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*for lawyers*

## **Media Policies & Guidelines for Law Firms**

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# Media Policies & Guidelines for Law Firms

By David M. Freedman and Paula Levis Suita<sup>1</sup>

This article is an excerpt from *How to Do the Interview*, a handbook in The GET GOOD PRESS Series for Lawyers ([www.getgoodpress.com](http://www.getgoodpress.com)). A version of this article was published in *Law Practice* (ABA).

Every firm needs a clearly written media policy, whether your media relations activities are active or reactive.<sup>2</sup> A good policy prevents you from saying something foolish, actionable, or injurious to you, your firm, or your clients' interests in media interviews. Your policy spells out who in your organization may respond to media inquiries, what kinds of information can or should be released to reporters, and what information must be kept confidential, among other things. It also informs interviewees when and how to mix promotional messages with educational content.

A policy can be effective only if (a) it supports the firm's strategic marketing plan, (b) it is endorsed and distributed by the leader or leaders of your organization, and (c) it is distributed to *all* employees.

This article lays out the elements of a good media policy. It is not a template, but a set of suggestions and ideas. Each firm's policy should be customized to suit its needs and culture. Also, we do not advocate an iron-clad, dogmatic approach; you may need to violate (well, let's say "make exceptions to") your policy in unusual circumstances.

In the introduction to your media policy, you might say something along these lines:

Talking to the media, and building good relationships with reporters, can help to establish an accurate public perception of who we are and what we do. There is no need to feel intimidated by the press. Reporters need us as a source of news and background information as much as we need them to give us publicity and clarify our point of view. Therefore, our policy is to cooperate with the media and respond to their questions according to the following policies and guidelines.

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<sup>1</sup> See bio's on page 12.

<sup>2</sup> There are two approaches to media relations. One is called reactive or responsive, and it primarily involves responding to media inquiries, i.e., submitting to interviews and answering questions. The other approach is called active or proactive, and it involves aggressively going after good press, not waiting for it to come inquiring. Active media relations strategies include pitching story ideas to reporters and assignment editors, distributing press releases, and writing bylined articles for publication, to name a few.

A good media policy may include some or all of the following eight provisions:

### **1. Who may talk to the press**

- List (by name and/or position) who in the company may respond to media inquiries regarding each of the following: (a) firm clients and lawsuits, (b) new laws and substantive legal issues, (b) firm news, and (d) firm policies or political activism. In some firms, those might be four different spokespersons.
- If your firm is organized by practice areas or industry groups, designate who in each group may respond to the media. Hint: It's not always the group leader; it should be the person who is most articulate, knowledgeable, and usually available to respond quickly.
- If you have a marketing director or PR manager, determine whether media inquiries should be routed through him or her, or directly to the appropriate lawyer/spokesperson. One strong reason to route all media inquiries through a central marketing professional is to check for conflicts of interest. You *must not* allow any lawyer in the firm to comment publicly on stories involving a particular client that will adversely affect your relationship with another client.
- For those who are not authorized to respond, designate to whom they should direct media inquiries.

### **2. What you may talk about**

- In response to a reporter's inquiry, you should first introduce yourself and clarify the areas in which you are qualified to answer questions. Discuss with reporters only what is in your area of expertise.
- In general, if the reporter asks for information that has already been made public, don't hesitate to share it, even if it's not flattering. Withholding such information will only force the reporter to develop other sources and/or suspect that you have something to hide.
- Do not speculate. If you don't have personal knowledge about a subject, help the reporter reach a source who does, even if that source is not a member of your firm. Providing reliable sources enhances your value with the media, and they will likely come back to you in the future.
- If you cannot answer a question, or decline to be interviewed, make sure the reporter understands why. Do not simply say, "No comment," which may be interpreted as evasive. You might say, for example, "I'm sorry I can't answer your question because this matter is the subject of a pending lawsuit," or "I'm sorry, but I'm legally obligated to protect my client's confidentiality." (More about that on page 8.)
- You may, and in some cases you have a duty to, clarify any inaccuracies or distortions in the media, or mitigate adverse publicity, about your clients. In such cases, simply bring the error to the reporter's attention and offer to provide the correct information. You may emphasize that it is very important for the press to correct these inaccuracies, in the interests of justice and fairness; but do not gripe or get angry.

### 3. What you may not talk about

- If a reporter asks about a pending lawsuit, judicial proceeding, official investigation, or criminal allegations, it may not be advisable – and in many cases it is improper – to discuss it. (More about extra-judicial speech on page 7.)
- Avoid disparaging other companies or their products or services; do not defame other people. Not only is it possibly actionable, but it makes you appear unprofessional.
- As a general rule, assume that everything you say is *on the record*. If you don't want to see it in print or on the air, don't say it. There are exceptions to this rule, of course. (More about that on page 9.)

### 4. Preparation

- Be familiar with the print, broadcast, or online media outlet that the reporter represents – and make sure you know who its audience is – before you respond. If you need time to check the media outlet's (or reporter's) style, bias, or reputation before responding, take the time. Then respond, one way or another (i.e., accept or decline the invitation to be interviewed) before the deadline.
- Feel free to ask the reporter questions about the story: What's the theme, what's the point of view, who else is being interviewed for the story? This groundwork should be the job of your PR consultant or in-house marketing director, if you have one.
- Ask the reporter if he or she needs background information or historical context before the interview, and if so, provide it to the best of your ability. That may include court filings, statistics, case law, articles that you (or anyone else) wrote, etc. An educated reporter is more accurate and fair.
- Try to anticipate difficult questions and practice answering them, if you have time (like preparing a witness for cross-examination).
- If you need professional help, enlist your PR manager or media relations consultant. He or she can help you prepare, make arrangements, and accompany you to the interview to provide guidance.

### 5. Press relations

- Treat reporters, editors, and program directors courteously. Their impression of each individual in your firm, from the way a receptionist answers their first call to how they are treated by senior partners, affects their impression of the entire firm, and that may influence how they report about you.
- Don't argue with a reporter. You can be persuasive, but never confrontational. They always have the last word. (Never argue with someone who buys ink in 55-gallon drums.)
- Don't ask the reporter if you can review the story before it's published. If the story is controversial, sensitive, or complex, you may ask the reporter to read back your quotes (but no one else's) to confirm their accuracy before the story is

- published. Reporters sometimes comply with that request, because it's in their best interests to ensure accuracy too.
- When the reporter's query relates to the subject of an investigation, dispute, or litigation, always offer to provide opposing counsel's contact information to the reporter. This is a *huge* help to them. If you don't provide the information, they're going to find it anyway, because they have to get both sides of the story for balance. (Some reporters get quite annoyed if you don't provide that info.)
  - Don't give information to a single media outlet exclusively (i.e., don't grant an exclusive interview), unless you get something valuable in return – like being the only lawyer or firm featured in a big story.
  - Some reporters can be hostile, arrogant, or unprofessional. You must remain cool, courteous, and professional. (Some reporters employ hostility to induce you to lose your cool and blurt out something foolish.)
  - The news media usually have a legal right to report on and photograph newsworthy events or statements made in public. Don't try to stand in their way, or they'll perceive that you are infringing on their sacred First Amendment rights – to which they do not take kindly.

## 6. Timing

- Return reporters' calls within an hour if possible. They are often on tight deadlines and they appreciate promptness. You don't want to hear on the evening newscast that your firm "could not be reached for comment."
- If you respond promptly to an inquiry and get into the story early, you have a chance to "sculpt" the story, or influence its direction. On the other hand, if you wait and respond later you can learn what the reporter has heard from other sources. "Usually you're better off being early," says Dan Boho, partner and veteran litigator at Hinshaw Culbertson, a 400-lawyer firm based in Chicago. "If you're early, sometimes the reporter will get comments from the other side and then contact you again later to get your reaction. But there isn't always time for that."

## 7. During the interview

- In most cases, tape recording a telephone interview is not a good idea. First of all, you must ask the reporter's permission to do so, and some feel that recording an interview sets an adversarial tone, as though you don't trust them. Second, recording devices are unreliable (taking notes is imperative). If you are concerned about being quoted accurately because the subject is very sensitive, especially if it involves a client's case, you're better off furnishing a written response so that there is little chance that you will be misquoted.
- In most cases, there is no reason to prohibit the reporter from tape recording the interview. Doing so usually helps to ensure accuracy of the quotes.
- Listen carefully, and do not answer until you are sure you understand the question. If the question is unclear, ask politely for clarification.

- Speak in plain English that average readers, viewers, and listeners can understand. If you must use jargon, define your terms.
- Always be truthful and accurate. Never exaggerate or inflate. Understatement often works better than hyperbole for establishing credibility, especially when dealing with experienced (cynical, skeptical) journalists and sophisticated audiences. Trust, as in most relationships, is the key to good media relations.
- When you talk to a reporter, remember that you are really talking to the media outlet's audience. At the same time, remember that everything you say to the audience will be filtered through the reporter.
- Keep it simple. If you finish answering the question and the reporter remains silent, don't feel pressured to elaborate or fill the void. It may only serve to dilute your message. Instead ask, "Have I answered your question?"
- If you are speaking with a reporter over the phone, whenever possible speak on a land-line phone with a handset, rather than a speaker phone or cell phone, so you can be heard clearly. Some reporters resent being "put on speaker" because it seems like second-class treatment.
- During an interview, if you need time to research or think about how to answer a question, it's okay to tell the reporter that you need time. Ask what his or her deadline is, and assure them you'll call back with an answer before that time. Always call back, even if you are unable to find answers to the questions.
- If you know the answer to a question, don't deny it. A good reporter will discover that you knew, or should have known, the answer.

## 8. After the interview

- Take notes on any substantial interview you have with the media, and send a memo about the interview to your PR manager or a designated partner or executive as soon as possible. That person needs to be aware of stories in progress that involve your firm, in the event additional information or clarification is needed.
- If you have promised to send the reporter additional data to support the interview, follow through *on time*.
- You may ask the reporter when the story is expected to run, but often the reporter won't know for sure. If the story does not appear within the expected time, it is acceptable to contact the reporter to check the status of the story (but don't push). If the story is "spiked" or killed, you may ask for the reason (usually it's a lack of space), but there's not much you can do about it.
- When the story appears in the media, if you feel the reporter handled it well, send him or her a note of thanks (by regular mail or e-mail) for the story's *accuracy and completeness*. Do not thank the reporter for treating you or your firm (or client) favorably, because that was not their primary intent, and it smacks of being "bought." If you feel the reporter handled it poorly, usually the best policy is to just get over it.
- If the published story contains minor factual errors or omissions, endure it – in fact, expect it. Consider the tone of the entire story. If the overall tone is favorable, and the errors are minor, the story is a success. If the story seriously

distorts material facts or misrepresents your position, call it to the reporter's attention in a *polite* phone call or e-mail message, and request a correction. Never go over the reporter's head to complain to his or her editor or news executive unless the reporter's response is wholly unsatisfactory. Again, be careful, you do not want to alienate reporters.

### **Limits on extra-judicial speech**

Each jurisdiction has rules that limit extra-judicial speech, i.e., during an investigation, dispute, or litigation. Judges may further limit what you are permitted to say to the media about a given proceeding, based on the need to ensure the fairness of the proceeding and avoid "poisoning" the jury pool.<sup>3</sup> Additionally, the American Bar Association and many state bar associations have ethics codes that deal with media disclosure and other forms of publicity. The ABA's Center for Professional Responsibility has promulgated Rule 3.6 of the Model Rules of Professional Conduct, titled "Trial Publicity."<sup>4</sup>

For practical purposes, in the case of pending litigation or a judicial proceeding, it is important to discuss public disclosure and possible media coverage with your client, early in the case. There will be times when you have to adamantly advise your client not to talk to the press about a pending case. Remember, anything you say publicly may potentially be admissible in court. Usually the best thing to do is to work with your client to prepare a brief, polite statement to the effect that you will be happy to comment on the case when it is out of litigation.

Of course, there are exceptions, such as where the lawsuit has high visibility and raises extraordinary public issues. You may decide that some form of disclosure to the press is in order. But be extremely careful. If a reporter calls asking questions, the best thing to do is tell him or her that you're not available to talk now, and arrange a time to be interviewed later. This will give you or your spokesperson an opportunity to discuss the matter with your client and plan your response.

Another reason why you may agree to be interviewed by journalists is that by listening to their questions, you may be able to find out if they have a distorted view of the case. If so, an interview is an opportunity to straighten them out by explaining what *has* transpired in the open courtroom. As a general rule, you may acknowledge that a proceeding or investigation is in progress, offer copies of court filings, and identify the parties involved. That information is public domain anyway. You may also be allowed to "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

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<sup>3</sup> Jim Grogan, chief counsel, Illinois Attorney Registration and Disciplinary Commission, Chicago. See also *Gentile v. State Bar of Nevada*, U.S. Supreme Court 501 U.S. 1030, 1991.

<sup>4</sup> See Rule 3.6 of the Model Rules of Professional Conduct at [www.abanet.org/cpr/mrpc/rule\\_3\\_6.html](http://www.abanet.org/cpr/mrpc/rule_3_6.html). For additional discussion of this topic, see *Lawyers and Reporters: Understanding and Working with the Media*, edited by Robert L. Rothman (ABA Litigation Section, Chicago, 2000), Chapters 10 and 11.

lawyer or the lawyer's client."<sup>5</sup> However, never talk about evidence not yet admitted in court, and never argue or advocate. Just be factual.

### **No comment**

To an inquisitive journalist, "no comment" is a red flag that signifies evasion, or code for "guilty as charged." The same is true for media audiences. According to a 1993 study conducted by New York-based PR firm Porter Novelli, when a company spokesperson declines to comment in a "controversial situation," about 65 percent of Americans think the company is guilty of wrongdoing.<sup>6</sup>

You can create a more sympathetic impression by explaining *why* you are unable to answer reporters' questions.

In spring 2005, Atlanta-based law firm Powell Goldstein fired one of its attorneys, Richard W. Merritt, for authoring a book titled *Secrets of a Gay Marine Porn Star*. When the *Fulton County Daily Report* asked the firm's managing partner James McAlpin to comment, he knew his response might be quoted all over the legal press and daily news outlets. After seeking guidance from the firm's outside PR adviser Jaffe Associates (Washington, DC), McAlpin said: "I wish I could more freely discuss the circumstances surrounding Rich Merritt's departure from our firm but, as lawyers, our firm feels bound by the confidentiality."

Here are some more ways to diplomatically decline to comment:

- "I'd like to help you, but you understand I would be violating my professional ethics [or client confidentiality] if I were to discuss that with you."
- "Sorry, that's proprietary information. If we divulge it, that will only help our competitors."
- "Out of respect for our employees, we don't disclose personal information about them."
- "That information is not available in the form that you need. Unfortunately, because it's pretty voluminous, we don't have the staff available right now to put it together in the way you need it."
- "It's premature to comment, but I can give you the information you seek on (date)."
- "We do not comment on rumors or speculation."

Regarding that last rule: Some PR people might advise you to deny rumors that you know to be false. But that can get you into trouble. For example, let's say you have denied four false rumors, and a reporter calls you to ask about one that is true. If you decline to comment about that fifth rumor, what is the reporter to conclude but that it's true? Better

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<sup>5</sup> Model Rules of Professional Conduct, Rule 3.6(c), ABA Center for Professional Responsibility.

<sup>6</sup> *Communication Briefings*, November 1993, page 2.

not to comment about *any* rumors. Here's an analogy that clarifies the reason for this policy:

Q: Sir, it's been alleged that you are addicted to cocaine.

A: That is not true.

Q: What about reports that you assaulted a police officer?

A: That absolutely has no basis in fact.

Q: Well, is it true that you embezzled funds from your son's Boy Scout patrol?

A: That's a scurrilous lie.

Q: How about allegations that you collect child pornography?

A: I can't comment on that.

In general, your diplomatic equivalent of "no comment" should be conversational, or what Hinshaw's Dan Boho calls a "flesh-and-blood response, rather than a Styrofoam response" (by which he means overly processed). Compare the following:

- Styrofoam: We are unable to present an accurate response until we have an opportunity to review the report thoroughly.
- Flesh & blood: I haven't read the report yet, so I can't answer your question now.

Some PR professionals advise that you should "bridge" to a positive statement after you decline to comment. For example: "I can't answer your question because..., but I can tell you that..." The ensuing positive statement is what they call a "message point," which you prepare in advance. It takes some skill to bridge without appearing to change and evade the subject.

### **Off the record**

There may be situations where you would like to explain something off the record to a reporter to gain his or her confidence, or to put into proper perspective the information that *is* on the record. (Frankly, some people like to say "off the record" to a reporter so they can feel like big shots.)

Unless you have a lot of media relations expertise and have established strong trust with certain reporters, you should assume that everything you say to them is on the record. Some journalists don't have the integrity to honor an off-the-record agreement, and some get so sloppy under deadline pressure that they simply can't remember what is and isn't on the record.

There are a couple of variations of "off the record" that you should know about:

- Not for attribution
- On background

Be careful, because this is dangerous territory if you are not media-savvy. Any misinterpretation of these terms could prove injurious to your firm or clients.

“Not for attribution” means you are divulging information to a reporter on the condition that the reporter (a) may not identify you as the source, or (b) may disseminate the information only if he or she finds another source to confirm it on the record. The purpose of not-for-attribution disclosure is to put the reporter on the right trail. This arrangement gets tricky when the reporter wants to put the information that you divulge in an article or on the air, and attribute it to “a source familiar with the case” or “a lawyer who agreed to talk to us on condition of anonymity.” How specific can the reporter be when citing the anonymous source? Can the reporter say, for example, “...according to a senior partner with the XYZ law firm who practices in the area of securities fraud”? That gets awfully close to actually identifying the source. To prevent that from happening, you must reach an agreement with the reporter as to exactly how he or she will refer to you as the anonymous source, *before* you divulge the information.

Another variation of “off the record” is “on background.” If you tell a reporter something on background, that means the information should not be used in the story at all. John Cosmides, a San Francisco-based marketing consultant who serves law firms, offers this example:

In explaining a legal term to a reporter, an attorney may refer to one of his cases to shed light on the meaning. If he and the reporter agree that the reference to the case is being used on background, the reporter will not use any of that information in the story.<sup>7</sup>

If you give a reporter information on background, and the reporter digs up that same information from another source, of course he or she is free to use it in a story, as long as it’s not attributed to you.

Be aware that if a reporter makes an off-the record deal (or either of its variations) with a source, and the published story later becomes the subject of an investigation or dispute, a court may order the reporter or the media outlet to divulge sources. Some reporters (and/or their editors) will go to jail to keep their end of the bargain and protect their sources, but some will spill the beans – and rat out their sources – at the first hint of a court action.

On June 27, 2005, the U.S. Supreme Court refused to hear the appeal of journalists Matthew Cooper and Judith Miller, who had been held in contempt in federal court for refusing to disclose who leaked the identity of CIA undercover agent Valerie Plame. A week later Miller, a *New York Times* reporter, went to jail to protect the leak’s source. Cooper’s employer *Time* magazine, itself facing a contempt citation, decided to surrender Cooper’s notes. (Plame’s identity had been revealed publicly in 2003 by columnist Robert Novak, who cited unidentified senior Bush administration officials as the

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<sup>7</sup> John Cosmides, “Getting Your Story in the Business Press,” *Baruster’s Report*, November 15, 2001.

source.<sup>8</sup>) So be aware that in some cases, a reporter might feel compelled to betray your off-the-record agreement by the threat of incarceration.<sup>9</sup>

### **Who is in control?**

When a reporter asks you a question, assuming you have the authority to answer it, you should respond truthfully and accurately, and then stop talking. Do not try to steer the interview in another direction – especially, don't try to promote your firm or your services – or you'll only frustrate the reporter, who can always find another source of information.

Now, there are some media trainers who teach spokespersons to subtly steer reporters in certain directions that serve their own purposes, and in some cases this can be done artfully without alienating the reporter. The technique is called bridging. It involves cursorily or superficially answering the question and then deftly transitioning to another, often unrelated subject. But it takes a lot of training to pull that off well, and you have to know when to back off and let the reporter maintain control.

As a general rule, beyond a brief, boilerplate statement about your firm, refrain from talking about yourself unless the reporter asks. Your goal as a spokesperson is to establish yourself or your organization as a reliable source of news and background information. Being quoted as such a source is more valuable than self-serving puffery, which sophisticated media consumers (as well as veteran reporters) find distasteful.

Violating this policy is risky. A reporter for a big-city daily newspaper told us about a large East Coast law firm – let's call it Eastern Firm – that was defending a big corporation in a wrongful death lawsuit several years ago. The claim for damages was so huge that the corporation had hired two different law firms for its defense. After months of litigation, the judge dismissed the case, based on arguments made in a brief written by one of the lawyers from Eastern Firm. The defendant and its two law firms decided that this brief-writing lawyer (BWL) would be the spokesperson for press inquiries. The reporter called BWL, intending to ask questions about the broad issues in the case, the social implications of the judge's decision, and how the decision might affect other companies in the same industry. But BWL tried to steer the conversation to his brief and his firm's representation of the defendant. The reporter finally got fed up and called the other defense firm for comments instead.

In most cases, your value to the news media depends on your ability to provide the information they need to do their jobs well. If you prove your value in that respect, the press will contact you again and again, whether it's about a story that involves your firm or client, or when they simply need background information.

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<sup>8</sup> *Miller v. United States*, 04-1507, and *Cooper v. United States*, 04-1508.

<sup>9</sup> For additional discussion of these issues, see *Lawyers and Reporters: Understanding and Working with the Media*, edited by Robert L. Rothman (ABA Litigation Section, Chicago, 2000), Chapter 5.

## Update

You should have a written media relations policy, and update it at least annually, whether your media relations efforts are active or reactive.

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## About the authors

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