

Colorado Supreme Court
Colorado Judicial Ethics Advisory Board (CJEAB)

C.J.E.A.B. Advisory Opinion 2026-01
(Finalized and effective February 4, 2026)

BACKGROUND:

The requesting judge is a district court judge who presides over the Veterans Treatment Court (“VTC”) in his jurisdiction. He recently received notice from the District Attorney of his jurisdiction that, on February 5, 2026, that office will stop participating in the VTC. Specifically, the District Attorney has given formal notice of withdrawal from a Memorandum of Understanding (“MOU”) under which the VTC operates.

VTCs are treatment courts that were authorized in 2010 under section 13-5-144, C.R.S. The authorizing statute provides that

[t]he chief judge of a judicial district may establish an appropriate program for the treatment of veterans and members of the military. In establishing any such program, the chief judge, in collaboration with the probation department, the district attorney, and the state public defender, shall establish program guidelines and eligibility criteria.

A steering committee set up by the requesting judge’s judicial district then created a governing document entitled “Veterans Treatment Court Policies and Procedures,” (2025) (hereafter “VTCPP”). As pertinent here, the voting members of the steering committee included representatives from the judicial district, probation, the District Attorney’s Office, the Public Defender’s Office, and the Sheriffs’ offices in the district (the “Stakeholders”). VTCPP at 4. The VTCPP sets out the program guidelines under which the VTC can operate in the judicial district, as contemplated by the authorizing statute. *Id.* at 4-28.

The VTCPP explains that the VTC was established “to address the growing number of veterans involved in the criminal justice system.” *Id.* at 3. Participants in VTC must apply and are all veterans of the armed forces who satisfy certain eligibility requirements, such as meeting the diagnostic criteria for a behavioral health disorder and having a criminal case filed in the requesting judge’s judicial district (“Participants”). *Id.* at 7. According to the requesting judge, all cases in VTC are post-conviction, and all Participants have been sentenced to three years of probation supervised by VTC. The goals of VTC include assisting Participants to achieve long-term sobriety, increasing Participants’ treatment involvement, and improving Participants’ engagement in support. *Id.* at 3. As part of the management of the program, the VTCPP provides that before any VTC docket, the Stakeholders will participate in a staffing meeting. *Id.* at 15.

In order to facilitate those staffing meetings, and pursuant to the VTCPP, the Stakeholders, as well as other interested parties, such as treatment providers, entered into the MOU. The signatories to the MOU—in addition to the Colorado Judicial Department, the

District Attorney's Office, and the Public Defender's Office—included the Sheriff's Office for each of the counties in the judicial district and several organizations that provide addiction, behavioral health, and other health treatments. MOU at 1. The MOU specifies that “[a]ny Party other than the [Judicial] District may terminate its participation in the MOU effective upon 30 days written notice to the other Parties.” *Id.* When such a termination occurs, the MOU nevertheless remains effective among the other signatories as long as the District concludes that the MOU's purposes can still be accomplished. *Id.* Notably, the MOU does not contemplate that the VTC program will dissolve upon the withdrawal of a single member.

As set forth in the MOU and the VTCPP, the weekly staffing meetings are attended by the requesting judge and several other court employees: the VTC Coordinator, the Veteran's Peer Mentor Coordinator, the Division Clerk, a probation officer, and a probation supervisor. MOU at 1; VTCPP at 15. Generally, a representative of each of the other MOU signatories also participates and all are invited to the staffing meetings. *Id.* Notably, the representative of the Public Defender does not act as the Participants' attorney, but they may be called upon to advise those Participants who face potential consequences for non-compliance. MOU at 5; VTCPP at 18.

The requesting judge states that at these staffing meetings, which are held in a conference room that is not accessible to the public, the attendees discuss each VTC Participant who is set to appear on the VTC docket that week, and that Participant's compliance with the terms and conditions of the VTC probation sentence since the last court date. These conversations may address the Participants' results on substance use tests, attendance at court-ordered treatment, and attendance at meetings with probation. The discussions may also touch on the individual circumstances of each Participant's life that might affect their recovery and compliance, such as employment, housing, relationships, family, and physical health concerns. The attendees may also discuss whether the probation officer intends to file a complaint to revoke probation for noncompliance. Overall, the meeting attendees discuss how to help the VTC Participants succeed and comply with the terms and conditions of VTC probation. Because confidential information is shared at these meetings, including protected health information, only MOU signatories may attend. The MOU contains detailed guidelines regarding the handling of the confidential information that is discussed in staffing meetings. MOU at 6-7.

The VTCPP also provides for observers to attend staffing meetings under certain circumstances. VTCPP at 28. Observers are required, as a condition of their attendance, to sign a confidentiality agreement. *Id.* The requesting judge states that, after the DA's withdrawal becomes effective, the other MOU signatories could extend an open invitation to the DA to attend on a similar ad hoc basis, but the DA would be required to sign a similar confidentiality agreement, as well as an agreement not to use information obtained in those meetings to prosecute VTC participants.

After the staffing meeting, the attendees move to the courtroom and call the docket of VTC Participants. Those proceedings are public and recorded. The requesting judge notes that “[e]ven though the DA's Office would no longer be a member of the VTC team and no longer present at staffing meetings, they would be able to attend all docket settings in the courtroom.” If a critical stage, such as a motion to terminate probation (successfully or unsuccessfully), will

take place during the docket, the requesting judge states that the MOU signatories will notify the DA's office so it can comply with the Victim Rights Act.

The requesting judge has asked whether he may continue to participate in these multidisciplinary staffing meetings that are part of the VTC program. More specifically, the requesting judge asks whether his participation in meetings that include the representative of the Public Defender's office, but not a representative of the District Attorney's Office, would constitute unethical ex parte communications.

ISSUES PRESENTED:

Whether judges can participate in meetings with members of an interdisciplinary team, including a representative of the Public Defender's Office, as part of a problem-solving or treatment court, despite the non-participation of the District Attorney's Office.

Whether judges can participate in meetings with members of an interdisciplinary team as part of a problem-solving or treatment court, despite the non-participation of the District Attorney's Office, if the representative of the Public Defender's Office is excluded from the meetings.

SUMMARY:

Under the Colorado Code of Judicial Conduct ("Code"), the judge may participate in treatment court staffing meetings held in the absence of a representative of the District Attorney because that office has notice of the meetings and has chosen not to participate. Thus, the meetings are not "ex parte." Even if those meetings were to be considered ex parte, the Code provides that a judge is permitted to engage in ex parte communications as authorized by law or by consent of the parties. In this case, the VTC was authorized by statute and established pursuant to the requirements thereof, including through the participation of the District Attorney's Office. The judge can, therefore, participate in the staffing meetings under the safe harbor provision of Rule 2.9.

The judge may attend the VTC staffing meetings regardless of whether a representative of the Public Defender is present. Should the probation officer disclose an intent to file a complaint seeking the revocation of a Participant's probation, it would be best practice for the judge to notify the District Attorney's Office and, if absent, the Public Defender's Office.

APPLICABLE PROVISIONS OF THE CODE:

Rule 1.2 provides that "[a] judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety."

Rule 2.3(A) states that "[a] judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice."

Rule 2.9 of the Code addresses ex parte communication. It directs that “[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 or their lawyers, concerning a pending or impending matter” except under certain exceptions. As pertinent here, subsection (A)(5) provides, “A judge may initiate, permit, or consider any ex parte communication when expressly authorized by law or by consent of the parties to do so.” Comment [4] to Rule 2.9 goes on to note:

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

ANALYSIS:

A judge is generally prohibited from engaging in ex parte communications about pending or impending matters. Black’s Law Dictionary defines “ex parte” as something “[d]one or made at the instance and for the benefit of one party only, and without notice to, or argument by, anyone having an adverse interest; of, relating to, or involving court action taken or received by one party without notice to the other.” *Ex Parte*, Black’s Law Dictionary (12th ed. 2024). When all parties have notice of a proceeding, yet one or more voluntarily choose not to participate, the proceeding is not ex parte. *See, e.g., C & F Packing Co. v. Doskocil Cos.*, 126 F.R.D. 662, 688 (N.D. Ill. 1989) (noting that no ex parte proceeding took place where both parties were notified of a hearing but one chose not to attend, as this was “no different from innumerable other instances in which one party fails to show up for a motion or status hearing held on the record”); *Cagle v. Davis*, 513 S.E.2d 16, 21 (Ga. App. 1999) (determining that no ex parte communication took place where the complaining party was notified, through counsel, of each contested communication); *cf. In re Green*, 11 P.3d 1078, 1087 n.8 (Colo. 2000) (noting that, where the opposing party received copies of all of an attorney’s correspondence with the judge, the attorney did not engage in “ex parte” communications).

The requesting judge has noted that the VTC program would welcome the District Attorney’s Office to re-sign the MOU and rejoin the program should it decide to do so. In addition, he explained that in the future the steering committee may authorize the DA to attend on an ad hoc basis, if they sign a confidentiality agreement, including an agreement not to prosecute Participants based on information disclosed during the staffing meetings. Thus, the decision not to attend appears to rest solely with the District Attorney’s Office and is not the result of a lack of notice or invitation. It is not clear, therefore, that the meetings at issue satisfy the definition of “ex parte.”

In addition, although this Board has not previously considered the issue presented here, the New York Advisory Committee on Judicial Ethics has published several opinions addressing so-called “ex parte communications” in the context of problem-solving and treatment courts. Most pertinent here, in NY Jud. Eth. Adv. Op. 24-117, that Committee concluded that in the context of a treatment court, these sorts of proceedings are permissible, even in the absence of a prosecutor. Key to that conclusion was the Committee’s observation that sometimes the

prosecution may “choose not to appear at treatment court sessions,” despite having “a number of options to provide for a representative to participate.” *Id.* at *3. The Committee emphasized that participation in these sorts of treatment courts is “often post-plea” and “the treatment court judge is not expected to make determinations of guilt on the underlying criminal case.” *Id.* at *4. Thus, the Committee concluded that even if such communications are “ex parte,” in the context of treatment courts, a judge would not violate his ethical obligations by participating in the absence of a prosecutor and possibly even defense counsel. *Id.*

As in New York, the Board concludes that, even if these staffing meetings could be construed as “ex parte” when conducted in the absence of the prosecution, the ethics rules are intended to permit a judge to participate in these sorts of communications when doing so is for the purpose of serving on therapeutic or problem-solving courts and, where, as here, the programs are authorized by law. *See Rule 2.9(a)(5); Rule 2.9 Comment [4].*

The enabling statute provides that the VTC program guidelines and criteria have been established by the Chief Judge “in collaboration with” the other members of the steering committee. § 13-5-144. Thus, the architecture of the program was created, in part, by the District Attorney’s Office. In addition, it is notable that the MOU, by its terms, and as agreed to by the DA’s Office, provides for the continued existence of the VTC and the MOU itself, even following the withdrawal of one or more parties. MOU at 1.

Finally, as in New York, VTC takes place post-conviction and sentencing. The judge’s role is more interactive and designed to be part of the team helping Participants to recover, achieve stability, and manage their recovery. As explained by the requesting judge, the information discussed in staffing meetings is the same information later discussed in open court on the docket—the meetings simply allow the entire team to work together to support Participants’ compliance with the terms of the VTC program. At no time do the members of the VTC program undertake modifications of the terms and conditions of probation or alter the Participants’ sentences in any way.

Thus, a judge does not violate his ethical obligations by continuing to participate in VTC staffing meetings, even in the absence of a representative of the District Attorney’s Office. Nor is the judge required to exclude the representative from the Public Defender’s Office.

As a matter of prudence, it is best practice for the court to notify the District Attorney’s Office and, if needed, the Public Defender’s Office if, during a staffing meeting, the probation department indicates an intent to file a complaint seeking revocation of a Participant’s probation.

CONCLUSION:

The Code does not prevent a judge from participating in VTC staffing meetings, even in the absence of a representative from the District Attorney’s Office. The Code also does not require exclusion of the Public Defender’s representative in order for the judge to participate.

FINALIZED AND EFFECTIVE this 4th day of February, 2026.