

RULES CONCERNING TRIAL PUBLICITY

Amended Rule 3.6

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 a reasonable person would expect to be disseminated by means of public communication if the lawyer knows or reasonable should know that it would pose a serious and imminent threat to the fairness of an adjudicative proceeding.

- (b) There are certain subjects which would pose a serious and imminent threat to the fairness of a proceeding, particularly when they refer to a civil matter triable to a jury, or a criminal matter. These subjects relate to:
 - (1) the character, credibility, reputation or criminal record of a party, suspect in a criminal investigation or witness, or the identity of a witness, or the expected testimony of a party or witness;

 - (2) in a criminal case, the possibility of a plea of guilty to the offense or the existence or contents of any confession, admission or statement given by a defendant or suspect or that person's failure to make a statement;

 - (3) the performance or results of any examination or test or the failure of a person to submit to an examination or test, or the 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;

(5) information that the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial;

(6) the fact that a defendant has been charged with a crime, unless there is included therein a statement explaining that the charge is merely an accusation and that the defendant is presumed innocent unless proven guilty.

(c) 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;

(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.

(d) Notwithstanding paragraph (a) a lawyer may make a statement that a reasonable lawyer would believe is required to protect a client from substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

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

Adopted February 8, 1990, effective August 1, 1990; amended October 22, 1999, effective December 1, 1999.

Amended Rule 3.8

Rule 3.8. Special Responsibilities of a Prosecutor

- (a) A public prosecutor or other government lawyer shall not institute or case to be instituted criminal charges when such prosecutor or lawyer knows or reasonable should know that the charges are not supported by probable cause.
- (b) A public prosecutor or other government lawyer in criminal litigation shall make timely disclosure to counsel for the defendant, or to the defendant if the defendant is not

represented by a lawyer, of the existence of evidence, known to the prosecutor or other government lawyer, that tends to negate the guilt of the accused or mitigate the degree of the offense.

- (c) In addition to his or her obligations under Rule 3.6, a public prosecutor or other government lawyer in criminal litigation shall exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the public prosecutor or other government lawyer would be forbidden from making under Rule 3.6.

- (d) The prosecutor in a criminal case shall refrain from making extrajudicial comments that would pose a serious and imminent threat of heightening public condemnation of the accused, except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose.

Adopted February 8, 1990, effective August 1, 1990; amended November 20, 1991, effective immediately; amended October 22, 1999, effective December 1, 1999.