

STATE OF NEW HAMPSHIRE

HILLSBOROUGH, S.S.
216-2022-CR-03011

SUPERIOR COURT
NORTHERN DISTRICT

STATE OF NEW HAMPSHIRE

v.

ALEXANDRA ECKERSLEY

**STATE'S RESPONSE TO PETITION OF UNION LEADER CORPORATION TO
INTERVENE AND MOTION TO UNSEAL COURT RECORDS**

NOW COMES, the State of New Hampshire by and through the Hillsborough County Attorney's Office, Shawn P. Sweeney, with this response to the Union Leader Corporation's Petition to Intervene and Motion to Unseal Court Records in the above captioned matter:

1. The State recognizes and respects the right of the public to access court records and proceedings and encourages public attention to the criminal justice process. It does not ask the Court to seal pleadings where there are reasonable options to protect legitimate privacy interests and the integrity of the judicial process.
2. Where the State has requested that the Court seal pleadings, it has included the reasoning and legal support for the request in its attendant motion to seal. The Court has only ordered the records sealed after consideration of pleadings from both parties and its further independent analysis.
3. "[T]he public's right of access to governmental proceedings and records shall not be unreasonably restricted." N.H. CONST. pt. I, art. 8 as amended. "The reasonableness of any restriction on the public's right of access to any governmental proceeding or record must be examined in light of the ability of the public to hold government accountable absent such access." *Associated Press v. State*, 888 A.2d 1236, 153 N.H. 120 (N.H. 2005).

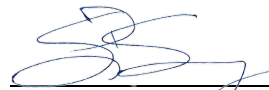
4. “[A]bsent special circumstances, those things which are filed in court in connection with a pending case are open to public inspection.” *Thomson v. Cash*, 117 N.H. 653, 654, 377 A.2d 135 (1977)(decided shortly after the 1976 amendment to N.H. Const. Pt. 1, art. 8 adding the above referenced quote).
5. “The right of access to a criminal trial...[ordinarily] enhances the quality and safeguards the integrity of the factfinding process, with benefits to both the defendant and to society as a whole. *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 606, 102 S.Ct. 2613, 73 L.Ed.2d 248 (1982). It is this enhanced quality and safeguarding of the integrity of the factfinding process that has been the foundation of the right of access to criminal trials in common law, the U.S. Const. 1st Amend. I, and in the N.H. Const. pt. I, art. 8.
6. However, the State’s recent motion addressing trial publicity sought to limit damage to the integrity of the criminal trial process by prohibiting statements that “have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.” *N.H. R. Prof. Conduct* 3.6. Broadcast statements including inaccurate and inadmissible evidence “create a substantial risk of prejudicing an impartial trial.” *N.H. R. Prof. Conduct* 3.6(b)(5). “[P]retrial publicity can create such a presumption of prejudice in a community that the jurors’ claims that they can be impartial should not be believed.” *Patton v. Yount*, 467 U.S. 1025 1031, 104 S.Ct. 2885 2888, 81 L.Ed.2d 847 (1984); *State v. Smart*, 136 N.H. 639, 622 A.2d 1197 (N.H. 1993).
7. “The vigilance of trial courts against the prejudicial effects of pretrial publicity also protects the interest of the public and the state in the fair administration of criminal justice” *United States v. Brown*, 218 F.3d 415, 423-24 (5th Cir. 2000). “Preserving the right to a fair trial necessarily entails some curtailment of the information that may be disseminated about a party prior to trial, particularly where trial by jury is involved. If there were no such limits, the result would be the practical nullification of the protective effect of the rules of forensic decorum and the exclusionary rules of evidence.” *ABA Model R. Prof. Conduct* 3.6 Comment.

8. The practical nullification effect is amplified in light of New Hampshire's departure from the ABA Model Rules. The New Hampshire rule does not include an exception to the general prohibition against certain extra-judicial statements allowing lawyers to reply to recent adverse publicity even if it is completely false. See *ABA Model Rule 3.6(c)*. So, some extrajudicial statements simply undermine the integrity of the trial.
9. Although the subject matter of legal proceedings is often of direct significance in debate and deliberation over questions of public policy, the prohibitions in New Hampshire's Rule 3.6 of Professional Conduct attempt to strike the balance between the protective effect of the rules of forensic decorum and the exclusionary rules of evidence.

Wherefore, the State respectfully requests that this honorable Court,

- A. Deny the Union Leader's Motion to Reconsider the Court's order to seal the Motion for an Order Prohibiting Additional Trial Publicity, the Objection thereto, and the Order thereon, and,
- B. Such other relief as the Court deems just and equitable.

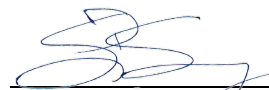
Respectfully Submitted,
State of New Hampshire,



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CERTIFICATION

This motion has been uploaded and filed this date in accordance with eFile & Serve rules.



Shawn P. Sweeney