

**Oregon Rules of Professional Conduct**  
**(effective January 1, 2005 and amended effective December 1, 2006)**

**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.

**See Formal Bar Ethics Opinion (under RPC 3.6): Formal Opinion No. 2007-179:**

<http://www.osbar.org/docs/ethics/2007-179.pdf>

**Code of Professional Responsibility**  
**(effective through December 31, 2004)**

**DR 7-107**

**Trial Publicity**

- (A) A lawyer engaged in a matter shall not make an extrajudicial statement pertaining to that matter that a reasonable person would expect to be disseminated by means of public communication if the statement poses a serious and imminent threat to the fact finding process in a governmental adjudicative proceeding and if the lawyer either intends to affect that process or reasonably should know that the statement poses such a threat and acts with indifference to that effect.
- (B) The foregoing provision of DR 7-107 does not preclude a lawyer from replying to charges of misconduct publicly made against the lawyer or from participating in the proceedings of legislative, administrative or other investigative bodies.
- (C) 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 DR 7-107(A).

**Interesting and Noteworthy Cases** (under former rule, DR 7-107)

*In re Laswell*, 296 Or 121, 673 P2d 855 (1983): Court found no violation where DA reported that the people arrested sold narcotics and that he expected a high conviction rate:

“[It is] not whether the tribunal believes that the lawyer’s comments impaired the fairness of an actual trial, which may or may not have taken place. The question, rather, is the lawyer’s intent or knowledge and indifference when making published statements that were highly likely to have this effect.” *Id.* at 126.

*In re Burrows*, 290 Or 131, 618 P2d 1283 (1980): Court found no violation where DA read homicide defendant’s letter to high school students while defendant’s case was pending. DA did not intend to reach the media, and the letter was not likely to have any prejudicial effect. Defendant’s letter expressed regret for unspecified events only, and thus its relationship to the pending charges was tenuous.

*In re Richmond*, 285 Or 469, 591 P2d 728 (1979): Court found no violation where 1000 Friends of Oregon attorney wrote letter to the governor regarding an administrative proceeding initiated by the attorney on behalf of private parties concerning a land use decision, and then mailed the letter to various legislators and newspaper editors. Court held that the proceeding was not the type covered by the rule, and was unlikely to interfere with the fair adjudication of factual issues because the letter did not request the governor or anyone else to enter the land use proceeding.

*In re Porter*, 268 Or 417, 521 P2d 345 (1974): Court found violation where attorney made several statements during the pendency of the case he was litigating on behalf of the husband of a woman who died of hypothermia while engaged in an Outward Bound program. Attorney made several statements regarding the program’s failure to tell the women the dangers of the cold and hypothermia, and that the offer of settlement was inadequate.

“Such continual haranguing of the public through the news media about the virtues of his client’s case and the vices of the opposition would tend to have had some effect and was certainly unprofessional.” *Id.* at 422-23.

**Joint Statement of Principles Governing Certain (as published on OSB's website)  
Lawyer-Press-Broadcasters Relationships**

Oregon's Bill of Rights provides both for fair trials and for freedom of the press. These rights are basic and unqualified. They are not ends in themselves but are necessary guarantors of freedom for the individual and the public's rights to be informed. The necessity of preserving both the right to fair trial and the freedom to disseminate the news is of concern to responsible members of the legal and journalistic professions and is of equal concern to the public. At times these two rights appear to be in conflict with each other.

In an effort to mitigate this conflict, the Oregon State Bar, the Oregon Newspaper Publishers Association and the Oregon Association of Broadcasters have adopted the following statement of principles to keep the public fully informed without violating the rights of any individual.

1. The news media have the right and the responsibility to print and to broadcast the truth.
2. However, the demands of accuracy and objectivity in news reporting should be balanced with the demands of fair play. The public has a right to be informed. The accused has the right to be judged in an atmosphere free from undue prejudice.
3. Good taste should prevail in the selection, printing and broadcasting of the news. Morbid or sensational details of criminal behavior should not be exploited.

Joint Statements of Principles 5 Current versions of this document are maintained on the OSB website: [www.osbar.org](http://www.osbar.org)

4. The right of decision about the news rests with the editor or news director. In the exercise of judgment he should consider that:
  - (a) an accused person is presumed innocent until proved guilty;
  - (b) readers and listeners are potential jurors;
  - (c) no person's reputation should be injured needlessly.
  - (d) Reporting on the eve of trial may prejudice potential jurors. Just prior to trial, stories reviewing a suspect's criminal history, incriminating statements, or other prejudicial detail should be avoided whenever possible.
5. The public is entitled to know how justice is being administered. However, it is unprofessional for any lawyer to exploit any medium of public information to enhance his side of a pending case. It follows that the public prosecutor should avoid taking unfair advantage of his position as an important source of news; this shall not be construed to limit his obligation to make available information to which the public is entitled. In recognition of these principles, the undersigned hereby testify to their continuing desire to achieve the best possible accommodation of the rights of the individual and the rights of the public when these two fundamental precepts appear to be in conflict in the administration of justice.

## **Guidelines For Disclosure and Reporting of Information on Criminal Proceedings**

It is generally appropriate to disclose or report the following:

1. The arrested person's name, age, residence, employment, marital status and similar biographical information.
2. The charge.
3. The amount of bail.
4. The identity of and biographical information concerning both complaining party and victim.
5. The identity of the investigating and arresting agency and the length of the investigation.
6. The circumstances of arrest, including time, place, resistance, pursuit and weapons used.

It is rarely appropriate to disclose for publication or to report prior to the trial the following:

1. The contents of any admission or confession, or the fact that an admission or confession has been made.
2. Opinions about an arrested person's character, guilt or innocence.
3. Opinions concerning evidence or argument in the case.
4. Statements concerning anticipated testimony or the truthfulness of prospective witnesses.
5. The results of fingerprints, polygraph examinations, ballistic tests or laboratory tests.
6. Precise descriptions of items seized or discovered during investigation.
7. Prior criminal charges and convictions.
8. Evidentiary details that were excluded in prior judicial proceedings in the same case.

## **Photography**

1. Photographs of a suspect may be released by law enforcement personnel provided it doesn't interfere with enforcement of the law. It is proper to disclose such information as may be necessary to enlist public assistance in apprehending fugitives from justice. Such disclosure may include photographs as well as records of prior arrests and convictions.
2. Law enforcement and court personnel should not prevent the photographing of defendants when they are in public places outside the courtroom. However, they should not pose the defendant.

## **Joint Statements of Principles**

Current versions of this document are maintained on the OSB website: [www.osbar.org](http://www.osbar.org)

The above Guidelines are supplemental to and should be interpreted with the "Oregon Bar-Press-Broadcasters Joint Statement of Principles" adopted in 1962.

The Guidelines are cautionary, not mandatory. They do not prohibit release of, or publication of, information needed to identify or aid in the capture of a suspect or information required in the vital public interest after arrest. Neither do they proscribe publication of information which is already in the public domain.