

Alabama Rules of Professional Conduct

Advocate

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 except as permitted by law; or
- (c) Engage in conduct intended to disrupt a tribunal.

Comment

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

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.

Comparison with Former Alabama Code of Professional Responsibility

With regard to paragraphs (a) and (b), DR 7-108(A) provided that “[b]efore the trial of a case a lawyer... shall not communicate with... anyone he knows to be a member of the venire....” DR 7-108(B) provided that during the trial of a case a lawyer “shall not communicate with... any member of the jury.” DR 7-110(A) provided that a lawyer may make legitimate campaign contributions under appropriate circumstances to a judge or an official of a tribunal or a candidate for any such office. DR 7-110(B) provided that a lawyer shall not give or lend anything of value to a judge, official or employee of a tribunal except legitimate campaign contributions under appropriate circumstances with intent to influence his official conduct or action. DR 7-110(C) provided that a lawyer shall not “communicate... as to the merits of the cause with a judge or an official before whom the proceeding is pending,

except... in the course of official proceedings in the cause; in writing if he promptly delivers a copy of the writing to opposing counsel or to the adverse party if he is not represented by a lawyer; orally upon adequate notice...; or as otherwise authorized by law.”

With regard to paragraph (c), DR 7-106(B)(2) provided that a lawyer shall not engage in “undignified or discourteous conduct which is degrading to a tribunal.”