

Ex Parte Pop Quiz

1. True or False

A trial judge may communicate with an appellate judge regarding an appeal pending from the trial judge's court.

2. True or False A judge may consider letters received from friends and relatives of the defendant and the victim concerning a pending sentence without making the letters available for inspection by the parties and their attorneys.

3. True or False A judge may not respond to a letter or inquiry from a legislator on behalf of a constituent concerning a pending or impending case except to inform the legislator that it is improper for the judge to permit or consider an ex parte communication.

4. True or False A judge may communicate with a probation officer preparing a pre-sentence report for a case being tried by the judge.

5. True or False

After sentencing, a judge may not have communicate with a probation officer concerning matters relating to terms and conditions of probation.

6. True or False Judges may communicate with county jail personnel regarding the amount of bail established following an arrest.

7. True or False A judge may participate in a telephone conference call with counsel for both parties to resolve disclosure and discovery disputes without formal papers being filed.

8. True or False

Letters addressed to the court with copies to opposing counsel and letters addressed to opposing counsel with copies to the court do not constitute prohibited ex parte communications.

9. True or False A judge may read and respond to a letter or other written communications from an unrepresented criminal defendant so long as copies are provided to all parties as soon as possible.

10. True or False

A judge is not obligated to respond to communication from a defendant's spouse, parent, or other relative or friend but may direct court staff to send a form response advising these individuals that the court will not discuss a case with a non-party.

11. True or False A judge who receives a letter from the complaining witness in a criminal proceeding over which the judge presided, stating that he had heard nothing about the progress of the case. The judge may tell the writer where he may learn what has happened to the case, but should send a copy of the letter to the assistant district attorney who was responsible for prosecuting the case and to defense counsel with a copy of the letter from the complaining witness.

12. True or False If a judge orders an independent study or investigation in a pending action, the judge may receive that report and, without disclosure, rely on it in making a determination.

Ex Parte Pop Quiz Answers

1. False

Texas Advisory Opinion 263 (2000)A trial judge may not communicate ex parte with an appellate judge regarding an appeal pending from the trial judge's court.

New York Advisory Opinion 98-77A judge may not write to the appellate division asking to reconsider a decision that reversed the judge's ruling.

2. False

New York Advisory Opinion 99-50A judge who is considering letters received from friends and relatives of the defendant or the victim concerning a pending sentence should make the letters available for inspection by the parties and their attorneys.

3. True

Virginia Advisory Opinion 00-7A judge may not respond to a letter or inquiry from a legislator on behalf of a constituent concerning a pending or impending case except to inform the legislator that it is improper for the judge to permit or consider an ex parte communication. A judge who receives an improper ex parte communication is not required to disqualify from the case.

4. False

5. True

Virginia Advisory Opinion 00-4A judge may not have an ex parte communication with a probation officer preparing a pre-sentence report for a case being tried by the judge. To remedy an improper ex parte communication, a judge should disclose the communication promptly to all parties on the record, offer the defendant an opportunity to respond, and direct the person who caused the communication to cease. If a judge becomes biased or prejudiced, recusal is necessary. After sentencing, a judge may not have ex parte communications with a probation officer concerning matters relating to terms and conditions of probation.

6. True

Nevada Advisory Opinion 02-3Judges may engage in ex parte communications with county jail personnel regarding the amount of bail established following an arrest or in order to grant an own recognizance release.

7. True

8. True

Arizona Advisory Opinion 02-3Telephonic discussions between a judge and counsel for both parties to resolve disclosure and discovery disputes without formal papers being filed do not constitute prohibited ex parte communications. Letters addressed to the court with copies to opposing counsel and letters addressed to opposing counsel with copies to the court do not constitute prohibited ex parte communications, but the judge should discourage letters related to matters that should have been addressed by formal motions.

9. True

10. True.

Washington Advisory Opinion 02-14A judge may read and respond to a letter or other written communications from an unrepresented criminal defendant so long as copies are provided to all parties as soon as possible. In some cases, the proper response may be a form letter advising the defendant that the judge cannot respond to questions posed and advise the defendant to contact a lawyer or schedule a hearing in accordance with the court rules and give the required notice and opportunity to be heard to all parties. All correspondence should be retained in the court file. If a judge receives a communication from a defendant who is represented, the judge may respond by advising the defendant to contact his or her lawyer; counsel should be furnished copies of both the defendant's letter and the judge's response. A judge may direct the court clerk to send out a form letter advising a defendant that the court will not act upon any information or request made in the letter and that the defendant should contact counsel immediately and schedule a hearing in accordance with court rules or both. A judge is not obligated to respond to an ex parte communication from a defendant's spouse, parent, or other relative or friend but may direct court staff to send a form response advising these individuals that the court will not discuss a case with a non-party. Counsel, if any, should be provided copies of all correspondence and copies should be retained in the court file

11. True

Massachusetts Advisory Opinion 03-17A judge who receives a letter from the complaining witness in a criminal complaint over which the judge presided stating that he had heard nothing about the progress of the case may tell the writer where he may learn what has happened to the case but should send a copy of the letter to the assistant district attorney who was responsible for prosecuting the case and to defense counsel with a copy of the letter from the complaining witness.

12. False

Maryland Advisory Opinion 03-10 If a judge orders a home study or custody investigation, the judge may receive that report and shall share it with the parties or their attorneys and rely on it in making determinations subject to the right of the parties or their attorneys to cross examine the author under oath, to present countervailing evidence, to discredit the report in any of its material aspects, or to present supportive evidence.