

CANON 2, RULE 2.9

A judge shall perform the duties of judicial office impartially, competently, and diligently.

RULE 2.9: EX PARTE COMMUNICATIONS

- (A) A judge shall not initiate, permit, or consider *ex parte* communications or consider other communications made to the judge outside the presence of the parties or their lawyers concerning a pending* or impending matter,* except as follows:
- (1) When circumstances require it, *ex parte* communication for scheduling, administrative, or emergency purposes, which does not address substantive matters, is permitted, provided:
 - (a) the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the *ex parte* communication; and
 - (b) the judge makes provision promptly to notify all other parties of the substance of the *ex parte* communication and gives the parties an opportunity to respond.
 - (2) [Reserved]
 - (3) A judge may consult with court staff and court officials whose functions are to aid the judge in carrying out the judge's adjudicative responsibilities, or with other judges, provided the judge makes reasonable efforts to avoid receiving factual information that is not part of the record and does not abrogate the responsibility personally to decide the matter.
 - (4) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge.
 - (5) A judge may initiate, permit, or consider any *ex parte* communication when expressly authorized by law* to do so.

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- (B) If a judge inadvertently receives an unauthorized *ex parte* communication bearing upon the substance of a matter, the judge shall make provision promptly to notify the parties of the substance of the communication and provide the parties with an opportunity to respond.
- (C) A judge shall not investigate facts in a matter independently and shall consider only the evidence presented and any facts that may properly be judicially noticed.
- (D) A judge shall make reasonable efforts, including providing appropriate supervision, to ensure that this Rule is not violated by court staff, court officials, and others subject to the judge's direction and control.

COMMENTS

- [1] To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge.
- [2] Whenever the presence of a party or notice to a party is required by this Rule, it is the party's lawyer, or if the party is unrepresented, the party, who is to be present or to whom notice is to be given.
- [3] The proscription against communications concerning a proceeding includes communications with lawyers, law teachers, or other persons who are not participants in the proceeding and communications made or posted on social media or social networking platforms. A judge must make reasonable efforts to ensure that law clerks, court staff, court officials, and others under the judge's direction and control do not violate this Rule.
- [4] A judge may initiate, permit, or consider *ex parte* communications expressly authorized by law, such as when serving on therapeutic or problem-solving courts, mental health courts, or drug courts. In this capacity, judges may assume a more interactive role with parties, treatment providers, probation officers, social workers, and others.

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- [5] A judge may consult with other judges on pending matters but must avoid *ex parte* discussions of a case with judges who have previously been disqualified from hearing the matter and with judges who have appellate jurisdiction over the matter.
- [6] The prohibition against a judge investigating the facts in a matter extends to information available in every medium, including electronic.
- [7] A judge may consult ethics advisory committees, outside counsel, or legal experts concerning the judge's compliance with this Code.
- [8] Judges who maintain a presence on social media or social networking platforms should be aware of the potential for these sites to become an unintended vehicle for *ex parte* communications.