

MEDIA GUIDE FOR LAWYERS

Tips For Lawyers

Citizens' interest in legal matters is at an all-time high, bolstered by the advent of social media, the 24-hour news cycle, and entire networks and programming devoted to case coverage and analysis. Consequently, many lawyers have begun to harness the power of the media in their advocacy. While press conferences, media appearances, and interviews may be useful in advancing clients' interests, lawyers should always aim to be strategic and adherent to the rules surrounding publicity of trial matters when interacting with the media.

The Basic Rule

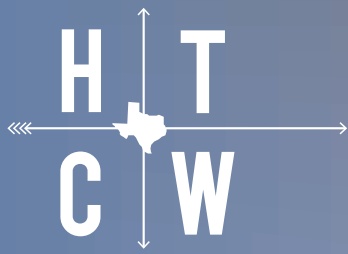
A lawyer cannot make a statement out of court that a reasonable person knows or should know has a substantial likelihood of materially prejudicing the case while representing their client.[1] This prohibition also extends to the lawyer counseling or assisting a third person in making such a statement.[2] In analyzing "material prejudice," the rules chiefly consider the context and surrounding circumstances in which the statement is made,[3] providing for a flexible standard which accounts for constitutional considerations regarding the speech.

While lawyers definitely enjoy free speech rights — due to the First Amendment — lawyers' free speech rights come second to the constitutional protections guaranteeing a fair trial.[4] Nonetheless, the public has a right to know about threats to their safety; and some judicial and legal matters concern certain debates about public policy, thus the rules seeking to strike a balance between respecting due process protections and transparency with the public.[5]

So, what can't I do?

First, if litigation is imminent or in progress, a lawyer should not comment on any of the following[6]:

1. The character, credibility, reputation, or criminal record of a suspect or witness in a criminal case (or a party in a civil case);
2. Expected testimony from a witness;
3. The possibility of a guilty plea;
4. The existence or contents of a confession;
5. The existence of an admission or statement given by the suspect or defendant;
6. The refusal of the suspect or defendant to make a statement;
7. The performance, refusal, or results of an examination (e.g. blood alcohol concentration);
8. The identity or nature of physical evidence;
9. Their opinion as to the guilt/innocence of the suspect or defendant; and/or
10. Any information the lawyer knows is likely inadmissible and prejudicial, which might affect the trial's impartiality.



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What can I do?

A lawyer will not ordinarily violate the trial publicity rules when they discuss the following in a media appearance, press conference, or interview[7]:

1. The general nature of their client's claim or defense;
2. Information contained in a public record;
3. The fact that an investigation is in progress and the general nature of that investigation;
4. The people involved in the case (unless prohibited by law);
5. A request for assistance in obtaining evidence;
6. If the lawyer has a reasonable belief that there's a substantial likelihood of harm to an individual or the public, she may warn of danger (e.g. that the subject is "armed and dangerous.")
7. In criminal cases in particular, they may remark on the following:
 - a. The identity, residence, occupation and family status of the accused;
 - b. Information necessary to aid in the apprehension of the accused;
 - c. The fact the accused was arrested and the time and place of that arrest; and
 - d. The identity of investigating and arresting officers or agencies, and the length of their investigation.

Best Practices for Lawyers Interacting With Media

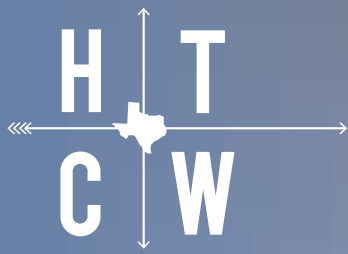
The Disciplinary Rules of Professional Conduct clearly lay out what is permissible and impermissible to say while advocating for your client. There are several other considerations lawyers should endeavor to keep top of mind when interacting with journalists, reporters, and media outlets.

Keep It Simple.

Some lawyers love to talk and to make it clear that they know more \$10 words than other folks. Media appearances are one instance where that often works against lawyers. No matter how eloquent, brilliant, or well-crafted your statement, those reporting on it might not always communicate it precisely the way you would want it. As such, lawyers should keep their statements brief, clear, and free of legal jargon to ensure their messages keep their integrity when published. When possible, provide reporters with written copies of your statements to further ensure they are reported accurately.

Remember Miranda

"Anything you say can and will be used against you." Lawyers would be wise to keep this at the forefront of their minds when allowing clients to address the media. While your client's appearance or interview may advance your cause, you must counsel them effectively on what to say and not say. Rest assured: opposing counsel, law enforcement, and potential witnesses will be reviewing your statements and, where appropriate, using them against you. Be smart and strategic in this regard to save your client from a disadvantage.



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Don't Oversell It

To a great extent, a lawyer's credibility is on trial when they appear in public on behalf of their client. As much as possible, lawyers should endeavor not to exaggerate, embellish, or "oversell" the strength of their claim or defense, particularly if there is a reasonable chance they will be in the public eye again in the future on the same case or a different case. Keep it honest and undersell your position so you can "over-deliver" in litigation.

It's Not About You

Media appearances can be integral in raising a lawyer's profile; informing their community about their areas of practice and abilities; and in crafting their individual "brand." While all of these may be incidental benefits, they should not be the lawyer's paramount focus. The focus should be on the client's claim, defense, positive attributes, terrible ordeal, etc. Keep the focus on the work and not raising your profile, and the fame you seek may yet come your way.

Understand Leverage

It goes without saying, but the kinds of cases that generally evoke strong interest usually have compelling factual circumstances or "optics." Maximizing the benefit of the media in a case where you believe your position is compelling lies in understanding how to leverage the optics of the situation to your benefit. This is especially important in cases where there is great potential for settlement because the optics are tragic, heinous, or "charged" (e.g. racially, politically, etc.). The greatest benefit to your client lies in understanding points of leverage and how to capitalize on them.

[1] Tex. Disciplinary Rules of Prof'l Conduct R. 3.07(a).

[2] Ibid.

[3] Tex. Disciplinary Rules of Prof'l Conduct R. 3.07, cmt. 3.

[4] Tex. Disciplinary Rules of Prof'l Conduct R. 3.07 cmt.1.

[5] Ibid.

[6] Tex. Disciplinary Rules of Prof'l Conduct R. 3.07(b).

[7] Tex. Disciplinary Rules of Prof'l Conduct R. 3.07(c)