

ADVISORY ETHICS OPINION 79-03

SYNOPSIS:

An attorney may interview a juror after a criminal or civil trial, prior to the end of the juror's service on the current jury panel with regard to matters pertaining to the juror's reaction to the case.

QUESTIONS PRESENTED:

- A. May an attorney interview a juror after a criminal or civil trial, prior to the end of the juror's service on the current jury panel, on matters pertaining to the juror's reaction to the issues presented at trial, the witnesses, and the attorneys?
- B. May an attorney interview a juror after a criminal or civil trial, prior to the end of the juror's service on the current jury panel, for the sole purpose of determining whether there has been jury tampering or other misconduct, which may have affected the jury's verdict?

APPLICABLE RULES:

The provisions of the Code of Professional Responsibility which appear to govern the answers to the above questions are Canon 7, Ethical Consideration 7-29 and Disciplinary Rule 7-108 (A) through (G), which Disciplinary Rule reads as follows:

- (A) Before the trial of a case a lawyer connected therewith shall not communicate with or cause another to communicate with anyone he knows to be a member of the venire from which the jury will be selected for the trial of the case.
- (B) During the trial of the case:
 - (1) A lawyer connected therewith shall not communicate with or cause another to communicate with any member of the jury.
 - (2) A lawyer who is not connected therewith shall not communicate with or cause another to communicate with a juror concerning the case.
- (C) DR 7-108(A) and (B) do not prohibit a lawyer from communicating with veniremen or jurors in the course of official proceedings.
- (D) After a discharge of the jury from further consideration of a case with which the lawyer was connected, the lawyer shall not ask questions of or make comments to a member of that jury that are calculated merely to harass or embarrass the juror or to influence his actions in future jury service.
- (E) A lawyer shall not conduct or cause, by financial support or otherwise, another to conduct a vexatious or harassing investigation of either a venireman or a juror.
- (F) All restrictions imposed by DR 7-108 upon a lawyer also apply to communications with or investigations of members of a family of a venireman or a juror.
- (G) A lawyer shall reveal promptly to the court improper conduct by a venireman or a juror, or by another toward a venireman or a juror or a member of his family, of which the lawyer has knowledge.

Ethical Consideration 7-29 reads as follows:

To safeguard the impartiality that is essential to the judicial process, veniremen and jurors should be protected against extraneous influences. When impartiality is present, public confidence in the judicial system is enhanced. There should be no extrajudicial communication with veniremen prior to a trial or with jurors during trial by or on behalf of a lawyer connected with the case. Furthermore, a lawyer who is not connected with the case should not communicate with or cause another to communicate with a venireman or a juror about the case. After the trial, communication by a lawyer with jurors is permitted so long as he refrains from asking questions or making comments that tend to harass or embarrass the juror or to influence actions of the juror in future cases. Were a lawyer to be prohibited from communicating after trial with a juror, he could not ascertain if the verdict might be subject to legal challenge, in which event the invalidity of a verdict might go undetected. When an extrajudicial communication by a lawyer with a juror is permitted by law, it should be made considerately and with deference to the personal feelings of the juror.

DISCUSSION AND OPINION:

The Committee is of the opinion that the questions as promulgated are answered with certainty by Ethical Consideration 7-29 and Disciplinary Rule 7-108 as above set forth and that an attorney may interview a juror after a criminal or civil trial, prior to the end of the juror's service on the current jury panel, with regard to matters pertaining to the juror's reaction to the issues

presented at trial, the witnesses and the attorneys, and for the purpose of determining whether there has been jury tampering or other misconduct which may affect the jury's verdict. Any contact with the juror after trial is constrained by Ethical Consideration 7-29, as well as Disciplinary Rule 7-108 (D) and (E), which prohibit harassment or embarrassment of a juror. The Committee feels very strongly that any contact of a juror after trial but prior to the end of the juror's service on the current jury panel will in all likelihood disqualify the attorney from further work with that particular jury panel. Great caution should be undertaken, therefore, in the contact of any jury member until the end of the term of the jury panel.

Attention is also directed to 12 V.S.A. Section 1947 which provides:

A verdict shall be set aside and new trial granted on proof that a party in whose favor such verdict is rendered and during the same term of court, gives a juror, knowing him to be a juror in the cause, victuals or drink or procures it to be done by way of treat either before or after such verdict.