

MINUTES

Historical Society of the United States Courts in the Eighth Circuit

Executive Committee Conference Call

November 8, 2004

12:15 p.m.

Officers present:

Hon. Richard G. Kopf, President

Frances Ross, Vice President

Ann Fessenden, Secretary-Treasurer

Others present:

Tom Boyd, Past-President

Joan Voelker, Library Staff

Historical Society President Judge Kopf initiated the conference call at 12:15 p.m. He noted that Judge Peterson was unable to participate in the call.

Parent Treasurer

- Fessenden Resignation/Appointment of Greenbaum as Acting

Chief Judge Kopf announced that as a result of the Administrative Office (AO) memorandum of July 14, 2004, and Advisory Opinion No. 104, Secretary-Treasurer Ann Fessenden felt the need to resign her duties as Treasurer of the parent Society. He further announced that Sheila Greenbaum was willing to assume those treasurer duties. Ms. Fessenden identified Ms. Greenbaum as a private attorney in St. Louis who approximately five years ago resigned as Senior Staff Attorney for the Eighth Circuit, a position she had held for about 10 years.

Ms. Fessenden reported that she had closed the parent Society's checking, savings, and certificate of deposit accounts while in St. Paul recently. They issued her one check for all accounts in the amount of \$13,958.69.

Chief Judge Kopf moved the executive committee appoint Sheila Greenbaum as acting treasurer of the parent Society and that they have her open an account at an FDIC banking institution of her choosing. The motion carried.

- Issues Relating to Parent Bank Account: Type of Account(s), Signatures, etc.

The executive committee then discussed the type of account to be opened and how checks would need to be signed. Chief Judge Kopf said the bylaws did not require dual signatures by the

treasurer and the president, as they had been operating. It was agreed that only the signature of the treasurer would be required in the future. Judge Kopf suggested, and the committee agreed, that Ms. Greenbaum would deposit all the parent funds into one checking account, so as to be more fluid given the current state of flux of the Society, and the type of checking account could be of Ms. Greenbaum's choosing. President Kopf pointed out that the bank may require his and Vice President Frances Ross' signature as a corporate resolution.

Update on Branch Treasurers; Report Made to Judicial Council

Ms. Fessenden told the executive committee that at the request of Chief Judge Loken, she had surveyed the clerks of court in the Eighth Circuit in order to determine the level of compliance with the AO's memorandum on historical society fund handling by court staff. Ms. Fessenden presented a report with the results at the September Eighth Circuit Judicial Council meeting. She then shared a summary of those results with the committee: the Nebraska branch had been in compliance, the parent organization and six branches were not in compliance but were in the process of finding non-court treasurers and having funds transferred, two branches appeared to have no funds, and one branch's funds were part of its court's attorney admission fee fund (hereafter referred to as AAFF). Ms. Fessenden told the committee there were a couple of discrepancies among the branches in what to do with funds after accounts were closed. After an audit, the Eastern District of Arkansas branch closed its account and deposited the monies in the AAFF. The South Dakota branch closed its account, but after being unable to find anyone to accept the funds, was planning to transfer the funds back to the treasury because an auditor told them depositing in the AAFF was not permissible.

Judge Kopf commented that he believed an accountant would not have a problem if money originally coming from the AAFF were redeposited into the AAFF, but an accountant would object if the funds came from other sources. Ms. Fessenden and Judge Kopf agreed that many issues would arise should the Historical Society dissolve.

Implications of AO's Advisory Opinion No. 104

Chief Judge Kopf gave a brief summary of his analysis of the AO's Advisory Opinion No. 104. He said that basically if the parent Historical Society and its branches were to continue as is but desire at times to raise non-AAFF funds, this would create problems for the judges and court staff in the Society. He said he felt the Historical Society could probably function just as well if it was agreed to not use AAFF, but he suspected that this would conflict with the Society's articles of incorporation, forcing the Society to be radically restructured. The third alternative, Judge Kopf outlined, would be to dissolve the Historical Society. Chief Judge Kopf suggested soliciting the advice of Chief Judge Loken and the chief district judges of the circuit.

The executive committee then commented on Judge Kopf's interpretation of Advisory Opinion No. 104. Frances Ross felt the Judge was taking a very practical approach, while Tom Boyd expressed some reservation. While he appreciated the Judge's analysis, he said he did not see the need to dissolve the Historical Society. He said he was, however, sensitive to the situation of court staff. Mr. Boyd said he agreed with the Judge's practical observation that there is limited

involvement of the bar in the Society, but he felt that a successful Society ultimately depends on the meaningful involvement of the court. Without the court's active participation, Mr. Boyd said he saw no need to continue the Historical Society.

Judge Kopf asked Mr. Boyd that if he agreed that if the court were interpreted to be running the Historical Society, that it would need to be restructured or resolved in some way. Mr. Boyd replied that if that premise were true, yes, the Society would need restructuring. He felt, however, that according to the language of the Advisory Opinion, it could be argued that the Society is separate from the court. He further felt the Society could pursue funds without being in violation of the new rules.

Ann Fessenden commented that she agreed more with Judge Kopf's interpretation of the Advisory Opinion. In her view, the court does most of the work in operating the Society, while there are few private attorneys who are actively involved, with Mr. Boyd being one of the few. As an illustration she pointed out that the U.S. Courts Library has the Historical Society files, and the Society uses the Library's address as its business address.

Mr. Boyd said he had spoken with Brad Williams of the 9th Circuit Historical Society and Bruce Ragsdale of the Federal Judicial Center History Office regarding the Advisory Opinion No. 104. Their feeling was that the opinion came from a perceived problem with raising money for education centers rather than the regular functioning of the historical societies.

Judge Kopf asked Mr. Boyd if he felt, assuming that the Society did not dissolve, that making judges non-voting members would help. Mr. Boyd replied yes, though he felt that judges would be less likely to attend meetings if they had no vote. Further, he felt it was important to have judges as officers.

Judge Kopf pointed out that the problem with judges holding office is the use of the word "may" in the line in the Advisory Opinion which states, "... the Committee believes that the service of a judge or judicial employee as chairperson or president of the organization may raise ethical concerns." He said he would be reluctant to hold office himself since he's not sure what that means.

He further noted that there are two ethical issues: one for the individual judges and one for the institution. He added that if the Society wants judges to vote, perhaps lay persons could be given 2 votes each and judges 1 vote each so the lay votes out weigh the judges'.

Frances Ross asked if perhaps the Society could ask the AO for their interpretation of the Advisory Opinion. Chief Judge Kopf replied that the Committee on Codes of Conduct would likely not look at our Historical Society and tell us what is in compliance and not in compliance, but they may respond to specific issues.

Ms. Fessenden then asked the executive committee their opinion as to whether, should the Historical Society be dissolved, it would be acceptable for private attorneys to donate their time. Judge Kopf felt it would. Mr. Boyd noted that the Minnesota branch makes use of both AAFF

and attorneys' time. Ms. Fessenden commented that if the Society were to dissolve, she would like to see something take its place that allows contributions of time from private attorneys.

Judge Kopf said it was apparent that the executive committee had differing views about the seriousness of the situation. He proposed that the committee ask Chief Judge Loken and the Eighth Circuit Judicial Council what they would like the Historical Society to do. After receiving their comments, the executive committee could again meet, followed by a meeting of the Historical Society board of directors. Judge Kopf added that he had not sent his memo of analysis to the board, as he did to the executive committee, because he wanted to alert the chief judges of the situation before they would receive questions from the board. He proposed seeking comment from Chief Judge Loken and the chief district judges so the tenor of their reactions could be conveyed to the Historical Society board and help the Society determine how to proceed. All thought this was a good approach.

Since the Judicial Council is likely to meet during April court week, Judge Kopf proposed asking for their comments by May 1, 2005. He then set the next executive committee meeting for Monday, May 16, 2005, at 12:15. At this meeting, a date would be set for a meeting of the board of directors.

Report on State and Federal Court Historical Societies Annual Meeting, St. Louis, Sept. 30 - Oct. 2, 2004

Ann Fessenden reported that the State and Federal Court Historical Societies annual meeting in St. Louis had been a success. Approximately 30 persons attended the Thursday night reception at the Thomas F. Eagleton U.S. Courthouse, despite competition from the local bar association dinner, and a little under 20 persons attended the Saturday sessions at the Courthouse. She noted that thanks to Tom Boyd's fund-raising efforts, the St. Louis firm of Armstrong Teasdale contributed \$500 for the reception. The Eighth Circuit Historical Society contributed the rest of the cost of the meeting, a little over \$1,000.

One of the topics at the Saturday meeting was the future of the group, and a committee was formed to look into this and nominate people for roles. Tom Boyd asked if the Supreme Court Historical Society had voiced the concept of providing some form of leadership for the state and local federal court societies, and Ms. Fessenden replied that a member of that Society was in fact present and did bring up such a possibility.

Publication of the Court of Appeals History

Tom Boyd reported that the Appeals branch was moving forward with publication of the Court of Appeals history with the University of Minnesota. He sought the executive committee's approval to enter into a publication contract between the University of Minnesota Board of Regents and the Appeals branch. Frances Ross inquired as to the terms of the contract, and Mr. Boyd mentioned terms such as publisher rights and indexing. He also reported that the University's Board of Regents requires an indemnification clause absolving the University of responsibility in any disputes that may arise.

Mr. Boyd said publication would cost \$13,000. He said he had discussed with Judge Heaney the possibility of obtaining half this amount from the AAFF, and he planned to raise the other half.

Chief Judge Kopf moved that Tom Boyd be authorized to enter into a contract on behalf of the Society with the University of Minnesota to publish the history of the Court of Appeals for the Eighth Circuit, understanding, among others things, that (1) the contract would obligate the Society to pay the University \$13,000 if the Court of Appeals branch could not fund that payment, and (2) the contract would require the Society to hold the University harmless from copyright claims. The motion was seconded and carried.

Mr. Boyd further reported that he would be seeking authorization for photos that would appear in the history, while the author, Professor Jeffrey Morris, was working with the University on publication. He anticipated publication one year after they receive the cite-checked manuscript in the proper format.

Joan Voelker: Anticipated Maternity Leave/Post Leave Schedule Change

Ann Fessenden reported that Joan Voelker would be on maternity leave from approximately December through February, so the committee could contact Ms. Fessenden if they needed anything during that time. Ms. Fessenden also mentioned that Ms. Voelker would be reducing her hours to part-time when returning to work.

Conclusion

As there were no further items for discussion, the meeting was adjourned.