



Prosecuting Attorneys Association of Michigan

BEST PRACTICES RECOMMENDATION PROSECUTOR AND LAW ENFORCEMENT COMMUNICATION TO MEDIA

Prosecuting attorneys and law enforcement must act in a judicious manner to ensure and maintain an impartial trial for all involved in a criminal case. The Prosecuting Attorneys Association of Michigan (PAAM) recommends:

- Prosecutors observe Michigan Rules of Professional Conduct Rule 3.6, which provides in pertinent part:

“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 materiality prejudicing an adjudicative proceeding in the matter. A statement is likely to have a substantial likelihood of materiality prejudicing an adjudicative proceeding when it refers to a civil matter triable to a jury, a criminal matter, or any other proceeding that could result in incarceration, and the statement relates to”

- The character or credibility of a party, suspect or witness, or the expected testimony of a witness.
 - The possibility of a plea of guilty or the existence or contents of a confession, admission or statement given by a defendant or suspect or that person’s refusal to give a statement.
 - The performance or result of any examination or test, or the failure to submit to same, or the identity or nature of physical evidence.
 - Any opinion as to guilt or innocence of a defendant or suspect.
 - Information that is likely to be inadmissible at trial, and if disclosed would create a substantial risk of prejudice.
 - The fact that a defendant has been charged with a crime unless there is included a statement explaining the presumption of innocence.
- Rule 3.8 provides that prosecutors shall exercise reasonable care to prevent law enforcement in a criminal case from making extrajudicial statements that a prosecutor is prohibited from making under Rule 3.6. Consequently, all Prosecuting Attorney Offices should adopt clear, written policies on what may be communicated to media outlets by local law

enforcement before, during and after a criminal case to comply with Rules 3.6 and 3.8. This will include, but not be limited to, guidelines for the use of social media relative to a pending investigation, criminal proceeding, or outcome of a case. The Prosecuting Attorney shall meet with chiefs and sheriffs to clarify communications policies as needed. To the extent practicable, the Prosecuting Attorney's Office should provide police agencies with training and/or explanation of the Michigan Rules of Professional Conduct (MRPC) 3.6 and 3.8.

A best practices recommendation by the Prosecuting Attorneys Association of Michigan (PAAM) is the product of careful consideration of experienced prosecuting attorneys. However, it is only a recommendation. A best practices recommendation may or may not be feasible or desirable to implement in every jurisdiction. There may be other methods in local jurisdictions to reach the same or similar objectives.

Date approved by PAAM: June 19, 2015