

IN THE UTAH SUPREME COURT

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Re: ~~Inquiry Concerning A Judge~~
Honorable William E. Herring,
Justice Court Judge

No. 970502
96-6JC-008

ORDER

Pursuant to the authority vested in the Supreme Court by article VIII, section 13 of the Utah Constitution, and section 78-7-30(4)(a) of the Code, the court accepts the stipulation consenting to the implementation of the Commission's Findings of Fact, Conclusions of Law, and Order, in this matter.

Date

11/17/97

I. Daniel Stewart
I. Daniel Stewart
Associate Chief Justice
For The Court

BEFORE THE JUDICIAL CONDUCT COMMISSION

In re:	:	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER
Inquiry Concerning a Judge	:	96-6JC-008

A quorum of the Judicial Conduct Commission (Commission), having considered the record in this case, enters the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

The following facts were stipulated to by the parties:

1. Judge William E. Herring (Judge Herring) waived the notice of formal proceedings required by Rule 6 of the Commission's Rules of Procedure and consented that the Commission could enter Findings of Fact, Conclusions of Law, and Order based on a Stipulation. That Stipulation is part of the record in this case.

2. Judge Herring stipulated that consistent with Article VIII, Section 13 of the Utah Constitution, and Section 78-7-30(4) of the Utah Code, the record of the proceedings, which shall consist of the original complaint, Judge Herring's response to it, the Stipulation, and the Commission's Findings of Fact, Conclusions of Law, and Order, shall be certified to the Utah Supreme Court for review; that the Commission's Findings of Fact, Conclusions of Law, and Order may be implemented by the Utah Supreme Court without a hearing; that neither the Commission nor Judge Herring shall file additional pleadings with, or request oral argument before, the Utah Supreme Court; that if, on its own motion, the Utah Supreme Court schedules

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oral argument, counsel for the Commission and Judge Herring shall appear for oral argument and jointly recommend that the Supreme Court implement the Commission's Findings of Fact, Conclusions of Law, and Order; and that neither the Commission's counsel nor Judge Herring shall make any other recommendation to, nor argue any other position before, the Utah Supreme Court.

3. Judge Herring presided over a criminal proceeding in which he knew that his mother-in-law, Joyce Comstock, would likely be a material witness.

4. Canon 3E(1)(d)(iv) of the Code of Judicial Conduct (CJC) provides that "[a] judge shall enter a disqualification in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where * * * the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person * * * is to the judge's knowledge likely to be a material witness in the proceeding."

CONCLUSIONS OF LAW

1. In order to conclude that Judge Herring engaged in conduct prejudicial to the administration of justice which brought a judicial office into disrepute in violation of Section 78-7-28(1)(e) of the Utah Code, the Commission must (i) identify "the relevant 'unjudicial conduct,' and (ii) [assess] whether that conduct would appear to an objective observer to prejudice public esteem for the judicial office." *In re Richard Worthen*, 926 P.2d 853, 872 (Utah, 1996).

2. Having identified Judge Herring's relevant unjudicial conduct, the Commission now assesses whether that conduct would appear to an objective observer to prejudice public esteem for the judicial office. Judge Herring's failure to enter a disqualification in a criminal

proceeding in which he knew that his mother-in-law, Joyce Comstock, would likely be a material witness, violated Canon 3E(1)(d)(iv) of the CJC and would cause an objective observer to conclude that Judge Herring prejudiced public esteem for the judicial office.

3. Judge Herring should be publicly reprimanded for engaging in conduct prejudicial to the administration of justice which brought a judicial office into disrepute in violation of Section 78-7-28(1)(e) of the Utah Code, because he violated Canon 3E(1)(d)(iv) of the CJC by failing to enter a disqualification in a criminal proceeding in which he knew that his mother-in-law, Joyce Comstock, would likely be a material witness.

ORDER

Judge Herring is publicly reprimanded for engaging in conduct prejudicial to the administration of justice which brought a judicial office into disrepute in violation of Section 78-7-28(1)(e) of the Utah Code, because he violated Canon 3E(1)(d)(iv) of the CJC by failing to enter a disqualification in a criminal proceeding in which he knew that his mother-in-law, Joyce Comstock, would likely be a material witness.

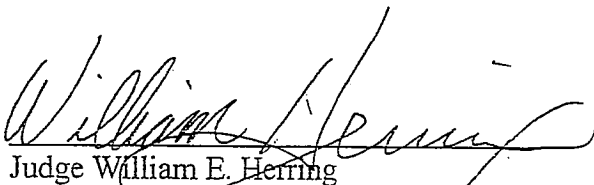
DATED this 22nd day of SEPTEMBER, 1997.

JUDICIAL CONDUCT COMMISSION



Kenneth L. Warnick, Chair

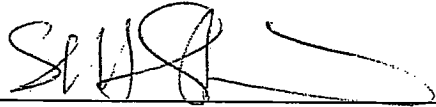
APPROVED AS TO FORM AND CONTENT



Judge William E. Herring

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of October, 1997, I mailed a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**, postage prepaid, to the Hon. William E. Herring, Bigwater Town Justice Court Judge, by mailing a copy thereof, postage prepaid, to him at Bigwater Justice Court, Drawer 410127, Bigwater, UT 84741-2127.



Steven H. Stewart

BEFORE THE JUDICIAL CONDUCT COMMISSION

In re: : STIPULATION
: :
Inquiry Concerning : :
a Judge : : 96-6JC-008

The Judicial Conduct Commission (Commission) and Bigwater Town Justice Court Judge William E. Herring (Judge Herring) stipulate as follows:

A. Uncontroverted Facts. The following facts are uncontroverted:

1. Judge Herring presided over a criminal proceeding in which he knew that his mother-in-law, Joyce Comstock, would likely be a material witness.

2. Canon 3E(1)(d)(iv) of the Code of Judicial Conduct (CJC) provides that “[a] judge shall enter disqualification in a proceeding in which the judge’s impartiality might reasonably be questioned, including but not limited to instances where * * * the judge or the judge’s spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person * * * is to the judge’s knowledge likely to be a material witness in the proceeding.”

B. Findings of Fact, Conclusions of Law, and Order.

1. The Commission shall enter the foregoing uncontroverted facts in its formal Findings of Fact.

2. The Commission shall enter conclusions of law and an order publicly reprimanding Judge Herring for engaging in conduct prejudicial to the administration of justice

which brought a judicial office into disrepute because he violated Canon 3E(1)(d)(iv) of the CJC by failing to enter a disqualification in a criminal proceeding in which he knew that his mother-in-law, Joyce Comstock, would likely be a material witness.

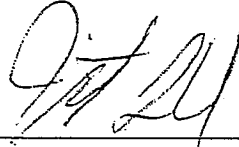
3. Before entry, the Commission shall obtain approval as to form from Judge Herring with respect to its proposed Findings of Fact, Conclusions of Law, and Order.

C. Formal hearing. Judge Herring waives the formal hearing required by Section 78-7-30(2)(b) of the Utah Code and consents that after approval as to form by him, the Commission's Findings of Fact, Conclusions of Law, and Order may be entered by the Commission and certified to the Utah Supreme Court for review.

D. Mandatory Supreme Court review. Consistent with Section 78-7-30(4) of the Utah Code, the record of the proceedings, which shall consist of the original complaint, Judge Herring's response to it, the Notice of Formal Proceedings, this Stipulation, and the Commission's Findings of Fact, Conclusions of Law, and Order, shall be certified to the Utah Supreme Court for review. Judge Herring consents that the Commission's Findings of Fact, Conclusions of Law, and Order may be implemented by the Utah Supreme Court without a hearing. Neither the Commission nor Judge Herring shall file additional pleadings with, or request oral argument before, the Utah Supreme Court. If, on its own motion, the Utah Supreme Court schedules oral argument, counsel for the Commission and Judge Herring shall appear for oral argument and jointly recommend that the Supreme Court implement the Commission's Findings of Fact, Conclusions of Law, and Order. Neither the Commission's counsel nor Judge Herring shall make any other recommendation to, nor argue any other position before, the Utah Supreme Court.

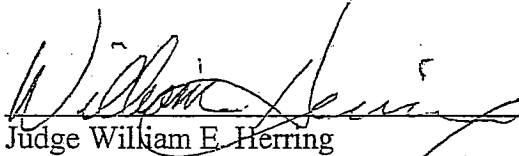
DATED this 22nd day of September, 1997.

JUDICIAL CONDUCT COMMISSION



Kenneth L. Warnick, Chair


DATED this 14 day of August, 1997.



Judge William E. Herring

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of October, 1997, I served a copy of the foregoing **STIPULATION** on Judge William E. Herring, Bigwater Town Justice Court Judge, by mailing a copy thereof, postage prepaid, to him at Bigwater Justice Court Drawer 410127, Bigwater, UT 84741-2127.



Steven H. Stewart