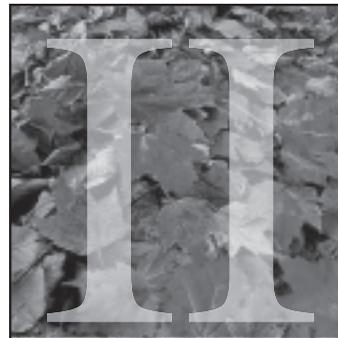


# MICHIGAN DEFENSE

## *Quarterly*

Volume 23, No. 3 January 2007



### IN THIS ISSUE:

- *Daubert* Principles (Part II of III)
- *Daubert* – A Neuropsychologist’s Perspective (Part II of II)
- Uncertainty in Accident Reconstruction
- Insurance Law Update
- Public Relations – Protecting a Client’s Reputation
- Third Annual Law Student Writing Competition
- Young Lawyers Section: The Trial (Part 1)
- Court Rules Update
- Guest Column: Child Welfare and Parental Rights

MDTTC

MICHIGAN DEFENSE TRIAL COUNSEL, INC.

THE STATEWIDE ASSOCIATION OF ATTORNEYS REPRESENTING THE DEFENSE IN CIVIL LITIGATION

---

# IN THE PUBLIC EYE: PROTECTING A CLIENT'S REPUTATION

By: Daniel Cherrin, Esq.

---

## Executive Summary

High-profile litigation involves not just the defense of the legal claim but also the protection of the client's public image. The normal orientation of defense counsel is toward protecting information from disclosure, but where a case has aroused public or media interest, a narrow focus on preventing disclosure can have broad negative effects outside the scope of the litigation itself. In cases of that type it is wise for defense counsel to retain public relations counsel to assist with the public relations aspects of the defense. Public relations counsel can coordinate public relations efforts with defense counsel in a way that helps to protect the client's public reputation without jeopardizing the attorney client privilege.

The sands have shifted in the practice of law. Gone are the days when clients were only concerned about the legal ramifications of a lawsuit or legal quagmire. Today, clients are often also concerned with how they are judged in the public eye and perceived by their customers, vendors and by their own families.

In protecting a client's reputation, "an attorney's duties do not begin inside the courtroom door — he or she cannot ignore the practical implications of a legal proceeding for the client."<sup>1</sup> An attorney should take reasonable steps to defend a client's reputation.

This is particularly important in an environment where news is reported "24/7" and at times even delivered instantaneously to our cell phones. Likewise, with sales of newspapers and magazines at all-time lows, the media is hungry for a story even if no story really exists. Therefore, lawyers must be more diligent in looking at the big picture in protecting their clients' interests in the court of law as well as in the court of public opinion.

### Today's legal strategies demand public relations

Today's business environment demands an aggressive strategy to resolve issues legally while protect-

*Lawyers need to be more than legal counselors or advocates. They need to be familiar with how perception is created within the public eye and how to use the media effectively to manage that perception.*

ing one's reputation publicly. As a result, lawyers need to be more than legal counselors or advocates. They need to be familiar with how perception is created within the public eye and how to use the media effectively to manage that perception. Therefore, the potential impact any litigation will have on a client's image, reputation, investor relations and future business must be considered in creating a legal strategy.

To protect a client's legal interests and also to preserve the client's reputation publicly in a high-profile case, defense counsel should consider engaging public relations counsel early in the process, so as to develop a complementary strategy and get advice on how to deal with the media and protect the client's public relations interests. In developing a broad

defense strategy that embraces both legal and public relations concerns, lawyers need to look beyond the facts and include public relations concerns as part of a comprehensive defense. Public relations counsel can assist defense counsel by managing the public relations issues while defense counsel focuses on the traditional elements of mounting a defense. If both the legal and the public relations components are to succeed, it is essential that defense counsel and public relations counsel coordinate their efforts.

### Protecting a client's reputation

A lawyer who is going to represent a client outside the courtroom must become more comfortable in talking freely about their client's case. Lawyers, trained to protect client confidences and to control information, have a natural tendency to answer only the questions that are asked and to give no more information than is necessary to resolve the issue. In the view of the public, however, information and communication are the two factors that build trust and go a long way toward preserving one's reputation.

A public relations counselor can employ specific tactics to protect the

*Continued on page 34*

Continued from page 33

reputation of a company or an individual leading a company while reinforcing issues legally. For example, in the public eye, we are presumed guilty if we respond to a reporter's question with "no comment." A better way to respond to a question you do not want to answer or are not ready to answer is to deflect it, by saying something like: "That is a very good question, one that we are looking into at the moment. As soon as we learn something new, we will get back to you promptly."

## Retaining public relations counsel

The attorney-client privilege is generally preserved in retaining public relations counsel during the course of litigation. However, it helps when your public relations counsel also happens to be a licensed attorney. In fact, public relations seems to be a popular alternative career for attorneys. In any event, defense counsel should exercise care to ensure that any privilege is preserved. It also is preferable that the public relations firm be retained by and report to defense counsel rather than the client. This will help in mounting a coordinated defense and also help to preserve attorney-client privilege by ensuring that all communications pass through defense counsel.

Likewise, public relations counsel should include defense counsel in all

*The attorney-client privilege is generally preserved in retaining public relations counsel during the course of litigation. However, it helps when your public relations counsel also happens to be a licensed attorney.*

stages of communication and consult closely with defense counsel in developing key messages to make sure they complement the legal strategy rather than put it in jeopardy. Defense counsel should be present during any conferences involving public relations counsel and the client.

Given the stakes in today's litigation environment, defense counsel may find it helpful to develop a relationship with a public relations firm, so that it can be ready to assist on short notice if and when it is needed. For example, some public relations firms are known for their expertise in crisis and reputation management while others focus more on soft promotions and publicist work. Some public relations firms focus specifically on litigation communications practice, and even have attorneys and registered lobbyists on staff.

Many of the larger law firms have

a chief marketing officer that they can rely upon for initial help or guidance, while others have already retained a public relations firm to assist with matters that are beyond the routine. In any event, defense counsel should look for a public relations firm that has relationships with the media, both local and national, on-line, in-print and on-the-air. A useful source of information on public relations firms is the website maintained by the Council of Public Relations Firms at [www.prfirms.org](http://www.prfirms.org).

In preparing for litigation or creating a legal strategy to meet a client's objectives attorneys must consider the impact on their clients' businesses and reputations. Reputations take years to create and only seconds to destroy. Engaging public relations counsel early can create a comprehensive strategy that will help clients — and defense counsel — succeed.

---

*Daniel Cherrin is a Vice President of Southfield-based Caponigro Public Relations Inc., and also an attorney and lobbyist. He can be reached at (248) 355-3200, or [dcherrin@caponigro.com](mailto:dcherrin@caponigro.com).*

---

## Endnotes

1. *Gentile v State Bar of Nevada (Kennedy opinion)*, 510 US 1030, 1043 (1991).

## BUILDING & PREMISES EXPERT

Review and research to render opinions on correct building code statutes & standards to included ADA & MIOSHA. Opinions on causation and foresee ability. Licensed builder with may years of subcontracting and general contracting (hands-on) experience. Plaintiff and Defense attorney clients. Continuing education studies, never disqualified in court. Faulty Construction, Failure to Disclose, Personal Injury, Toxic Substance, Other Construction Issues.

Ronald Tyson  
248-230-9561 / [www.tyson1rk@mac.com](http://www.tyson1rk@mac.com)

[geoforensics.com](http://geoforensics.com)  
517.655.8348



**GEOFORENSICS**  
Forensic Geology & Environmental Consulting

**Consulting & Litigation Support for  
Civil & Criminal Cases involving  
Soil, Groundwater, Sediment,  
Surface Water, & Rocks**

Certified Professional Geologist  
Experienced Expert Witness  
30+ years regulatory & consulting experience