

ADVISORY COMMITTEE
ON STANDARDS OF JUDICIAL CONDUCT

OPINION NO. 16 - 2019

RE: Propriety of a family court judge testifying as a witness in an out-of-state hearing for the judge's friend in a custody/relocation action.

FACTS

A family court judge inquires into the propriety of appearing (via telephone) as witness in an out-of-state proceeding. A personal friend of the judge's is seeking to move to South Carolina with her daughter, but must seek the court's permission to relocate.

CONCLUSION

A family court judge should not appear as a witness for a friend in a custody/relocation hearing.

OPINION

Canon 2B states that a judge "shall not testify voluntarily as a character witness." The commentary to that section states: "A judge must avoid lending the prestige of judicial office for the advancement of the private interests of others. For example, a judge must not use the judge's judicial position to gain advantage in a civil suit involving a member of the judge's family." We think this Canon applies to a situation in which the judge would be testifying for a friend in custody/relocation matter, even if that matter is out of state. We recognized that in a previous decision, we found that a part-time judge who also practiced real estate law could serve as an expert witness in a case concerning mobile home closing practices. Op. No. 16-2001. However, that opinion can be distinguished from the inquiry here. In 16-2001, we found that the

judge/attorney could serve as a witness, based on his/her knowledge gleaned from practicing real estate law, but cautioned that the judge should not include testimony that he/she was also a judge. We determined that revealing the judgeship could unfairly influence the strength of his/her testimony and/or lend the prestige of office to the advancement of others.

In the pending inquiry, we cannot conceive of a way in which the judge could be a witness for the judge's friend without disclosing his/her role as a family court judge, which is a full-time position, unlike the one in 16-2001. Thus, the judge's testimony could unfairly influence the judge in the custody/relocation action and/or lend the prestige of office to the advancement of the interest of the judge's friend. Thus, the judge should decline the request to be a witness in the custody/relocation matter.

s/ Letitia H. Verdin
LETITIA H. VERDIN, CHAIR

s/ Usha Jeffries Bridges
USHA JEFFRIES BRIDGES

s/ Keith M. Babcock
KEITH M. BABCOCK

November 4, 2019