

Everybody's TALKIN'

ATTORNEY WILL REPRESENTS THE FAMILY OF DANIEL, who died in a car crash. The driver of the other car, Elizabeth, was driving home from the company Christmas party of her employer, XYZ Corporation. Elizabeth fled the scene and hid at a friend's house for three days before turning herself in to the police. She was booked for leaving the scene of an accident and administered drug and alcohol tests, which showed trace amounts of cocaine and alcohol.

Will files suit on behalf of Daniel's family against: (1) Elizabeth for negligence in causing the collision, and (2) XYZ, alleging that Elizabeth was impaired when she left the Christmas party and her impairment caused the collision. Defense counsel Marsha files an answer and a motion for summary judgment, alleging there is no evidence that Elizabeth was impaired, no evidence she was knowingly over-served at the party, and that XYZ owed no duty to Daniel. Will is unable to persuade anyone at the party to testify specifically about Elizabeth's condition at the Christmas party; he only elicits general comments that there was widespread drinking and there appeared to be surreptitious drug use. The trial court grants the motion for summary judgment on behalf of XYZ. Will appeals to the court of appeals.

The court of appeals reverses the summary judgment, holding that the evidence at least raises a fact issue about XYZ's conduct regarding the party being a cause of the collision. Marsha files a petition for review in the Texas Supreme Court.

After the petition is filed, Will calls a press conference and sharply criticizes XYZ for its "legal shenanigans" calculated to delay and avoid ever facing a jury. To highlight XYZ's misconduct, Will says he has received reliable—but thus far anonymous—tips about the Christmas party revealing that: (1) XYZ encouraged heavy drinking but made no arrangements for alternative transportation nor did it warn partygoers about drinking and driving; (2) XYZ's CEO offered cocaine to female partygoers in exchange for sex, and Elizabeth accepted the cocaine but declined the sex, leading to a confrontation that ended in her leaving the party in an emotionally fraught condition; (3) after leaving the scene of the accident, Elizabeth called the CEO of XYZ, who picked her up and hid her at his home until enough time had passed for her test results to be inconclusive; and (4) despite this horrific conduct, XYZ has only offered an "insultingly paltry" sum of money to compensate Daniel's family.

In response, Marsha calls a press conference of her own and denies everything Will said about the XYZ party and its aftermath, pointing to the utter lack of proof. Nonetheless, she says that, out of sympathy for Daniel's family and in the spirit of compromise, XYZ offered the policy limits of its first layer of insurance, or \$1 million, which Will turned down as personally insulting to a lawyer of his stature.

Which is the most accurate?

- A. Will's and Marsha's statements are both unethical.
- B. Will's statement is unethical, but Marsha's is permissible.
- C. Will's statement is permissible, but Marsha's is unethical.
- D. Both statements are permitted under the Rules.



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DISCLAIMER

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ANSWER: While many of the extra-judicial statements made by Will and Marsha would seem to violate Texas Disciplinary Rule of Professional Conduct 3.07(a), which prohibits statements that "will have a substantial likelihood of materially prejudicing an adjudicatory proceeding," that rule does not apply to cases on appeal, per Ethics Opinion 683. The best answer is D. For more analysis of this issue, go to legalethicstexas.com/ethics-question-of-the-month.