

STATE OF WASHINGTON
ETHICS ADVISORY COMMITTEE
ETHICS OPINION 21 - 03

Question

1) May the child of a Superior Court Judge be included on a pro tem commissioner and pro tem judge list for the Superior Court if the judge is not involved with decisions related to the judge's child's pro tem application. For example, the judge would not be involved with decisions such as: 1) including the judge's child on the pro tem list; 2) determining when the judge's child will be called on to pro tem; 3) revision motions based on a ruling made by the child as a pro tem commissioner; and 4) supervising the child in their role as a pro tem. In this court, the court has a personnel committee that oversees the additions to the pro tem lists based on standardized qualifications and the judge is not involved with the personnel committee and would abstain on any of the committee's recommendations or actions if it they were necessarily discussed with the entire bench. Additionally, the judge's child would disclose his/her relationship to the judge to the parties and, if acting as a pro tem judge would seek agreement from both parties to hear the case.

2) Is the analysis any different if the judge is the current presiding judge when the judge's child applies for pro tem appointment?

3) Is the analysis any different if the judge is the assistant presiding judge when the judge's child applies for the pro tem appointment?

Answer

CJC 2.13(A)(2) requires judges to avoid nepotism and unnecessary appointments when making administrative appointments.

1) The administrative authority to appoint pro tempore commissioners and judges is reserved for the Presiding Judge. GR 29. In the first question, the judge parent is not the appointing authority for the bench's pro tempore commissioners and judges. In the cases where a close relative of a judge is appointed to, or employed by the same court the judge serves on, the Committee has previously advised that using objective selection protocols (EAO 20-06) and objective supervisory protocols (EAO 05-09) helps

to ensure that an applicant is sufficiently qualified, is not being appointed due to their relationship with the judge parent, and that the judicial officer has no supervisory authority over the family member. Use of objective selection and supervision protocols assist in avoiding the appearance of nepotism, so long as the judge abstains from any part of the process that recommends or confirms the appointment and the judge parent has no supervisory authority over the judge's child.

2) The analysis is different if the judge parent is the current Presiding Judge as that judge has the paramount responsibility for the management and administration of the court's business and personnel. GR 29(e), (f), (h). While personnel committees and other employees can vet applicants and make recommendations regarding administrative appointments, the Presiding Judge cannot delegate their authority to make such administrative appointments or their responsibility to supervise the daily operation of the business of the courts to others. This analysis follows the Committee's previous advice in EAO 92-11, which prohibited a judge parent from appointing their child to appear as a judge pro tem in their court. Due to the Presiding Judge's responsibilities and authority to make administrative appointments and the inability to delegate such authority to a committee, the judge's child should not be appointed or act as a pro tempore judge or commissioner while their parent is the Presiding Judge.

3) The analysis is also different if the judge parent is the court's Assistant Presiding Judge because the intent of that role is to become the Presiding Judge during the presiding judge's absence or upon the request of the Presiding Judge, which would then require the Acting Presiding Judge to perform such further duties as the Presiding Judge. GR 29(a)(1). As the Assistant Presiding Judge, the judge parent should not be involved in pro tem selection, appointment, or supervision if the judge's child applies for or is selected or appointed as a judge pro tempore in the court. Should the Assistant Presiding Judge become the Acting Presiding Judge for any reason, the judge's child should not be appointed or act as a judge pro tempore in the court while the judge parent is the Acting Presiding Judge.