REPORT BY THE SPECIAL INVESTIGATORY COMMITTEE
TO THE JUDICIAL COUNCIL
OF THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

DOCKET NO. 07-05-351-0085

In the Matter of Judge G. Thomas Porteous, Jr.
United States District Judge
Eastern District of Louisiana

REPLY MEMORANDUM

Submitted

December 5, 2007

CONFIDENTIAL

MAY IT PLEASE THE COMMITTEE:

At the very outset let me state my sincere apology and regret for my actions which have brought me before the Committee.

After two years of therapy following my wife's death, I am just beginning to understand my difficulties. My health care professionals are of the opinion that I had a pre-disposition and genetic cause for my depression. This is evidenced based upon my father's suicide and one of my son's need for in patient treatment. My attempts to ease the situation led to my dependence on alcohol, itself a depressant, which eased the pain only until the next morning when the vicious cycle would begin anew. These problems became exacerbated because of financial difficulties and gambling. Each and every day of my life the vicious cycle kept repeating itself. I bring this up not as an excuse for my actions, but to give the Committee and the Judicial Council some insight into my history. The bottom line is that my therapist believes I have suffered from anxiety and depression for a substantial period of my life.

That being said, I have finally begun putting my life back in order. I have not gambled for over two years and have been free from alcohol for twenty months. I recognize this will be a continuing battle, but with firm determination and the support of my family, I am committed to changing my life for the better.

As part of my lifestyle changes, I am signing a contract with the Lawyers Assistance Program. This contract will be for five years and will require weekly AA meetings, weekly meeting with the lawyer support group, monthly meeting with my monitor, and random blood and/or urine specimen testing. If the Council should decide that a reprimand is an appropriate sanction, the contract will provide appropriate monitoring well past my point of retirement and

ensure that my commitment to sobriety is real.

PRELIMINARY ISSUES

First, as raised before the Committee initially, I re-urge dismissal of several of the charges as being untimely. Rule 1 (D) of the Rules Governing Complaints of Judicial Misconduct or Disability provides for dismissal if the delay in filing prevents fair consideration of the matter. The portion of the complaint involving my actions on the state bench are at the best thirteen years ago back to twenty-three years ago. I respectfully suggest that these allegations are clearly time barred.

Additionally, the allegation of misconduct in 1999 is eight years old and also appears to be untimely. Further, it appears that the Department of Justice had this material as far back as 2001, and their actions caused the delay in bringing this charge to the Committee.

Second, during the Committee hearings, I was required to undergo hand-wanding each time I entered the building. I asked the Committee if this was due to some information of a threat or because of a concern about my mental stability. No satisfactory answer was provided. I raise this issue because the Committee several times in its opinion suggested I had no disability. If, however, the reason for the searching was because of my mental instability this would clearly have relevance to my request for disability retirement.

Third, at the start of the hearing, I moved to have the prosecutors from the Department of Justice Office of Public Integrity removed from the hearing, as well as, the FBI agents. The Committee response was that they represented the complainant. The opinion of the Committee also references the Public Integrity Section as the complainant. However, when I asked to call a Department of Justice representative as a witness that request was denied. This despite Rule

10 (C) which states the complainant will be a witness. This action by the Committee precluded me from inquiring about the length of the investigation, my cooperation in agreeing to extend the statute of limitations, their reasons for their decision not to prosecute, whether they had favorable evidence, their contacts with the Chief Judge of the Circuit wherein no objection to my disability was discussed, their contacts with the bankruptcy trustee, and many other areas. This denial was clearly contrary to the plain language of the Rules Governing Complaints.

Fourth, in the course of the opinion, the Committee at various times made reference to various resolutions which would have eliminated the need for a hearing. While believing that references to compromise are inappropriate under the Rules of Evidence which are applicable to this proceeding, I must comment on the last suggestion that I would resign and the matter would be closed as moot. The Committee fails to mention that the offer also required a consent to a Federal disbarment.

Finally, I again respectfully submit that the opinions of my health care professionals support a finding of disability pursuant to the Rules. The only difference is that I am not fighting a finding of disability. I make this suggestion in spite of the findings of Dr. Gabbard, the psychiatrist for the Committee. Dr. Gabbard's findings are the result of a two and a half day evaluation and only reflect my condition during that time period. His findings fail to take into consideration the findings of my doctors that at multiple times during my twenty month treatment I have appeared quite depressed and anxious. Their opinion is that I am disabled. When one considers the sudden death of my wife, the loss and rebuilding of my home, my separation from my family during the rebuilding, the pressures of an investigation which lasted for approximately five years and the daily pressures of the bench it is not hard to recognize that these stressors have

taken a toll on me. Accordingly, I renew my request that the Committee and the Council make a finding of disability and so certify the matter. This finding will mean my immediate removal from the bench.

BANKRUPTCY FRAUD AND VIOLATIONS OF THE ORDER OF THE BANKRUPTCY COURT

In its original complaint, the U. S. Department of Justice set out numerous grounds for their decision not to prosecute. The bottom line in their decision simply put is that they could not prove a crime was committed. Importantly, they recognized that intent to deceive could not be proven. This would also suggest that intent to defraud could not be proven. Heavy burden of proof, unanimous verdict, and materiality were also mentioned. Again, this is simply legal linguistics for being unable to prove a crime was committed. By filing a complaint, they seek to avoid their constitutionally mandated burden of proof as is applicable in every case and attempt to prove criminal conduct via a civil proceeding.

The incorrect names in the original filing were not done to defraud any creditor, but rather to avoid the embarrassment of news articles. The articles were printed anyway. No creditor was defrauded by the original petition, indeed no creditor even received the incorrect filing. Hence, there was no illegal purpose for the filing. Also the names were corrected within two weeks of the original filing.

The impermissible debt allegations deal with gambling markers. By its own definition, the Committee recognizes that the marker operates as a check. Using this definition, there is no extension of credit. The markers did not affect the net payout to the creditors.

At the time of the filing, I did have a gambling problem. Upon filing of the petition, I did

not immediately stop gambling. Such is the nature of this addiction. However, even with analysis by the FBI, they could not establish that winnings from other casinos actually offset the markers they found. Such was their admission upon questioning by Judge Benavides.

With respect to the Fleet Credit Card, I must admit that it was in my wife's name and I did not know she was using it post bankruptcy. I also did not recall paying off the card immediately prior to filing for bankruptcy. In any event, gambling addiction was my wife's only vice. She also did not turn off the gambling switch with the filing of the bankruptcy.

The other bankruptcy misrepresentations involve tax refunds, omission of the Fidelity money market account, payment of the Fleet Credit Card, understating income (higher net income when FICA maximum is met), markers, and gambling losses.

As to the tax refund, I maintain my position that I told Mr. Lightfoot about it and he said to place it in my account, but if requested by the bankruptcy trustee, I would have to surrender it. As to this area, Lightfoot could only say he did not recall the conversation.

Fidelity was an oversight of an account containing $283.42. This was not intentionally omitted with the intent to defraud any creditor and did alter the percentage payback.

The Fleet Credit Card was omitted and I did not recall paying it off or my wife's continued use of it.

The understating of income was not intentional. Although, a pay stub was included prior to paying of the maximum FICA, that same pay stub showed my ultimate gross income for the year. In any event, the nominal increase in income would not have affected the ultimate percentage payout as is reflected in the Beaulieu letter.

The issue of gambling markers and losses has previously been discussed. It is important

to note that when a person brings chips to the cashier for cash, the cashier does not require any form of identification. Hence, no record of the customers winnings is actually recorded.

The Department of Justice brought all of these areas to the attention of the bankruptcy trustee prior to my discharge (Beaulieu's 302's and accompanying letters). In his staff attorney's letter of April 1, 2004, to Wayne Horner of the FBI he stated, "You may file an objection to the Trustee's Final Account or you may provide Mr. Beaulieu with evidence of wrongdoing and same will be investigated." Neither option was selected by the FBI and/or Department of Justice. Had they really believed that bankruptcy fraud existed or wanted to help the creditors obtain a greater payout, they had every opportunity to do so. Additionally, no action was taken by the trustee even with the information provided by the Department of Justice. Again, this would appear to indicate that they felt there was insufficient evidence of bankruptcy fraud. Quite to the contrary after an additional three years, they reached the same conclusion that no prosecution was warranted.

BANK FRAUD INVOLVING A LOAN AT REGIONS BANK

Despite the findings of the Committee, it was never my intention to harm Regions Bank. When the potential payout letters were sent to the other creditors, it was my honest intention to negotiate a settlement with them and still pay the bank 100% of my debt. The simple reason for this was my friendship with Buddy Butler and my longstanding relationship with the bank. This was not part of a bankruptcy payout, but rather an attempt to avoid bankruptcy if at all possible. These efforts continued until early 2001 when it was obvious a resolution could not be accomplished. The loan extension application did not result in any additional funds being disbursed.

Although the Committee has questioned my reasons for my actions, there was never any ill purpose or attempt to defraud.

In hindsight, I now understand how converting my loan to a secured debt in January, 2001, would have accomplished my intentions. However, had that occurred, I am positive I would now stand accused of granting the bank a preference to the detriment of the other creditors.

Essentially, I found myself in a Catch 22 position. However, again I must state that I never had any intention to harm the bank. By declining prosecution the Department of Justice undoubtedly has reached the same conclusion. However, now it appears that the Committee has found a criminal violation in a civil proceeding.

Again, in hindsight, my attempts to pay the bank my full debt may have been confusing and illogical. However, at the time, I fully believed I could work out my other debts and still pay the bank 100%. Defrauding the bank was never my intention.

RECEIPT OF CASH, GIFTS AND OTHER FORMS OF REMUNERATION

I have never seriously disputed the fact that at different times during my tenure on the State bench that Amato & Creely periodically helped me by giving me financial assistance. There never has been any suggestion or claim that their help in any way constituted a bribe. Indeed, at the beginning of the hearing before the Committee, Mr. Woods stated, upon questioning:

Judge Porteous: You make no claim alleging bribery.

Mr. Woods: That's correct. (p. 21)

During the course of the hearing and after almost five years of investigation by the FBI, there has been no evidence or information gathered which indicates that my dealings with Amato & Creely in court were anything but fair and impartial. No evidence of favoritism or impropriety has been found or presented. Indeed, subsequent to the 1999 event, Mr. Creely admitted he had lost a decision in my Court but that decision was later reversed by the Fifth Circuit.

Even in the Liljeberg matter, there has been no claim of a lack of fairness or impartiality. During Mr. Mole's testimony, he unequivocally stated that I was a gentleman, professional, polite and let him argue his case. He also testified that I was a "very good trial judge". (p.187) Even when I lost my temper at one point during the trial, I returned to Court after the weekend recess and allowed Mr. Mole to ask additional questions without interruption.

At the conclusion of the trial, a judgment was rendered in favor of the plaintiff but there has been no evidence that my friendship with the lawyers on both sides played any part in that decision.

With respect to the 1999 event, I have not disputed that they helped me. The Committee, however, has attempted to suggest that the event involved $4000.00 - $5000.00. I believe this is because when I returned from the bachelor party I deposited $5000.00 in winnings from that trip. Actually, the $5000.00 was used to pay advances on my credit cards that were obtained during the trip. Since the Committee has no direct evidence of receiving that amount from Amato or Creely, they have tried to infer that the amount came from them. In fact, during his questioning, Mr. Creely never gave any indication that he had given me $5000.00 during the bachelor party.

With respect to paying for my room and one dinner with the whole group, I never considered this as anything but friendship. Indeed, during the trip, I am sure I bought drinks at

various times and believe I bought one lunch when we were all together. In any event, Creely also testified that my rulings on the bench had no relationship to my dealings with them. (p.231)

There never was a Curatorship Scheme. During my questioning, Creely testified he had no reason to doubt that I sent curatorships to him in order to help him in giving Raphael something to do and in an attempt to help defray some of his costs. (p. 232 - 233)

The unexplained cash balances and transactions have been presented in an attempt to suggest that I received unaccounted for cash. The FBI, after years of investigation and analysis, has been unable to link the alleged amounts to any criminal or unlawful activities and now is attempting to simply assert they were improper. I did not receive any cash from any illegal source at any time.

As for Mrs. Danos, she tried to explain during her testimony the differences. Her testimony revealed that she was placing reimbursement for her sons' bills into her account and paying their bills because they did not have checking accounts at that time. This same testimony was provided during Mrs. Danos' grand jury testimony and the Department of Justice still elected not to prosecute.

FINANCIAL DISCLOSURE REPORT VIOLATIONS

VIOLATIONS OF THE CANONS OF THE CODE OF CONDUCT FOR UNITED STATES JUDGES

Since there is much crossover in the above referenced sections, I will address both in this section.

I agree completely with the Committee when it found, "Porteous was in a downward

financial spiral by the time he had engaged Lightfoot in the summer of 2000, and was on the brink of bankruptcy..."

The reality is that the darkest and most distressing period in my life began in 1999 and tragically continued with the loss of my family home in Hurricane Katrina, physical separation from our family and the sudden death of my wife in December, 2005. It was also during this period when the criminal investigation was occurring.

During this period, my gambling was clearly a problem and my self medication with alcohol increased. This had the effect of me neglecting my duties and paying little, if any, attention to the requirements of my work and reporting requirements. The impending embarrassment of filing what did become a well reported bankruptcy served to worsen my condition. I am only beginning to understand my situation after almost two years of therapy.

Again, I have no excuse for the inaccurate reports, but respectfully ask the Committee and the Council to at least look at my worsening mental status during this period. It was never my intention to commit a fraud or willfully ignore my responsibilities.

All of my dealings with the attorneys listed in the Report of the Committee were as a friend to a friend. No gift was given as a lawyer to a judge. I have been friends with all of the attorneys for my entire legal and judicial career. As noted, I am the godfather to one of Don Gardner's daughters. I performed the wedding ceremony for one of Creely's marriages. I have known Amato for thirty plus years and knew his children from an early age. In fact, his daughter clerked for me for the 2002 - 2003 term. Levenson is likewise a longtime friend. I also know his family. I helped him have his daughter appear in the Washington Mardi Gras Ball as a princess. My friendship with Forstall is similar. I bring this up not to justify my actions, but to show that

my contact with all of the lawyers was predominantly as friend helping friend with no expectation of receiving anything in return. Clearly, this again does not justify my lapses in filing the financial reports or adherence to the Code of Conduct, but it should provide a picture of our real relationships.

On page 64 of the Report of the Committee when discussing whether I've been fair and impartial in every proceeding before me, the Committee stated, "The lawyers who lost the recusal motion in Liljiberg would probably take issue with that statement". However, as previously discussed, Mr. Mole agreed that I was a gentlemen, professional, polite and let him argue his case. In conclusion, he stated, "I thought you were a very good trial judge". (p.187)

Why do I deserve mercy and a chance to finish my judicial career and when did my life change? As tragic as Hurricane Katrina was on life, it was during the four months post the storm when my wife and I got the chance to truly share our life and discuss what we needed to do in order to make our life together better. From August, 2005, through December, 2005, my wife and I were inseparable and spent more time together than almost any point in our lives. We cried together, laughed together and generally renewed our commitments and love for one another. Tragically, this ended with her sudden death on December 22, 2005, one day before her birthday. What helped with this sad situation was the four months we did share together. In April, 2006, I took the first steps in permanently changing my life for the better. As the remaining parent, I wanted to make sure that the remainder of my life was clean, sober and of help to my children and grandchildren. My continuing therapy has opened my eyes to my past and given me hope for the future. What is important in my life are my children, grandchildren, family and career. I now realize that I have been given a second chance to be a better person. I do not intend to squander

that chance.

I beg the Committee and the Council to please give me a second chance and recommend a reprimand. I sincerely apologize for all of my transgressions. I am ultimately responsible for my actions and lapses.

If a reprimand, whether public or private, is ordered, I would agree to a Judge Monitor to whom I would report and who could supervise my activities. This would give the Committee an extra level of supervision to ensure that my commitments and intentions are not shallow promises. This would also be in conjunction with my AA monitor's duties.

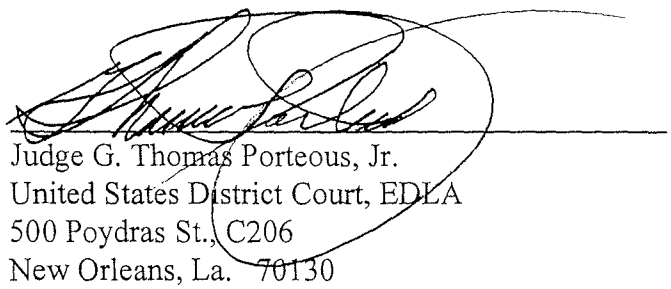
The portion of the report dealing with removal of cases involving the United States Government is unnecessary since I voluntarily withdrew from those cases several years ago and did not intend to take them again until this matter was terminated. Also, if the Committee or Council believe I should be removed from all cases pending a final ruling herein, I will abide by that decision.

In conclusion, let me again apologize and ask this Committee to recognize my commitment to change for the better. I can only pray that the Committee and Council will allow me the opportunity to prove my worth and complete my tenure on the Bench.

I am comforted by the fact that since my return to the Bench in June, 2007, pursuant to Chief Judge Jones' order, I have been contacted by innumerable attorneys who have expressed their support for me and said how happy they were that I am back. Clearly, I have not lost the support and trust of the bar as a whole. With your mercy and help, I beg that I be allowed to

continue earning and keeping their support and trust.

Respectfully Submitted,



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