

1       **Rule 3.5. Impartiality and Decorum of the Tribunal.**

2       A lawyer shall not:

3       (a) Seek to influence a judge, juror, prospective juror or other official by means prohibited by law; or

4       (b) Communicate *ex parte* in an adversary proceeding as to the merits of the case with a judge, juror,  
5       prospective juror or court official during the proceeding, prior to full discharge of that person's duties in the  
6       proceeding, unless authorized to do so by law, rule or court order;

7       (c) communicate with a juror or prospective juror after discharge of the jury if:

8             (c)(1) the communication is prohibited by law, rule or court order;

9             (c)(2) the juror has made known to the lawyer a desire not to communicate; or

10            (c)(3) the communication involves misrepresentation, coercion, duress or harassment; or

11       (d) engage in conduct intended to disrupt a tribunal.

12       **Comment**

13       [1] Many forms of improper influence upon a tribunal are proscribed by criminal law. Others are  
14       specified in the Utah Code of Judicial Conduct, with which an advocate should be familiar. A lawyer is  
15       required to avoid contributing to a violation of such provisions.

16       [2] During a proceeding a lawyer may not communicate *ex parte* with persons serving in an official  
17       capacity in the proceeding, such as judges, masters or jurors, unless authorized to do so by law, rule or  
18       court order.

19       [2a] Paragraph (b) of Utah Rule 3.5 differs from the ABA Model Rule by inclusion of the qualifying  
20       phrases "in an adversary proceeding," "as to the merits" and "prior to full discharge of that person's duties  
21       in the proceeding." In the interest of fairness and impartiality, these additional qualifications give the  
22       practitioner more guidance and more clearly define the types of *ex parte* communications that are  
23       prohibited. Consistent with treatment elsewhere in these Rules, the exceptions stated in paragraphs (b)  
24       and (c)(1) of the Utah Rule also include "by rule" where the ABA Model Rule does not.

25       [3] A lawyer may on occasion want to communicate with a juror or prospective juror after the jury has  
26       been discharged. The lawyer may do so unless the communication is prohibited by law, rule or a court  
27       order but must respect the desire of the juror not to talk with the lawyer. The lawyer may not engage in  
28       improper conduct during the communication.

29       [4] The advocate's function is to present evidence and argument so that the cause may be decided  
30       according to law. Refraining from abusive or obstreperous conduct is a corollary of the advocate's right to  
31       speak on behalf of litigants. A lawyer may stand firm against abuse by a judge but should avoid  
32       reciprocation; the judge's default is no justification for similar dereliction by an advocate. An advocate can  
33       present the cause, protect the record for subsequent review and preserve professional integrity by patient  
34       firmness no less effectively than by belligerence or theatrics.

35       [5] The duty to refrain from disruptive conduct applies to any proceedings of a tribunal, including a  
36       deposition. See Rule 1.0(eg).