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**Meet the Press:  
Working Effectively with the Media**

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The constitutional rights to free speech and a free press can collide with other constitutional rights. Most obviously, there are constitutional rights to a fair trial. And individuals in Texas have the constitutional right to protect their reputations. The Texas Constitution expressly guarantees the right to bring claims for reputational torts. *See* TEX. CONST. art. I, §§ 8 (“Every person shall be at liberty to speak, write or publish his opinions on any subject, being responsible for the abuse of that privilege.”), 13 (“All courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law.”)

When lawyers speak to the media they do so against a backdrop of duties to clients, which restrict a lawyer’s right to free speech when representing a client or even after a representation has ended. Yet the public has a significant interest in lawsuits, judicial proceedings, and matters of public concern. Lawyers, journalists, and reporters *need* to speak to each other, but they have to navigate their respective interests and duties carefully.

This paper has the modest goal of highlighting only a few of these issues. First, it identifies two key Texas Rules of Disciplinary Procedure and ethical guidelines for journalists. Then it covers two key Texas Supreme Court cases relevant to lawyer and journalist liability to third parties when taking a litigant’s allegations to the press. Last, it ends with practical tips for your next media encounter. The paper is generally written with the Texas civil lawyer in mind, as the landscape varies by jurisdiction.

## **I. ETHICS RULES**

The Texas Disciplinary Rules of Profession Conduct include a rule expressly dealing with trial publicity (Rule 3.07) and a general rule governing confidential information (Rule 1.05).

### **A. Rule 3.07. Trial Publicity**

When representing a client, lawyers give up some of their free speech rights. The parties have constitutional rights to a fair trial that are paramount. Nevertheless, there are “vital social interests served by the free dissemination of information about events having legal consequences and about legal proceedings themselves.” Tex. R. Disp. P. 3.07 (comment a). For example, “[t]he public has a right to know about threats to its safety and measures aimed at assuring its security[,]” “the conduct of judicial proceedings, particularly in matters of general public concern[,]” and “the subject matter of legal proceedings is often of direct significance in debate and deliberation over questions of public policy.” *Id.*

Rule 3.07 balances these competing interests by prohibiting extrajudicial statements that the lawyer knows or reasonably should know have a reasonable likelihood of materially prejudicing an adjudicatory proceeding. Subsections (b) and (c) offer particular examples of what will and will not violate the general rule stated in subsection (a).

The Rule states:

- (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:

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