

DEALING WITH THE MEDIA

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RILEY FLETCHER
BASIC LAW SEMINAR
AUSTIN, TEXAS
February 21-22, 2013

Basic Rules for Dealing with the Media and Trying to Understand the Media

Overview:

The media believes it is the “watchdog” of government, including public utilities on behalf of citizens and rate payers. Attorneys representing the public utility, whether outside counsel or employee of the public utility, need to understand the role of the media. Just about anything, unless it falls under competitive matter, that is done by the public utility is open to public scrutiny and criticism. Acknowledge the public’s right to know. Accept this premise, if you do, you’re on your way to successful media relations.

*It is critical for an attorney representing the public sector to understand the role of the media and the rules he/she need to know when dealing with the media. On one hand it is critical to cultivate a working relationship with the media in order to get information to the public and for them to accept your explanation of the event or matter; on the other hand, you must remember they have a job to do and are **not** your friends.*

Government Attorney Standard

Government attorneys have traditionally been held to higher standards of ethical conduct than their private practice brethren. Court opinions have repeatedly stated that the duty of a government attorney is not just to win a case, but also to see that justice is done.

Much of the case law on this issue arises out of fact situations involving prosecuting attorneys and administrative agency counsel, and a lot of the discussion appears to be **dicta**. Nevertheless, it is firmly established that a government attorney has a duty to the justice system as a whole, not just a duty to a particular government agency. *Freeport v. F.E.R.C.*, 962 F.2d 45 (D.C. Cir. 1992); *Williams v. Secretary of Health & Human Services*, 779 F.Supp. 471 (W.D. Mo. 1991).

Simple Rules on how not to panic but the proper way to respond to the call from the reporter.

- **Understand the media’s job.** Reporters are neither your friends nor enemies. They get paid to get their stories – with or without your help. If you want your views represented, open your mouth and answer their questions. When you clam up, reporters will find other sources.
- **DO NOT LIE.** Even if you think that it’s an innocent lie, DON’T do it. A persistent reporter will find out that you told a lie and not only will you be embarrassed, you will lose all credibility with the media.

- Lawyers usually advise not to talk to the media. This usually does not work in the public sector. Be aware that in many situations, your potential liability may be trivial compared with the risk of alienating the public and employees by avoiding the reporters and cameras.
- Take “**no comment**” out of your vocabulary. Even when you can’t disclose information, saying little is better than saying nothing and explaining why you can’t talk is better than stonewalling. *Exception:* Court-ordered gags.
- **Do return the call**, especially if you tell a reporter you’ll call him back. Even if you don’t obtain the needed information, call and let the reporter know. You will lose credibility if you say you will call and don’t.
- **Don’t guess.** Only provide information you know. It’s okay to tell a reporter that you will get back to them with the information.
- Know when the reporter needs the information. You might have to leave an important meeting to return the call.
- **Speak English.** Don’t use legal jargon when answering questions. Explain everything in simple to understand terms. Don’t assume the reporter knows the facts. Give as much background as you can.
- Call a reporter when they have made an error, especially errors where you have been misquoted or facts have been misstated. Find out how the reporter intends to correct the error. If not satisfied with reporter’s answer, talk to the editor. Although you still may not get immediate relief, by calling them on their errors they will probably try harder the next time.
- Don’t criticize the City’s decisions to the media, even if they went against your recommendation. You still have to defend the decision of your client and continue working for them.
- Keep your composure. Some reporters will do what they can to have you lose your cool. And even if you are justified, do not yell or touch the reporter and **DO NOT TRY TO GRAB THE CAMERA.**

Texas Rules of Professional Conduct

Rule 1.05 Confidentiality of Information

Rule 1.06 Conflict of Interest: General Rule

Rule 1.12 Organization as a Client

Rule 3.07 Trial Publicity (Attached)

Rule 4.01 Truthfulness in Statements to Others

Rule 4.02 Communication with One Represented by Counsel

Bottom Line:

The media has a job to do and so does the lawyer representing the governmental entity. An attorney can be responsive to inquiries from the media, without compromising the client's position. Always answer the questions, and THINK before answering.

Rule 3.07 Trial Publicity

(a) In the course of representing a client, a lawyer shall not make an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the lawyer knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicatory proceeding. A lawyer shall not counsel or assist another person to make such a statement.

(b) A lawyer ordinarily will violate paragraph (a), and the likelihood of a violation increases if the adjudication is ongoing or imminent, by making an extrajudicial statement of the type referred to in that paragraph when the statement refers to:

- (1) the character, credibility, reputation or criminal record of a party, suspect in a criminal investigation or witness; or the expected testimony of a party or witness;
- (2) in a criminal case or proceeding that could result in incarceration, the possibility of a plea of guilty to the offense; the existence or contents of any confession, admission, or statement given by a defendant or suspect; or that person's refusal or failure to make a statement;
- (3) the performance, refusal to perform, or results of any examination or test; the refusal or failure of a person to allow or submit to an examination or test; or the identity or nature of physical evidence expected to be presented;
- (4) any opinion as to the guilt or innocence of a defendant or suspect in a criminal case or proceeding that could result in incarceration; or
- (5) information the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and would if disclosed create a substantial risk of prejudicing an impartial trial.

(c) A lawyer ordinarily will not violate paragraph (a) by making an extrajudicial statement of the type referred to in that paragraph when the lawyer merely states:

- (1) the general nature of the claim or defense;
- (2) the information contained in a public record;
- (3) that an investigation of the matter is in progress, including the general scope of the investigation, the offense, claim or defense involved;
- (4) except when prohibited by law, the identity of the persons involved in the matter;
- (5) the scheduling or result of any step in litigation;
- (6) a request for assistance in obtaining evidence, and information necessary thereto;
- (7) a warning of danger concerning the behavior of a person involved, when there is a reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and
- (8) if a criminal case:
 - (i) the identity, residence, occupation and family status of the accused;
 - (ii) if the accused has not been apprehended, information necessary to aid in apprehension of that person;
 - (iii) the fact, time and place of arrest; and
 - (iv) the identity of investigating and arresting officers or agencies and the length of the investigation.