ACCESS TO COURT RECORDS

1. Access in general

While the public has a common law right of access to court records, that right of access may be restricted by statute. See Nixon v. Warner Communications, 435 U. S. 597, 598 (1978); Matter of Newsday v. Sise, 71 N.Y.2d 146, 153 n.4 (1987); Matter of New York Post Corp. v. Leibowitz, 2 N.Y.2d 677, 686 (1957). The Freedom of Information Law ("FOIL") specifically exempts court records from disclosure. Public Officers Law § 86. Rather, access to court records is governed by Section 255 of the Judiciary Law.

Upon a request and the payment of "the fees allowed by law," Section 255 of the Judiciary Law requires a court clerk to "diligently search the files, papers, records and dockets of his office" and make copies or certify that the records cannot be found. The request must reasonably describe the specific records sought, and cannot simply be a request for general information or for the creation or compilation of records.

As to the fees allowed by law, Section 8019(f) of the CPLR indicates that a superior court clerk may charge the following: 50 cents per page to prepare a copy of any record or paper, with a minimum fee of $1.00; 50 cents per page to certify a prepared copy of any record or paper, with a minimum fee of $4. Pursuant to CPLR 8020(g), the clerk may charge $5 for certifying to a search of records in a particular court for a consecutive two-year period or fraction of that period. CPLR 8016 and various Uniform Court Acts set forth the fee that clerks of other courts may charge for providing copies of court records. If no such statute sets forth a fee that a clerk may charge for a copy of a court record, the clerk may charge the fee that the county clerk may charge for such a service. Judiciary Law § 255. These fees, in general, are set forth in CPLR Sections 8020 and 8021.

2. Statutory limitations to access

A number of statutes limit access to court records where the interest in confidentiality outweighs the public interest in disclosure:

A. Family Court Records

Access to court records in the Family Court is governed by Section 166 of the Family Court Act, which provides that the records of any proceeding in Family Court are not open to indiscriminate public inspection. In order to access a particular Family Court record, the requesting party must make an application to the Court and set forth the reasons for the request. It is solely within the discretion of the Court whether to permit the inspection of such records. Certain individuals, such as the parties and their representatives, are permitted access to Family Court records without application to the Court. 22 NYCRR 205.5

B. Sealed Records

Several New York statutes require the sealing of the record of a criminal case. Section 160.50 of the Criminal Procedure Law mandates that a record be sealed when the defendant is acquitted of all charges or the case is dismissed. Access by an individual other than the defendant is not authorized, except for certain law enforcement agencies (see the procedures set forth in CPL 160.50[1][d]). CPL 720.35(2) requires the sealing of a court record in a case when the defendant is adjudicated a youthful offender. In addition, if a criminal matter against a juvenile offender is removed to the Family Court pursuant to CPL Article 725, the record must be sealed. See CPL 725.15.

N.Y.2d 430 (1979); Matter of Gannett Co. v. De Pasquale, 43 N.Y.2d 370 (1977), aff'd 443 U.S. 368 (1979). Section 4 of the Judiciary Law provides that the "sittings of every court within the state shall be public, and every citizen may freely attend the same," except that the court has the discretion to exclude persons who are not directly interested in cases involving "divorce, seduction, abortion, rape, assault with the intent to commit rape, sodomy, bastardy or filiation."

The right of public access to trials is subject to the Court's inherent authority to close a courtroom to preserve order and decorum in the courtroom, to protect the parties and witnesses, and to further the administration of justice. See Matter of Gannet Co. v. De Pasquale, 43 N.Y.2d 370, 377; People v. Jelke, 308 N.Y. 56, 63 (1954). This discretion should be exercised only when "unusual circumstances necessitate it, and the court must conduct an inquiry to assure that the right to a public trial is not being sacrificed for less then 'compelling reasons.'" People v. Jones, 47 N.Y.2d 409, 413-15, cert. denied, 444 U.S. 946 (1979).

A. Criminal Actions

The constitutional provisions at issue in criminal actions involve the defendant's guarantees of a public trial under the Sixth and Fourteenth Amendments. Any restriction on public access depends upon the balancing of the First Amendment guarantees of public access with the defendant's guarantees to a public trial and the public interest in closure. Thus, although court proceedings are presumptively open, when it would jeopardize a defendant's right to a fair trial, the competing interests must be reconciled. Matter of Gannett Co. v. De Pasquale, 43 N.Y.2d 370, 380.

• Voir Dire: Jury selection is open to the public and closure is permitted only when there is an overriding interest essential to preserve a higher value and closure is narrowly tailored to serve that interest. Press-Enterprise Co. v. Superior Court, 464 U.S. 501, 510 (1984) (setting forth procedures to follow prior to closing voir dire proceedings).

• Youthful Offender Proceedings: The sealing provisions of CPL 720.35 operate only upon a youthful offender adjudication and do not require that the proceedings be closed automatically. See Capital Newspapers Division of the Hearst Corp. v. Moynihan, 125 A.D.2d 34 (3d Dept. 1987), aff'd 71 N.Y.2d 263 (1988) (setting forth the procedures that must be followed prior to closure of youthful offender proceedings).

• Suppression Hearings: The same qualified right of access to a criminal trial applies to pre-trial suppression hearings in criminal cases. Associated Press v. Bell, 70 N.Y.2d 32, 38 (1987); Matter of Westchester Rockland Newspapers v. Leggett, 48 N.Y.2d 430, 440 (1979). However, the countervailing interest is the defendant's right to an impartial jury (one insulated from matters that may ultimately be ruled inadmissable) should the matter proceed to trial. As such, where publicity or openness during a pretrial hearing could threaten the impaneling of an impartial jury, the Court may conduct a preliminary inquiry and make findings to support whether closure is required. Matter of Gannett Co. v. De Pasquale, 43 N.Y.2d 370, 380; Capital Newspapers Division of the Hearst Corp. v. Moynihan, 125 A.D.2d 34, 37. In the event that closure is necessary to protect the rights of the accused, the closure must be no broader than necessary to protect those rights and the court must consider reasonable alternatives to closure. Waller v. Georgia, 467 U.S. 39 (1984); Associated Press v. Bell, 70 N.Y.2d 32, 38.

• Testimony During Trial: The circumstances under which a trial can be closed are limited, as the justification must be a weighty one, and the court must follow the principles and procedures provided in Gannett and Leggett. Closure during the testimony of a witness has been upheld in the following circumstances: to protect an undercover officer's safety and to protect the integrity of an open investigation (People v. Cuevas, 50 N.Y.2d 1022 [1980]); to protect the identity of a witness-informer

(People v. Hinton, 31 N.Y.2d 71 [1979], cert. denied 444 U.S. 946 [1977]); and to protect the life of a witness or shield the witness from embarrassment (People v. Hagen, 24 N.Y.2d 395, cert. denied 396 U.S. 886 [1969]; see also Globe Newspaper Co. v. Superior Court, 457 U.S. 596 [1982] [setting forth the factors to be considered prior to closure during the testimony of a minor witness in a prosecution for a sex offense]). These factors apply to pre-trial hearings as well.

B. Civil Actions

Like criminal proceedings, civil actions are presumptively open pursuant to the guarantees under the First Amendment. Unlike criminal actions that present constitutional considerations for criminal defendants, in civil actions the First Amendment guarantees must be measured against the public interest in requiring closure.

1. Family Court Proceedings

The declaration in Section 4 of the Judiciary Law of a presumption of public access to court proceedings does not differentiate among the courts, and therefore applies to the Family Court, subject to any other statute that gives special treatment to Family Court proceedings. As such, there is also a presumption of openness to all Family Court proceedings, and Section 205.4 of the Uniform Rules [22 NYCRR] expressly provides that the Family Court is open to the public, including the media. However the presumption can be overcome on a case-by-case basis by an overriding interest that closure is essential to preserve higher values. See e.g., Globe Newspaper Co. v. Superior Court, 457 U.S. 596, 608; Matter of Ruben R., 219 A.D.2d 117 (1st Dept.), lv. to app. denied 88 N.Y.2d 806 (1996) (holding potential trauma to mental and physical well-being of children required closure of child protective proceeding to public and press); Matter of Katherine B., 189 A.D.2d 450 (2d Dept. 1993) (holding public properly excluded from child protective proceeding where compelling testimony established that child would be adversely affected).

Section 205.4 (b) of the Uniform Rules [22 NYCRR] provides specific factors that a judge may consider in determining whether to close the courtroom or to exclude specific individuals, such as preserving courtroom decorum, avoiding a disruption in the proceedings, and serving the orderly administration of justice, including privacy interests of individuals before the court and the need to protect litigants from harm.

2. Matrimonial Proceedings

Domestic Relations Law § 235(2) grants the court the discretion to exclude the public if "the public interest requires that the examinations of the witnesses should not be public." Because matrimonial proceedings include matters concerning child custody, visitation and maintenance, aside from potential embarrassment to the litigants in a public proceeding, the public interest standard may protect minors from public testimony. See CPLR 4019; Matter of Lincoln v. Lincoln, 24 N.Y.2d 270 (1969) (trial court had discretion to interview the child in a custody proceeding in private).

3. Adoption Proceedings

Given the nature of adoption proceedings, the proceedings are confidential and held in closed courts, and the records pertaining to adoptions are sealed pursuant to Domestic Relations Law § 114. See Matter of Walker, 64 N.Y.2d 354 (1985) (setting forth the considerations for deeming adoption records confidential).

4. Mental Competency Proceedings

The media has a qualified right of access to competency hearings, whether held pursuant to the Mental Hygiene Law or the Criminal Procedure Law. See Matter of New York News v. Ventura, 67 N.Y.2d

C. Matrimonial Actions

Section 235 of the Domestic Relations Law provides that neither an officer of the court with whom th proceedings in a matrimonial action or a written agreement of separation is filed or an action or proceeding for custody, visitation or maintenance of a child are filed, or before whom testimony is taken, or his clerk, either before or after termination of the suit shall not permit a copy of any pleadings affidavits, findings of fact, conclusions of law, judgment of dissolution, written agreement of separatio or memorandum thereof, or examination to be taken by any person other than a party, or the attorney o counsel of a party, except by order of the court.

D. Confidential Records

Records contained in a court file that are deemed confidential may not be disclosed absent a court orde including the following:

• A defendant's criminal history record (i.e., rapsheet or NYSIIS sheet). See 42 U. S. C. § 3789g(b); 28 CFR Part 20; "Use and Dissemination Agreement" between the Unified Court System and the State Division of Criminal Justice Services.

• Alcohol or drug treatment records. See 42 CFR Part 2.31 et seq.

• Court records in sex offense cases that might identify the victim. See Civil Rights Law § 50-b.
• Grand Jury minutes. See generally CPL 190.25(4), Penal Law § 215.70.

• Probation reports and pre-sentence memoranda. See CPL 390.50, 750.

• Records and questionnaires that disclose the names and addresses of jurors are not subject to disclosure, even upon argument that some of the same information may have been provided during voir dire. See generally Judiciary Law § 509(a); Matter of Newsday v. Sise, 71 N.Y.2d 146 (1987).

• Mental health records, including records of commitment, retention and discharge proceedings of the mentally ill and mentally retarded (see Articles 9 and 15 of the Mental Hygiene Law; CPL 330.20) and clinical records submitted in connection with the proceedings (see Mental Hygiene Law § 33.13[c]).

• Orders of commitment of mentally ill inmates. See Correction Law § 402.

• Records of adoption proceedings. See Judiciary Law § 90.10.

• Other records or documents that have been sealed or designated confidential by the court.

E. Court Transcripts

Transcripts of court proceedings are treated the same as any other records for purposes of court access. If the stenographic minutes of a court proceeding have not been transcribed and the file is not sealed, the court reporter may provide a transcript upon payment of the appropriate fees. See Judiciary Law § 300, 301.

ACCESS TO COURT PROCEEDINGS

All judicial proceedings, both civil and criminal, are presumptively open to the public. Matter of Hearst Corp. v. Clyne, 50 N.Y.2d 707, 715 (1980); Matter of Westchester Rockland Newspapers v. Leggett, 48

472 (1982); Matter of Westchester Rockland Newspapers v. Leggett, 48 N.Y.2d 430 (1979); see also People v. Ortega, 69 N.Y.2d 763 (1987). This right exists despite the fact that the court papers in some proceedings are sealed under Mental Hygiene Law § 9.31.