



Meet the Press:

Working Effectively with the Media

CONFERENCE ON STATE AND FEDERAL APPEALS



Connie H. Pfeiffer
Yetter Coleman LLP
Houston, TX



Natalie Posgate
The Texas Lawbook
Dallas, TX



Live Webcast June 10-11, 2021

Overview

- ***Ethics***
Texas Rules of Disciplinary Procedure and rules for reporters
- ***Lawyer Liability***
Landry's Inc. v. Animal Legal Defense Fund (Tex. 2021)
- ***Tips, Tricks, Do's and Don'ts—***
The Practical Side

General Rule:

- (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.**

Rule 3.07—Trial Publicity

Safe Harbors

(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

Rule 3.07—Trial Publicity

Safe Harbors, continued

(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.

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First appeared as part of the conference materials for the
31st Annual Conference on State and Federal Appeals session
"Meet the Press: Working Effectively with the Media"