

## In the Supreme Court of Iowa

In the Matter of the  
 Prohibition Against  
 Ex Parte Communications

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Supervisory Order CLERK SUPREME COURT

Fairness and impartiality are the central tenets of a judge. These twin concepts are deeply embedded into the process of justice and help support public confidence in and respect for the entire justice system.

One component of judicial fairness and impartiality is the limitation on communications between a judge and a party or attorney in a case that exclude another party or attorney in the case. Such ex parte communications are not only inconsistent with legal advocacy, they undermine fairness and create the appearance of bias and partiality. The Iowa Code of Judicial Conduct prohibits almost all ex parte communications. See rule 51:2.9.

Ex parte judicial communications include a judge's request to an attorney to prepare a proposed decree or ruling without including all opposing counsel or parties in the communication. The practice of attorneys, as officers of the court, providing proposed findings of fact and conclusions of law can greatly assist judges in the preparation of orders, particularly in complex or technical cases. Yet, knowledge of and notice to all parties or attorneys is the touchstone that permits the practice to occur. See Iowa R. Elec. P. 16.201(23) (describing EDMS process for notice to parties upon electronic filing of documents or proposed documents); *id. r.* 16.316 (providing for filing of certificate of service on all documents EDMS does not serve on parties who are nonregistered

filers); *id. r.* 16.409 (permitting proposed orders to be filed electronically). The overarching prohibition against *ex parte* communications must be carefully followed.

The Iowa Supreme Court has previously admonished Iowa judges to remain faithful to their professional responsibility and refrain from engaging in *ex parte* communications in requesting an attorney to assist in drafting or preparing a proposed decree or order. *Kroblin v. RDR Motels, Inc.*, 347 N.W.2d 430 (Iowa 1984); *See NevadaCare, Inc. v. Dep't of Human Servs.*, 783 N.W.2d 459, 465–66 (Iowa 2010). Today, we repeat this admonition by incorporating it into this supervisory order. This admonition does not change permitted practices, but ensures that the rules and principles regarding *ex parte* communications are followed.

The court believes that just a single violation of this admonition by one judge in one case threatens not only the fair resolution of that case but the reputation of the bench, bar and entire system of justice. All judges are obligated to conduct their work in a way that preserves this reputation.

Accordingly, no judge or magistrate shall communicate with an attorney about preparing a proposed order or decree without including all other attorneys or self-represented litigants in the case in the communication. Iowa Code of Judicial Conduct rule 51:2.9.

Furthermore, in the interest of the administration of justice, all judges shall be required to attend one hour of continuing legal education by July 31, 2018 on the rules and principles of *ex parte* communications.

This education shall be offered at the Iowa Judges Conference in June. The educational program will be offered on July 17, 2018 at the Judicial Branch Building for those judges who are unable to attend the June conference.

Dated this 27th day of March, 2018.

The Supreme Court of Iowa

By Mark S. Cady  
Mark S. Cady, Chief Justice