

IN RE: IDAHO CODE OF JUDICIAL CONDUCT)))))	ORDER AMENDING IDAHO CODE OF JUDICIAL CONDUCT
--	-----------------------	--

The Court having reviewed a recommendation to correct certain references in the Commentary to Canon 3B(7) of the Idaho Code of Judicial Conduct;

NOW, THEREFORE, IT IS HEREBY ORDERED, that the Commentary to Canon 3B(7) of the Idaho Code of Judicial Conduct be amended as follows:

(7) A judge shall accord to every person who has a legal interest in a proceeding, or that person’s lawyer, the right to be heard according to law.* 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 concerning a pending or impending proceeding except that:

(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 the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication.

(b) A judge may obtain the advice of a disinterested expert on the law* applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond.

(c) 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.

(d) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge.

(e) A judge may initiate or consider any ex parte communications when expressly authorized by law* to do so.

Commentary

The proscription against communications concerning a proceeding includes communications from lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted.

To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge.

Whenever presence of a party or notice to a party is required by Section 3B(7), 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.

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.

Certain ex parte communication is approved by Section 3B(~~6~~7) to facilitate scheduling and other administrative purposes and to accommodate emergencies. In general, however, a judge must discourage ex parte communication and allow it only if all the criteria stated in Section 3B(~~6~~7) are clearly met.

A judge must not independently investigate facts in a case and must consider only the evidence presented. This does not preclude a judge from asking questions in court.

A judge must make reasonable efforts, including the provision of appropriate supervision, to ensure that Section 3B(~~6~~7) is not violated through law clerks or other personnel on the judge's staff.

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.

IT IS FURTHER ORDERED that the effective date of this order shall be the 10 day of September 2007.

DATED this 10 day of September 2007.

By Order of the Supreme Court

/s/
Daniel T. Eismann
Chief Justice

ATTEST: /s/
Clerk