

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 5th day of November, 2008, the following order was made and entered:

In Re: Provisional Amendment to Canon 3 of the Code of Judicial Conduct

On this day came the Court, upon the recommendation of Linda Richmond-Artimez, Director, Mental Hygiene Services, Treatment Courts Project Director and Administrative Counsel, and proceeded to consider amendments to Canon 3 of the Code of Judicial Conduct.

Upon consideration whereof, the Court is of the opinion to and doth hereby provisionally approve said amendments, effective immediately, with any public comment to be filed with the Clerk of the Court by December 5, 2008. Justice Albright not participating. Senior Status Justice McHugh, sitting by temporary assignment, by administrative order entered on September 11, 2008.

The text of the amended rule to read as follows, with insertions indicated by underscore.

“Canon 3. A judge shall perform the duties of judicial office impartially and diligently.

* * *

(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:

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

(ii) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication and allows an opportunity to respond.

(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 functions include aiding 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 authorized by law.

(f) A judge may initiate, permit, or consider ex parte communications expressly authorized by law, such as when serving on therapeutic or problem-solving courts, mental health courts, or drug courts. In this capacity, judges may assume a more interactive role with parties, treatment providers, probation officers, social workers, and others.

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A True Copy

Attest: _____
Deputy Clerk, Supreme Court of Appeals