

STATE OF WASHINGTON
ETHICS ADVISORY COMMITTEE
ETHICS OPINION 19-04

Question

Can a judge be the executor/trustee of a will/trust and guardian of a child should the child's parent pass away? The adult is a very, very close friend of mine. We grew up together since the age of 2, and I have known her for 40 years. We have remained extremely close throughout our lives. We live in different states, so we do not see each other on a regular basis, but we have stayed at each other's houses, and we have shared holidays together. We have visited each other and have stayed extended time with each other. She is welcome at my house at any time, with or without notice. Both our families know and recognize that we have been best friends since childhood. My spouse has even called her regarding big family events when I was unable to. We share meals when we are together. We speak on the phone or text nearly every day and at least several times a week at the minimum. We share everything from work frustrations, relationship issues, and child rearing questions and concerns. We offer each other emotional support and have been there for each other through all of life's big events. She is like a sister to me and I care for her child like I do my own niece and nephew.

Answer

The Code of Judicial Conduct (CJC) prohibits a judge from accepting an appointment to serve in a fiduciary position such as executor, guardian, or trustee except for the estate, trust, or person of a member of the judge's family, and then only if such service will not interfere with the proper performance of judicial duties. CJC 3.8. The CJC describes "member of the judge's family" as a spouse, domestic partner, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. CJC Terminology.

In *In re Horgos*, 682 A.2d 447, 451-452 (Pa. Ct. Jud. Disc. 1996), the court distinguished mere friendship from a close familial relationship by evaluating eight factors: "(1) intimacy of address, (2) recognition by others of a close relationship, (3) shared meals, (4) frequent contact either by phone or in-person, (5) shared holidays, (6) shared family events, (7) assistance with physical medical, legal or emotional needs, and (8) longevity [of the relationship]."

In this query, the judge and friend grew up together and have known each other for 40 years. Although they live in different states, they stay in touch by phone almost daily, spend extended time together, share holidays and family events together, provide emotional support for each other, and both families recognize the nature of the relationship. The friend is like a sister to the judge, and the judge cares for the friend's child like the judge's own niece and nephew. These facts support a close familial relationship between the judge and friend of 40 years. Based on the long and involved relationship between the judge and friend, this appears to be more than just a mere friendship, but appears more akin to a close familial relationship. Therefore, the judge may serve as executor/trustee of the friend's will/trust and as guardian of the friend's child in the event of the friend's death, provided serving in such capacity will not interfere with the proper performance of judicial duties.¹

¹ We acknowledge that EAC 87-07 reached a different result. However, unlike the question posed in this opinion, the requestor in EAC 87-07 described the relationship as merely a "close long time friend" with no further elucidation of the extent of the friendship. Also, the definition of "member of the judge's family" that expanded that term to include "other relative or person with whom the judge maintains a close familial relationship" was not added to the Code until 1995. Therefore, EAC 87-07 does not control our decision here.