

MEMORANDUM

Date: September 9, 2019

To: Texas Supreme Court Advisory Committee
From: Judicial Administration Subcommittee
Subject: Ex Parte Communications in Problem-Solving Courts

For assignment and relevant background, see May 3, 2019 memorandum and attachments.

Votes at the May meeting:

1. Whether to include a comment that authorizes ex parte communications in specialty courts—**22 in favor; 3 against.**
2. Votes on whether to provide a recusal provision—**13 for mandatory recusal; 6 for discretionary.**

Current proposed comment, for discussion at September 13 meeting: see next page.

It is not a violation of this Canon for a judge—when serving on a statutory specialty court—to initiate, permit, or consider ex parte or privileged¹ communications insofar as the judge reasonably believes such communications are necessary to fulfill the specialty court’s functions and the specialty court’s procedures contemplate such communications. If such communications occur, then, after the conclusion of the party’s participation in the specialty court program, the specialty court judge

MANDATORY RECUSAL OPTIONS:

- A. must recuse from further involvement in the proceedings, absent written consent of the party.
- B. must not, absent that party’s written consent, preside over any case brought against that party in which the content of those communications is relevant to the merits of the case.

DISCRETIONARY RECUSAL OPTION:

should consider whether recusal is proper under Rule 18b of the Texas Rules of Civil Procedure, absent written consent of the party.

¹ To be discussed: whether to include privileged communications.