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Robert White
Chief of Police
Denver Police Department
1331 Cherokee Street
Denver, Colorado 80204

Re: Pre-trial publicity and news releases

Dear Chief White:

It is my practice to send this letter at the beginning of each year. The purpose of the letter is to provide to you the details about limitations that my office and your department must observe in providing information to the public. As a prosecutor and a member of the Colorado Bar, I am bound by strict prohibitions regarding what information is to be released to the media in pending civil or criminal cases. These prohibitions are found in the Colorado Rules of Professional Conduct, as adopted by the Colorado Supreme Court in 1992 and amended thereafter. It is well established that, where government lawyers are concerned, these strictures extend to those government agencies that are engaged in the investigative aspects of the case. Specifically, Rule 3.8 (f) requires a ***prosecutor*** to:

> Exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extra-judicial statement that the prosecutor would be prohibited from making under Rule 3.6.

Under Rule 3.6, prosecutors and law enforcement personnel are constrained from issuing statements that they "know or reasonably should know...will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter." For example, in connection with criminal matters, other proceedings which could result in incarceration, or civil matters involving a jury trial, statements that relate to the following subjects ordinarily are considered likely to prejudice adjudicatory proceeding and therefore should be avoided:

> (1) the character, credibility, reputation or criminal record of a party, suspect in a criminal investigation or witness, or the identity of a 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 or the existence or contents of any confession, admission, or statement given by a defendant or suspect or that person's refusal or failure to make a statement;

(3) the performance or results of any examination or test or the refusal or failure of a person to 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;

(5) information that the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and that would, if disclosed, create a substantial risk of prejudicing an impartial trial;

(6) the fact that a defendant has been charged with a crime, unless there is included a statement explaining that the charge is merely an accusation and that the defendant is presumed innocent until and unless proven guilty.

See Rule 3.6, Comment [5]

Pursuant to these rules, prosecutors and agencies engaged in the investigation of the case are allowed to release the fact that the investigation is in progress, and the claim, offense, or defense involved. They may also disclose the identity of the persons involved, *except when prohibited by law.*[1] The rule specifically provides that, in a criminal case, only a limited amount of information may be released.

(i)the identity, residence, occupation, and family status of the accused;
(ii)if the accused has not been apprehended, information necessary to aid in the 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

Further, it is allowable to release the following information:

- Information contained in a public record;
- The scheduling or result of any step in litigation;
- A request for assistance in obtaining evidence and information necessary thereto;

[1] For example, there are substantial limited on public access to information regarding juveniles. Only narrowly defined "arrest and criminal records" may be made available to the public, and only after a juvenile has been *formally* charged with possession of a handgun, or a class 1, 2, 3, or 4 felony, a crime involving the use of a weapon, or (if the juvenile is over 14) a crime of violence. *See* C.R.S. 1998, §§19-1-304 and 24-72-302(1). Another example where disclosure of the identity of an involved person is other "prohibited by law" is the proscription against disclosing the name of a sexual assault victim. C.R.S. 1998, §24-72-304(4).

- 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.

Speculation about the specific charges that might be filed by my office or information about a tentative acceptance is not part of the public record and should not be released.

I would appreciate any effort on your part to communicate to the members of your department the above-stated constraints. If, at any time, I or a member of my staff can be of assistance to you in training your department about these constraints, we would be happy to provide the help.

I realize how difficult it is for a police department the size of Denver's to control the flow of information. I appreciate all the efforts you and members of your department make to bring integrity to the department and the criminal investigations conducted by it.

Sincerely,

Beth McCann
District Attorney
Second Judicial District
Denver, Colorado

cc: Stephanie O'Malley, Manager of Safety