

AMERICAN BAR ASSOCIATION  
CPR POLICY IMPLEMENTATION COMMITTEE

COMPARISON OF ABA MODEL JUDICIAL CODE AND STATE VARIATIONS

**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) A judge may obtain the written advice of a disinterested expert on the law applicable to a proceeding before the judge, if the judge gives advance notice to the parties of the person to be consulted and the subject matter of the advice to be solicited, and affords the parties a reasonable opportunity to object and respond to the notice and to the advice received.

(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 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.

(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.

	<p><b>COMMENT</b></p> <p>[1] To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge.</p> <p>[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.</p> <p>[3] The proscription against communications concerning a proceeding includes communications with lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted by this Rule.</p> <p>[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.</p> <p>[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.</p> <p>[6] The prohibition against a judge investigating the facts in a matter extends to information available in all mediums, including electronic.</p> <p>[7] A judge may consult ethics advisory committees, outside counsel, or legal experts concerning the judge’s compliance with this Code. Such consultations are not subject to the restrictions of paragraph (A)(2).</p> <p>One (1) state has identical language (NH)                  Twenty-eight (28) states have similar language (AZ, AR, CA, CT, CO, DC, HI, IN, IA, KS, KY, MA, ME, MD, MN, MO, NE, NV, NM, ND, OH, OK, OR, PA, SD, TN, UT, and WY)                  Three (3) states have different language (DE, MT, and WA)</p>
<p><b>AL</b></p>	
<p><b>AK</b></p>	
<p><b>AZ</b>  <b>Effective</b>  <b>9/1/2009</b></p>	<p>(A)(2): deletes “written,” ends after “proceeding”</p> <p>(A)(3): ends first sentence after “other judges,” replaces language between “provided” and record” with “<i>If in doing so the judge acquires factual information that is not part of the record, the judge shall make provision promptly to notify the parties of the substance of the information and provide the parties with an opportunity to respond</i>” and replaces “and does” with “The judge may.”</p> <p>Adds (A)(6): <i>A judge may engage in ex parte communications when serving on therapeutic or problem-solving courts, if such communications are authorized by local rules or protocols known and consented to by the parties.</i></p> <p>[1]: adds “A judge may also direct judicial staff, without invoking the notice and disclosure provisions of this rule, to screen written ex parte communications and to take appropriate action consistent with this rule” to end</p> <p>[3]: deletes “lawyers, law teachers, and other”</p> <p>[4]: deletes language through “such as”</p> <p>[6]: adds “independently” before “investigating”</p> <p>[7]: deletes last sentence</p> <p>Adds [8]: <i>An appropriate and often desirable procedure for a court to obtain the advice of a</i></p>

	<p><i>disinterested expert on legal issues is to invite the expert to file a brief amicus curiae.</i></p> <p>[9]: <i>A judge may request a party to submit proposed findings of fact and conclusions of law, so long as the other parties are apprised of the request and are given an opportunity to respond to the proposed findings and conclusions.</i></p> <p>[10]: <i>If communication between the trial judge and the appellate court with respect to a proceeding is permitted, a copy of any written communication or the substance of any oral communication should be provided to all parties.</i></p>
<b>AR Effective 7/1/2009</b>	Deletes (A)(4)
<b>CA Effective 1/1/2013</b>	<p>Canon 3B(7). Moves the prohibition against independently investigating facts from the commentary into the Canon itself as in Model Code. Also, adds “reasonable efforts” to the CA language as in Model Code.</p> <p>Canon 3B(7)(a). Contrary to the ABA’s revisions, eliminates exception to the prohibition against ex parte communications embodied in this Canon.</p> <p>Canon 3B(7)(a) and commentary. New. Clarifies whom a judge may consult regarding his adjudicative responsibilities.</p> <p>Canon 3B(7)(c). Deletes because the new CA Canon 3B(12) addresses dispute resolution efforts.</p> <p>Canons 3B(7)(d) and (e). Standardizes the use of the verbs to “initiate,” “permit,” or “consider” ex parte communications throughout the Canons and renumber them accordingly vs. Model Code’s language in the passive voice (ex parte communications “are permitted”).</p> <p>Canon 3B(7)(d). New. Based on the Model Rule, but deletes the word “inadvertently” receives.</p>
<b>CO Effective 7/1/2010</b>	<p>[6]: <i>A judge may consult ethics advisory committees, outside counsel, or legal experts concerning the judge’s compliance with this Code. Such consultations are not subject to the restrictions of paragraph (A)(2).</i></p> <p>[7]: Identical to Model Code Comment [6]</p>
<b>CT Effective 1/1/2011</b>	<p>(C): Adds “<i>servicing as a factfinder</i>” after “judge”</p> <p>[4]: Deletes clause “such as when...and others” to end.</p> <p>[6]: Adds to end: “Nothing in this rule is intended to relieve a judge of the independent duty to investigate allegations of juror misconduct. See <i>State v. Santiago</i>, 245 Conn. 301 (1998)”</p>
<b>DE Effective 11/1/2008</b>	<p>(A): <i>A judge, except as authorized by law, should neither initiate nor consider ex parte or other communications concerning a pending or impending proceeding.</i></p> <p>Deletes (A)(1)</p> <p>First Comment: combines Comment [3], 1990 Model Code Canon 3B(7)(e) Commentary eighth paragraph and “<i>It does not preclude considering and ruling upon emergency applications where circumstances require. It does not preclude a judge from consulting with other judges, or with court personnel whose function is to aid the judge in carrying out adjudicative responsibilities. It is not intended to preclude communications between a judge and lawyers, or parties if unrepresented by counsel, concerning matters which are purely procedural, such as those which pertain to scheduling, and which in no way bear on the merits of the proceeding. However, such communications should, as soon as practicable, be fully disclosed by the judge to all lawyers, or</i></p>

	<p><i>parties if unrepresented by counsel, involved in the proceeding.”</i></p> <p>Adds second Comment: <i>Except in the course of the judge’s official duties, a judge should not initiate a communication of information to a sentencing judge or a probation or corrections officer but may provide to such persons information in response to a formal request.</i></p> <p>(B): same as 1990 Model Code Canon 3B(7)(b)</p> <p>Comment: same as 1990 Model Code Canon 3B(7)(e) Commentary fourth paragraph</p> <p>Deletes (A)(3)</p> <p>(C): same as (A)(4) but replaces language after “effort to” with “mediate or settle matters”</p> <p>Deletes remainder of Rule and Comment</p>
<p><b>DC</b> <b>Effective</b> <b>1/1/12</b></p>	<p>[4]: Replaces with:</p> <p><i>[4] This Rule applies to judges serving on therapeutic or problem-solving courts, including family treatment courts, drug courts, mental health courts, and community courts. Although judges of these non-traditional courts may assume a more interactive role with parties, treatment providers, and others than is usual for judges, they may not initiate, permit or consider ex parte communications unless expressly authorized to do so by law (including applicable court rules), as stated in Rule 2.9 (A)(5).</i></p> <p><i>[4A] The Auditor-Master, to whom this rule also applies, may initiate, permit or consider ex parte communications, and may investigate facts, to the extent authorized by Rule 53 of the Superior Court Rules of Civil Procedure or other applicable court rule, or by any order of reference that the Auditor-Master is required to execute by D.C. Code § 11-1724 (2001).</i></p> <p>[6]: Replaces “including electronic” at the end with “including on-line databases and he Internet generally.”</p>
<p><b>FL</b></p>	
<p><b>HI</b> <b>Effective</b> <b>1/1/2009</b></p>	<p>(A)(3): replaces language after “adjudicative responsibilities” up to “does not abrogate” with “<i>provided that any factual information received by the judge that is not part of the record is timely disclosed to the parties. A judge may also consult with other judges, except that the judge shall not have an ex parte discussion of a case with a judge who has either previously been disqualified from or has appellate jurisdiction over the matter. A consultation under this Rule</i>”</p> <p>(A)(4): adds “in criminal matters and juvenile matters involving law violations or status offenses” to end</p> <p>Adds (A)(6): <i>A judge may initiate, permit, or consider an ex parte communication when serving on a therapeutic or specialty court, such as a mental health court or drug court, provided that the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication and any factual information received that is not part of the record is timely disclosed to the parties.</i></p> <p>(C): adds “Subject to Rule 2.9(A)(3) and Rule 2.9(A)(6)” to beginning</p>
<p><b>ID</b> <b>Effective</b> <b>7/1/2016</b></p>	<p>Adds (A) (5): During a scheduled court proceeding, including a staffing*, conference, hearing, or trial, a judge may initiate, permit, or consider communications dealing with substantive matters or issues on the merits of the case in the absence of a party who had notice of the proceeding and did not appear.</p> <p>Adds (A)(6): Communications during a staffing* are not ex parte merely because a defendant, who is represented by counsel, is not permitted to attend the staffing*.</p> <p>(A)(7) is MR (A)(5)</p> <p>(B): An electronic communication sent simultaneously to the judge and all parties or their respective lawyers is not an ex parte communication, nor is a written communication that is served substantially simultaneously upon the judge and all parties or their respective counsel prior</p>

	<p>to any staffing*, hearing, trial, or other court proceeding at which the written communication may be relevant.</p> <p>(C) is MR (B): Adds sentence to end “If the communication was in writing, the judge shall promptly provide a copy to the parties.”</p> <p>(D) is MR (C)</p> <p>(E) is MR (D)</p> <p>[4]: Deletes all text after “authorized by law”</p>
<b>IL</b>	
<b>IN</b> <b>Effective</b> <b>1/1/2009</b>	<p>Adds [8] <i>A judge is permitted by Rule 2.9(A)(3) to consult about legal and procedural issues with the Indiana Judicial Center or Indiana Supreme Court Division of State Court Administration.</i></p>
<b>IA</b> <b>Effective</b> <b>5/3/2010</b>	<p>[2] Adds to end, “<i>See e.g., Iowa R. Civ. P. 1.1507;</i>”</p> <p>Adds:</p> <p><i>[8] Parties frequently present ex parte requests to a judge for routine scheduling matters. Iowa Rule of Civil Procedure 1.453 requires the clerk to provide notice of all orders entered by the court. A notice of orders entered in routine scheduling matters provided by the clerk satisfies the judge’s obligation under paragraph (A)(1)(b).</i></p>
<b>KS</b> <b>Effective</b> <b>3/1/2009</b>	<p>(A)(4): adds “But see Rule 2.6(B) Ensuring the Right to Be Heard and Rule 2.11 Disqualification” to end</p> <p>[4]: replaces language between “communications” and “when” with “authorized by Supreme Court Rule 109A”</p>
<b>KY</b> <b>Effective</b> <b>1/31/2018</b>	<p>Adds new (A)(2): As a part of legal research, a judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge.</p> <p>Comment:</p> <p>[1]: Adds “all” before “communications”; Adds: “See Rule 2.6(A); see also Commonwealth v. Carman, 455 S.W.3d 916, 923 (Ky. 2015) (holding that ex parte communications to modify conditions of release are improper); Commonwealth v. Wilson, 384 S.W.3d 113, 114 (Ky. 2012) (holding that Commonwealth is entitled to notice and opportunity to be heard on criminal defendant’s motion to vacate or set aside arrest warrant.)</p> <p>[2]: Deletes “who is to be present or to whom notice is to be given.”</p> <p>[4]: Replaces “therapeutic” with “problem-solving”</p>
<b>MD</b> <b>Effective</b> <b>7/1/2010</b>	<p>(a) replaces “outside the” with “out of the”</p> <p>Adds (1) “A judge may initiate, permit, or consider any ex parte communication when expressly authorized by law to do so.”</p> <p>(2) is identical to ABA MR (1)</p> <p>(3) is similar to ABA MR (2) but deletes “written” before “advice”; deletes “before the judge” to end after “proceeding” and adds “if the judge (A) makes provision promptly to notify all of the parties as to the expert consulted and the substance of the advice, and (B) affords the parties a reasonable opportunity to respond.”</p> <p>(4) is similar to ABA MR (3) but deletes “makes reasonable” to end after “the judge” and replaces with “does not decide a case based on adjudicative facts that are not made part of the record, and does not abrogate the responsibility personally to decide the matter.” <i>Cross References. See Comment [1] to Rule 3.9, permitting a judge to engage in settlement conferences.</i></p>

	<p>(5) is similar to ABA MR (4) but replaces clause “confer separately with the parties... judge” to end with “their lawyers as part of a settlement conference conducted pursuant to Rules <a href="#">17-102</a> (h) and 17-105 (b).          Adds: (6) “<i>When serving in a problem-solving court program of a Circuit Court or the District Court pursuant to Rule <a href="#">16-206</a>, a judge may initiate, permit, and consider ex parte communications in conformance with the established protocols for the operation of the program if the parties have expressly consented to those protocols.</i>”          (c) Deletes “adjudicative” between “investigate” and “facts”; deletes “presented” and adds instead “in the record”          [2]: Replaces “unrepresented” with “self-represented”          Deletes MR Comment [4]          [4] is similar to MR [5]: Inserts clause “including a retired judge approved for recall” between “matters” and “but”          [5]: is similar to MR [6] but replaces “the” between “investigating” and “facts” with “adjudicative”          [6]: Identical to MR [7]</p>
<p><b>MA Effective 1/1/2016</b></p>	<p>(A)(2): A judge may engage in ex parte communications in specialty courts,* as authorized by law.*          (A)(3): A judge may consult with court personnel* whose function is to aid the judge in carrying out the judge's adjudicative responsibilities, or with other judges, subject to the following:              (a) a judge shall take all reasonable steps to avoid receiving from court personnel* or other judges factual information concerning a case that is not part of the case record. If court personnel* or another judge nevertheless brings information about a matter that is outside of the record to the judge's attention, the judge may not base a decision on it without giving the parties notice of that information and an opportunity to respond. Consultation is permitted between a judge, clerk-magistrate, or other appropriate court personnel* and a judge taking over the same case or session in which the case is pending with regard to information learned from prior proceedings in the case that may assist in maintaining continuity in handling the case;              (b) when a judge consults with a probation officer, housing specialist, or comparable court employee about a pending* or impending* matter, the consultation shall take place in the presence of the parties who have availed themselves of the opportunity to appear and respond, except as provided in Rule 2.9(A)(2);              (c) a judge shall not consult with an appellate judge, or a judge in a different Trial Court Department, about a matter that the judge being consulted might review on appeal; and              (d) no judge shall consult with another judge about a pending matter* before one of them when the judge initiating the consultation knows* the other judge has a financial, personal or other interest that would preclude the other judge from hearing the case, and no judge shall engage in such a consultation when the judge knows* he or she has such an interest.          (C): Similar to MR: A judge shall consider only the evidence presented and any adjudicative facts that may properly be judicially noticed, and shall not undertake any independent investigation of the facts in a matter.           [1 A]: “Ex parte communication” means a communication pertaining to a proceeding that occurs without notice to or participation by all other parties or their representatives between a judge (or court personnel* acting on behalf of a judge) and (i) a party or a party's lawyer, or (ii) another</p>

	<p>person who is not a participant in the proceeding.</p> <p>[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 self-represented, the party, who is to be present or to whom notice is to be given, unless otherwise required by law.* For example, court rules with respect to Limited Assistance Representation may require that notice be given to both the party and the party's limited assistance attorney.</p> <p>[3]: Adds “ex parte” before “communications”</p> <p>[4]: Paragraph (A)(2) permits a judge to engage in ex pane communications in conformance with law,* including court rules and standing orders, governing operation of specialty courts.*</p> <p>[4A]: Ex parte communications with probation officers, housing specialists, or other comparable court employees are permitted in specialty courts* where authorized by law.* See Paragraph (A)(2) and Comment [4]. Where ex parte communications are not permitted, a judge may consult with these employees ex parte about the specifics of various available programs so long as there is no discussion about the suitability of the program for a particular party.</p> <p>[5]: A judge may consult with other judges, subject to the limitations set forth by this Rule. This is so whether or not the judges serve on the same court. A judge must avoid ex parte 16 communications about a matter with a judge who has previously been disqualified from hearing the matter or with an appellate judge who might be called upon to review that matter on appeal. The same holds true with respect to those instances in which a judge in one department of the trial court may be called upon to review a case decided by a judge in a different department; for example, a judge in the Superior Court may be required to review a bail determination made by a judge in the District Court. The appellate divisions of the Boston Municipal Court and of the District Court present a special situation. The judges who sit as members of these appellate divisions review on appeal cases decided by judges who serve in the same court department. However, the designation of judges to sit on the appellate divisions changes quite frequently; every judge on the Boston Municipal Court will, and every judge on the District Court may, serve for some time as a member of that court's appellate division. Judges in the same court department are not barred from consulting with each other about a case, despite the possibility that one of the judges may later review the case on appeal. However, when a judge is serving on an appellate division, the judge must not review any case that the judge has previously discussed with the judge who decided it; disqualification is required. Consultation between or among judges, if otherwise permitted, is appropriate only if the judge before whom the matter is pending* does not abrogate the responsibility personally to decide it.</p> <p>[6]: Changes “mediums” to “media”</p> <p>[7]: A judge may consult the Committee on Judicial Ethics, the State Ethics Commission, outside counsel, or legal experts concerning the judge's compliance with this Code.</p>
<p><b>ME Effective 9/1/2015</b></p>	<p>(A)(1)(b)(2): Changes “advice received” to “advice requested”</p> <p>(A)(1)(b)(4): Changes language after “confer separately with parties” to: “with or without their lawyers present, or separately with their lawyers alone.”</p> <p>(A)(1)(b)(5): Deletes “permit”; after “expressly authorized by law” adds: “court rule, or administrative order to do so, such as when serving in judicially assisted settlement conferences or on therapeutic or problem-solving courts, mental health courts, or drug courts. In this capacity, judges may assume a more interactive role with parties, counsel, treatment providers, probation officers, social workers, and others.”</p> <p>(C) Adds to beginning of sentence “Except when receiving case-related information about events in or around the courthouse that is relevant to assuring a fair trial and protecting the integrity of</p>

	the judicial process,”
<b>MI</b>	
<b>MN Effective 7/1/2009</b>	(B): adds “If a judge inadvertently receives an unauthorized ex parte communication bearing upon the substance of a matter, the communication should be noted as received and returned to the sender without review by the judge” to beginning and replaces “receives” with “reviews” in second sentence.
<b>MO Effective 1/1/2012</b>	(B) Replaces text after “ex parte communication” with “that the judge considers bears upon the substance of a matter, the judge shall take appropriate action.” (C) Replace “may properly be” with “properly may be” (D) Adds reference to Rule 2-2.9 after “this Rule” [2] and [3] Adds reference to Rule 2-2.9 after “this Rule” [5] Replaces “judges who previously been disqualified” with “judges who have previously recused” [6] Deleted MO [6] is the same as MC [7]
<b>MS</b>	
<b>MT Effective 1/1/2009</b>	Adds: Rule 2.9 Ex Parte Communications;* Investigations—Courts of Limited Jurisdiction* (A) Except as permitted in paragraph (C) of this Rule, a judge of a court of limited jurisdiction shall not investigate the substantive facts, circumstances, or merits of a pending* or impending* matter. (B) Except as permitted in paragraph (D) of this Rule, a judge of a court of limited jurisdiction shall not initiate, permit, or consider ex parte communications.* (C) When circumstances or the interests of justice require it or when expressly authorized by law,* a judge of a court of limited jurisdiction may examine the criminal record, driving record, and on-line court records repository pertaining to a defendant in a pending or impending matter which is on file within an agency of the state of Montana for the purpose of determining whether the charge is lawful or for purposes of setting bail or sentencing. A judge may not amend the charge except on motion of the prosecutor and as otherwise provided by law. (D) When circumstances or the interests of justice require it or when expressly authorized by law, a judge of a court of limited jurisdiction may: (1) engage in ex parte communications involving administrative, ministerial or scheduling matters provided: (a) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication; and (b) the judge notifies all other parties, if necessary to prevent any party from gaining a procedural or tactical advantage. (2) consult with court staff and court officials whose functions are to aid the judge in carrying out the judge’s adjudicative responsibilities, with other judges or with peace officers, prosecutors, and defense counsel provided: (a) that the judge avoids receiving factual information that is not a part of the record or part of the defendant’s criminal or driving record; and (b) that the judge does not abrogate his or her responsibility to personally adjudicate the matter fairly and impartially.* (3) receive ex parte communications in proceedings in open court if the prosecutor is not present, provided: (a) that the prosecutor has not otherwise informed the judge in writing of his or her desire or



willingness to appear; and

(b) that the judge shall not try a case to the court or to a jury without the presence of a prosecutor.

(4) verify whether a party has a valid driver's license and mandatory automobile insurance and whether a party is complying with any restitution requirement or conditions imposed in a sentence.

(5) receive ex parte communications in proceedings involving temporary orders of protection provided that the respondent has been given notice and an opportunity to appear to the extent required by law.

(6) Except as set forth in subparagraphs (1) through (5), if a judge receives an ex parte communication or other information having a potentially significant bearing upon the substance of a matter, the judge shall make provision promptly to notify the parties of the content of the communication or information and provide the parties with an opportunity to respond. If such communication or information is in writing, a copy of it shall be made available to the parties and retained.

(E) 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.

#### COMMENT

[1] This Rule is tailored to accommodate the unique circumstances in which Montana's courts of limited jurisdiction operate. This Rule acknowledges that these courts exist in both large metropolitan and isolated rural locations; that the judges of these courts may or may not have clerks or other staff; that prosecutors may or may not be able to be present at all proceedings of the court; that it is necessary for these judges to sometimes speak directly with a party, peace officer, administrative personnel, or insurance agent to verify or clarify administrative or ministerial facts; and that such courts must administer large case loads consisting primarily of misdemeanor criminal and traffic offenses and civil matters involving amounts limited by law.

[2] This Rule provides some flexibility to the judges of courts of limited jurisdiction in dealing with procedural, administrative, and ministerial matters, while retaining requirements that the judge may not independently investigate the substantive facts or merits of any pending or impending matter; that notice and opportunity to be heard be provided if the judge receives or obtains information which may have a significant bearing upon an pending or impending matter; and that the judge personally adjudicate the matter at issue impartially and fairly. While the judge may use discretion and common sense, those must be exercised in accordance with the law and keeping in mind constitutional rights of the parties. Nothing in this Rule abrogates the judge's obligation to comply with all applicable laws, court rules, or administrative regulations.

[3] The prohibition against a judge independently investigating the substantive facts or merits of any matter that is or may come before the court extends to information available in all mediums, including electronic.

[4] Judges are admonished that they are members of a distinct branch of government—the judiciary; that they are always to perform their duties as neutral and detached magistrates; and that they do not function as arms of local government, law enforcement, or as members of either the prosecution or defense “team.” Judges do not and may not “represent” either party.

[5] This Code also controls the conduct of a judge if and when the judge functions as the court clerk or administrator.

Rule 2.10

	<p>Title: same as Model Code Rule 2.9 but adds “All Courts Except for Courts of Limited Jurisdiction” to end</p> <p>(A): same as Model Code Rule 2.9 but deletes language between “communication” and “except” Deletes Model Code Rule 2.9(A)(2)</p> <p>(A)(2): same as Model Code Rule 2.9(A)(3) but deletes “makes reasonable efforts to” Deletes Model Code Rule 2.9(A)(4)</p> <p>(A)(4): same as Model Code Rule 2.9(A)(5) but adds “or when serving on therapeutic or problem-solving courts, mental health courts, drug courts, or the water court. In this capacity, judges may assume a more interactive role with parties, treatment providers, probation officers, social workers, and others” to end</p> <p>(B): similar to Model Code Rule 2.9(B) but deletes “inadvertently” and “unauthorized,” adds “having a potentially significant” before “bearing,” replaces “substance” with “content” and adds “If such communication is in writing, a copy of it shall be made available to the parties and retained” to end</p> <p>(C): similar to Model Code Rule 2.9(C) but deletes “facts in a” and ends after “independently” Deletes Model Code Rule 2.9 [1]</p> <p>[1]: similar to Model Code Rule 2.9 [2] but deletes “the presence of a party or” and “who is to be present or”</p> <p>[3]: same as Model Code Rule 2.9 [4] but adds “water court” to examples</p> <p>[4]: similar to Model Code Rule 2.9 [5] but deletes “may consult with other judges on pending matters, but” and adds “substituted or” before “disqualified”</p> <p>[5]: same as Model Code Rule 2.9 [6] but adds “The prohibition does not apply to a judge’s effort to obtain general information about a specialized area of knowledge that does not include the application of such information in a specific case. Nor does the prohibition apply to interstate or state-federal communications among judges on the general topic of case management decisions in mass torts or other complex cases, such as discovery schedules, standard interrogatories, shared discovery depositories, appointment of liaison counsel, committee membership, or common fund structures” to end</p> <p>[6], compare to Model Code Rule 2.9 [7]: Consultations with ethics advisory committees, outside counsel, or legal experts concerning the judge’s compliance with this Code are permitted. Adds [7]: It is acknowledged that judges frequently receive unsolicited ex parte communications. Judges should apply their discretion and common sense when called upon to determine whether any such communication qualifies as one having a potentially significant bearing upon the substance of a matter, for purposes of paragraph (B).</p>
<p><b>NE Effective 1/1/2011</b></p>	<p>Adds (A)(6) and (A)(7):</p> <p>(6) A judge may initiate, permit, or consider ex parte communications when serving on therapeutic or problem-solving courts, mental health courts, or drug courts, if such communications are authorized by protocols known and consented to by the parties. In this capacity, judges may assume a more interactive role with parties, treatment providers, probation officers, social workers, and others.</p> <p>(7) A judge may initiate, permit, or consider ex parte communications with persons supervising individuals placed on pretrial release programs or house arrest programs, if such communications are authorized by protocols known and consented to by the parties.</p> <p>[4] Reserved</p>
<p><b>NV Effective</b></p>	<p>(A)(5) and [4]: deletes “expressly”</p>

<b>1/19/2010</b>	
<b>NH Effective 4/1/2012</b>	Identical
<b>NJ</b>	
<b>NM Effective 12/31/ 2015</b>	<p>(A)(2) Adds sentence to end: “A probate judge may obtain written or verbal advice from a disinterested expert on the law applicable to a proceeding before the judge without notice to the parties.”</p> <p>(A)(5) Adds after “authorized by law:” “rule, or Supreme Court Order”</p> <p>[1] Adds to end: “A judge may utilize court staff for the purposes of screening potential ex parte communications. Court staff should return ex parte communications to the sender with the admonition that the sender, if an attorney, must comply with Rule 16-305(B) NMRA.”</p> <p>[3] Adds to end: “An appropriate and often desirable procedure for a court to obtain the advice of a disinterested expert on legal issues is to invite the expert to file a brief amicus curiae.”</p> <p>[4] Adds after “authorized by law:”: “rule, or Supreme Court Order”</p>
<b>NY</b>	
<b>NC</b>	
<b>ND Effective 7/1/2012</b>	<p>Adds (A)(4): With the consent of all parties, the judge and court personnel may have ex parte communication with those involved in a specialized court team. Any party may expressly waive the right to receive that information.</p> <p>ND (A)(5) is the same as Model Code (A)(4)</p> <p>ND (A)(6) is the same as Model Code (A)(5)</p> <p>(B) Replaces “substance” with “subject matter”</p> <p>(C) Adds in the beginning: “Except as otherwise provided by law,”</p> <p>[6] Adds to the end: “An exception to the prohibition against the independent investigation of facts by a judge is provided for when such inquiries are otherwise authorized by law (See, e.g. N.D.C.C.&amp;S 27-08.1-03 governing small claims actions – “The court will conduct the proceeding and may make its own inquiry before, during, or after the hearing.”).”</p> <p>Adds new [7]: “The prohibition does not apply to a judge’s effort to obtain general information about a specialized area of knowledge that does not include the application of such information in a specific case”; renumbers following Comment as [8].</p>

<p><b>OH</b> <b>Effective</b> <b>3/1/2009</b></p>	<p>Title: adds “Contacts and” before “Communications” and “with Others” after  (A): adds “receive” before “permit” and deletes language between “communications” and “except.”  (A)(1): combines Model Code (A)(1) and (A)(1)(a) but adds “or issues on the merits” after “matters” and deletes “both of the following apply.”  Deletes (A)(1)(b).  (A)(2): deletes “written,” “advance” and “the notice and to.”  (A)(5): adds “receive” before “permit.”  Adds (A)(6): A judge may initiate, receive, permit, or consider an <i>ex parte</i> communication when administering a <i>specialized docket</i>, provided the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage while in the specialized docket program as a result of the <i>ex parte</i> communication.  (B): Deletes “inadvertently.”  [4]: adds “receive” before “permit” and replaces language after “when” with “(1) <i>an indigent defendant demonstrates a particularized need to retain an expert witness and has not determined whether the expert will testify at trial; (2) the judge obtains information that may result in a confidential referral of counsel to a lawyers assistance program [see Rule 2.14], or (3) in order to comply with Crim. R. 46(C) provided the prosecutor and accused, or accused’s attorney, are apprised of the information prior to any decision that is made as a result of the information gathered by the judge or member of the judge’s staff.</i>”  Adds [4A]: <i>A judge may initiate, receive, permit, or consider ex parte communications when administering a specialized docket established under the authority of the Rules of Superintendence or other law. In this capacity, judges may assume a more interactive role with parties, treatment providers, probation officers, social workers, and others.</i></p>
<p><b>OK</b> <b>Effective</b> <b>4/15/2011</b></p>	<p>Adds OK (4):  <i>With the consent of all parties, the judge and court personnel may have ex parte communication with those involved in a specialized court team. Any party may expressly waive the right to receive that information.</i>  OK (5) and (6) are identical to MC (4) and (5), respectively.  (C) Adds at the end: “While a judge shall not independently investigate facts in a case, and shall consider only the evidence presented, a judge may seek information of a general nature that does not bear on a disputed evidentiary fact or influence the judge’s opinion of the substantive merits a specific case.”  [4] Replaces “therapeutic or problem-solving courts” with “specialized courts”  [6] Adds: “in the rule” after “The prohibition;” Replaces “in a matter” with “in a case independently or through a member of the judge’s staff”  Adds OK [7]:  <i>The prohibition does not apply to a judge’s effort to obtain general information about a specialized area of knowledge that does not include the application of such information in a specific case.</i>  Adds OK [8]:  <i>The prohibition in this rules foes not apply to interstate or state-federal communications among judges on the general topic of case management decisions in mass torts or other complex cases, such as discovery schedules, standard interrogatories, shared discovery depositories, appointment of liaison counsel, committee membership, or common fund structures. If communications of this nature have occurred the judge should disclose these</i></p>

	<p><i>communications to the parties.</i> OK [9] is identical to MC [7].</p>
<p><b>OR</b> <b>Effective</b> <b>12/1/2013</b></p>	<p>OR Rule 3.8 is similar to MCJC Rule 2.9(A)(4):</p> <p>(B) Nothing in this rule precludes a court from requiring parties to attend a meeting to consider whether they are willing to participate in settlement discussions. If the parties agree to participate in settlement discussions, the settlement judge may confer separately with each party or each party's lawyer on the merits of a matter in an effort to settle matters before the court.</p> <p>(C) Except with the consent of the parties, a judge who will rule on the merits of a pending case shall not participate in the case as a settlement judge.</p> <p>OR Rule 3.9 title is identical to MCJC Rule 2.9.</p> <p>OR Rule 3.9(A) is similar to MCJC Rule 2.9(A): Unless expressly authorized by law or with the consent of the parties, a judge shall not initiate, permit, or consider ex parte communications. The following exceptions apply:</p> <p>OR Rule 3.9(A)(1)(a) and (b) is similar to MCJC Rule 2.9(A)(1)(a) and (b): 3.9(A): Changes “which” to “that”; changes “substantive matters” to “the merits of a matter”</p> <p>OR Rule 3.9(A)(1)(a): Deletes “substantive”, deletes “or” before “tactical” adds “or other” after “tactical”; adds “on the merits” after “advantage”</p> <p>OR Rule 3.9(A)(1)(b): adds “a reasonable” before “opportunity”.</p> <p>OR Rule 3.9(A)(2) is similar to MCJC Rule 2.9(A)(3): Adds “and employees of the judicial branch of government” before “whose functions”; Adds “at the same level” after “other judges”</p> <p>OR Rule 3.9(A)(3) is similar to MCJC Rule 2.9(A)(4): Adds “settlement” before “judge”; replaces “and” with “or” before “their lawyers”; deletes “pending” after “matters”.</p> <p>OR Rule 3.9(B) is similar to MCJC Rule 2.9(B): Deletes “inadvertently” before “receives”; Replaces “substance” with “merits” before “of a matter”; Deletes “make provision” before “promptly”; deletes “to” before “notify”; Replaces “the parties” with “them” after “provide”; Adds “reasonable” before “opportunity to respond.”</p>
<p><b>PA</b> <b>Effective</b> <b>7/1/2014</b></p>	<p>(A)(3): Moves “personally” from before “to decide the matter” to end of sentence</p> <p>(B): Deletes “make” after “shall”; Deletes “provision to” after “promptly”</p> <p>Adds (E): It is not a violation of this Rule for a judge to 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, a judge may assume a more interactive role with the parties, treatment providers, probation officers, social workers, and others.</p>

	<p>[4] Reads: “A judge shall avoid comments and interactions that may be interpreted as ex parte communications concerning pending matters or matters that may appear before the court, including a judge who participates in electronic social media.”</p> <p>Adds [8]: In order to obtain the protection afforded to ex parte communication under paragraph (E) of this Rule, a judge should take special care to make sure that the participants in such voluntary special court programs are made aware of and consent to the possibility of ex parte communications under paragraph (E).</p>
<p><b>SD</b> <b>Effective</b> <b>1/1/2006</b></p>	<p>Model Code Rule 2.9 (A) corresponds to SD Canon 3B (7). Same substantive effect. Model Code Rule 2.9 (B): No comparable rule in SD Code. Model Code Rule 2.9 (C) corresponds to the Commentary to SD Canon 3B (7). Same substantive effect. Model Code Rule 2.9 (D) corresponds to the Commentary to SD Canon 3B (7). Same substantive effect.</p>
<p><b>TN</b> <b>Effective</b> <b>7/1/12</b></p>	<p>(A)(2): Deletes “written” before “advice”; deletes “advance” before “notice”; deletes “to be” between “person” and “consulted”; replaces “and the subject matter of the advice to be solicited” with “and the substance of the advice”; deletes “to object” after “opportunity”; deletes “to the notice” after “respond”</p> <p>(A)(3): <i>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.</i></p> <p>(A)(4): Did not adopt</p> <p>(B): Deletes “inadvertently” between “judge” and “receives”</p> <p>[1]: Adds sentence: “A judge may also direct judicial staff, without invoking the notice and disclosure provisions of this rule, to screen written ex parte communications and to take appropriate action consistent with this rule.”</p> <p>[4]: Deletes “expressly” before “authorized”; replaces clause “such as when serving...drug courts” with “<i>or when serving on a mental health court or drug court</i>”; Adds sentence: “<i>However, if this ex parte communication becomes an issue at a subsequent adjudicatory proceeding in which the judge is presiding, the judge shall either (1) disqualify himself or herself if the judge gained personal knowledge of disputed facts under 2.11(A)(1) or the judge’s impartiality might reasonably be questioned under 2.11(A) or (2) make disclosure of such communications subject to the waiver provisions of Rule 2.11C.</i>”</p>
<p><b>TX</b></p>	
<p><b>UT</b> <b>Effective</b> <b>4/1/2010</b></p>	<p>(D): deletes “including providing appropriate supervision” and replaces “this Rule is not violated by” with “the judge does not receive inappropriate ex parte communications through or from”</p>
<p><b>VT</b></p>	
<p><b>VA</b></p>	
<p><b>WA</b> <b>Effective</b> <b>1/1/2011</b></p>	<p>(A) Adds “before that judge’s court” between “impending matter*” and “except as follows;”</p> <p>(A)(1) State Code adds clause after “substantive matters:” “or ex parte communication pursuant to a written policy or rule for a mental health court, drug court, or other therapeutic court.”</p> <p>(A)(2) State Code deletes “gives advance notice to the parties of the person to be consulted and the subject matter of the advice to be solicited;” deletes “to the notice” after “respond.”</p> <p>(C) State Code replaces “independently” with “pending or impending before that judge,” and adds</p>

As of February 20, 2018

	clause at end of sentence: “unless expressly authorized by law.”
<b>WV Effective 12/1/2015</b>	Identical  [6]: Adds “Importantly, this provision is not intended to refer to routine court records available from the bench, as long as the records are disclosed to and subject to review by both parties.” Adds [8]: A judge may request a party to submit proposed findings of fact and conclusions of law, so long as the other parties are apprised of the request and are given an opportunity to respond to the proposed findings and conclusions.
<b>WI</b>	
<b>WY Effective 7/1/2009</b>	(A)(1) Adds clause, “or issues on the merits,” between “substantive matters” and “is permitted;” (B) Deletes “inadvertently,” replaces “unauthorized” with “unsolicited;” Adds clause after “substance of a matter:” “which in the interest of justice the court believes is required to be considered.”

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