

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).