Celebrity Client, Celebrity Lawyer?

by David J. Marquardt and David D. Masterman

In 2007, the number of news stories about celebrities and their encounters with the legal system seems higher than ever. Whether it's Paris Hilton's jail term, Britney Spears's custody case, or Michael Vick's dog-fighting charges, the news is full of such stories. Lewis "Scooter" Libby and others in the political arena are no strangers to courtrooms.

Of course, this only feels like a new development because the names have changed and the legal entanglements are different. O.J. Simpson's infamous legal troubles occurred fewer than fifteen years ago. Tom Cruise and Nicole Kidman filled tabloids with their divorce, as did Donald and Ivana Trump, while many more years ago, Lee Marvin and palimony were the fare of celebrity stories. Locally, Marv Albert's bizarre sexual assault charges in the Arlington County Circuit Court, the sniper cases of Lee Boyd Malvo and John Allen Muhammad in the Fairfax County Circuit Court, and former Redskins quarterback Joe Theismann's divorce show that high-profile legal matters occur in Virginia, not just in New York or California.

Gloria Allred and F. Lee Bailey have had a steady diet of celebrity clients. With the clients came frequent media attention, courthouse-step interviews, appearances on news programs and book deals. Attorneys can become celebrities.

When representing the famous and speaking for media consumption, attorneys are not free to do as they please. Attorneys are not publicists for their clients. Publicists in many cases answer to no higher authority than the celebrities. Publicists sometimes lie about their clients. Publicists make the celebrities look good in good times and appear better in bad times.

Attorneys' ethical standards impose responsibilities to the client and to the judicial system. When involved in a celebrity representation, an attorney must not put his own appearance, advancement or fame first. Professional obligations cannot be compromised simply because of a client's stardom, wealth, or notoriety.

An attorney's primary obligation is to the client. Rules of ethics[1] demand that attorneys must respect clients' privacy and interests. Rule 1.1 of the Virginia Rules of Professional Conduct requires attorneys to provide competent representation.

Rule 1.3 requires reasonable diligence. However, Rule 1.6 provides the backdrop by which the major issue in representing celebrity clients evolves. "A lawyer *shall not* reveal information protected by the attorney-client privilege under applicable law or other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client unless the client consents after consultation, *except for disclosures that are impliedly authorized in order to carry out the representation*." VA. Sup. Ct. R. Pt. 6, Sec. II, 1.6 [*emphasis added*]

As a result of these rules, with each communication the attorney must weigh the client's interest in maintaining the attorney-client privilege versus disclosure that aids the attorney in carrying out the representation.

When representing the celebrity client, however, attorneys may be tempted to self-promote at the expense of an ethical requirement, despite the risk of discipline by the bar. After all, the opportunity to gain publicity for an attorney's practice may never be more evident than during high-profile cases. How the attorney chooses to deal with this temptation helps shape the direction that representation will take. Although self-promotion is a choice to be made with any client or case, the result of this choice is amplified exponentially with celebrity clients, due to their stature in the public eye.

Attorneys must scrutinize every decision more closely when dealing with the rich and famous, because each of those decisions is being looked at under the public microscope. Furthermore, attorneys must look after their staffs to ensure that they are operating with the same prudence.

There are some instances, however, in which an attorney has an obligation to keep the public informed in addition to protecting the client's privacy. This is primarily the case in matters involving prosecutors and other criminal attorneys, but also relevant to many civil actions involving well-known parties. Attorneys again must weigh what facts the public needs to know against what communications the client needs protected.

There are three potential rules the lawyer should be exceptionally wary of when dealing with a high-profile case:

Rule 3.4 of the Virginia Rules of Professional Conduct relates to fairness to the opposing party and counsel. Prohibited actions contained in this rule include tampering, withholding or falsifying relevant evidence, secreting witnesses, or advising a client to disregard rules or procedures.

Rule 3.6 requires that a "lawyer participating in or associated with the investigation or the prosecution or the defense of a criminal matter that may be tried by a jury shall not make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication that the lawyer knows, or should know, will

have a substantial likelihood of interfering with the fairness of the trial by a jury." VA. Sup. Ct. R. Pt. 6, Sec. II, 3.6 This rule reflects the crux of the dilemma facing attorneys in a public trial.

Rule 3.8 defines additional responsibilities of a prosecutor, ranging from filing and maintaining only meritorious charges, making timely disclosures, and not knowingly taking advantage of unrepresented defendants.

These rules describe clear violations even in the most publicized cases. The Duke University "rape case," as it came to be known, is a model of how a prosecutor should not deal with the media or the case. Prosecutor Michael Nifong did not lose his license to practice law because of how he dealt with the media, but because he made mistakes with evidence by being public early in the case.

On occasion, what lawyers may communicate to the public is restricted. A judge may issue a gag order that limits what may be stated or cuts off communication between the attorneys and the media.

Alternatively, a judge may further privatize the case by limiting media coverage. The judiciary has responsibilities to the parties involved in these high-profile cases and to the public that wants to know every detail. In many cases, these responsibilities conflict. The recent Michael Vick case in the Eastern District of Virginia illustrates how the court could have stepped in to limit the accused's exposure. Notwithstanding his admission of guilt, which makes any argument toward his innocence irrelevant, Vick was found guilty by many well before he agreed to the plea bargain that decided his fate.

Due to the despicable nature of the crimes and Vick's celebrity, media coverage of the case became larger than the case itself. Media representatives discussed every angle of every fact (and even some that weren't). Further compounding the issue were the federal prosecutors and Vick's defense attorneys, who were not shy about addressing the media. The result was a metaphorical nationwide trial where every person with access to any news source was a juror. It is easy to see how media coverage and attorney exuberance could become a major issue during a high-profile prosecution, even prior to court proceedings.

Judges, as officers of the court, may be thrust into the spotlight while presiding over a case involving a celebrity party. As both judges and former lawyers, they must be prepared to accept the responsibilities that come with their position in the case. These responsibilities are defined in the attorney Rules of Professional Conduct and in the Canons of Judicial Conduct for the State of Virginia.

The conduct of Judge Lance Ito during the O.J. Simpson murder trial provides a prime example of the hazards that judges face in such cases. Some analysts and fellow judges criticized Ito's handling of the case, saying that he let the trial turn into a media circus. His refusal to enter a gag order led to many interesting episodes that involved the attorneys and the media outside of the courtroom.

The nature of attorney fame also tends to show that the game is not worth the candle for the vast majority of lawyers. The American Bar Association has more than four hundred thousand members; the total number of licensed attorneys in the U.S. is considerably higher. The percentage of lawyers who are commentators for CNN or Fox News as a result of having handled high-profile cases is tiny. Andy Warhol's "fifteen minutes of fame" is the most the majority of attorneys will get. This undercuts the public's faith and trust in attorneys, merely for a twenty-second sound bite on the local news.

Some celebrity clients prefer not to air their legal woes in the press. They hire attorneys who are not known for their interviews with the press. These clients want their traffic matter, divorce or contract action handled competently and quietly. Attorneys must respect this choice. If a client wishes even the fact of representation to be maintained as a confidence, the attorney must respect that wish. Staff should be trained so that if a caller asks, "Do you represent _____?", the individual will respond immediately that the firm does not confirm or deny its representation of any clients.

So what does all of this mean? There is nothing unusual about an attorney finding the representation of a celebrity client and the ensuing whirlwind of attention to be exciting. The temptation to make a repu-

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tation on the case or otherwise garner individual fame will always be present.

Careful attorneys fulfill their ethical obligations to their profession while realizing the marketing benefits of a well-advertised job done well. But sloppy attorneys can lose both their client and their profession. ⚖

Endnote:

1 While this article speaks of rules of ethics in terms of the Virginia Rules of Professional Conduct, it is important to note that Virginia's rules are modeled after the American Bar Association's Model Rules of Professional Conduct, as are the majority of other states' rules. To date, only New York, California, and Maine do not have rules of professional conduct that adhere to the ABA's Model Rules. Therefore the rules of ethics that are applicable to attorneys licensed in Virginia are also applicable to attorneys licensed in forty-seven of the fifty states.