

Louisiana Legal Ethics and Jurors

Prepared by Richard P. Lemmler, Jr., Ethics Counsel, Louisiana State Bar Association

A discussion of jury selection and Louisiana legal ethics should include a review of a lawyer's professional obligations and conduct with respect to:

- I. Prospective Jurors
- II. Jurors During A Proceeding
- III. Jurors After A Proceeding

I. Prospective Jurors

Rule 3.5 of the Louisiana Rules of Professional Conduct, in pertinent part, states:

A lawyer shall not:

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

Comment [1] to ABA Model Rule 3.5:

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

Louisiana Revised Statutes, Title 14, §118

§118. Public bribery

A.(1) Public bribery is the giving or offering to give, directly or indirectly, anything of apparent present or prospective value to any of the following persons, with the intent to influence his conduct in relation to his position, employment, or duty:

- (a) Public officer, public employee, or person in a position of public authority.
- (b) Repealed by Acts 2010, No. 797, §2, eff. Jan. 1, 2011.
- (c) **Grand or petit juror.**
- (d) Witness, or person about to be called as a witness, upon a trial or other proceeding before any court, board, or officer authorized to hear evidence or to take testimony.

(e) Any person who has been elected or appointed to public office, whether or not said person has assumed the title or duties of such office.

(2) The acceptance of, or the offer to accept, directly or indirectly, anything of apparent present or prospective value, under such circumstances, by any of the above named persons, shall also constitute public bribery.

B. For purposes of this Section, "public officer", "public employee", or "person in a position of public authority", includes those enumerated in R.S. 14:2(9), and also means any public official, public employee, or person in a position of public authority, in other states, the federal government, any foreign sovereign, or any subdivision, entity, or agency thereof.

C.(1) Whoever commits the crime of public bribery shall be fined not more than one thousand dollars, or imprisoned, with or without hard labor, for not more than five years, or both.

(2) In addition to the penalty provided for in Paragraph (1) of this Subsection, a person convicted of the provisions of this Section may be ordered to pay restitution to the state if the state suffered a loss as a result of the offense. Restitution shall include the payment of legal interest at the rate provided in R.S. 13:4202.

D. Property which was given, offered, or accepted during the commission of the crime of public bribery shall be deemed to be contraband and shall be subject to seizure and forfeiture. Upon final disposition of the case, the district attorney may petition the district court to forfeit the property seized in connection with a violation of this Section, and such property seized under this Section shall be forfeited upon:

(1) A showing by the district attorney of a conviction for a violation of the provisions of this Section.

(2) A showing by the district attorney that the seizure was made incident to an arrest with probable cause or a search under a valid search warrant pursuant to other provisions of law.

E. Property forfeited pursuant to the provisions of this Section shall be disposed of as follows:

(1) When the property is not cash or currency, it shall be disposed of pursuant to the provisions of R.S. 15:41.

(2) When the property consists of cash or currency, it shall be forfeited and distributed as follows:

(a) Fifty-five percent to the law enforcement agency or agencies who investigated the crime.

(b) Fifteen percent to the criminal court fund.

(c) Twenty-five percent to the prosecuting authority that prosecuted the crime.

(d) Five percent to the clerk of court.

F. If the charges of public bribery are dismissed by the district attorney, or if the accused is acquitted following a trial in the district court of the parish in which the violation is alleged to have occurred, all property shall be immediately returned to the owner.

Amended by Acts 1975, No. 802, §1; Acts 1988, No. 684, §1; Acts 2008, No. 269, §1; Acts 2010, No. 797, §2, eff. Jan. 1, 2011; Acts 2010, No. 811, §1, eff. Aug. 15, 2011.

Louisiana Revised Statutes, Title 14, §120

§120. Corrupt influencing

A. Corrupt influencing is the giving or offering to give anything of apparent present or prospective value to, or the accepting or offering to accept anything of apparent present or prospective value by, any person, with the intention that the recipient shall corruptly influence the conduct of any of the persons named in R.S. 14:118 (public bribery) in relation to such person's position, employment, or duty.

NOTE: Subsection B eff. until Aug. 15, 2011. See Acts 2010, No. 811, §1.

B. Whoever commits the crime of corrupt influencing shall be imprisoned for not more than ten years with or without hard labor or shall be fined not more than ten thousand dollars or both.

NOTE: Subsection B as amended by Acts 2010, No. 811, §1, eff. Aug. 15, 2011.

B.(1) Whoever commits the crime of corrupt influencing shall be imprisoned for not more than ten years with or without hard labor or shall be fined not more than ten thousand dollars, or both.

(2) In addition to the penalty provided for in Paragraph (1) of this Subsection, a person convicted of the provisions of this Section may be ordered to pay restitution to the state if the state suffered a loss as a result of the offense. Restitution shall include the payment of legal interest at the rate provided in R.S. 13:4202.

Amended by Acts 1980, No. 454, §1; Acts 2008, 1st Ex. Sess., No. 21, §1, eff. March 11, 2008; Acts 2010, No. 811, §1, eff. Aug. 15, 2011.

Louisiana Revised Statutes, Title 14, §122

§122. Public intimidation and retaliation

A. Public intimidation is the use of violence, force, or threats upon any of the following persons, with the intent to influence his conduct in relation to his position, employment, or duty:

- (1) Public officer or public employee.
- (2) Grand or petit juror.
- (3) Witness, or person about to be called as a witness upon a trial or other proceeding before any court, board or officer authorized to hear evidence or to take testimony.
- (4) Voter or election official at any general, primary, or special election.
- (5) School bus operator.

B. Retaliation against an elected official is the use of violence, force, or threats upon a person who is elected to public office, where:

(1) The violence, force, or threat is related to the duties of the elected official.

(2) Is in retaliation or retribution for actions taken by the elected official as part of his official duties.

C. Whoever commits the crime of public intimidation or retaliation against an elected official shall be fined not more than one thousand dollars or imprisoned, with or without hard labor, for not more than five years, or both.

Amended by Acts 1979, No. 479, §1; Acts 2003, No. 1089, §2.

Louisiana Revised Statutes, Title 14, §129

§129. Jury tampering

A. Jury tampering is any verbal or written communication or attempted communication, whether direct or indirect, made to **any juror in a civil or criminal cause, including both grand and petit jurors**, for the purpose of influencing the juror in respect to his verdict or indictment in any cause pending or about to be brought before him, **otherwise than in the regular course of proceedings upon the trial or other determination of such cause**. To constitute the offense of jury tampering, the influencing or attempt to influence the juror must be either:

(1) For a corrupt or fraudulent purpose, or

(2) By violence or force, by threats whether direct or indirect.

B.(1) Whoever commits the crime of jury tampering in a civil case shall be fined not more than five thousand dollars, or imprisoned, with or without hard labor, for not more than five years, or both.

(2) Whoever commits the crime of jury tampering in a criminal case shall be punished as follows:

(a) If the offense charged in the trial for which the jury has been impaneled is punishable by death or life imprisonment, the offender shall be imprisoned at hard labor for not more than ninety-nine years.

(b) In all other cases the offender shall be fined or imprisoned, or both, to the same extent and in the same manner as for the offense charged in the trial for which the jury has been impaneled.

Amended by Acts 1968, No. 60, §1; Acts 1981, No. 866, §1; Acts 1995, No. 823, §1; Acts 2002, 1st Ex. Sess., No. 128, §5.

Rules for Louisiana District Courts, Titles I, II and III, Rule 9.14 (amended effective 01/01/2011):

Rule 9.14 Fixing for Trial or Hearing; Scheduling Orders; Contact with Jurors

(a) The date on which a motion to fix for trial on the merits may be made, and the method of setting a date for trial or hearing of a matter, including deadlines for scheduling orders, pre-trial briefs, contact with jurors, or any other matter, shall be determined by each district court as set forth in Appendix 9.14.

Rules for Louisiana District Courts, Titles I, II and III, Appendix 9.14

9th Judicial District Court, Parish of Rapides:

CONDUCT OF ATTORNEY

In addition to official ethical principles and the amenities dictated by professional and personal courtesy, all attorneys appearing in the Courtrooms of this district are reminded of their status and position as officers of the Court. As such, they are equally responsible with the judge for maintaining reasonable dignity and decorum in the Courtroom. Specifically and in addition to general responsibilities, they will be expected to observe such principles with regard to clothing and general appearance (coat and tie required for men) by avoiding disconcerting extremes of style or informality, with regard to their conduct in relation to witnesses, jurors, counsel, court personnel and the public by avoiding over familiarity and overt hostility.

25th Judicial District Court, Parish of Plaquemines:

CIVIL JURY TRIALS

In the event of settlement or compromise of a jury case, before or during trial, the party upon whose order the jury trial was granted shall be responsible for payment of all accrued costs and expenses of said jury which are taxable under the law. The parties ordering the jury trial shall be responsible in order of their position on the Jury Trial calendar for the cost of the jury. If a party settles or compromises the case and notifies the Court or Clerk of Court thirty (30) days prior to the jury trial date, he shall not be responsible for the cost of the jury. If, after the thirty (30) days prior to trial, a party cancels the jury trial, the party next in order on the docket shall be responsible for the cost of the jury. The party utilizing the jury or the last person to cancel the jury shall be responsible for the cost of the jury.

27th Judicial District Court, Parish of St. Landry:

PETIT JURY LISTS IN CIVIL CASES

- a. Petit jury lists in civil cases are to be considered confidential until the date of jury selection. Accordingly, the lists are not to be made available to the public or attorneys until the date of jury selection. However, the names on the lists are to be made available to the Sheriff for the purposes of effectuating notice.*
- b. Petit jury lists in both civil and criminal cases shall not be used by anyone to conduct "Dry Run" jury procedures to secure opinions and impressions on pending civil and criminal cases in the 27th Judicial District Court.*

29th Judicial District Court, Parish of St. Charles:

JURY TRIALS

- 1. A juror may be excused from duty only by the judge of the division for which he has been summoned.*
- 2. Neither prospective jurors nor jurors shall be contacted, either directly or through any member of the immediate family of any juror.*
- 3. Absent an order of court, no juror shall be interviewed by anyone at any time concerning the deliberations of the jury.*
- 4. A jury venire shall be drawn by the Clerk of Court and the jury commissioners 30 days before the date assigned for trial.*

The cost of drawing the jury venire and subpoenaing the prospective jurors shall be assessed and paid as court costs, in the manner provided by law. If the party requesting jury trial is not cast for all of the court costs, he is entitled to a full (or proportionate) refund of the deposit required by this rule when the court costs are paid in full by the party cast.

- 5. In a civil case, a party requesting trial by jury shall deposit with the Clerk of Court the sum of \$2,000 cash, to be posted at least 30 days before trial. In the event that this deposit is fully depleted during the trial, the Clerk of Court shall notify the party requesting the jury of the remaining costs required, and said party shall promptly pay the same.*

The request for a jury trial shall include the following order:

IT IS HEREBY ORDERED that this cause be tried by jury upon applicant's depositing into the registry of court the sum of \$2,000 cash, to be posted at least 30 days prior to trial.

Within one hour before the commencement of court on each day that the trial continues, the party requesting jury trial shall verify with the Clerk of Court that the amount of the cash deposit is sufficient to cover jury costs. If it is insufficient, an additional deposit must be made.

- 6. Every motion to set for trial shall include an estimate of the number of days required for trial. If the motion fails to state a number of days, the judge will assign an estimate of ten days. The cash deposit shall be computed accordingly.*

7. No trial by jury shall commence until this rule is complied with. Failure to comply with this rule shall constitute a waiver of the request for jury trial and a consent to trial of the case before the judge alone. The funds disbursed from the cash deposit for payment of jury costs shall be assessed as costs of court. After payment of all jury costs, any unexpended amounts remaining in the cash deposit shall be refunded by the Clerk of Court to the party filing the cash deposit. If the party requesting jury trial is not cast for all of the court costs, he is entitled to a full (or proportionate) refund of the deposit after the court costs have been paid in full by the party cast.

When the funds are made available through the provisions of this rule, the Clerk of Court shall pay each juror the fees and costs to which he is entitled no later than upon completion of the trial.

- 8. The party requesting a trial by jury shall be responsible on a daily basis for all jury food expenses.*

31st Judicial District Court, Parish of Jefferson Davis:

COMMUNICATION WITH JURORS

- 1. No attorney, party litigant, or other person shall contact any prospective juror, or a member of a prospective juror's immediate family, for the purpose of obtaining information concerning the background of any prospective juror.*
- 2. After trial or following a verdict, no juror has any obligation to speak to any person about any case and may refuse all interviews or comments. No person may make repeated requests for interviews or questions after a juror has expressed his or her desire not to be interviewed.*

3. No juror or alternate juror who consents to be interviewed may disclose any information with respect to the following:

- 1) The specific vote of any juror other than the juror being interviewed.
- 2) The deliberations of the jury.
- 3) For the purposes of obtaining evidence of improprieties in the jury's deliberation.
4. After trial or following a verdict, no party or their attorney shall, personally or through another person, contact, interview, examine or question any juror or alternate juror or any relative, friend or associate thereof, except on leave of court granted upon good cause shown.
5. Any violation of this rule may be punishable as contempt of the court.

Rule 3.6(a) of the Louisiana Rules of Professional Conduct states:

... (a) A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter...

- **“Reasonable Lawyer” Standard** – A lawyer’s evaluation of the likelihood that an extrajudicial statement will be disseminated by means of public communication should be based on what a “reasonable lawyer” would do under the facts and circumstances, rather than what would be done by a “reasonable person”, i.e., a lawyer’s conduct, when examined under this Rule, will be evaluated according to what other lawyers would reasonably do under the same facts and circumstances, not simply according to what other persons/non-lawyers would reasonably do under the same facts and circumstances.

Comment [1] to ABA Model Rule 3.6, in pertinent part, states:

...[1] It is difficult to strike a balance between protecting the right to a fair trial and safeguarding the right of free expression. Preserving the right to a fair trial necessarily entails some curtailment of the information that may be disseminated about a party prior to trial, particularly where trial by jury is involved. If there were no such limits, the result would be the practical nullification of the protective effect of the rules of forensic decorum and the exclusionary rules of evidence...

Rule 3.6(b) of the Louisiana Rules of Professional Conduct states:

...(b) Notwithstanding paragraph (a), a lawyer may state:

- (1) the claim, offense or defense involved and, except when prohibited by law, the identity of the persons involved;*
- (2) information contained in the public record;*
- (3) that an investigation of a matter is in progress;*
- (4) the scheduling or result of any step in litigation;*

- (5) a request for assistance in obtaining evidence and information necessary thereto;
- (6) a warning of danger concerning the behavior of a person involved, when there is a reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and
- (7) in a criminal case, in addition to subparagraphs (1) through (6):
 - (i) the identity, residence, occupation and family status of the accused;
 - (ii) if the accused has not been apprehended, information necessary to aid in apprehension of that person;
 - (iii) the fact, time and place of arrest; and
 - (iv) the identity of investigating and arresting officers or agencies and the length of the investigation

Comment [4] to ABA Model Rule 3.6 states:

...[4] Paragraph (b) identifies specific matters about which a lawyer's statements would not ordinarily be considered to present a substantial likelihood of material prejudice, and should not in any event be considered prohibited by the general prohibition of paragraph (a). Paragraph (b) is not intended to be an exhaustive listing of the subjects upon which a lawyer may make a statement, but statements on other matters may be subject to paragraph (a)...

Comment [5] to ABA Model Rule 3.6 states:

...[5] There are, on the other hand, certain subjects that are more likely than not to have a material prejudicial effect on a proceeding, particularly when they refer to a civil matter triable to a jury, a criminal matter, or any other proceeding that could result in incarceration. These subjects relate to:

- (1) *the character, credibility, reputation or criminal record of a party, suspect in a criminal investigation or witness, or the identity of a witness, or the expected testimony of a party or witness;*
- (2) *in a criminal case or proceeding that could result in incarceration, the possibility of a plea of guilty to the offense or the existence or contents of any confession, admission, or statement given by a defendant or suspect or that person's refusal or failure to make a statement;*
- (3) *the performance or results of any examination or test or the refusal or failure of a person to submit to an examination or test, or the identity or nature of physical evidence expected to be presented;*
- (4) *any opinions as to the guilt or innocence of a defendant or suspect in a criminal case or proceeding that could result in incarceration;*
- (5) *information that the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and that would, if disclosed, create a substantial risk of prejudicing an impartial trial; or*
- (6) *the fact that a defendant has been charged with a crime, unless there is included therein a statement explaining that the charge is merely an accusation and that the defendant is presumed innocent until and unless proven guilty...*

Comment [6] to ABA Model Rule 3.6 states:

...[6] Another relevant factor in determining prejudice is the nature of the proceeding involved. Criminal jury trials will be most sensitive to extrajudicial speech. Civil trials may be less sensitive. Non-jury hearings and arbitration proceedings may be even less affected. The Rule will still place limitations on prejudicial comments in these cases, but the likelihood of prejudice may be different depending on the type of proceeding...

- **Appropriate Use(s) of the Internet and Social Media With Regard to Jurors/Prospective Jurors?**

--Searching for/Using Publicly-Available Information vs. Interaction/Communication With Jurors/Prospective Jurors (and/or Friends/Relatives of Jurors/Prospective Jurors)

- “Google” searches for information on prospective jurors/jurors?
- “Friend-ing” requests to prospective jurors/jurors?
- Discovery of criminal or fraudulent conduct of prospective jurors/jurors?
- Conduct of Lawyer vs. Conduct of Non-Lawyer(s) on behalf of the lawyer?

Rule 1.1(a) of the Louisiana Rules of Professional Conduct states:

...(a) A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation necessary for the representation...

Comment [5] to ABA Model Rule 1.1 states:

...[5] Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more extensive treatment than matters of lesser complexity and consequence. An agreement between the lawyer and the client regarding the scope of the representation may limit the matters for which the lawyer is responsible. See Rule 1.2(c)...

Rule 1.3 of the Louisiana Rules of Professional Conduct states:

...A lawyer shall act with reasonable diligence and promptness in representing a client...

Rule 3.3 of the Louisiana Rules of Professional Conduct, in pertinent part, states:

...(b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal...

...(c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6...

Comment [12] to ABA Model Rule 3.3 states:

...[12] Lawyers have a special obligation to protect a tribunal against criminal or fraudulent conduct that undermines the integrity of the adjudicative process, such as bribing, intimidating or otherwise unlawfully communicating with a witness, juror, court official or other participant in the proceeding, unlawfully destroying or concealing documents or other evidence or failing to disclose information to the tribunal when required by law to do so. Thus paragraph (b) requires a lawyer to take reasonable remedial measures, including disclosure if necessary, whenever the lawyer knows that a person, including the lawyer's client, intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding...

Rule 4.1(a) of the Louisiana Rules of Professional Conduct states:

...In the course of representing a client, a lawyer shall not knowingly:

(a) make a false statement of material fact or law to a third person;...

Rule 5.1 of the Louisiana Rules of Professional Conduct, in pertinent part, states:

...(a) A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct...

(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct...

Rule 5.2(a) of the Louisiana Rules of Professional Conduct states:

...(a) A lawyer is bound by the Rules of Professional Conduct notwithstanding that the lawyer acted at the direction of another person...

Rule 5.3(b) of the Louisiana Rules of Professional Conduct states:

... With respect to a nonlawyer employed or retained by or associated with a lawyer:...

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer;...

Rule 8.4 of the Louisiana Rules of Professional Conduct, in pertinent part, states:

...It is professional misconduct for a lawyer to:...

(a) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another...

(c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;...

(d) Engage in conduct that is prejudicial to the administration of justice...

II. Jurors During A Proceeding

Rule 3.4 of the Louisiana Rules of Professional Conduct, in pertinent part, states:

...A lawyer shall not:...

...(c) knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists;...

...(e) in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused;...

Louisiana Code of Civil Procedure

Art. 224. Constructive contempt

...A constructive contempt of court is any contempt other than a direct one.

Any of the following acts constitutes a constructive contempt of court:

- (1) Willful neglect or violation of duty by a clerk, sheriff, or other person elected, appointed, or employed to assist the court in the administration of justice;*
- (2) Willful disobedience of any lawful judgment, order, mandate, writ, or process of the court;*
- (3) Removal or attempted removal of any person or property in the custody of an officer acting under authority of a judgment, order, mandate, writ, or process of the court;*
- (4) Deceit or abuse of the process or procedure of the court by a party to an action or proceeding, or by his attorney;*
- (5) Unlawful detention of a witness, party, or his attorney, while going to, remaining at, or returning from the court where the action or proceeding is to be tried;*
- (6) Improper conversation by a juror or venireman with a party to an action which is being, or may be, tried by a jury of which the juror is a member, or of which the venireman may be a member, or with any person relative to the merits of such an action; or receipt by a juror or venireman of a communication from any person with reference to such an action, without making an immediate disclosure to the court of the substance thereof;*
- (7) Assuming to act as a juror, or as an attorney or other officer of the court, without lawful authority;*
- (8) Comment by a newspaper or other medium for the dissemination of news upon a case or proceeding, then pending and undecided, which constitutes a clear, present, and imminent danger of obstructing or interfering with the orderly administration of justice, by either influencing the court to reach a particular decision, or embarrassing it in the discharge of its judicial duties;*
- (9) Willful disobedience by an inferior court, judge, or other officer thereof, of the lawful judgment, order, mandate, writ, or process of an appellate court, rendered in connection with an appeal from a judgment or order of the inferior court, or in connection with a review of such judgment or order under a supervisory writ issued by the appellate court; and*
- (10) Any other act or omission punishable by law as a contempt of court, or intended to obstruct or interfere with the orderly administration of justice, or to impair the dignity of the court or respect for its authority, and which is not a direct contempt.*
- (11) Knowingly making a false statement or representation of a material fact or knowingly failing to disclose a material fact in order to apply for or receive support enforcement services for the purpose of securing an order of paternity, child support, medical support, an income assignment order, or a notice of income assignment against another person.*

Acts 2004, No. 159, §1, eff. June 10, 2004.

Art. 1763. Examination of juror

A. The court shall examine prospective jurors as to their qualifications and may conduct such

further examination as it deems appropriate.

B. The parties or their attorneys shall individually conduct such examination of prospective jurors as each party deems necessary, but the court may control the scope of the examination to be conducted by the parties or their attorneys.

Acts 1983, No. 534, §5; Acts 1990, No. 603, §1.

Art. 1765. Challenges for cause

A juror may be challenged for cause based upon any of the following:

- (1) When the juror lacks a qualification required by law;*
- (2) When the juror has formed an opinion in the case or is not otherwise impartial, the cause of his bias being immaterial;*
- (3) When the relations whether by blood, marriage, employment, friendship, or enmity between the juror and any party or his attorney are such that it must be reasonably believed that they would influence the juror in coming to a verdict;*
- (4) When the juror served on a previous jury, which tried the same case or one arising out of the same facts;*
- (5) When the juror refuses to answer a question on the voir dire examination on the ground that his answer might tend to incriminate him.*

Art. 1766. Time for challenges; method

A. After a juror has been examined as provided in Article 1763, the court may excuse the juror and if the court does not do so, either party may challenge the juror for cause.

B. If a juror has not been excused for cause, a peremptory challenge may be made by any party. The court shall alternate between the sides when making initial inquiry as to whether any party wishes to exercise a peremptory challenge to that juror.

C. After the entire jury has been accepted and sworn, no party has a right to challenge peremptorily.

D. Peremptory challenges of jurors shall be made and communicated to the court in a side bar conference of the judge, the attorneys conducting the examination and selection of jurors, and the plaintiff or defendant in a case in which the plaintiff or defendant chooses to represent himself. The conference shall be conducted in a manner that only the court, the attorneys, and the plaintiff or defendant in a case in which the plaintiff or defendant chooses to represent himself, are aware of the challenges made until the court announces the challenges without reference to any party or attorney in the case. The side bar conference shall be conducted on the record and out of the presence of the prospective jurors.

Acts 1983, No. 534, §5; Acts 1990, No. 703, §1.

Art. 1794. Taking evidence to jury room

A. Jurors shall be permitted to take notes. The court shall provide the needed writing implements. Jurors may, but need not, take notes and such notes as are taken may be used during the jury's deliberations but shall not be preserved for review on appeal. The trial judge shall ensure the confidentiality of the notes during the course of the trial and the jury's deliberations. At each recess prior to jury deliberation, the court shall collect and maintain any and all notes made by each juror and upon reconvening, the court shall return to each juror his individual notes and shall cause the notes to be destroyed immediately upon return of the verdict.

B. The court may allow the jury to take with them any object or writing received in evidence, except depositions and except as otherwise provided in the Louisiana Code of Evidence.

Acts 1983, No. 534, §7; Acts 1988, No. 515, §2, eff. Jan. 1, 1989; Acts 1997, No. 668, §1.

Louisiana Code of Criminal Procedure

Art. 793. Use of evidence in jury room; reading of recorded testimony; jurors' notes

A. Except as provided in Paragraph B of this Article, a juror must rely upon his memory in reaching a verdict. He shall not be permitted to refer to notes or to have access to any written evidence. Testimony shall not be repeated to the jury. Upon the request of a juror and in the discretion of the court, the jury may take with it or have sent to it any object or document received in evidence when a physical examination thereof is required to enable the jury to arrive at a verdict.

B. A juror shall be permitted to take notes when agreement to granting such permission has been made between the defendant and the state in open court but not within the presence of the jury. The court shall provide the needed writing implements. Jurors may, but need not, take notes and such notes may be used during the jury's deliberations but shall not be preserved for review on appeal. The trial judge shall ensure the confidentiality of the notes during the course of trial and the jury's deliberation and shall cause the notes to be destroyed immediately upon return of the verdict.

C. The lack of consent by either the defendant or the state to allow a juror to take notes during a trial shall not be communicated to the jury.

Acts 2001, No. 465, §1

Art. 795. Time for challenges; method; peremptory challenges based on race or gender; restrictions

A. A juror shall not be challenged for cause after having been temporarily accepted pursuant to Paragraph A of Article 788 unless the challenging party shows that the cause was not known to him prior to that time.

B.(1) Peremptory challenges shall be exercised prior to the swearing of the jury panel.

(2) Peremptory challenges of jurors shall be made and communicated to the court in a side bar conference of the judge, the attorneys conducting the examination and selection of jurors, and the defendant in a case in which the defendant chooses to represent himself. The conference shall be conducted in a manner that only the court, the attorneys, and the defendant in a case in which the defendant chooses to represent himself, are aware of the challenges made until the court announces the challenges without reference to any party or attorney in the case.

C. No peremptory challenge made by the state or the defendant shall be based solely upon the race or gender of the juror. If an objection is made that the state or defense has excluded a juror solely on the basis of race or gender, and a prima facie case supporting that objection is made by the objecting party, the court may demand a satisfactory race or gender neutral reason for the exercise of the challenge, unless the court is satisfied that such reason is apparent from the voir dire examination of the juror. Such demand and disclosure, if required by the court, shall be made outside of the hearing of any juror or prospective juror.

D. The court shall allow to stand each peremptory challenge exercised for a race or gender neutral reason either apparent from the examination or disclosed by counsel when required by the court. The provisions of Paragraph C and this Paragraph shall not apply when both the state and the defense have exercised a challenge against the same juror.

E. The court shall allow to stand each peremptory challenge for which a satisfactory racially neutral or gender neutral reason is given. Those jurors who have been peremptorily challenged and for whom no satisfactory racially neutral or gender neutral reason is apparent or given may be ordered returned to the panel, or the court may take such other corrective action as it deems appropriate under the circumstances. The court shall make specific findings regarding each such challenge.

Acts 1990, No. 547, §1; Acts 1990, No. 713, §1; Acts 1993, No. 1019, §1; Acts 2008, No. 669, §1.

Art. 797. Challenge for cause

The state or the defendant may challenge a juror for cause on the ground that:

(1) *The juror lacks a qualification required by law;*

(2) *The juror is not impartial, whatever the cause of his partiality. An opinion or impression as to the guilt or innocence of the defendant shall not of itself be sufficient ground of challenge to a juror, if he declares, and the court is satisfied, that he can render an impartial verdict according to the law and the evidence;*

(3) *The relationship, whether by blood, marriage, employment, friendship, or enmity between the juror and the defendant, the person injured by the offense, the district attorney, or*

defense counsel, is such that it is reasonable to conclude that it would influence the juror in arriving at a verdict;

(4) The juror will not accept the law as given to him by the court; or

(5) The juror served on the grand jury that found the indictment, or on a petit jury that once tried the defendant for the same or any other offense.

Art. 798. Causes for challenge by the state

It is good cause for challenge on the part of the state, but not on the part of the defendant, that:

(1) The juror is biased against the enforcement of the statute charged to have been violated, or is of the fixed opinion that the statute is invalid or unconstitutional;

(2) The juror tendered in a capital case who has conscientious scruples against the infliction of capital punishment and makes it known:

(a) That he would automatically vote against the imposition of capital punishment without regard to any evidence that might be developed at the trial of the case before him;

(b) That his attitude toward the death penalty would prevent or substantially impair him from making an impartial decision as a juror in accordance with his instructions and his oath; or

(c) That his attitude toward the death penalty would prevent him from making an impartial decision as to the defendant's guilt; or

(3) The juror would not convict upon circumstantial evidence.

Amended by Acts 1968, Ex.Sess., No. 13, §1, emerg. eff. Dec. 27, 1968, at 1:00 P.M; Acts 1990, No. 366, §1.

Art. 801. Time for charge; when written charge required

A. The court shall charge the jury after the presentation of all evidence and arguments. The court shall reduce its charge to writing if it is requested to do so by either a defendant or the state prior to the swearing of the first witness at the trial on the merits. The court's written charge shall be read to the jury. The court shall deliver a copy thereof to the defendant and to the state prior to reading it to the jury.

B.(1) After such written charge is read to the jury, a copy of the written charge shall be delivered to the jury if such delivery is consented to by both the defendant and the state in open court but not in the presence of the jury.

(2) The lack of consent by either the defendant or the state to the delivery of the written charge to the jury shall not be communicated to the jury.

C. A party may not assign as error the giving or failure to give a jury charge or any portion thereof unless an objection thereto is made before the jury retires or within such time as

the court may reasonably cure the alleged error. The nature of the objection and grounds therefor shall be stated at the time of objection. The court shall give the party an opportunity to make the objection out of the presence of the jury.

Amended by Acts 1982, No. 458, §1; Acts 2001, No. 310, §1.

Art. 808. Manner of giving further charges after jury retires

If the jury or any member thereof, after having retired to deliberate upon the verdict, desires further charges, the officer in charge shall bring the jury into the courtroom, and the court shall in the presence of the defendant, his counsel, and the district attorney, further charge the jury. The further charge may be verbal, but shall be in writing if requested by any juror. No charge shall be reduced to writing at the request of a juror pursuant to this Article unless consent is obtained from both the defendant and the state in open court but not within the presence of the jury. The lack of consent by either the defendant or the state shall not be communicated to the jury. A copy of the court's written charge shall be delivered to the defendant, the state, and the jury.

Acts 2001, No. 310, §1.

Rule 3.5 of the Louisiana Rules of Professional Conduct, in pertinent part, states:

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

Comment [2] to ABA Model Rule 3.5 states:

...[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, unless authorized to do so by law or court order...

§129.2. Recording, listening to, or observing proceedings of grand or petit juries while deliberating or voting

It shall be unlawful for any person knowingly and intentionally, by any means or device whatsoever:

(1) to record or attempt to record, the proceedings of any grand or petit jury in any court of the state of Louisiana while such jury is deliberating or voting; or

(2) to listen to or observe, or attempt to listen to or observe, the proceedings of any grand or petit jury of which he is not a member in any court of the state of Louisiana while such jury is deliberating or voting.

Whoever violates the provisions of this Section shall be fined not more than five hundred dollars, or imprisoned for not more than six months, or both.

Added by Acts 1981, No. 866, §2.

Louisiana Revised Statutes, Title 14, §130

§130.1. Obstruction of justice

A. The crime of obstruction of justice is any of the following when committed with the knowledge that such act has, reasonably may, or will affect an actual or potential present, past, or future criminal proceeding as hereinafter described:

(1) Tampering with evidence with the specific intent of distorting the results of any criminal investigation or proceeding which may reasonably prove relevant to a criminal investigation or proceeding. Tampering with evidence shall include the intentional alteration, movement, removal, or addition of any object or substance either:

(a) At the location of any incident which the perpetrator knows or has good reason to believe will be the subject of any investigation by state, local, or United States law enforcement officers; or

(b) At the location of storage, transfer, or place of review of any such evidence.

(2) Using or threatening force toward the person or property of another with the specific intent to:

(a) Influence the testimony of any person in any criminal proceeding;

(b) Cause or induce the withholding of testimony or withholding of records, documents, or other objects from any criminal proceeding;

(c) Cause or induce the alteration, destruction, mutilation, or concealment of any object with the specific intent to impair the object's integrity or availability for use in any criminal proceeding;

(d) Evade legal process or the summoning of a person to appear as a witness or to produce a record, document, or other object in any criminal proceeding;

(e) Cause the hindrance, delay, or prevention of the communication to a peace officer, as defined in R.S. 14:30, of information relating to an arrest or potential arrest or relating to the commission or possible commission of a crime or parole or probation violation.

(3) **Retaliating against any** witness, victim, **juror**, judge, party, attorney, or informant by knowingly engaging in any conduct which results in bodily injury to or damage to the property of any such person or the communication of threats to do so with the specific intent to retaliate against any person for:

(a) The attendance as a witness, juror, judge, attorney, or a party to any criminal proceeding or for producing evidence or testimony for use or potential use in any criminal proceeding, or

(b) The giving of information, evidence, or any aid relating to the commission or possible commission of a parole or probation violation or any crime under the laws of any state or of the United States.

B. Whoever commits the crime of obstruction of justice shall be subject to the following penalties:

(1) When the obstruction of justice involves a criminal proceeding in which a sentence of death or life imprisonment may be imposed, the offender shall be fined not more than one hundred thousand dollars, imprisoned for not more than forty years at hard labor, or both.

(2) When the obstruction of justice involves a criminal proceeding in which a sentence of imprisonment necessarily at hard labor for any period less than a life sentence may be imposed, the offender may be fined not more than fifty thousand dollars, or imprisoned for not more than twenty years at hard labor, or both.

(3) When the obstruction of justice involves any other criminal proceeding, the offender shall be fined not more than ten thousand dollars, imprisoned for not more than five years, with or without hard labor, or both.

Acts 1984, No. 561, §1, eff. Jan. 1, 1985.

Louisiana Code of Judicial Conduct, CANON 3:

A Judge Shall Perform the Duties of Office Impartially and Diligently

The judicial duties of a judge take precedence over all other activities. Judicial duties include all the duties of office prescribed by law. In the performance of these duties, the following standards apply:

A. Adjudicative Responsibilities.

(1) *A judge shall be faithful to the law and maintain professional competence in it. A judge shall be unswayed by partisan interests, public clamor, or fear of criticism.*

(2) *A judge shall maintain order and decorum in judicial proceedings.*

(3) *A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and should require similar*

conduct of lawyers, and of staff, court officials, and others subject to the judge's direction and control.

(4) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, and shall not permit staff, court officials or others subject to the judge's direction and control to do so.

(5) A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice against parties, witnesses, counsel or others.

(6) Except as permitted by law, a judge shall not permit private or ex parte interviews, arguments or communications designed to influence his or her judicial action in any case, either civil or criminal. A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond. Where circumstances require, ex parte communications are authorized for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits, provided the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication. A judge shall not knowingly accept in any case briefs, documents or written communications intended or calculated to influence his or her action unless the contents are promptly made known to all parties. Judges of appellate courts shall also avoid all actions or language which might indicate to counsel, litigants or any member of the public, the particular member of the court to whom a case is allotted or assigned for any purpose. Similar circumspection should be exacted on the part of court officers, clerks and secretaries.

(7) A judge shall dispose of all judicial matters promptly, efficiently and fairly.

(8) A judge shall not, while a proceeding is pending in any Louisiana state court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness, and shall require similar abstention on the part of court personnel subject to his or her direction and control. This subsection does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court. [Amended effective February 1, 2005]

(9) Except as herein provided a judge should prohibit broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto at least during sessions of court or recesses between sessions.

A trial judge may authorize:

(a) the use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record for the court or for counsel, or for other purposes of judicial administration;

(b) the broadcasting, televising, recording or photographing of investitive or ceremonial proceedings;

(c) the photographic or electronic recording and reproduction of appropriate court proceedings under the following conditions:

- (i) the means of recording will not distract participants or impair the dignity of the proceedings;*
- (ii) the parties have consented, and the consent to being depicted or recorded has been obtained from each witness appearing in the recording and reproduction;*
- (iii) the reproduction will not be exhibited until after the proceeding has been concluded and all direct appeals have been exhausted; and*
- (iv) the reproduction will be exhibited only for instructional purposes in educational institutions.*

An appellate court may permit broadcasting, televising, recording, and taking photographs of public judicial proceedings in the courtrooms of appellate courts in accordance with the guidelines set forth in an appendix to this Canon, subject, however, to the authority of each court and the presiding judge of each court or panel to (a) control the conduct of proceedings before the court, (b) ensure decorum and prevent distractions, and (c) ensure the fair administration of justice in the pending cause.

(10) A judge shall not, with respect to cases, controversies or issues that are likely to come before the court, make pledges, promises or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office. [Enacted effective February 1, 2005]

Louisiana Code of Judicial Conduct, CANON 7:

A Judge Or Judicial Candidate Shall Refrain From Inappropriate Political Activity

A. Political Conduct in General.

(1) A judge or judicial candidate shall not:

- (a) act as a leader or hold any office in a political organization;*
- (b) publicly endorse or publicly oppose another candidate for public office;*
- (c) make speeches on behalf of a political organization or a candidate for public office;*
- (d) except to the extent permitted by these Canons, solicit funds for, pay an assessment to, or make a contribution to a political organization or candidate or purchase tickets for political party dinners or other campaign functions.*

B. Campaign Conduct.

(1) A judge or judicial candidate:

- (a) shall maintain the dignity appropriate to judicial office and act in a manner consistent with the impartiality, integrity and independence of the judiciary, and should encourage the members of the candidate's family to adhere to the same standards of political conduct in support of the candidate as apply to the candidate;*

[Amended effective February 1, 2005]

- (b) shall prohibit employees and officials who serve at the pleasure of the candidate, and should discourage other employees and officials subject to the candidate's direction and*

control from doing on the candidate's behalf what the candidate is prohibited from doing under this Canon;

(c) except to the extent permitted by these Canons, shall not authorize or knowingly permit any person to do for the candidate what the candidate is prohibited from doing under this Canon;

(d) shall not

(i) with respect to cases, controversies, or issues that are likely to come before the court, make pledges, promises or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office;

(ii) knowingly make, or cause to be made, a false statement concerning the identity, qualifications, present position or other fact concerning the candidate or an opponent; or
(iii) while a proceeding is pending in any Louisiana state court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness. **[Amended effective February 1, 2005]**

(e) may respond to personal attacks or attacks on the candidate's record as long as the response does not violate Canon 7B(1)(d).

Court Commentary Regarding 2002 Amendment to Canon 7

The 2002 amendment to Canon 7B(1)(d) of the Code of Judicial Conduct, concerning public comments about pending or impending proceedings, is not intended to apply to in-court comments by lawyer candidates, or comments regarding a case or proceeding that the lawyer candidate is participating in. Comments by a lawyer candidate regarding a proceeding that the lawyer candidate is participating in, or a proceeding in which an associate of the lawyer candidate is participating in, are governed by Rule 3.6 of the Louisiana Rules of Professional Conduct.

- See also *In Re: Paul Henry Kidd* (03-10-2004, LADB), wherein the lawyer was charged with violations of Rule 3.5(c) and 8.4(a) & (d) [“...during the course of the trial , you made several improper and inappropriate comments in the presence of the jury, including referring to the court as a ‘star chamber proceeding’ and uttering and obscenity in response to a ruling by the court. You suggested in the presence of the jury that the court could not give your client a fair trial. You engaged in threatening conduct toward the prosecutor...that resulted in evacuation of the jury and the involvement of the court bailiffs in preventing a physical altercation. You made several attempts in the presence of the jury to call [the prosecutor] to the stand as a witness. You turned your back on the presiding judge, and filed a motion to recuse the judge...”]
- See also *Louisiana v. Washington*, 626 So. 2d 841, 842-843 (La. Ct. App. 2d cir. 1993).
- See also *La. State Bar Ass’n v. Harrington*, 585 So. 2d 514, 522 (La. 1990).

III. Jurors After a Proceeding

Rule 3.5 of the Louisiana Rules of Professional Conduct states:

...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;...*
- (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; or*
- (d) *engage in conduct intended to disrupt a tribunal.*

- See *Adams v. Ford Motor Co.*, 2011 U.S. App. LEXIS 16127 (3d Cir. 08/05/2011)
[Based on a complaint by a juror, the magistrate judge issued an order finding that the plaintiff's lawyer, in contacting one of the jurors shortly after the trial had ended to ask about the jury's award of damages and the assignment of fault between the parties, had engaged in misconduct by his post-verdict communication with a juror in contravention of ABA Model Rule of Professional Conduct 3.5(c)]
- **Getting Help With Ethics Questions/Issues/Dilemmas**

LSBA Ethics Counsel: Richard P. Lemmler, Jr., Ethics Counsel, (504) 619-0144,
RLemmler@LSBA.ORG

Eric K. Barefield, Ethics Counsel, (504) 619-0122,
EBarefield@LSBA.ORG