

Judicial Ex Parte Communication—From the view of Taiwan

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1. Regulations of ex parte communications in Taiwan

For a broad sense, according to Article 18 of Judges Act, a judge may not engage in any act detrimental to the dignity of the position or credibility, and must strictly adhere to the duty of confidentiality. The duty of confidentiality must continuously be adhered to even after leaving the position. Ex parte communication may be considered as an act detrimental to the dignity or credibility of the position as judge, or the violation of the duty of confidentiality.

In addition to the general regulation mentioned above, according to Article 13(2) of Judges Act, a judge shall adhere to the Code of Conduct for Judges, whose content shall be formulated through consultation by the Judicial Yuan, which is the high council of the judiciary in Taiwan, with judges' representatives from across the nation. In the light of this article, the Code of Conduct for Judges (“Code of Conduct”) has been promulgated by the Judicial Yuan. According to Article 15 of the Code of Conduct, a judge, barring the exceptions mentioned below, is prohibited from ex parte communications concerning the pending case he/she is dealing with. The Code does not distinguish whether the communication is made on intent or by accident. As a result of that, it shall be interpreted as that such prohibition against ex parte communication does not turn on intent.

2. Permitted Communications

2-1. In emergency and unable to reach the opposing party

The Code of Conduct does not prescribe the clear definition of “emergency”, nor does it limit the communication to be dealt with non-substantive matters. From my point of view, it allows a quite broad room for the permitted communication of “emergency”.

2-2. Under consent of the opposing party

2-3. Scheduling, procedure matters or other non-substantive matters in justifiable situation

2-4. Ex parte communication allowed by law

2-5. Necessary due to the nature of the matter

In my point of view, it's apparently a vague prescription and requires further

specification in practice.

In any of the exceptions above, the judge shall promptly inform the opposing party the subject matter of the ex parte communication, unless otherwise prescribed by law.

3. Social media

In Taiwan, once you graduate from college of law, you are qualified to take the national exam for judge/prosecutor. Once you pass the exam, after two years training, you serve as a judge or prosecutor. According to the recent survey in Taiwan, the average age of beginning of serving as judge is about 27. As a result of the majority of judges from young generation, nearly all judges have all sorts of social media accounts and are relatively active in social media.

Nevertheless, there is no specific regulation prescribing the common use of social media of judges. Only the Article 16 of the Code of Conduct prescribes that the judge shall not disclose or use the confidential information which he/she has knowledge because of the position of judge. In addition, according to Article 17 of the Code, judge shall not publish any statement about the pending or impending case if the comment may influence the impartiality of adjudication or procedure. However, this rule shall not apply if reasonably expected that the statement has no effect on the impartiality of adjudication or procedure, or the statement is a necessary public explanation due to performance of the duty. Besides, the judge shall demand the law clerks under his/her supervision to comply with the same rule mentioned above.

4. Some examples to be discussed

4-1. Judge uses his/her social media account to publicly(or semi-publicly which only public to “friends”) share his/her experience or post brief comments (or just express pure feelings) about the pending case(which may be or may be not dealt by him/her), with the name or any possible information that could be linked to the individual party disguised.

4-2. Judge expresses feeling(eg. “like”) or comment or reply to another judge’s post about a pending or impending case which may be or may be not dealt by him/her.

4-3. Judge expresses feelings(eg. “like”) or comment or reply to a prosecutor’s or an attorney’s (who may be or may not be a “friend”) post about a pending or impending case which may be or may be not dealt by him/her.

While the examples mentioned above are all very common practices of my Taiwan colleagues when using the social media, it's still unclear whether such practices may be considered as statements which may "influence the impartiality of adjudication or procedure". In addition, due to the common misunderstanding or simply lack of legal knowledge of Taiwanese people, many the situations mentioned above occur, simply because the judge is trying to clarify the misunderstanding of the public or give some basic education of rule of law. As a result of that, it's also uncertain whether such practice may be seen as "necessary public explanation due to performance of the duty".