

DELAWARE STATE BAR ASSOCIATION
COMMITTEE ON PROFESSIONAL ETHICS

OPINION 1979-2

The State Prosecutor, Department of Justice, has requested this Committee's opinion as to whether DR7-108(D) prohibits a representative of the Department of Justice of the State of Delaware from speaking to a member of a jury after the completion of a criminal case which resulted in a mistrial by reason of failure of the jurors to agree upon a verdict.

The question arose when the Department of Justice received a letter from a member of the jury in which she related to the Deputy who handled the case, "some of her feelings about the case", including her frustration concerning the outcome of the trial and expressed a willingness to speak to the prosecuting Deputy concerning "certain areas which gave us great difficulty".

Question

After the completion of a criminal case which resulted in a hung jury, may the state prosecutor speak with a juror to discuss the juror's frustration with the outcome and "certain areas" that gave the jury great difficulty.

Answer

No.

Discussion

DR7-108(D) appears as follows:

"(D) After discharge of the jury from further consideration of a case with which the lawyer was connected, a lawyer shall not ask questions of or make comments to a member of that jury."

After the discharge of a jury DR7-108(D) prohibits a lawyer from asking questions of or making comments to a member of the jury. Although the rule does not specifically address itself to a situation where a juror requests an opportunity to talk to a prosecuting attorney, it is difficult to envision a meeting between the juror and the Deputy in which the Deputy will not ask questions or make comments during the course of the meeting.

In the present case, we see little to be gained by a meeting with a juror. There was a mistrial and the prosecution has the right to proceed against the defendant in a new trial.

Impeachment cannot be an issue. Even if it were, it is not available under Delaware decisional law. Watson v. State, 184 A.2d 780 (Del.Supr. 1962). Nor is there any suggestion of impropriety in the jury room.

Thus, it would appear that no valid reason is presented as to why the Deputy prosecutor should meet with the juror particularly without the presence of opposing counsel under the guidance of the Court.

June 22, 1979