

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

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

Rule 3.6 Trial Publicity

(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.

(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 a 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 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.

(c) Notwithstanding paragraph (a), a lawyer may make a statement that a reasonable lawyer would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

(d) No Coast Guard lawyer associated with a lawyer subject to paragraph (a) shall make a statement prohibited by paragraph (a).

DISCUSSION

A Coast Guard lawyer must comply with any applicable laws, regulations and policies in making public statements of any kind. Reference to appropriate public affairs guidance may be necessary.

Rule 3.7 Lawyer as Witness

(a) [changed] A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless:

(1) the testimony relates to an uncontested issue;

(2) the testimony relates to the nature of legal services rendered in the case; or

(3) disqualification of the lawyer would work substantial hardship on the client.

(b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by Rule 1.7 or Rule 1.9.

Rule 3.8 Special Responsibilities of a Trial Counsel [Prosecutor]

The trial counsel in a criminal case shall:

(a) [changed] recommend the convening authority withdraw any charge or specification not warranted by the evidence;

(b) make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;

(c) [changed] not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to pretrial investigation under Article 32, UCMJ;

(d) make timely disclosure to the defense of all evidence or information known to the trial counsel that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the trial counsel, except when the trial counsel is relieved of this responsibility by a protective order of the tribunal;

(e) [changed] not call a lawyer as a witness in an Article 32 proceeding or other criminal proceeding to present evidence about a past or present client unless the trial counsel reasonably believes:

(1) the information sought is not protected from disclosure by any applicable privilege;