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Trump Comments Highlight Need for a Plan When Clients Go Rogue

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Words can be a litigator's greatest asset—but they can also send lawyers scrambling when clients go rogue and say something that goes viral for the wrong reasons.

Representing a client who goes off the rails, despite advice to stay mum, is no easy task. High-profile clients can easily say something to the media that threatens pending litigation or spurs new lawsuits. And with social media, opportunities for off-the-cuff comments to become something bigger are endless, especially in politics, where President Donald Trump's brash comments have already been used in court to stymie his travel ban.

"Lawyers are counselors, they assist clients, they can't control clients," said Jason Steed, a partner at the law firm Bell Nunnally & Martin in Dallas. "Things are still up to the client. The client can still do whatever they want and the lawyer is still there to assist and counsel and deal with whatever it is the client does."

The importance of clients' public statements was on full display last week when two federal judges used Trump's campaign comments against him in rulings that blocked provisions of his immigration ban. Trump issued the order March 6, after a federal [judge in Washington state blocked](#) a similar order issued Jan. 28.

Judges in Hawaii and Maryland cited Trump's statements, and those of his aides, during campaign rallies and media interviews as evidence that his revised immigration order was still probably intended to ban Muslims from the country. The government appealed both rulings.

The day of the Hawaii decision, the first to come out against the new executive order, Trump [commented further](#) during a rally in Tennessee.

"I wasn't thrilled, but the lawyers all said, 'Oh, let's tailor it,'" Trump said in reference to the first executive order he issued. "[The new order] is a watered down version of the first one. ... I think we ought to go back to the first one and go all the way, which is what I wanted to do in the first place."

One of the lawyers fighting Trump in Hawaii [said last week](#) that her team will consider those comments going forward.

While the first instinct for an attorney may be to instruct a client to stay mum, Wayne Pollock, the founder and managing attorney at the boutique Philadelphia law firm Copo Strategies, said one way to handle

damaging comments is actually to encourage clients to say more.

"When clients have gone off the rails with their public statements, counsel should encourage the client to make additional statements that provide context for the earlier comments," Pollock said.

Doing so may "reduce the swelling," Pollock said. He urged against any all-out retraction of statements, which would likely "harm the client's reputation and business interests."

Another option is to talk a client out of it — respectfully. Steve Ryan, a partner at McDermott Will & Emery in Washington, D.C., said one of the most important qualities in the attorney-client relationship is trust. Without it, convincing a client to tone down their rhetoric or refrain from commenting comes off as insincere.

"It's a matter of asking if [the client] really, upon reflection, would do that again," Ryan said. "But you have to be a trusted adviser to someone to raise that point."

Sometimes all a lawyer can do is be prepared. Covington & Burling partner Benjamin Razi said it's crucial to be aware of any and all public statements a client made before taking a litigation position. That advice doesn't just stand for individuals — Razi has represented major corporations and organizations.

He said public companies constantly put out comments and statements, and they have an obligation to shareholders to keep them informed. But if lawyers aren't aware of every word, they risk "taking a position that's undermined in some way."

Razi also said not to be discouraged if a client does say something ominous.

"It is also most often true that when clients say things ... those statements can be dealt with and can be reconciled and explained and made sense of," he said. "Context is important."

As for Trump, the president's lawyers will likely need to address his comments in court.

Constitutional law professor Josh Blackman said he thinks the president's comments will have little sway on the U.S. Supreme Court.

"I don't think the Supreme Court will make a decision based on what Donald Trump told Anderson Cooper," Blackman said. "Even to say it is to realize how insane it is."

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