

(0009J)

ETHICS ADVISORY PANEL  
Opinion #92-89, Request #317  
Issued November 18, 1992

An attorney seeks Panel advice with regard to the following circumstances. During the preparation of a case, the attorney drafted a motion to be heard in court. Because the motion would not be heard for sixty days the attorney contacted the judge to expedite the hearing of the motion. The attorney informs the Panel that ex parte communications regarding "the substance of the motion" never occurred. The attorney asks whether the opposing attorney must be notified prior to obtaining the expedited court date.

It appears that the attorney is asking the Panel to comment on substantive law rather than ethical conduct. The Panel cites Rule 3.5(b) entitled "Impartiality and Decorum of the Tribunal" which states that "A lawyer shall not: Communicate ex parte with such a person except as permitted by law." The Panel is unaware of any law which allows for ex parte communication. In this regard, "except as permitted by law" Rule 3.5(b) states that ex parte communication is a violation of the ethical standard set forth in the Rules of Professional Conduct.