

OPD PRESS/PUBLIC COMMENT/LEGISLATIVE/GUBERNATORIAL/ COMMENT POLICY

I. MEDIA CONTACTS

A. OPD Employees Need Advance Approval Before Making Public Statements or Responding to Media Requests on OPD Policies, Positions, or Legislative Matters.

OPD employees must seek advance authorization from Public Defender Management before making any public statements or responding to media requests on OPD policies, positions, or legislative matters, either directly to the public or through the media, as an OPD representative or spokesperson. For example, OPD employees may not initiate media contacts or call a press conference on OPD policies, positions, or legislative matters without express prior authorization. Otherwise, the media could have a false impression that the OPD employee was speaking as an OPD spokesperson.

Public Defender Jennifer N. Sellitti is the primary contact for authorization. In her absence, the supervising Assistant Public Defender should be contacted.

B. Attorneys Do Not Need Advance Authorization to Respond to Case-Specific Inquiries that Do Not Involve OPD Policies or Positions.

Notwithstanding the forgoing, attorneys do not need to seek advance authorization before they speak to a reporter to respond to a case-specific inquiry that does not involve a discussion of any OPD policies or positions. For example, an attorney is free to answer a reporter's questions about whether or not a specific client is being represented or what happened in court on a particular case. In fact, an attorney on a particular case can best answer specific questions about the cases he or she is handling.

However, if the media inquiry involves a request for information about an OPD policy or position, the OPD employee must obtain advance authorization from Public Defender Management. If an OPD employee is unsure if a media request calls for case-specific information or policy information, the employee must refer the question to Public Defender Management.

C. OPD Employees May Speak in Their Individual Capacity on Matters of Public Concern.

OPD employees do not need to obtain advance authorization before they speak publicly in their individual capacities about matters of public concern, provided they do not make their individual comments during work hours, or use OPD letterhead, the OPD phone system, or the OPD email System. OPD employees are also prohibited from holding any press conferences on OPD work locations to express their personal viewpoints.

If OPD employees wish to express viewpoints in their individual capacity, the employees must make it clear that they are speaking in their personal capacities and not as an OPD representative.

If any comment, including a comment made in an employee's individual capacity, causes disruption to the functioning of the OPD, the interests of our clients, or violates the Rules of Professional Conduct, the Public Defender reserves the right to discipline the employee. These determinations will be made on a case-by-case basis with due consideration given to factors such as whether the speech implicates any public interest and whether the speech has any actual or potential adverse impact on the OPD or our clients.¹

D. OPD Employees Are Prohibited from Making Public Comments About or Characterizations of Judges, Prosecutors, and Law Enforcement Officers.

To protect the Office's ability to function effectively and the OPD's working relationships with other public agencies, the Public Defender strictly prohibits any public comments about or characterizations of judges, adjudicatory officers, prosecutors, or law enforcement officers unless Public Defender Management provides prior approval. This is consistent with New Jersey Rule of Professional Conduct 8.2(a).²

All OPD staff are prohibited from making any statement that they know to be false or is made with reckless disregard as to its truth or falsity concerning the qualifications of a judge, adjudicatory officer or other public legal officer, or of a candidate for election or appointment to judicial or legal office. See New Jersey Rule of Professional Conduct 8.2(a).

¹ For example, if a staff attorney declares in public that his immediate superior lied about certain matters and his statement undermines the working relationship between them and causes internal strife in the office, the attorney's public comment could lead to appropriate disciplinary action. See Sprague v. Fitzpatrick, 546 F.2d 560 (3d Cir. 1976).

² "A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualification of a judge, adjudicatory officer or other public legal officer or of a candidate for election or appointment to judicial or legal office." RPC 8.2(a).

II. PUBLIC PRESENTATIONS

A. Public Presentations Are Encouraged.

The Public Defender encourages OPD employees to seek and accept invitations to speak before organizations and groups regarding the Office's activities. The Public Defender specifically encourages OPD employees to participate in community education programs, such as presentations at local schools.

B. OPD Employees Need Advance Approval Before Making Public Presentations.

To ensure accuracy and consistency of the Public Defender's positions and statements, the Deputy or Division Manager of a staff member's unit must receive a summary or outline of the proposed public presentation and must provide advance approval of the content of the public comments before the staff member makes any public presentation on behalf of the OPD. The Deputy or Division Manager must also advise his or her supervising Assistant Public Defender of the staff member's presentation.

If an OPD staff member intends to speak as an OPD representative or spokesperson at a scheduled event, the OPD staff member must submit a completed "Request for Attendance at Event" form to his or her Deputy or Division Manager to be forwarded for review by Public Defender Management. See N.J.A.C. 19:61-6.1 et seq.

Attorneys do not need to submit a written summary or outline before giving a presentation on the general function or mechanics of the criminal justice system. For example, an attorney can give a presentation to school children discussing criminal law and the function of the OPD without receiving advance approval of the content of the presentation. However, an OPD employee should still inform his or her Deputy or Division Manager that he or she plans to make a general presentation on criminal law before a particular group as an OPD representative or spokesperson.

III. LEGISLATIVE TESTIMONY, BILL COMMENTS, AND RULE COMMENTS

A. OPD Employees Must Receive Advance Approval Before Submitting Comments on Proposed Legislation or Proposed Administrative Regulations

If an OPD employee wishes to comment on proposed legislation or administrative regulations on behalf of the OPD or in a submission that identifies the individual as an employee of the OPD, the employee must receive advance approval from the Public Defender or, in his or her absence, the First Assistant Public Defender or an Assistant Public Defender.

An OPD employee, commenting as a spokesperson or representative of the OPD or submitting comments that identifies the individual as an employee of the OPD, shall submit all proposed comments on legislative bills to the Public Defender for review at least two days prior to the proposed legislation and shall indicate how rapidly the legislation is moving through the Legislature. The Public Defender must approve in advance any public comments made on the proposed legislation and will designate who will present the OPD comments before the Legislature.

OPD employees who wish to submit comments on proposed regulations on behalf of the OPD or who wish to submit comments that identify the individual as an employee of the OPD shall also submit their comments on proposed regulations to the Public Defender, or in his or her absence, the First Assistant Public Defender or an Assistant Public Defender at least two working days in advance of any deadlines and shall indicate any deadlines for the submission of comments. The Public Defender must approve in advance any public comments made on proposed regulatory changes.

Notwithstanding the foregoing, OPD employees may express their own personal viewpoints on proposed legislation or proposed regulations, but they may not make their individual comments during work hours or use OPD letterhead, the OPD phone system, or the OPD email system.

B. OPD Employees Should Not Initiate Contact with the Legislature Without Advance Approval.

OPD employees must bring any communication from a legislator or other elected official to the Public Defender's immediate attention. OPD staff shall not initiate contact with the Legislature concerning OPD policies, positions, case strategies, and legislative initiatives unless they receive advance approval from the Public Defender.

OPD employees may submit comments to the Legislature in their individual citizen capacity, but they must not make their individual comments during work hours or use OPD letterhead, the OPD phone system, or the OPD email system.

IV. OPD EMPLOYEES SHOULD NOT INITIATE CONTACT WITH THE GOVERNOR'S OFFICE WITHOUT ADVANCE APPROVAL

OPD employees shall also receive advance approval from the Public Defender or, in his or her absence, the First Assistant Public Defender or an Assistant Public Defender, before having any communications with the Governor's Office on behalf of the OPD or any communications in which the individual identifies him or herself to the Governor's Office as an employee of the OPD. The OPD staff member must also receive advance approval before submitting proposed OPD bill comments or regulatory comments to the Governor's Office for their review.

OPD employees may express personal viewpoints to the Governor's Office in their capacity as individual citizens, but they may not express their individual opinions during OPD working hours or use OPD letterhead, the OPD phone system, or the OPD email system.

Please contact Public Defender Management if you have any questions or need any further information about these policies. These policies supersede any previous OPD policies that address the same matters.