

Advisory Opinion #99-3

(adopted September 8, 1999)

Question: *When a judicial officer receives an ex parte communication by a court employee concerning facts affecting a pending case before that judicial officer, does full disclosure of the communication include disclosure of the identity of the employee who initiated the communication?*

Opinion: Canon 3B(7) prohibits judges from initiating or considering “ex parte communications or other communications made to the judge outside the presence of the parties....” The only partial exception is for scheduling or other administrative purposes. It has been noted that while the “Code of Judicial Conduct does not address the question of remedies...courts have held that prompt disclosure of the ex parte communication to all affected parties may avoid the need for other corrective action.” SHAMAN, LUBET, ALFINI, JUDICIAL CONDUCT AND ETHICS at 164 (2d ed. 1995).

Disclosure of ex parte communications should be a full disclosure. While the identity of the individual who initiated the communication may not always be a necessary element of full disclosure, where the parties have inquired as to the identity of that individual, absent any legal basis for maintaining the anonymity of that individual, the name should be disclosed. Court employees, in general, have no special privileges and should respect the integrity of the court process by insulating the judicial officer from factual information outside of the court record.