

## **Communications with the Media: Tensions Between Diligent Advocacy and Professionalism (resources and references)**

### **RULE 3.6: TRIAL PUBLICITY**

(a) A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.

(b) Notwithstanding paragraph (a), a lawyer may state:

(1) the claim, offense or defense involved and, except when prohibited by law, the identity of the persons involved;

(2) information contained in a public record;

(3) that an investigation of a matter is in progress;

(4) the scheduling or result of any step in litigation;

(5) a request for assistance in obtaining evidence and information necessary thereto;

(6) a warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and

(7) in a criminal case, in addition to subparagraphs (1) through (6):

(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.

(c) Notwithstanding paragraph (a), a lawyer may:

(1) reply to charges of misconduct publicly made against the lawyer; or

(2) participate in the proceedings of legislative, administrative or other investigative bodies.

(d) No lawyer associated in a firm or government agency with a lawyer subject to paragraph (a) shall make a statement prohibited by paragraph (a).

(e) A lawyer shall exercise reasonable care to prevent the lawyer's employees from making an extrajudicial statement that the lawyer would be prohibited from making under this rule.

### **RULE 1.6 CONFIDENTIALITY OF INFORMATION**

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

(1) to disclose the intention of the lawyer's client to commit a crime and the information necessary to prevent the crime;

(2) to prevent reasonably certain death or substantial bodily harm;

(3) to secure legal advice about the lawyer's compliance with these Rules;

(4) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;

(5) to comply with other law, court order, or as permitted by these Rules; or

(6) to provide the following information in discussions preliminary to the sale of a law practice under Rule 1.17 with respect to each client potentially subject to the transfer: the client's identity; the identities of any adverse parties; the nature and extent of the legal services involved; and fee and payment information. A potential purchasing lawyer shall have the same responsibilities as the selling lawyer to preserve information relating to the representation of such clients whether or not the sale of the practice closes or the client ultimately consents to representation by the purchasing lawyer.

**The Duke lacrosse case:**

<http://www.cbsnews.com/stories/2007/01/24/national/main2393199.shtml> (with link to the N.C. State Bar complaint)

**The Steven Hatfill case (distribution of anthrax):**

[http://en.wikipedia.org/wiki/Steven\\_Hatfill](http://en.wikipedia.org/wiki/Steven_Hatfill) (General background about Steven Hatfill and the three cases he filed; that's right, it's from Wikipedia)

[www.anthraxinvestigation.com/Hatfill57.pdf](http://www.anthraxinvestigation.com/Hatfill57.pdf) (Copy of complaint filed by Mr. Hatfill against John Ashcroft, the Department of Justice, et al)

<http://www.washingtonpost.com/ac2/wp-dyn/A49717-2003Sep9?language=printer> (Washington Post article, September 9, 2003 entitled: "The Pursuit of Steven Hatfill")

[http://www.columbia.edu/cu/news/vforum/02/anthrax\\_media/index.html](http://www.columbia.edu/cu/news/vforum/02/anthrax_media/index.html) (Columbia University streaming video of panel discussion starring Floyd Abrams entitled: "First Amendment Panel Scrutinizes Media Coverage of Anthrax Attack")

**The D.C. area sniper case:**

[www.courts.state.md.us/opinions/coa/2003/81a02ag.pdf](http://www.courts.state.md.us/opinions/coa/2003/81a02ag.pdf) (Copy of complaint filed against Douglas Gansler, the prosecuting attorney in the D.C. sniper case, for extrajudicial comments in previous cases)