

**: MINNESOTA JUDICIAL TRAINING UPDATE :****COURTROOM CLOSURE: FULL OR PARTIAL EXCLUSIONS**

QUESTION: You're in the Middle of Trial and You Get a Request to Temporarily Exclude Someone from the Court Room. What Findings Must a Judge Make Before Ordering a Full or Partial Closure of a Public Trial Including Exclusion of any Member of the Public From Any Portion of the Public Trial?

1) *Basic Right: The right to a public trial is guaranteed by the U.S. and Mn Constitutions, however, this right 'is not absolute and may give way in certain cases to other rights or interests'.*

ANSWER: Before the court can order a full or partial closure and/or exclude any member of the public from any portion of the public trial the court must make the following (*Waller*) findings:

- 1) **A party must advance an overriding interest that is likely to be prejudiced;**
- 2) **The closure must be no broader than necessary to protect that interest;**
- 3) **The district court must consider reasonable alternatives to closure; and**
- 4) **The district court must make findings adequate to support the closure.**

NOTE: Failure of the court to address the '*Waller*' factors will result, at a minimum, in a remand.

EXAMPLE: In a 1st degree assault trial, before the testimony of a key states witness [Mary], the prosecution asked that defendant's sisters be excluded from the courtroom during [Mary's] testimony because they had allegedly made threatening phone calls to her. The defense objected and the judge granted the limited exclusion but failed to address the above '*Waller*' factors. Defendant was convicted. Case remanded for additional findings on closure. *State vs. McDaniel, A08-2261, Ct of Appeals, Feb 23, 2010.*

AUTHORITY: U.S. Const. amend.VI; Minn. Const. art. I, sec. 6; *Waller v. Georgia*, 467 U.S. 39 (1984); *State v. Mahkuk*, 736 N.W.2d 675 (Minn. 2007); Minn. R. Crim. Proc. 26.03, subd. 6.