

EX PARTE CONSIDERATIONS

Background & Analysis

Communication between the court and counsel (or other interested person) when opposing counsel has neither notice nor an opportunity to respond is a prohibited ex parte communication. The purpose behind prohibiting ex parte communications is to ensure that the litigants in a proceeding have a neutral forum and an impartial judge. “Ex parte communications with a judge, even when related to such matters as scheduling, can often damage the perception of fairness and should be avoided where at all possible.” Rose v. State, 601 So. 2d 1181, 1184 (Fla. 1992) (concurring opinion).

Communications with other judges or court personnel (instead of parties in interest) for administrative purposes are specifically authorized by the Code of Judicial Conduct Canon 3B(7)(c). CJC Canon 3C(1) provides that judges “should cooperate with other judges and court officials in the administration of court business.”

There are also exceptions when ex parte communications will be permitted. CJC Canon 3B(7)(a) reads:

- (a) Where circumstances require, ex parte communications for scheduling, administrative purposes, or emergencies that do not deal with substantive matters or issues on the merits are authorized, provided:
 - (i) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and
 - (ii) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication and allows an opportunity to respond.

Mere communication regarding scheduling does not rise to the level of a prohibited ex parte communications as long as a procedural or tactical advantage is not gained.