

DISCLOSING THE REVIEW OF COURT RECORDS OF RELATED CASES

Background & Analysis

If a judge is reviewing related case files for evidentiary matters, it could appear that the judge is investigating the facts independently and in a manner that does not allow the parties either notice or an opportunity to respond. The Commentary to Canon 3 B(7), Code of Judicial Conduct, indicates that, “A judge must not independently investigate facts in a case and must consider only the evidence presented.” The judge should not look at evidentiary matters in other files without first notifying the parties and giving them an opportunity to be heard. If the judge becomes aware of an evidentiary matter in reviewing another file, then the parties must be notified and given an opportunity to be heard as to the effect of this information. This is in keeping with Canon 3 B(7), Code of Judicial Conduct.

Reviewing a file for scheduling purposes and other purely administrative matters does not raise an ex parte concern and disclosure of the review is not required. This is obviously a common practice necessary for the efficient operation of the courts.