

Company lawyer not always best choice as company spokesperson



By Ann Bowden-Hollis

Crises occur with increasing frequency these days whether one's business is large or small. What is a crisis? Typically, it is an event that causes substantial disruption of a business and carries with it coverage by the news media. The prevalence of social media such as Facebook and Twitter, not to mention the 24-hour news cycle, all play a part in rumors and allegations becoming a crisis and bringing news media attention, whether wanted or unwanted. The reputations of company officials and the businesses themselves can be attacked almost instantly when a story goes "viral." When to seek legal advice on how to address and manage a crisis can be a crucial decision in getting out in front of a crisis.

What role the legal advisor can and should play is important for the company to understand. Those involved need to know who the lawyer represents — is it the company or one or more of its officers or managers? Lawyers have rules of professional responsibility that control how to address conflicts of interest. In some instances, the interests of the company and its officials will be aligned; in others, that will not be the case. An early and clear understanding of who the client is can avoid subsequent misunderstandings.

Protecting the attorney-client privilege is a matter that also must be considered. Does the crisis concern potential litigation? Have claims already been asserted? Corporations, just like individuals, are entitled to legal representation and to have privileged communications with their attorneys. Often, public relations consultants or employees are needed to assist in managing communications on behalf of the company. It is necessary to keep in mind that the attorney-client privilege can be lost by company officials communicating privileged information to third parties who are not included with the protection of the privilege.

Sometimes, companies want their lawyer to act as the spokesperson for the company with news media and others seeking comments from the company about a given crisis. Again, care must be taken in determining if that is the best role for the lawyer. Inadvertently turning the company lawyer into a witness can deprive the company of the lawyer's services. Generally, a lawyer cannot act as legal advisor and witness in the same matter.

Early consultation with legal advisors, early decisions about use of communications and public relations personnel and careful, thoughtful, communications regarding the crisis can avoid some of the pitfalls of the "off the cuff" remark and "misquotes." These steps enhance the company's ability to ensure the dissemination of accurate information and avoid misstatements.

Of course, having a crisis management plan in place in advance always makes for a better response when that potential disaster happens. For more information, one has only to Google the term, "crisis management." For example, a publication just announced Nov. 5, 2012, is Crisis Management Guidebook, available at prnnews.com/store/72.html.

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