



MEDFORD
CITY ATTORNEY'S OFFICE

October 14, 2021

Bruce Brown – bbrown@rcfp.org

Ellen Osoinach – eosoinach@rcfp.org

Reporters Committee for Freedom of the Press
via email only

Re: The RCFP's letter of October 12, 2021

Dear Mr. Brown and Ms. Osoinach,

Thank you for your factual and legal arguments regarding *City of Medford v. April Fonseca* (aka April Ehrlich). Although this office would not bring forward any case where we did not believe that the facts and the law supported the charges, please understand that we cannot publicly debate the specifics of any particular pending case. To the contrary, our office is expressly prohibited from engaging in public debate on such matters:

A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.

Oregon Rule of Professional Conduct 3.6(a). Oregon's rule is consistent with long-established Supreme Court case law:

From the cases coming here we note that unfair and prejudicial news comment on pending trials has become increasingly prevalent. Due process requires that the accused receive a trial by an impartial jury free from outside influences. Given the pervasiveness of modern communications and the difficulty of effacing prejudicial publicity from the minds of the jurors, the trial courts must take strong measures to ensure that the balance is never weighed against the accused. * * * Neither prosecutors, counsel for defense, the accused, witnesses, court staff nor enforcement officers coming under the jurisdiction of the court should be permitted to frustrate its function. Collaboration between counsel and the press as to information affecting the



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fairness of a criminal trial is not only subject to regulation, but is highly censurable and worthy of disciplinary measures.

Sheppard v. Maxwell, 384 US 333, 362-364 (1966). In turn, these principles are embedded in the Joint Statement of Principles from the Oregon State Bar, the Oregon Newspaper Publishers Association, and the Oregon Association of Broadcasters,¹ which recognizes both "The necessity of preserving both the right to fair trial and the freedom to disseminate the news is of concern to responsible members of the legal and journalistic professions and is of equal concern to the public." The Joint Statement reminds all involved that "readers and listeners are potential jurors" and that attorneys for the parties arguing the facts and law of the case in the media prior to trial can damage that right to a fair trial.

Based on these authorities, our office cannot, and will not, engage in public debate about the facts or law of any pending Municipal Court prosecution.

Sincerely,

Eric B. Mitton
City Attorney

¹ <https://pages.uoregon.edu/tgleason/j385/BBPGuide.htm>