

**JUDGE REYES' COMMENTS ON PROPOSED COMMENT ON  
EX PARTE COMMUNICATION IN SPECIALTY COURTS**

**General Recommendations**

- A. Consider changing "serving on a statutory specialty court" to "presiding over a statutory specialty court".
- B. Consider striking "judge reasonably believes such" as can foresee potential problems addressing what a judge believed and whether it was reasonable or not.
- C. "If such communications occur" should be omitted as ex parte and/or privileged communications are an inherent part of the specialty courts.
- D. Consider not to have automatic recusal / disqualification of specialty court judge for the following reasons:
  - a. What if there is not another judge in the county with jurisdiction, e.g. district judge for a felony case? Visiting Judge would need to be appointed.
  - b. If it is a misdemeanor case, then need another CCL Judge but could have Regional Administrative Judge appoint the District Judge to handle.
  - c. Jurors instructed to consider evidence for 1 purpose but not another so same expectation from a Judge should be allowed, e.g. hearsay statement admitted to show control of premises.
- E. Meaning of "after the conclusion of the party's participation in the specialty court program"?
  - a. Does this apply to successful completion of the program as well as termination of the program for non-compliance?

**Mandatory Recusal Option Recommendations:**

- F. Consider not making recusal mandatory for reasons stated in comment "D" under Current Proposal.
- G. Meaning of "proceedings"?
  - a. Include intermediate sanction hearings within the program? Include Motion to Revoke/ Application to Revoke Probation (MTR/ ARP) or Motion to Proceed With Adjudication of Guilt (MoPAG) or Termination from the Specialty Court Program?
  - b. Additionally, does use of "proceedings" as well as the second mandatory recusal statement I"B" in the Mandatory Recusal section]

now disqualify the judge from presiding over a family law case or future ARP/MTR or MoPA or criminal case?

**Discretionary Recusal Option Recommendations:**

- H. Suggest not referencing TRCP 18b specifically as basis for recusal/disqualification could arise in context of not only a civil case but also a criminal case. Not referencing TRCP 18b specifically allows appropriate applicable law to govern.
- I. Additionally, subsection (b)3 of TRCP 18b (judge having personal knowledge of disputed evidentiary facts) would likely always serve as basis for the specialty court judge's recusal. Specialty Court model promotes and standards mandate integral judicial involvement with the specialty court participants, their participation and treatment.

**Suggested Revision:**

It is not a violation of this Canon for a judge, when presiding over a statutory specialty court, to initiate, permit or consider ex parte or privileged communications insofar as such communications are [omit "reasonably"] necessary to fulfill the court's functions and the specialty court's procedures contemplate those communications. A party may object to the specialty court judge presiding over a final hearing or final trial on the merits of the party's case.