

REPORTERS COMMITTEE

FOR FREEDOM OF THE PRESS

1156 15th Street, NW, Suite 1020
Washington, DC 20005
(202)795-9300
www.rcfp.org
Bruce Brown
Executive Director
bbrown@rcfp.org
(202)795-9301

STEERING COMMITTEE

STEPHEN J. ADLER
Reuters

J. SCOTT APPLEWHITE
The Associated Press
WOLF BLITZER
CNN

DAVID BOARDMAN
Temple University

CHIP BOK
Creators Syndicate

MASSIMO CALABRESI
Time Magazine

MANNY GARCIA
USA Today Network

EMILIO GARCIA-RUIZ
The Washington Post

JOSH GERSTEIN
Politico

ALEX GIBNEY
Jigsaw Productions

SUSAN GOLDBERG
National Geographic

JAMES GRIMALDI
The Wall Street Journal

LAURA HANDMAN
Davis Wright Tremaine

JOHN C. HENRY
Freelance

KAREN KAISER
The Associated Press

DAVID LAUTER
Los Angeles Times

DAHLIA LITHWICK
Slate

MARGARET LOW
The Atlantic

TONY MAURO
National Law Journal

JANE MAYER
The New Yorker

ANDREA MITCHELL
NBC News

MAGGIE MULVIHILL
Boston University

JAMES NEFF
Philadelphia Media Network

CAROL ROSENBERG
The New York Times

THOMAS C. RUBIN
Quinn Emmanuel

CHARLIE SAVAGE
The New York Times

BEN SMITH
BuzzFeed

JENNIFER SONDAG
Bloomberg News

PIERRE THOMAS
ABC News

SAUNDRA TORRY
Freelance

VICKIE WALTON-JAMES
NPR

JUDY WOODRUFF
PBS/The NewsHour

Senior Advisor:
PAUL STEIGER
ProPublica

VIA ECF

April 22, 2019

The Hon. Dan Aaron Polster
Carl B. Stokes United States Court House
801 West Superior Avenue, Courtroom 18B
Cleveland, Ohio 44113-1837

Re: *In re: National Prescription Opiate Litigation*, MDL No. 2804

Dear Judge Polster:

The Reporters Committee for Freedom of the Press (the “Reporters Committee”) and the 28 interested news media organizations listed below (collectively, the “News Media Coalition”) submit this letter concerning the pre-trial conference scheduled for tomorrow, April 23, 2019, in the above-referenced matter.

Despite the Court’s April 18, 2019 order indicating that tomorrow’s conference will be “on the record,” it is the News Media Coalition’s understanding that the Court plans to close the courtroom to members of the press and the public. If this understanding is correct, the News Media Coalition respectfully objects to such closure and urges the Court to permit members of the press and public to attend tomorrow’s pre-trial conference, as well as all future conferences in this litigation of national importance.

The Reporters Committee is an unincorporated nonprofit association of reporters and editors dedicated to safeguarding the First Amendment rights and freedom of information interests of the news media and the public. The 28 other interested news media organizations listed below include those who have devoted substantial time and resources to covering this litigation and have a direct interest in ensuring that they have access to court proceedings in this case.

This multi-district litigation is of paramount importance to the public. It involves hundreds of public entities, representing millions of Americans across the country, and seeks to address the “deadliest drug crisis in American history.” Josh Katz, *Short Answers to Hard Questions About the Opioid Crisis*, N.Y. Times (Aug. 10, 2017), <https://nyti.ms/2v20oF2>. In 2016, opioid overdoses killed more people than guns or car accidents—more than 130 people each day. *Id.*; CNN Library, *Opioid Crisis Fast Facts*, CNN (Nov. 5, 2018), <https://cnn.it/2sPtPuW>. Rural Americans reported in a recent survey that opioid and other drug abuse was the biggest problem facing their local community today. Danielle Kurtzleben, *Poll: Rural Americans Rattled By Opioid Epidemic; Many Want Government Help*, NPR (Oct. 17, 2018), <https://n.pr/2NQz17a>. In this litigation, government entities seek damages that could amount to billions of dollars and impact the lives of millions of Americans.

Clearly, it addresses public health and safety matters of the utmost public interest and concern.

The First Amendment and common law afford a “strong presumption in favor of openness” in civil cases. *See Brown & Williamson Tobacco Corp. v. F.T.C.*, 710 F.2d 1165, 1179 (6th Cir. 1983). The Sixth Circuit has recognized that proceedings in which a court adjudicates the rights of a party, as well as proceedings that significantly affect subsequent proceedings, including trial, are presumptively open to the public. *See, e.g., Detroit Free Press v. Ashcroft*, 303 F.3d 681, 696 (6th Cir. 2002) (finding a right of access to immigration hearings that were adjudicatory in nature); *Application of Nat’l Broad. Co., Inc.*, 828 F.2d 340, 345 (6th Cir. 1987) (finding rights of access to pretrial criminal proceedings concerning both a judge’s alleged conflicts of interest and an attorney’s alleged conflicts of interest); *see also Press-Enter. Co. v. Superior Court*, 478 U.S. 1, 7 (1986) (explaining that “the First Amendment question cannot be resolved solely on the label we give the event, . . .”). The First Amendment and common law presumptions of openness apply to tomorrow’s pre-trial conference. Indeed, the Court ordered that the pre-trial conference be “on the record” on the motion of the Defendants, who explained that “significant issues that affect the parties’ procedural rights and their ability to present their cases and defenses” at trial will be addressed by the parties and the Court. *See* Mot. by All Defs. to Record April 23, 2019 Conference Pursuant to 28 U.S.C. § 753, ECF. No. 1558.

Access to pre-trial conferences like the one scheduled for tomorrow play an essential role in keeping the press—and the public that relies on it—informed about the status and progress of a case. Such access also contributes to greater public understanding of litigation and of the civil justice system as a whole. Tomorrow’s conference, in particular, where the structure of the first bellwether trial will be discussed, will preview legal issues and arguments of the parties, and offer a roadmap of how that trial, and indeed the remainder of this litigation, will proceed. Simply put, a trial is more difficult for journalists and the public to follow if key pre-trial hearings are closed to the public. Given the importance of the structure of this litigation’s first bellwether trial, the News Media Coalition urges the Court to ensure that tomorrow’s pre-trial conference is open to members of the press and the public.

In light of the public’s presumptive rights of access to proceedings in civil cases and the powerful public interests at stake in this litigation, the News Media Coalition respectfully requests that tomorrow’s pre-trial conference—and all future pre-trial conferences in this litigation—be held in open court. Should the Court request argument on the issue of closure of tomorrow’s status conference, the undersigned are available to appear telephonically on behalf of the News Media Coalition.

Respectfully submitted by,

/s/ Karen C. Lefton

Karen C. Lefton
The Lefton Group, LLC
3480 West Market Street, Suite 304
Akron, Ohio 44333
karen@theleftongroup.com
330-864-2003 – office
330-606-8299 – cell

*Patrick C. McGinley
Attorney at Law
737 South Hills Dr.
Morgantown, WV 26501

*Katie Townsend
*Caitlin Vogus
THE REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS
1156 15th Street NW
Suite 1020
Washington, D.C. 20005

**Of counsel*

For:

The Reporters Committee for Freedom of the Press
Advance Ohio (Publisher of Cleveland.com)
Advance Publications, Inc.
American Society of News Editors
The Associated Press
Associated Press Media Editors
Association of Alternative Newsmedia
Dow Jones & Company, Inc.
The E.W. Scripps Company
Gannett Co., Inc.
HD Media Company, LLC
Inter American Press Association
International Documentary Assn.
Investigative Reporting Workshop at American University
The McClatchy Company
The Media Institute
MPA – The Association of Magazine Media
National Press Photographers Association
The NewsGuild - CWA
Ohio News Media Association
Online News Association
Pennsylvania NewsMedia Association
Plain Dealer Publishing Co.
POLITICO LLC
Reporters Without Borders
Society of Professional Journalists
Tribune Publishing Company
Tully Center for Free Speech
The Washington Post