

Popular Threads on Solosez

Should I Talk To The Press About A Pending Case?

I have a case against a company and a guy who I will call a "predatory lender". I sued him, as have about five other attorneys, on fraud, Truth In Lending violations, UDTPA, etc. A reporter called from the local paper. He claims to be doing an expose of this guy, and his predatory practices. He wants to interview me. Is there some downside to this? Can I be sued for libel or slander? How much detail should I go into? Should I be careful with the language I use? Is the whole idea ill advised? Is the whole idea wonderful publicity, and therefore well-advised?

In order: Yes, yes, it depends, yes, probably, and probably not.

I think you need to start from the other perspective: what's the UPSIDE of talking to the reporter? Will it assist you in your case? Help you to obtain additional plaintiffs or witnesses? Get regulatory agencies to go after the guy? (Is that even a good thing for your case?) Make you feel better that you get to vent?

It's fun to talk to the press, but in the end usually unsatisfying. They'll use one sentence out of a long discussion... and for all that, you risk saying something harmful to yourself or your client.

David M. Nieporent

I think David Nieporent has it right. But that doesn't mean you shouldn't say anything. The secret is to be like a politician and say nothing, while sounding quite professional. And don't forget the American flag pin in the lapel:

"It is my practice to not comment upon matters that I have pending before the court. Until we get to a jury, we will allow the complaint that we filed to speak for us. It is important in the American system of justice [there's the flag pin] that the parties get a fair trial and we don't want to risk that by commenting to the press."

[Note that this makes it sound like you have lots of cases worthy of media attention, which will help with potential clients reading the story.]

If it is helpful to your client's case, talking "on background" is preferable IMHO. You can tell the reporter where to look, what to look for, etc. without being quoted and "who, what, where, when, how" suggestions are very hard to turn into defamation. (I told him where to look for info, but he reached the conclusion, not me.)

Andy Simpson, Christiansted, St. Croix, U.S. Virgin Islands



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I suggest that you also ask your client what his thoughts are about talking with the press.

My thoughts are that the less said the better, to avoid something coming back to haunt you.

Lynne R. Ostfeld, Chicago, Illinois

David, my view of dealing with the press is that I have to want something from them to justify answering their questions. If you expect that by giving up information you may acquire more clients on the lending issue, that is a reason which might justify agreeing to the interview. I would not talk about my client's case simply to satisfy the interest of a reporter who wants to sell newspapers. There are two reasons. First I may disclose facts to OC which I may not have to release in discovery; so i may help the defense. Second, my client has ceded some of his/her privacy by filing the action, where do I get the right to give up more.

Someone I once knew said that the art of doing an interview is giving the interviewer the information one wants to give, not necessarily giving what the interviewer thinks is desired. I consider that to be a valid point.

Before you make a decision talk to your client, decide what you want to or can get from the interview, and consider talking with the other lawyers who have filed actions against the same defendant. If you decide to do the interview, decide what you are not willing to address and stay out of that area. Stick to the facts and you probably have little concern about liability. Also consider if you want to be known as a lawyer who is willing to try a case in the media. Some people have an attitude that doing so is bad on a general approach.

chuck mitchell

Before you ever make any statement to any media about any case, read your state's version of :

New Jersey Rule of Professional Conduct RPC 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 have a substantial likelihood of materially prejudicing an adjudicative proceeding.

(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) the information contained in a public record; (3) that an investigation of the 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 make a statement that a reasonable lawyer would believe is required to protect a client from the 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.

Charles C. Abut, Hackensack New Jersey

You should also find out what your client's feelings are. Some may want the publicity, some may not.

Scott Hodes

All good advice that I've read. But I want to emphasize that YES you can be sued for libel.

There is a split among courts as to whether you can be sued for simply repeating what's in your complaint. But remember, complaints are absolutely privileged, but speaking to the press is NOT part of the proceedings.

I was once involved in a case that had these issues. I made the argument that the defendant in a defamation case (in that case, an insurance company) could not protect itself from libel by filing a complaint containing libelous statements, then holding a press conference to repeat those statements, and defend it on the basis that it was mere stating what was in the public record. There is case law to support that position, and the case generated a significant settlement.

Also, you need to consider whether in your jurisdiction, the defendant could sue you for defamation, then move to disqualify you from handling the case.

Another consideration -- does your business insurance cover defamation claims? Your malpractice insurance carrier would probably deny coverage, and with most GL policies now, you have to buy an endorsement to cover defamation.

So if you do talk, I would urge caution. Hope this helps some in your consideration.

Steve Terrell

Be very careful. If you want to be interviewed, stick strictly to the facts of public record (e.g. the facts alleged in the complaint; the contested facts in the answer; the lending documents or other documents; deposition testimony; etc.) Is your client you or another person? If another person, get their OK before talking at all. Finally, hedge everything you say with, "According to the complaint I filed . . ." or "It is public record that . . ." Do NOT offer any opinions on the defendant, the strength or weakness of your case, your strategy, etc.

TJ Thurston, Huntley, Illinois

Always remember that your job as an advocate varies from the job of a journalist, be it print, TV or something else. Talking to the media in pending litigation should be treated with the same degree of care as getting to defuse the bomb on your first day on the bomb disposal squad. Unless you have substantial experience, there is fair likelihood you may not achieve an intended result.

Like other professions, there are good-hearted, courageous and trustworthy journalists, and some that would sell their mother for a story. One of the issues is knowing who you are dealing with and how to best position any message you want to relate to the media.

Although not having the greatest degree of media experience, I have been in front of a few cameras. The best interview I ever gave was never aired, and that was my objective going in to the interview. Media can always be a two-edged sword, and deployment carries considerable risk.

IF your client gives informed consent and it achieves a valid objective, then proceed carefully. If proceeding, keep yourself on track and try to stay on message where possible.

Given the initial inquiry, I would consider meeting for coffee somewhere and chatting informally. Do not say anything you don't want "on the record" regardless of circumstance. Showing respect toward the judiciary and jury system is good form. Talking legitimately about client impact may be good form. Even working in a statement wondering how many others have a similar claim may be a valid statement. Remember many state bars heavily screen and look at these interviews looking to see if someone is out of line. Stay firmly in the boundaries of ethical constraints in any discussion. "We believe the evidence will show....." "My client has filed pleadings with these claims.... We look forward to our day in court. Defendant has denied and continues to disagree with this position....etc. etc.

Darrell G. Stewart, San Antonio, Texas

I wrote an article on dealing with the media that was published in the ABA SEER Environmental Enforcement and Crimes Committee Newsletter. Here is a link to the newsletter.

<http://www.abanet.org/environ/committees/environcrimes/newsletter/>

Walter D. James III, Grapevine, Texas

Instead of offering to talk about your case, offer yourself to the reporter as an expert on predatory lending and talk about the severity of the problem in America, how it hurts thousands of families a year, etc etc.

Dave Galalis

Today there was a local press conference regarding the hi profile kidnapping of a 5 yr old girl and the charges being laid at the perp's feet. The County Attorney holding the press conference stuck pretty much to the facts that were already public from the Court file - the information contained in the "Information". He did answer many questions with, "I can't discuss that at this time" at which time he would refer the reporter back to the information that had been filed. Of big concern to me in the civil arena, is that while statements in court are protected, blabbing them over the airwaves is not. You might win when you get sued for defamation, but do you want to have to try that case? Having said that, I would probably talk with the reporter for the visibility but be VERY careful.

Randy Birch, Salt Lake City, Utah

So much advice, so much good advice, so much varied advice, is there any room left on this thread?

For my modest contribution, I humbly suggest that there are times and cases when "the case" is bigger than the court. When a case is pretty much a private matter (a) likely to be resolved by litigation and (b) not likely to affect non-parties, I tend to keep my muzzle on. But when "the court case" is only a part of a larger "case" that may need to be fought in subsequent litigation involving other parties, or fought out in the legislatures, I feel it is my duty to assess whether and how what the press may say about the "act" going on in the courtroom will affect the outcome of the entire three-ring circus. Brown v. Bd. of Education, for example, cried out for speaking to the press because legislature and executive branches -- and the general public -- were going to be involved in the broader struggle.

John Mitchell

Provided you violate no ethical rules in your jurisdiction, provided you do not have sinking feeling in your gut, provided speaking to the press will advance your client's interest, Say nothing to the press with as much eloquence as you can muster. A great deal depends upon when the call comes. Be sure you know enough about every salient fact in the case to be sure that you do not cast the wrong light upon a possible future element of the case.

Most of the time, if the press is at your door (on the phone), and you have only spoken to the client on this matter once, nonce or twice, I doubt you know enough to be of any help to your client, but rather a liability. Very few times in a long career have I ever been quoted in a way that implied what I intended. My best answer was that the case is in a posture where public discussion may violate a court rule or restriction and it would not be prudent for me to speculate on things at this time. Of course, my client denies the allegations categorically and absolutely and we are sure that our courts will sort this out in client's favor. Dick Howland

Dick Howland, Amherst, Massachusetts

Depending on the posture of your case, and who your Judge is, you probably should contact the reporter. I would rely "heavily" on the allegations in your pleadings to avoid liability for defamation claims, because the pleadings give you qualified immunity, i.e., as we have claimed in our lawsuit; as our complaint says, etc. That said, none of us would be in business if there was a true fail safe to stop mere claims from being asserted. Otherwise, do a press release/prepared statement, incorporating a summary of your complaint, and email or fax it to the reporter in lieu of verbal comment. See web links for sample of press releases in predatory lending cases below.

<http://www.prweb.com/releases/2006/3/prweb360824.htm>

<http://www.prweb.com/releases/2005/5/prweb243928.htm>

<http://www.prweb.com/releases/2005/02/prweb206198.htm>

<http://www.prweb.com/releases/2005/6/prweb256548.htm> You no doubt will receive conflicting reports from the Solosezzers. It is your practice so at the end of the day you have to do what is best for you and your client. The client has already decided to go public with problem by filing the lawsuit, hence the reason the reporter is calling you out of the blue. In our experience, nothing works in predatory lending cases like the news of "personal pain and suffering in silence" from the Plaintiff. The predatory loan closed in silence, and in most instances you can ill afford to have your case proceed the same way unless, of course, your presiding Judge has a reputation for being hard on Plaintiffs or favorable to Lenders.

Rawle Andrews Jr., Washington, DC

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