

# Brief Explanation of Ex Parte Communications:

## Pretrial Hearings: Art. 28.01, CCP

- (1) Prosecutor must be present (unless it is simply to inform defendant of rights and procedures)
- (2) Resolve contested issues
- (3) Defense should have 10 day's notice before trials or pretrials in which to file motions.

## Judge's Role at Jury Trial

- (1) Preside over the trial and protect the rights of those involved.
- (2) Ensure that attorneys and *pro se* defendants follow the rules of evidence and procedure.
- (3) Instruct the jury as to the law involved in the case through a jury charge.

## Prosecutor's Role

- (1) Makes ultimate decisions about who to charge.
- (2) Decides what cases to dismiss.
- (3) Gathers witnesses for the State.
- (4) Has discretion over the exact wording, number, and nature of complaints.
- (5) Represents the State of Texas, not the court.

## Ex Parte Communication

### Canon 6C(2):

A justice of the peace or municipal court judge, except as authorized by law, shall not directly or indirectly initiate, permit, nor consider *ex parte* or other communications concerning the merits of a pending judicial proceeding.

## Prohibited Communications

- (1) Note that an *ex parte* communication can be either oral or written.
- (2) A judge is prohibited from personally investigating the facts of a case such as driving by the scene of the offense/accident; talking with a defendant on the telephone; reading letters from a defendant telling his side of the story; listening to the defendant telling his side of the story in person; and reading the officer's notes on the back of a citation.

## Communications NOT Prohibited

- (1) uncontested administrative matters,
- (2) uncontested procedural matters,
- (3) magistrate duties and functions,
- (4) determining jurisdiction of claim or dispute,
- (5) determining a more appropriate judicial or non-judicial forum for the claim or dispute,
- (6) mitigating evidence following a plea of *nolo contendere* or guilty, or
- (7) any other matters where *ex parte* communications are contemplated or authorized by law.