



STOP Grant – Judicial Training Program

Intersections of Domestic Violence and Human Trafficking

Ethically Effective Judicial Leadership and Ethical Impediments to
Judicial Responses to Human Trafficking Issues

Hon. Angelita Blackshear Dalton, Criminal Court Judge, Davidson County

Hon. Vicki Snyder, General Sessions Court, Henry County

Hon. Jeff Hollingsworth, Circuit Court Judge, Hamilton County

A close-up photograph of a traffic light. The top light is red and illuminated. The middle light is yellow and illuminated. The bottom light is green and illuminated. The background is a dark, textured surface, possibly a wall or a sign.

Judicial Communications In Domestic Violence & Human Trafficking Cases

Avoiding Improper Ex Parte Communications



Communicating in Specialty Courts

Human Trafficking and Treatment Courts

- Designed to provide clients with treatment and resources to address their problems
- Requires the sharing of information to understand the issues and needs of the clients
- What is the appropriate means of information sharing?



Code of Judicial Conduct Rule 2.9

Prohibits Ex Parte or Other Communications

- Outside the presence of the parties/lawyers
- Concerning Pending or Impending Matters



Code of Judicial Conduct Rule 2.9

Exceptions:

- A judge may consult with court staff/officials
- Whose functions are to aid in carrying out adjudicative responsibilities
 - Must avoid
 - Factual information not a part of the record
 - Judge does not abrogate the responsibility personally to decide the matter
- Ex Parte Communications expressly authorized by law is permitted



Code of Judicial Conduct Rules 2.9 & 2.12

Supervisory Duties of Judges

- Require staff, court officials, & others subject to the judge's discretion and control
- Act in a manner consistent judge's obligation under the Code



Code of Judicial Conduct Rule 2.10(C)

Statements on Pending/Impending Cases

- Require court staff, officials and others subject to the judge's direction to refrain from making public statements that the judge would be prohibited from making.



Code of Judicial Conduct Rule 2.9(B)

What to Do if You Receive an Ex Parte Communication

- Communication bearing on Substance of a Matter
- **SHALL** promptly notify the parties of the communication
- Provide parties with opportunity to respond



Issues involving Communications

Communications with “Stakeholders”

- Probation Officers, Social Workers, Treatment Providers
- Important Questions and Considerations:
 - Is the declarant in a position to “aid the judge in carrying out her adjudicative responsibilities?”
 - Does the communication “bear on the substance of the case?”



Scenario # 1

A judge sees a probation officer in the hallway. The probation officer advises the judge that after reading a warrant that charges the defendant with prostitution, it is her opinion that the defendant in the case is a victim of human trafficking.

- What, if anything, should the judge do about the comment?



Scenario # 1 (cont.)

- Is the declarant in a position to “aid the judge in carrying out her adjudicative responsibilities?”
- Does the communication “bear on the substance of the matter?”



Scenario # 2

The judge's bailiff overheard a minor tell her social worker that she does not want to reside in her current placement because her guardian has made unwanted physical contact and sexual advances toward the minor. The bailiff goes to the judge's chambers to report what he has overheard.

- What, if anything, should the judge tell the attorneys in the case about the comment?



Scenario # 2 (cont.)

- Is the declarant in a position to “aid the judge in carrying out her adjudicative responsibilities?”
- Does the communication “bear on the substance of the matter?”



Scenario # 3

Judge Dread opens his own mail while his assistant is on leave. One letter that he receives is from a respondent in an upcoming case who wants to “explain” that she is the victim of human trafficking.

- What, if anything, should the judge do about the letter?



Scenario # 4

Before the judge takes the bench to conduct a preliminary hearing in a sex trafficking and rape case, the victim approaches the bailiff and informs him that several associates of the defendant have been glaring at her outside of the courtroom. She tells the bailiff that their presence frightens her, and she would feel more comfortable if they were not inside the courtroom when she testifies. The bailiff instructs the associates to leave. When the judge takes the bench, the bailiff tells the judge, in a sidebar, the events that occurred.



Scenario # 4 (cont.)

Is this an ex parte communication?

- Is the declarant in a position to “aid the judge in carrying out her adjudicative responsibilities?”
- Does the communication “bear on the substance of the matter?”



Scenario # 4 (cont.)

Same scenario, except the defendant's associates were hostile with the bailiff when he spoke with them?

➤ What should the judge do?



Proper Communication

- Promotes public confidence in the courts and trust in the system.



Judicial Involvement in Community Events

How Involved Can You Be?



1. A juvenile judge is asked to attend a fundraiser in his/her community that will assist children of sex trafficking.

Can the judge attend?



2. The judge has created a working group to look at services for human trafficking victims in the community, and one of the members of the group is a service provider.

Can the judge refer victims to that provider for services?



3. The judge is asked to speak about human trafficking in the community at the Kiwanis Club.

What can he/she say?



Judge's Role

Ethical Barriers Judges Face Asking Questions During
Human Trafficking Hearings



QUESTION:

How far should a judge go in questioning witnesses in a case that may involve human trafficking?



Scenario 1

The Department of Children's Services is seeking termination of a mother's parental rights. The grounds are failure to remedy the conditions that led the Department to remove the child from the mother's home.

The judge has reason to suspect the mother is a victim of human trafficking and her failure to remedy is not willful. The mother's appointed lawyer is not picking up on the clues.



- **May the judge ask questions of the mother or other witnesses to determine if the suspicions have some merit?**
- **Should the judge suggest lines of questioning to the appointed lawyer?**
- **Should the judge call both lawyers to the bench, express the suspicions and have them ask questions on that issue?**



Scenario 2

The judge is hearing a custody case. The father has a lawyer. The mother is pro se.

The mother is from Central America, and the judge has reason to believe she may be a victim of human trafficking.



To what extent may the judge “take over” the proceedings to determine whether the human trafficking suspicions have merit?



Supreme Court Rule 10, 2.2 – Comment says:

“It is not a violation of this Rule for a judge to make reasonable accommodations to ensure self represented litigants have their matters fairly heard.”