

**STATE OF MICHIGAN  
IN THE 57TH JUDICIAL DISTRICT FOR THE COUNTY OF ALLEGAN**

PEOPLE OF THE STATE OF MICHIGAN

No. 20-3569-SM

v.

Hon. William A. Baillargeon

KATHERINE LINDSEY HENRY  
\_\_\_\_\_ /

MYRENE KAY KOCH (P62570)  
Allegan County  
113 Chestnut Street, Allegan, MI 49010  
269-673-0280  
prosecutor@allegancounty.org  
\_\_\_\_\_ /

KATHERINE L. HENRY (P71954)  
Defendant In Pro Per  
[REDACTED] Ormond Beach, FL 32175  
[REDACTED] (redacted per MCR 1.109)  
[REDACTED]

**EX PARTE MOTION FOR CLARIFICATION RE RECORDS**

Defendant, Katherine Henry, in pro per, moves this Court to clarify her unrestricted use of the records in this case based on the following:

1. On 11/3/20, Henry was charged with Trespassing in violation of MCL 750.552. Nearly 9 months later, Prosecutor added a charge of Disturbing the Peace, in violation of MCL 750.170.
2. This case had several proceedings: 1/11/21 arraignment, 2/4/21 motion hearing, 2/9/21 pretrial conference, 4/8/21 motion hearing, 4/22/21 motion hearing, 7/16/21 Settlement Conference, 7/21/21 arraignment, 10/22/21 settlement conference, 7/7/22 motion hearing (at which time the entire case was dismissed with prejudice).
3. At three of these proceedings, no one was allowed in the courtroom to observe (not even an attorney). At five of these proceedings, the court held them by zoom only, not allowing Henry to appear in person per her due process and ADA requests to do so. At the final hearing, members of the public were allowed in the courtroom, but only if they were wearing masks, leading to many being precluded from entering the courtroom that day.
4. Henry is a licensed attorney who devotes her practice to educating the public on the law and the constitution. She often explains court cases, opinions and orders; party pleadings and legal arguments; and general case procedures in her educational presentations (from highly-contended US Supreme Court cases to misdemeanors and civil infractions in district

courts and everything in between).

5. Henry has created a multi-faceted website for these purposes, published a Constitution mobile app, livestreams a weekly show, and is working on rolling out several constitution courses and publishing a constitution book. Giving real life examples of various legal and constitutional aspects is an integral part of each of these projects, wherein Henry works to make government, law and the constitution more understandable and accessible for the general public. After all, an attorney has a “duty to protect and *inform the public.*”<sup>1</sup>
6. As seen in the 7/7/22 motion hearing, the prosecution illegally and improperly arrested and prosecuted Henry in this case. As such, she is pursuing all options against those who violated her statutorily and constitutionally protected rights. Preparing for such future steps necessarily requires consultation with various trusted individuals and different types of professionals. Such persons must necessarily be able to review the court proceedings from this case - from arraignment through the final motion hearing.
7. The current court orders allowing Henry copies to DVDs, etc. of these court proceedings indicate that Henry “SHALL NOT” copy, release, publish or post any part of these proceeding records to anyone else.
8. Such restrictions unnecessarily hinder Henry’s aforementioned educational efforts, as well as her preparation for forthcoming litigation and the pursuit of other lawful remedies.
9. Henry raised this issue in her Motion for Declaratory Relief: Right to Open Hearings, filed on 5/26/22, which was supported by an attached Brief. It was properly noticed for hearing to be held on 6/2/22, which was moved sua sponte to 7/7/22. However, after the court dismissed the charges, it also ruled that no remaining motions would be heard that day. Thus, Henry relies upon the pleadings already filed on this issue in seeking final resolution from the court now. (But Henry provides a brief recap of the main legal issues on this point raised in those prior pleadings.)
10. The “First Amendment guarantees of freedom of speech and of the press protect[] a right of access to places traditionally open to the public, such as trials.”<sup>2</sup>
11. A judicially imposed gag order is a prior restraint and is, therefore, subject to the strictest scrutiny. Publicity of trials (the “open forum” of public trials) plays a very important role in ensuring and preventing abuse, serving as a “natural check” on unjust prosecution and abuse

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<sup>1</sup> MCL 600.901 Compiler’s Note, citing *Falk v State Bar*, 418 Mich 270 (1983).

<sup>2</sup> *Midland Publishing Co v District Court Judge*, 420 Mich 148, 161 (1985).

of judicial power.<sup>3</sup>

12. Moreover, as “*prior restraints on publication* are the most serious and *least tolerable infringement* on First Amendment rights, the party seeking to justify a prior restraint *must overcome a heavy presumption of unconstitutionality*.”<sup>4</sup> This is especially applicable in cases where a party is threatened with contempt of court for sharing the information. *Id.*
13. “With respect to judicial proceedings in particular, the function of the press serves to guarantee the fairness of trials and to bring to bear the beneficial effects of public scrutiny upon the administration of justice. Thus, the press, as a segment of the public, acts to assist the whole public in guaranteeing the openness and integrity of the trial process.”<sup>5</sup>
14. We must also not forget that a “trial court is a public event. What transpires in the courtroom is public property. . . . There is no special perquisite of the judiciary which enables it, as distinguished from other institutions of democratic government, to suppress, edit, or censor events which transpire in proceedings before it.”<sup>6</sup>
15. MCL 600.1420 *mandates* that all “sittings of every court within this state shall be public, except that a court may, for good cause shown, exclude” people for one of three extremely limited exceptions.<sup>7</sup> In other words, in this case, as in *Detroit Free Press*, “[n]one of the statutory exceptions permits closing this trial; national security was not involved and excluding the public went beyond the authority to exclude witnesses or minors.” *Id.* at 549.
16. At prior motion hearing, the court insinuated allowing the public to watch the livestream on their own devices, or paying for a DVD of the hearing that (under penalty of contempt of court) cannot be shared with anyone satisfied constitutional and statutory rights to a public hearing. The aforementioned state law, case precedent and constitutional provisions explain this is not the case. The same holds true for the manner in which members of the public were excluded on 7/7/22. After all, a public proceeding is one “that *anyone* may attend or

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<sup>3</sup> *Detroit Free Press* at 379-380, 388-389 (superseded on other grounds); *Murray* at 286; *Vaughn* at n 25, citing *In re Oliver*, 333 US 257, 270 (1948).

<sup>4</sup> *Midland* at 156, citing *Near v Minnesota ex rel Olson*, 283 US 697 (1931), *Nebraska Press Ass'n v Stuart*, 427 US 539 (1976).

<sup>5</sup> *Detroit Free Press* at 386 (superseded on other grounds), citing *Cox Broadcasting Corp v Cohn*, 420 US 469, 491-492 (1975).

<sup>6</sup> *Craig v Harney*, 331 US 367, 374 (1947), cited by *State v Marshall*, 166 Conn 593, 598 (1974), and *Detroit Free Press* at 386 (superseded on other grounds).

<sup>7</sup> “**witnesses** in the case when they are not testifying and may, in actions involving scandal or immorality, exclude all **minors** from the courtroom unless the minor is a party or witness. This section shall not apply to cases involving **national security**.” While it is possible an individual witness may have needed to be sequestered during Henry’s trial, that does not justify exclusion of *anyone* else. Further, this case is not involving scandal or immorality such as a CSC case, and does not involve national security.

observe.” Black’s Law Dictionary (8th ed), p 1543.

Therefore, Henry asks this Court:

- A. Clarify that Henry has the right to share with the public any transcripts and/or video of these court proceedings.
- B. For any such other relief the Court deems just and equitable.

Respectfully Submitted: August 4, 2022

/s/ Katherine L. Henry  
Katherine L. Henry (P71954)

### **PROOF OF SERVICE**

The undersigned certifies the foregoing Motion for Clarification re Records and Proposed Order were served upon the parties named herein at the addresses listed above, by US Mail, hand-delivered, emailed (if commonly accepted by opposing counsel, or allowed due to COVID19 Michigan Supreme Court recommendations), or by depositing in their box at the Courthouse on: August 4 2022.

Respectfully Submitted: August 4, 2022

/s/ Katherine L. Henry  
Katherine L. Henry (P71954)

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KATHERINE LINDSEY HENRY  
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**ORDER CLARIFYING RECORDS USE**

At a session of said Court, held in the  
City and County of Allegan, MI, on the  
4th day of August, 2022

PRESENT: HONORABLE WILLIAM A. BAILLARGEON, District Judge

Defendant has filed requests for transcripts and records of each of the court proceedings held in this case. The prior orders approving her to receive these copies indicate she “SHALL NOT” copy, release, publish or post any part of these proceeding records to anyone else. Defendant filed a Motion for Declaratory Relief and Supporting Brief on May 26, 2022, seeking clarification of her right to publish and share these records. The People filed no response to this request. The motion was scheduled to be heard on June 2, 2022, being rescheduled for July 7, 2022, but has not been decided to-date. Thus, on Defendant’s current Ex Parte Motion for Clarification re Records, the Court grants Defendant’s request. It is further ordered that Defendant may share with the public, or anyone else, any transcripts and/or video of any of the court proceedings in this case.

Dated: \_\_\_\_\_

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Hon. William A. Baillargeon