

Juvenile Cases and the Media

Speaker Information

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Biographical Information

Brian Fischer received a BA in Political Science from Boston College in 1976 and went on to earn his Doctor of Jurisprudence Degree from South Texas College of Law in 1979. Mr. Fischer practices law in Houston, Texas and is also a member of the State Bar of Florida. Mr. Fischer is a frequent speaker at Houston Bar Association CLE and Juvenile Law CLE Programs, and has also been a speaker for several years at the State Bar of Texas Juvenile Law Conferences.

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PROFESSOR ROBERT O. DAWSON
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Overview

As I have stated in my papers on past subjects I have spoken on I am a firm believers that papers presented at CLE programs should be outlines for practice in a given area and not treatises on the law. That, in my opinion, is better left to law review articles, and, in the Juvenile Law arena, to Professor Robert Dawson, Professor of Law, University of Texas School of Law. Professor Dawson is also the editor of the Juvenile Law Section publications and, more importantly, provides access to recent juvenile case law at the Juvenile Law Website at www.juvenilelaw.org. You may also access the current Family Code Sections at the Texas Statutes website at <http://capitol.texas.gov/sections.aspx>. There is also a free on line research site sponsored by the State Bar of Texas at [My Texas Bar.com](http://www.mytexasbar.com). This site allows the practitioner to research case law in all 50 states, Federal case law and has a searchable database by citation.

Therefore, this paper will address the Media and the Law as applied to Juvenile Cases and is by no means an exhaustive treatise on the subject but seeks to outline those areas of the law as applied to the media and the juvenile practitioner.

It is a great honor for me to be asked to speak at this conference. As you can tell from reviewing the course materials the esteemed speakers speaking at this conference have a wealth of knowledge when it comes to Juvenile Law, as most attendees do. Therefore, as has been my practice when speaking at CLE programs in the past, today I will try to allot time during my oral presentation for questions and comments from the audience in the hope that maximum information may be imparted to all participants in the process. **So please feel free to ask questions or offer comments at any time!!!!**

Juvenile Cases and the Media

SECTION 1: MEDIA ETHICS

The starting point in dealing with the media is to understand the media and under what code of ethics the media operates. The Society of Professional Journalists has a code of ethics which is published at their web site, www.spj.org. The Code of Ethics states as follows:

Preamble

Members of the Society of Professional Journalists believe that public enlightenment is the forerunner of justice and the foundation of democracy. The duty of the journalist is to further those ends by seeking truth and providing a fair and comprehensive account of events and issues. Conscientious journalists from all media and specialties strive to serve the public with thoroughness and honesty. Professional integrity is the cornerstone of a journalist's credibility. Members of the Society share a dedication to ethical behavior and adopt this code to declare the Society's principles and standards of practice.

Seek Truth and Report It

Journalists should be honest, fair and courageous in gathering, reporting and interpreting information.

Journalists should:

- Test the accuracy of information from all sources and exercise care to avoid inadvertent error. Deliberate distortion is never permissible.
- Diligently seek out subjects of news stories to give them the opportunity to respond to allegations of wrongdoing.
- Identify sources whenever feasible. The public is entitled to as much information as possible on sources' reliability.
- Always question sources' motives before promising anonymity. Clarify conditions attached to any promise made in exchange for information. Keep promises.
- Make certain that headlines, news teases and promotional material, photos, video, audio, graphics, sound bites and quotations do not misrepresent. They should not oversimplify or highlight incidents out of context.
- Never distort the content of news photos or video. Image enhancement for technical clarity is always permissible. Label montages and photo illustrations.
- Avoid misleading re-enactments or staged news events. If re-enactment is necessary to tell a story, label it.
- Avoid undercover or other surreptitious methods of gathering information except when traditional open methods will not yield information vital to the public. Use of such methods should be explained as part of the story.
- Never plagiarize.
- Tell the story of the diversity and magnitude of the human experience boldly, even when it is unpopular to do so.
- Examine their own cultural values and avoid imposing those values on others.
- Avoid stereotyping by race, gender, age, religion, ethnicity, geography, sexual orientation, disability, physical appearance or social status.
- Support the open exchange of views, even views they find repugnant.

- Give voice to the voiceless; official and unofficial sources of information can be equally valid.
- Distinguish between advocacy and news reporting. Analysis and commentary should be labeled and not misrepresent fact or context.
- Distinguish news from advertising and shun hybrids that blur the lines between the two.
- Recognize a special obligation to ensure that the public's business is conducted in the open and that government records are open to inspection.

Minimize Harm

Ethical journalists treat sources, subjects and colleagues as human beings deserving of respect.

Journalists should:

- Show compassion for those who may be affected adversely by news coverage. Use special sensitivity when dealing with children and inexperienced sources or subjects.
- Be sensitive when seeking or using interviews or photographs of those affected by tragedy or grief.
- Recognize that gathering and reporting information may cause harm or discomfort. Pursuit of the news is not a license for arrogance.
- Recognize that private people have a greater right to control information about themselves than do public officials and others who seek power, influence or attention. Only an overriding public need can justify intrusion into anyone's privacy.
- Show good taste. Avoid pandering to lurid curiosity.
- Be cautious about identifying juvenile suspects or victims of sex crimes.
- Be judicious about naming criminal suspects before the formal filing of charges.
- Balance a criminal suspect's fair trial rights with the public's right to be informed.

Act Independently

Journalists should be free of obligation to any interest other than the public's right to know.

Journalists should:

- Avoid conflicts of interest, real or perceived.
- Remain free of associations and activities that may compromise integrity or damage credibility.
- Refuse gifts, favors, fees, free travel and special treatment, and shun secondary employment, political involvement, public office and service in community organizations if they compromise journalistic integrity.
- Disclose unavoidable conflicts.
- Be vigilant and courageous about holding those with power accountable.
- Deny favored treatment to advertisers and special interests and resist their pressure to influence news coverage.
- Be wary of sources offering information for favors or money; avoid bidding for news.

Be Accountable

Journalists are accountable to their readers, listeners, viewers and each other.

Journalists should:

- Clarify and explain news coverage and invite dialogue with the public over journalistic conduct.
- Encourage the public to voice grievances against the news media.

- Admit mistakes and correct them promptly.
- Expose unethical practices of journalists and the news media.
- Abide by the same high standards to which they hold others.

The first issue in dealing with the media is understanding what the media seeks to achieve in reporting on a high profile juvenile case. Be aware that the media views a major element of its reporting as timeliness. Therefore, the media wants to report news at 5:00 p.m. or sooner on their web sites.

SECTION 2: LEGAL ETHICS

The legal ethics is an integral part of dealing with the media in a juvenile case. **Rule 2.01, Texas Disciplinary Rules of Professional Conduct** states "In advising or otherwise representing a client, a lawyer shall exercise independent professional judgement and render candid advice." The issue in dealing with the media in a juvenile case is whether the practitioner believes that media attention to the case is positive or negative. This issue is one of major concern regarding harm to the client, especially in a juvenile case where the client is a child. Guidance regarding the practitioner's ethical obligations in dealing with the media. The Trial Publicity section of **Texas Disciplinary Rules of Professional Conduct , Rule 3.07** states that "a lawyer 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 reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicatory proceeding." The full rule is as follows:

3.07 Trial Publicity

- (a) In the course of representing a client, a lawyer 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 reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicatory proceeding. A lawyer shall not counsel or assist another person to make such a statement.
- (b) A lawyer ordinarily will violate paragraph (a), and the likelihood of a violation increases if the adjudication is ongoing or imminent, by making an extrajudicial statement of the type referred to in that paragraph when the statement refers to:
- (1) the character, credibility, reputation or criminal record of a party, suspect in a criminal investigation or witness; or the expected testimony of a party or witness;
 - (2) in a criminal case or proceeding that could result in incarceration, the possibility of a plea of guilty to the offense; the existence or contents of any confession, admission, or statement given by a defendant or suspect; or that persons refusal or failure to make a statement;
 - (3) the performance, refusal to perform, or results of any examination or test; the refusal or failure of a person to allow or submit to an examination or test; or the identity or 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 or proceeding that could result in incarceration; or
 - (5) information the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and would if disclosed create a substantial risk of prejudicing an impartial trial.
- (c) A lawyer ordinarily will not violate paragraph (a) by making an extrajudicial statement of the type referred to in that paragraph when the lawyer merely states:
- (1) the general nature of the claim or defense;
 - (2) the information contained in a public record;

- (3) that an investigation of the matter is in progress, including the general scope of the investigation, the offense, claim or defense involved;
- (4) except when prohibited by law, the identity of the persons involved in the matter;
- (5) the scheduling or result of any step in litigation;
- (6) a request for assistance in obtaining evidence, and information necessary thereto;
- (7) a warning of danger concerning the behavior of a person involved, when there is a reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and
- (8) if a criminal case:
 - (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

The rule, which follows **Rule 3.6 ABA Model Rules of Professional Conduct**, states that the lawyer can state the following without violating the rule:

- 1. The general nature of the claim or defense;
- 2. Information already contained in the public record;
- 3. confirmation that there is an investigation underway, what the investigation is about, and any defenses of the investigation; and
- 4. Request for assistance in obtaining evidence.

Further, special rules of confidentiality will govern proceedings in juvenile cases. **Rule 3.04, Texas Disciplinary Rules of Professional Conduct** specifically states:

3.04 Fairness in Adjudicatory Proceedings

A lawyer shall not:

- (a) unlawfully obstruct another party's access to evidence; in anticipation of a dispute unlawfully alter, destroy or conceal a document or other material that a competent lawyer would believe has potential or actual evidentiary value; or counsel or assist another person to do any such act.
- (b) falsify evidence, counsel or assist a witness to testify falsely, or pay, offer to pay, or acquiesce in the offer or payment of compensation to a witness or other entity contingent upon the content of the testimony of the witness or the outcome of the case. But a lawyer may advance, guarantee, or acquiesce in the payment of:
 - (1) expenses reasonably incurred by a witness in attending or testifying;
 - (2) reasonable compensation to a witness for his loss of time in attending or testifying;
 - (3) a reasonable fee for the professional services of an expert witness.
- (c) except as stated in paragraph (d), in representing a client before a tribunal:
 - (1) habitually violate an established rule of procedure or of evidence;
 - (2) state or allude to any matter that the lawyer does not reasonably believe is relevant to such proceeding or that will not be supported by admissible evidence, or assert personal knowledge of facts in issue except when testifying as a witness;

The operative part of Section 54.08 is subchapter (c) which provides that if the child is under the age of 14 at the time of the hearing the court shall close the hearing. This means that either the hearings will be held in chambers or the court can order the courtroom cleared. A form for invoking Section 54.08 is attached to this paper for your reference.

Additionally, there is the provision that in a juvenile case, or any case involving a person accused of a crime, that the attorney, or guardian ad litem, if appointed, may file a Motion to Restrict Publicity (a "gag order"). In one case in which I was appointed guardian ad litem for the juvenile, I filed such a motion. A copy of the form for the Motion to Restrict Publicity is attached to this paper for your reference. In deciding whether to file a Motion to Restrict Publicity the court and the practitioner must weigh the competing interests of the media and the need to protect the juvenile respondent. The public's right to attend criminal trials is implicit in the guarantees of the First and Fourteenth Amendments to the United States Constitution. Although most of the cases involving access to trials deals with adult criminal trials, **Richmond Newspapers, Inc. v. Virginia**, 448 U. S. 554 (1980), **Nixon v. Warner Communica ions**, 435 U. S. 589 (1978), **Express News Corp v. MacRae** 787 W. W. 2d. 451 (Tex. Civ. App.—San An onio 1990, orig proceeding), **San An onio Express-News v. Roman** 861 S. W. 2d 365 (Tex. App.—San An onio,1993 orig. proceeding), **Davenport v. Garcia**, 834 S. W. 2d 4 (Tex. 1992), **Cain v. Hears Corp.**, 878 S. W. 2d 577 (Tex. 1994), there is at least one juvenile case in which the Supreme Court of he United States addressed the issue of media access. In he case of **Breed v. Jones**, 421 U. S. 519 (1975) the Supreme Courts stated that "determining the relevance of constitutional policies, like determining the applicability of constitutional rights, in juvenile proceedings, requires that courts eschew the "civil" label-of-convenience which has been attached to juvenile proceedings." Although there are no Texas cases dealing specifically with the issue of the restriction on media access to juvenile proceedings, there are cases from other jurisdictions which have addressed the issue. In the case of **Associa ed Press v. Bradshaw**, 410 N.W.2d 577 (S.D. 1987), the South Dakota Court required a closure hearing in which the court must take evidence to determine the balance between the press and public's first amendment rights and the juvenile's sixth amendment right to a fair trial, together with the state's interest in the juvenile's anonymity. In the case of **S a e ex rel. Oregonian Publishing Co. v. Die z**, 613 P.2d 23 (Ore. 1980) the Oregon Court stated that "he public has a right of access co-extensive with the press" and found that the application of the Oregon Statute to exclude the press from a juvenile proceeding was unconstitutional.

In the practitioner believes that media publicity will adversely affect the proceedings and taint the jury pool then the practitioner should file a Motion to Restrict Publicity. It is necessary that the Motion be served on all parties to the case, including all parents, guardians, attorneys, probation departments and the press. A Notice of Hearing must be included in the Motion. At the hearing it is the burden of the movant to show why the motion should be granted. Grounds for the granting of the motion include excessive adverse publicity which can impact the ability of the juvenile to have a fair trial and the tainting of the jury pool. Obviously, the size of the county within which the practitioner practices, the amount of the media coverage of the pre-trial proceedings and ancillary matters will have an impact on whether the motion is granted.

CONCLUSION

The ethical dilemma for the practitioner in juvenile cases regarding the media and what impact media coverage will have on the case is whether the practitioner wants the media coverage on the case or not. If the practitioner believes that media coverage of the proceedings is not in the best interest of the juvenile then the practitioner can avail himself or herself of the provisions of the Texas Juvenile Justice Code regarding closing the hearings to the public and the filing of a Motion to Restrict Publicity. The decision is ultimately up to the practitioner based upon his or her best judgment.

NO

IN THE MATTER OF:

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IN THE DISTRICT COURT OF

COUNTY, T E X A S

JUDICIAL DISTRICT

MOTION TO CLOSE PUBLIC ACCESS TO COURT HEARINGS

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes _____, Respondent, by and through his Attorney/Guardian ad Litem, _____, and files this Motion to Close Public Access to Court Hearings and for good cause and in the best interest of Respondent, shows the following:

1. Respondent Under the Age of 14 Years.

The Juvenile Respondent is _____ years old and falls within the purview of the provision of the Texas Family Code which provides for the Court to close the hearing to the public.

2. Section 54.08 (c) of the Texas Family Code Provides for Closing the Hearing to the Public.

Section 54.08(c) of the Texas Family Code states as follows:

“If a child is under the age of 14 at the time of the hearing, the court *shall* (emphasis added) close the hearing to the public unless the court finds that the interests of the child or the interests of the public would be better served by opening the hearing to the public.”

3. Best Interest of the Respondent is Served by Closing the Hearing to the Public.

Attorney/Guardian ad Litem asserts that the best interest of the Respondent will be served by the Court following the provisions of Section 54.08(c) and closing the hearing to the public. The Respondent is _____ years old and this case has garnered substantial media coverage over the past three weeks. Such media coverage has and/or will prejudice Respondent=s right to a fair trial. Further, Attorney/Guardian ad Litem has filed a Motion to Restrict Publicity to protect Respondent=s right to a fair trial.

4. The Interests of the Public is Not Better Served by Opening the Hearing to the Public

Attorney/Guardian ad Litem asserts that the best interest of the Respondent is paramount in this cause and the interests of the public would not be better served by opening the hearing to the public. The Respondent is _____ years old and this case has garnered substantial media coverage over the past three weeks. Such media coverage has and/or will prejudice Respondent=s right to a fair trial. Further, Attorney/Guardian ad Litem has filed a Motion to Restrict Publicity to protect Respondent=s right to a fair trial.

1. Prayer

Attorney/Guardian ad Litem, _____ requests that the Court grant this Motion to Close Public Access to Court Hearings. Attorney/Guardian ad Litem, _____, asserts that the granting of this Motion is in the best interest of Respondent, _____.

Respectfully submitted,

ATTORNEY/GUARDIAN AD LITEM

Address
Telephone Number
Fax Number
Bar Number

NOTICE OF HEARING

Notice is hereby given that the foregoing Motion to Close Public Access to Court Hearings is set for hearing on _____, at 9:00 a.m. in the ____ District Court of ____ County, Texas.

Attorney/Guardian ad Li em

CERTIFICATE OF SERVICE

I, _____, hereby certify that a true and correct copy of the foregoing Motion to Close Public Access to Court Hearings was hand delivered to the following persons on _____:

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.

Attorney/Guardian Ad Li em

NO. _____

IN THE MATTER OF:

;
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;
;

IN THE DISTRICT COURT OF

COUNTY, T E X A S

JUDICIAL DISTRICT

MOTION TO RESTRICT PUBLICITY

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes _____, by and through his Attorney/Guardian ad Litem, _____, and files this Motion to Restrict Publicity and for good cause and in the best interest of Respondent, shows the following:

1. This case has garnered extensive coverage in the media.

2. Attorney/Guardian ad Litem, _____ believes that continued discussions in the media by _____, the attorney for _____, _____, attorney for _____, _____, attorney for _____, _____, assistant district attorney, _____ County District Attorney=s Office, any employee of the _____ County District Attorney=s Office, _____, Guardian ad Litem and any other persons, employed by, associated with, affiliated with or otherwise connected with any of the persons referred to above and any other persons connected with this case might impair the possibility of Respondent, _____ obtaining a fair and unprejudiced jury. Accordingly, Attorney/Guardian ad Litem, _____, respectfully moves this Court to hold all pretrial hearings in chambers, outside the presence and hearing of the public and the press.

3. Attorney/Guardian ad Litem, _____, further respectfully moves this Court to restrict the news media as follows:

- A. From taking any photographs in the courthouse of the Respondent, _____ or witnesses or any person or persons connected with these proceedings;
- B. From photographing, or televising, or broadcasting these proceedings in or from the Courtroom or in such proximity as to disturb the order and decorum of the trial;
- C. From photographing Respondent, _____ at any time during these proceedings or at any time while being transported to the Courtroom;
- D. From reporting in detail the evidence obtained by this Court during pretrial hearings other than reporting that certain persons testified at said hearings;
- E. From photographing venirepersons and jurors in this case.

4. Attorney/Guardian ad Litem, _____, further respectfully moves this Court to enter an Order (Agag order@) enjoining the following persons from giving any oral statements, radio or television interviews, written statements or otherwise communicating with any member of the press and/or news media, effective immediately, regarding anything concerning this case during the pendency of this case:

- A. _____, Attorney for Respondent, _____;
- B. _____, attorney for _____;
- C. _____;
- D. _____;
- E. _____, attorney for _____;
- F. _____ - _____, attorney for _____;
- E. Any other persons, employed by, associated with, affiliated with or otherwise connected with any of the persons referred to above
- F. _____, Guardian ad Litem;
- G. _____, Assistant District Attorney, _____ County District Attorney=s Office;
- H. Any employee of the _____ County District Attorney=s Office.

5. Attorney/Guardian ad Litem _____ further requests that the Court order that no person, police officer, witness, court participant, or counsel comment to the media on any matter concerning this case at any time during its pretrial or trial. Attorney/Guardian ad Litem, _____, asserts that the granting of this Motion is in the best interest of Respondent, _____.

Respectfully submitted,

Attorney/Guardian ad Litem
Address
Telephone Number
Fax Number
Bar Number

NOTICE OF HEARING

Notice is hereby given that the foregoing Motion to Restrict Publicity is set for hearing on _____, at 9:00 a.m. in the _____ District Court of _____ County, Texas.

Attorney/Guardian Ad Litem

CERTIFICATE OF SERVICE

I, _____, hereby certify that a true and correct copy of the foregoing Motion to Restrict Publicity was served on the following persons by fax transmittal on _____:

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.

Attorney/Guardian Ad Litem