

# Q&A



## LAWYER LIABILITY AND ETHICS

# Ethics in the Court of Public Opinion



By Jessica Beckwith,  
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In a recent interview with *The Atlantic*, Justice Ruth Bader Ginsburg stated that “a fair opportunity to be heard” is “one of the basic tenants of our system” and that “everyone deserves a fair hearing.” However, in this internet and social media obsessed time, it seems that many accused of crimes (or improper conduct that may not rise to the level of a crime but may have serious repercussions) feel that being accused is the same as being convicted, at least in the court of public opinion. Conversely, the purported victim may also feel attacked by social media users or in the press.

With a massive amount of personal information available on the Internet, once an individual files a civil suit or makes a criminal report, the allegations and information contained therein has become fair game in the court of public opinion. Further, unlike times past, the Internet allows individuals living across the country to have nearly real-time access to the litigation. Attorneys representing parties on both sides are increasingly being asked to play a role in the

public relations piece of these disputes.

Ethical Rule 3.6(a) states, “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.” Subsection (c) of Ethical Rule 3.6 states, “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.”

In today’s world, an attorney may wonder if the mere filing of a lawsuit against an attorney’s client allows the attorney to respond to the allegations contained therein. It is possible (if not probable) that in today’s climate that the filing of charges, civil or criminal, before adjudication of the matter, will have a negative effect on a client which may at a minimum cause an attorney to consider mak-

ing a public statement. Some attorneys feel constrained by the Ethical Rules from making public remarks. Others take a different approach. Consider an attorney in Alabama defending a client in a wrongful death lawsuit that arose out of the suicide of a young woman who previously claimed the client raped her. The attorney took out a full-page ad in a local paper claiming that the evidence exonerated his client. The title of the ad was “Character Assassination In the Internet Age.” Local law enforcement never brought rape charges. The deceased’s parents had been interviewed by news media and the story had gained national attention. Although this is not the typical attorney ad, it may become more common.

Another consideration attorneys must weigh when choosing whether and how to make a public statement is the possibility of being on the receiving end of a defamation claim. Wayne Pollock, an attorney and the founder and managing partner of Copo Strategies in Philadelphia, has stat-

ed, “The formula for developing effective public statements about ongoing litigation when engaging the court of public opinion has always been “Strategy + Persuasion + Compliance with ethical rules + Avoiding defamation.” The fact that Copo Strategies and its competitors exist evidences the expansion of attorneys who either choose to or feel compelled to in order to protect their clients enter what Pollock also refers to as the Court of Public Opinion.

Whether or not taking out an ad to respond to recent negative publicity may be an ethical query more attorneys face when information is easier accessible than ever before and often the protections of due process are softened or forgotten in the court of public opinion. ■

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## Another Barristers' Ball

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vices Inc., provided the following statement: “Community Legal Services is grateful to receive support from this year’s Barristers’ Ball raffle and very honored to be selected as the Beneficiary of next year’s Barristers’ Ball Silent Auction! We thank all who attended and “voted” with their raffle tickets. This support for Community Legal Services and the Volunteer Lawyers Program, which is co-sponsored by MCBA and Community Legal Services, is especially vital now when there may be reductions in federal and other funding for civil legal services. The staff of Community Legal Services and volunteer lawyers look forward to working with MCBA to make next year’s Barristers’ Ball a great success!”

After cocktail hour, the guests were tempted into the ballroom by music from the Forever Young Orchestra. Once there, Ball attendees were treated to a delightful sit down dinner and wine pour. During dinner, the 2016 Steven Hirsch Outstanding Young Lawyer award winner, Tyler Carrell, introduced this year’s winner, Kim Davis.

Davis, an education law attorney at Udall Shumway, is and has been very actively involved with the Maricopa County Bar Association for the past five years. She currently serves as the Young Lawyers Division’s immediate past president, a Maricopa County Bar Association Board Member, and was instrumental to ensuring that

this year’s Barristers’ Ball was a success. In addition to her career and involvement with the MCBA, Davis is a member of The Centers for Habilitation’s Board of Directors. I have had the distinct pleasure of serving alongside Kim on the YLD Board of Directors for the past two years and can confirm that Kim embodies the spirit of service that this award seeks to honor.

Steve Irvin then took the stage for the paddle raise, which opened with a generous \$1,000 donation from Maricopa County Bar Foundation (MCBF) Board of Trustee, Bobby Kethcart. All in all the paddle raise generated \$5,155 in proceeds, which will go to support the scholarships the MCBF awards to law school and paralegal students from diverse backgrounds. As law school tuition continues to rise, scholarships like the Justice Michael D. Ryan Scholarship provide students with the invaluable opportunity to reduce the amount of debt they will carry with them after law school.

Barristers’ Ball closed out with a photo booth, casino tables, a wine toss, and music and dancing with the Forever Young Orchestra in the ballroom and a DJ in the lounge.

For those who attended this year’s Barristers’ Ball, we thank you for helping us to make the event a success and sincerely hope you enjoyed your evening. For those of you who could not make it to this year’s Barristers’ Ball, we look forward to seeing you next year! ■



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