



The Law Society of
Upper Canada | Barreau
du Haut-Canada

Rules of Professional Conduct

~Effective November 1, 2000~

Adopted by Convocation June 22, 2000
Amendments Current to October 25, 2012

Relationship to the Administration of Justice

4.05 Relations with Jurors

Rule 4

This rule applies with necessary modifications to examinations out of court.

[Amended – June 2009]

4.05 RELATIONS WITH JURORS

Communications Before Trial

4.05 (1) When acting as an advocate, before the trial of a case, a lawyer shall not communicate with or cause another to communicate with anyone that the lawyer knows to be a member of the jury panel for that trial.

Commentary

A lawyer may investigate a prospective juror to ascertain any basis for challenge, provided that the lawyer does not directly or indirectly communicate with the juror or with any member of the juror's family. But a lawyer should not conduct or cause another, by financial support or otherwise, to conduct a vexatious or harassing investigation of either a member of the jury panel or a juror.

Disclosure of Information

(2) When acting as an advocate, a lawyer shall disclose to the judge and opposing counsel any information of which the lawyer is aware that a juror or prospective juror

- (a) has or may have an interest, direct or indirect, in the outcome of the case,
- (b) is acquainted with or connected in any manner with the presiding judge, any counsel or any litigant, or
- (c) is acquainted with or connected in any manner with any person who has appeared or who is expected to appear as a witness,

unless the judge and opposing counsel have previously been made aware of the information.

(3) A lawyer should promptly disclose to the court any information that the lawyer has about improper conduct by a member of a jury panel or by a juror toward another member of the jury panel, another juror, or to the members of a juror's family.

Communication During Trial

(4) Except as permitted by law, when acting as an advocate, a lawyer shall not during a trial of a case communicate with or cause another to communicate with any member of the jury.

Relationship to the Administration of Justice

4.06 The Lawyer and the Administration of Justice

Rule 4

(5) A lawyer who is not connected with a case before the court shall not communicate with or cause another to communicate with any member of the jury about the case.

Commentary

The restrictions on communications with a juror or potential juror should also apply to communications with or investigations of members of his or her family.

4.06 THE LAWYER AND THE ADMINISTRATION OF JUSTICE

Encouraging Respect for the Administration of Justice

4.06 (1) A lawyer shall encourage public respect for and try to improve the administration of justice.

Commentary

The obligation outlined in the rule is not restricted to the lawyer's professional activities but is a general responsibility resulting from the lawyer's position in the community. A lawyer's responsibilities are greater than those of a private citizen. A lawyer should take care not to weaken or destroy public confidence in legal institutions or authorities by irresponsible allegations. The lawyer in public life should be particularly careful in this regard because the mere fact of being a lawyer will lend weight and credibility to public statements. Yet for the same reason, a lawyer should not hesitate to speak out against an injustice.

The admission to and continuance in the practice of law implies on the part of a lawyer a basic commitment to the concept of equal justice for all within an open, ordered, and impartial system. However, judicial institutions will not function effectively unless they command the respect of the public, and because of changes in human affairs and imperfections in human institutions, constant efforts must be made to improve the administration of justice and thereby maintain public respect for it.

Criticizing Tribunals - Although proceedings and decisions of tribunals are properly subject to scrutiny and criticism by all members of the public, including lawyers, judges and members of tribunals are often prohibited by law or custom from defending themselves. Their inability to do so imposes special responsibilities upon lawyers. First, a lawyer should avoid criticism that is petty, intemperate, or unsupported by a *bona fide* belief in its real merit, bearing in mind that in the eyes of the public, professional knowledge lends weight to the lawyer's judgments or criticism. Second, if a lawyer has been involved in the proceedings, there is the risk that any criticism may be, or may appear to be, partisan rather than objective. Third, where a tribunal is the object of unjust criticism, a lawyer, as a participant in the administration of justice, is uniquely able to and should support the tribunal, both because its members cannot defend themselves and because in doing so the lawyer is contributing to greater public understanding of and therefore respect for the legal system.