

SELECTED CASES ON EX PARTE CONTACTS WITH LAWYERS

In Re Martin, 302 N.C. 299 (1981): Judge removed from office for *inter alia* initiating night meetings with female defendants to discuss their cases.

In Re Crutchfield, 289 N.C. 597 (1975): Judge censured for signing orders on ex parte application of one side with no statutory authority.

In Re Nowell, 293 N.C. 235 (1977): “We are entirely convinced that the ex parte disposition of a criminal case out of court, or the disposition of any case for reasons other than an honest appraisal of the facts and law as disclosed by the evidence and the advocacy of both parties, will amount to conduct prejudicial to the administration of justice.”

In Re Edens, 290 N.C. 299 (1976): Taking a guilty plea in the Clerk’s office from defense counsel when DA not present and entering PJC improper. Judge censured.

In Re Stuhl, 292 N.C. 379 (1977) and In Re Brown, 351 N.C. 601 (2000)(similar to In Re Edens)

In Re Kivett, 309 N.C. 635 (1983): Improper to modify probation terms without consent of or notice to DA upon ex parte request of defense counsel.

In Re Alamance County Court Facilities, 329 N.C. 84 n.7: “By definition, **ex parte** orders are made without notice to or contestation by the party adversely interested, **Black’s Law Dictionary** 517 (rev. 5th ed. 1979).”

State v. McNeill, 349 NC 634: “Assuming, **arguendo**, that the judge’s comments and the deputy clerk’s testimony somehow showed an **ex parte** communication with the prosecutor, such **ex parte** communication relates only to the administrative functioning of the judicial system and would not be improper.”

State v. Locklear, 349 NC 118: “a defendant does not have a right to be present when the State makes a routine communication with the court, prior to trial, concerning a scheduling matter.”

State v. McHone, 348 NC 254: Where defendant alleged that State sent judge a proposed order and did not send a copy to defense counsel, evidentiary hearing required on whether defendant's due process rights were violated. Court characterized this as an ex parte contact and appears to assume it is improper.

State v. Rhome, 120 NCAApp 278: During trial, judge discussed unwillingness of witness to come to court in response to a subpoena with prosecutor in chambers without notice to defendant or defense counsel. Court assumes this was improper.

State v. Moctezuma, 141 NCAApp 90: Improper to exclude defendant and his attorney from hearing concerning identity of confidential informant.

State v. Hunt, 123 NCAApp 762: "At the time the second arrest order was issued, defendant was not in custody [and] he had not been released from custody to answer the charges in the bill that he had committed [felony] assault, the charge for which the new bond was set. We hold that the \$30,000 bond was not a modification, but a new bond for the new felony charge. . . . Defendant . . . alleges that it was improper for the prosecutor to approach the superior court judge to set the new bond without notifying his attorney. He argues that such conduct is unethical . . . We disagree. As stated above, the \$ 30,000 bond was not a modification, but a bond set for the new felony indictment. There was no improper conduct on the part of the prosecutor when he asked the judge to set bond for this new charge."