

FORMAL OPINION NO 2005-143
Communicating with Jurors after Trial

Facts:

After a verdict has been rendered and the jury has been discharged, Lawyer would like to interview jurors to determine what did or did not impress them about Lawyer's arguments, and determine whether any conduct of the jurors might give Lawyer an additional argument on appeal.

Question:

May Lawyer initiate contact with the jurors?

Conclusion:

No.

Discussion:

Oregon RPC 3.5(c) and (e) provide that a lawyer shall not

(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; or

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

....

(e) fail to 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 their families, of which the lawyer has knowledge.

Both Oregon UTCR 3.120¹ and LR 48-2 of the United States District Court for the District of Oregon² generally prohibit a lawyer from initiating contact with jurors concerning a case that they were sworn to try. Violation of either the state or federal court rules would in turn violate Oregon RPC 3.5(c)(1). Even if contact is permitted by the court, Lawyer must be mindful of the requirements of Oregon RPC 3.5(c)(3).

Approved by Board of Governors, August 2005.

¹ UTCR 3.120 Communication with Jurors:

(1) Except as necessary during trial, and except as provided in subsection (2), parties, witnesses or court employees must not initiate contact with any juror concerning any case which that juror was sworn to try.

(2) After a sufficient showing to the court and on order of the court, a party may have contact with a juror in the presence of the court and opposing parties when:

(a) there is a reasonable ground to believe that there has been a mistake in the announcing or recording of a verdict, or;

(b) there is a reasonable ground to believe that a juror or the jury has been guilty of fraud or misconduct sufficient to justify setting aside or modifying the verdict or judgment.

² LR 48-2 No Communications with Jurors—before, during, and after Trial

Except as authorized by the Court, attorneys, parties, witnesses, or court employees must not initiate contact with any juror concerning any case which that juror was sworn to try.

COMMENT: For additional information on this general topic and other related subjects, see *The Ethical Oregon Lawyer* § 8.7 (seeking to influence the tribunal or a juror) (OSB Legal Pubs 2015); *Restatement (Third) of the Law Governing Lawyers* § 115 (2000) (supplemented periodically); and ABA Model RPC 3.5.