When Your Client Faces a Crisis, Put a Crisis Manager on Your Team

By Bradley Boyer

Lurking on the fringes of virtually every dispute involving a public figure is a crisis manager: a PR professional who specializes in protecting reputations under siege.

In the age of 24/7 news cycles, popular gossip websites and paparazzi outside every hot restaurant or club, a crisis manager combines expertise in guarding reputations with another critically important quality. Often the crisis-management professional is the only member of the team whose communications with the public figure are shielded by the attorney-client privilege and the attorney work product doctrine. A celebrity’s closest confidants may be his entertainment manager, business manager or agent. But when civil or criminal litigation is pending or threatened, communications with those normally within the celebrity’s support system may be dangerously discoverable.

If the public figure’s lawyer hires the crisis manager for assistance, communications with the crisis manager may fall under the attorney-client privilege and attorney work product doctrine, as the crisis manager is acting as an agent, adviser and confidant of the lawyer. Such a relationship may put the client at ease, since he or she can communicate freely with and rely on the counsel of someone who talks a familiar language: PR, not legalese.

Public-relations consultant and former newspaper editor and publisher Tim Gallagher [WLK4–GL] notes, “Specific knowledge of the media, of reporters, their audiences and their deadlines is crucial when a story gets a life of its own and is endlessly looped on the 24-hour news cycle. Working with the attorney, the crisis-managing publicist can help you get in front of the story. You want to be telling your story, rather than responding to allegations.”

A crisis manager works with the lawyer and client in putting together an appropriate strategy to address what has come out in the media and what is expected to come out. Crisis-management expert Cindy Rakowitz [WLK3-GLIT] said, “It shouldn’t be assumed that all publicists are trained in crisis management. Attorneys should ask about specific experience and certification.” She adds that specialized knowledge is required, beyond the old PR rules of “Don’t feed a bad story” or “A story will not get legs if it comes out on a Friday.”

Roger Gillott [LA1], president of Gillott Communications LLC, a firm specializing in crisis and reputation management, adds: “The woods are full of PR people, but they’re not interchangeable. The most select niche is composed of those who deal effectively with crisis and reputation management. The very best are former high-level journalists—adrenaline junkies who stay calm amid the storm, revel in going eyeball-to-eyeball with the media and don’t blink.”

Celebrity clients tend to have journalists whom they believe to be their friends on speed dial in their BlackBerrys, and are tempted to call them to reply to accusations in the media. They also receive calls from
reporters or are ambushed by news crews outside their homes or favorite restaurants. A crisis manager advises the lawyer—and, often more importantly, helps control the client—regarding what to say or not say to the media.

According to Rakowitz and Gillott, such spin doctoring is critical. One video or statement (think Meg Whitman on Nicky Diaz) may shape public opinion, and some members of the public may end up in a jury box. Rakowitz said, “If public figures have powerful crisis management practitioners on their teams, the chances of long-term damage to their careers can often be mitigated.” Gillott adds, “When reputation is at stake, strategic PR is a critical tool to shape public perception. By being preemptive and seizing the offensive, clients have more options and more room to maneuver in protecting their businesses and reputations.”

Lawyers can maximize potential protection when retaining a specialist in crisis management. A lawyer would be ill advised to merely consult with a publicist who the public figure has on retainer. A celebrity publicist may excel at walking public figures down the red carpet or getting them quoted in the popular media, but lack crisis-management skills. Further, using a publicist who has a prior relationship to provide general PR for the client lessens the likelihood that such communications will be protected. Establishing a new relationship between lawyer and crisis manager, with all bills from the crisis manager going to the lawyer, strengthens the assertion of the privilege in protecting communications.

A written engagement letter between the lawyer and the crisis manager also is critical to protect confidentiality. The agreement should reflect that the crisis manager and lawyer believe and understand that all of their communications are confidential and privileged, and that their relationship is necessary to further the attorney’s representation of the client.

By carefully structuring a relationship with a professional crisis manager, a lawyer can be more effective in doing what he or she needs to do, either settling a case or aggressively representing the client before a judge and jury. The crisis manager, acting as an agent of the lawyer, enables the public figure to mount a defense—or take the offense—in what may be an equally important forum: the court of public opinion.

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