

*Ex Parte* Communication Training for Court Support Personnel  
Pre-Test and Post-Test

Please answer the following questions with the letter T for true and the letter F for false. **Before the training session begins, enter your answers in the Pre-Test (left) column.** Throughout the program, you can insert the correct answers under Post-Test. This test must be turned in at the end of this program in order to satisfy requirements of the grant funding agency.

<u><b>Pre-Test</b></u> T or F		<u><b>Post-Test</b></u> T or F
<input type="checkbox"/>	1. <i>Ex Parte</i> Communication is defined as a communication between a court employee and a former party to a lawsuit.	<input type="checkbox"/>
<input type="checkbox"/>	2. Adjudicative officers are permitted to investigate the facts presented in a case if they feel that further investigation is necessary to make an accurate ruling.	<input type="checkbox"/>
<input type="checkbox"/>	3. It is okay for a court employee to discuss the rescheduling of a case with an adjudicative officer.	<input type="checkbox"/>
<input type="checkbox"/>	4. When a court employee has concrete facts about a case (Example: You know that a party has been physically abused), it is okay to share those facts with the adjudicative officer.	<input type="checkbox"/>
<input type="checkbox"/>	5. <i>Ex parte</i> communications may negatively impact the outcome of a case, and could result in a mistrial.	<input type="checkbox"/>
<input type="checkbox"/>	6. Court employees are held to the same ethical standards as judges regarding <i>ex parte</i> communications.	<input type="checkbox"/>
<input type="checkbox"/>	7. A judge may consult with court personnel whose function is to aid the judge in carrying out the judge's adjudicative responsibilities.	<input type="checkbox"/>
<input type="checkbox"/>	8. An <i>ex parte</i> communication should automatically result in the disqualification of the judge to hear the case.	<input type="checkbox"/>
<input type="checkbox"/>	9. It is okay to let the judge know that the plaintiff in the next case made threats against the judge and that extra security will be in place.	<input type="checkbox"/>
<input type="checkbox"/>	10. It is okay to let the judge know that a party in a case will be late for a hearing and the judge will let the other parties know.	<input type="checkbox"/>

## *Ex Parte* Communication: A Training Seminar For Court Support Personnel

Before we begin the seminar:

- Complete the pre-test.
- Complete the voluntary demographic form.
- Help yourselves to hot coffee, tea or water.

Funding for this training provided by the  
Michigan Commission on Law Enforcement Standards (MCOLES)

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## *Ex Parte* Communication: A Training Seminar For Court Support Personnel

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17<sup>th</sup> Circuit Court, Grand Rapids

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## Definitions of *Ex Parte* Communication

- Black's Law Dictionary: "On one side only; by or for one party; done for, in behalf of, or on the application of, one party only."
- MJI's Handbook of Legal Terms: "A communication between the court and one party of a lawsuit, made without prior notice to any other party."

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## Introduction to Judicial Discipline

- What is a judge?  
"Judge means: (1) a person who is serving as a judge of an appellate or trial court by virtue of election, appointment, or assignment; (2) a magistrate or a referee;..." MCR9.201 (B)(1)-(3)
- "A judge must not independently investigate facts in a case and must consider only the evidence presented." Commentary to Model Canon 3B(7)

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## Intro to Judicial Discipline con't.

- “A judge must make reasonable efforts, including the provision of appropriate supervision to ensure that the rule [of *ex parte* communication] is not violated through law clerks or other personnel on the judge’s staff.” Commentary to Model Canon 3B(7)

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## Rules of *Ex Parte* Communication for ‘Pending’ or ‘Impending’ Cases

- No matter how pure the intent;
- No matter how conscientious a party is;
- No matter the actual effect on the case;
- No matter how much you try to discuss “hypothetical situations”...

***Ex Parte* Communications are  
not allowed!**

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## Allowable *Ex Parte* Communications

Canon allows certain *ex parte* communications:

- For scheduling, administrative, or emergencies if disclosed
- Expert advice, with disclosure to parties
- Judge may consult with court personnel (one way street?)
- "Shuttle diplomacy" with consent of all parties
- When authorized by law - examples

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## Prohibited *Ex Parte* Communications

- The adjudicative officer initiates the *ex parte* communication.
- The communication is intended to influence the outcome of a case.
- You cannot act as an advocate for a party with the adjudicative officer involved in the case.

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## Why Forbidden?

- Due process considerations
  - Is the communication purely procedural and not substantive?
- Actual bias or appearance of bias
  - It deprives the absent party of his/her right to be heard and comment.
- Creates more work for the court and staff
  - May require a new trial.

*Always consider your communication with any adjudicative officer.*

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Beware of any “helpful” communication with an adjudicative officer.

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## Case Examples



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## After an *Ex Parte* Communication



- Statutory responsibilities
- Ethical responsibilities

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## Guidelines for Court Support Personnel

You may refer to the following when discussing a case with an adjudicative officer:

- Scheduling
- Administrative Purposes
- Emergencies – as defined by adjudicative officer
- Not on substantive matters
- No party will gain a tactical or procedural advantage

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## Question & Answer

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## Conclusion

- Complete post-test.
- Complete evaluation.
- Leave post-test, evaluation, and demographic form at your table.
- Discard garbage on your way out.
- Thank you!

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