Rule 3.5. Impartiality and Decorum of the Tribunal.

**Colorado Court Rules**

**Colorado Rules of Professional Conduct**

**Advocate**

*As amended through Rule Change 2018(6), effective April 12, 2018*

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

A lawyer shall not:

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

 (b)    communicate ex parte with such a person during the proceeding unless authorized to do so by law or court order, or unless a judge initiates such a communication and the lawyer reasonably believes that the subject matter of the communication is within the scope of the judge's authority under a rule of judicial conduct;

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

   (1)    the communication is prohibited by law or court order;

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

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

   (4)    the communication is intended to or is reasonably likely to demean, embarrass, or criticize the jurors or their verdicts; or

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

**Cite as RPC 3.5**

**History.** Entire Appendix repealed and readopted April 12, 2007, effective January 1, 2008; (b) and Comment [2] amended and effective July 11, 2012.

**Note:**
**COMMENT**

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

[2] During a proceeding a lawyer may not communicate ex parte with persons serving in an official capacity in the proceeding, such as judges, masters or jurors, subject to two exceptions: (1) when a law or court order authorizes the lawyer to engage in the communication, and (2) when a judge initiates an ex parte communication with the lawyer and the lawyer reasonably believes that the subject matter of the communication is within the scope of the judge's authority to engage in the communication under a rule of judicial conduct. Examples of ex parte communications authorized under the first exception are restraining orders, submissions made in camera by order of the judge, and applications for search warrants and wiretaps. See also Cmt. [5]. Colo. RPC 4.2 (discussing communications authorized by law or court order with persons represented by counsel in a matter). With respect to the second exception, Rule 2.9(A)(1) of the Colorado Code of Judicial Conduct, for example, permits judges to engage in ex parte communications for scheduling, administrative, or emergency purposes not involving substantive matters, but only if "circumstances require it," "the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication," and "the judge makes provision promptly to notify all other parties of the substance of the ex parte communication, and gives the parties an opportunity to respond." Code of Jud. Conduct, Rule 2.9(A)(1). See also Code of Judicial Conduct for United States Judges, Canon 3(A)(4)(b)("A judge may. . . (b) when circumstances require it, permit ex parte communication for scheduling, administrative, or emergency purposes, but only if the ex parte communication does not address substantive matters and the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication[.]"). The second exception does not authorize the lawyer to initiate such a communication. However, a judge will be deemed to have initiated a communication for purposes of this Rule if the judge or the court maintains a regular practice of allowing or requiring lawyers to contact the judge for administrative matters such as scheduling a hearing and the lawyer communicates in compliance with that practice. When a judge initiates a communication, the lawyer must discontinue the communication if it exceeds the judge's authority under the applicable rule of judicial conduct. For example, if a judge properly communicates ex parte with a lawyer about the scheduling of a hearing, pursuant to Rule 2.9(A)(1) of the Colorado Code of Judicial Conduct, but proceeds to discuss substantive matters, the lawyer has an obligation to discontinue the communication.

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

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

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