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

Response to Reply Memorandum

Submitted

December 10, 2007

CONFIDENTIAL

On December 5, 2007, the Special Investigatory Committee to the Judicial Council of the United States Court of Appeals for the Fifth Circuit ("Committee"), through Chief Judge Edith H. Jones, received the "REPLY MEMORANDUM" ("Reply") from G. Thomas Porteous, Jr. ("Porteous").

Porteous's Reply breaks no new legal or factual ground, and for that reason the Committee re-urges its original Report submitted on November 20, 2007. Nevertheless, the Committee addresses some of the arguments raised by Porteous, as follows:

The Porteous Reply may be divided into two areas of argument:

1. alleged procedural defects, including a laches claim; a claim that he was unable to examine certain witnesses; and a claim of disability due to anxiety depression; and

2. alleged substantive issues involving the lack of evidence to support the allegations in the Complaint[1] filed by the U.S. Department of Justice ("DOJ") and the Charge[2] filed by the Committee, to wit:

a. bankruptcy fraud and violations of the order of the Bankruptcy Court;

b. bank fraud involving a loan at Regions Bank;

c. receipt of cash, gifts, and other forms of remuneration;

[1] See Exhibit A to Index of Exhibits attached to Confidential Report.
[2] See Exhibit B to Index of Exhibits attached to Confidential Report.

d. financial disclosure report violations;[3] and

e. violations of the Code of Conduct for United States Judges ("Code").

I. ALLEGED PROCEDURAL DEFECTS

A. Timeliness

Porteous argues that "several" of the charges should have been dismissed as "untimely," citing as authority Rule 1. (D) of the Rules Governing Complaints Of Judicial Misconduct Or Disability. Rule 1. (D) provides

> **Time for filing complaints.** A complaint may be filed at any time; however, complaints should be filed promptly. A complaint may be dismissed if the delay in filing prevents fair consideration of the matter.

The plain language of the rules states that a complaint "may be filed at any time." DOJ dated its Complaint May 18, 2007, following the conclusion of a federal grand jury investigation that lasted "several years" in the Eastern District of Louisiana.[4] There is nothing in the written record of this matter or in the Reply to suggest that DOJ was dilatory in preparing and submitting its Complaint.

[3] It should be noted that in its Report, the Special Investigatory Committee addressed financial disclosure report violations and violations of the Code of Conduct for United States Judges in separate sections. Indeed, the Committee's Report acknowledged that every area of substantive violations implicated one or more violation of the ethical rules. Porteous chose to combine the financial disclosure report violations and the ethical violations into one section.

[4] See Complaint of Judicial Misconduct Concerning the Honorable G. Thomas Porteous, Jr., dated May 18, 2007, and received by Chief Judge Jones on May 21, 2007.

Dismissal of a complaint is a remedy only when "delay in filing prevents fair consideration of the matter." The Committee's investigation (including fact finding, evidentiary hearing, and written report) was handled expeditiously, and it is noteworthy that the Reply does not raise the issue of actual prejudice.

Porteous makes an equitable laches-type argument when urging that "[t]he portion of the complaint involving my actions on the state bench are at the best thirteen years ago back to twenty-three years ago" and "are clearly time barred."

Evidence of Porteous's misconduct, spanning three decades on the Louisiana and federal benches, was included to show common scheme, plan, and absence of mistake. The Committee has never taken the position that it has authority over Porteous's judicial misconduct as a state district judge. The evidence has shown that Porteous's misconduct on the federal bench was an uninterrupted continuum of ethical lapses and other acts of misconduct that began when he was a state judge. Finally, there is nothing in Rule 1. (D) that imposes limitations on charges or evidence.

B. Addictions and Disability

Porteous asserts that he is disabled, is suffering from anxiety depression, is a recovering alcoholic, and is a gambling addict. Prospectively, he will be "signing a contract for five years" with the Lawyers Assistance Program that "will require weekly AA meetings" and other self-help commitments. While it is admirable that

Porteous now seeks recovery from his addiction(s) by way of a twelve-step program(s), these lifestyle changes in no way address or justify his history of ethical and legal missteps that have been detailed in the Committee's Report. Instead, he again submits "the opinions of my health care professionals [that] support a finding of disability," while minimizing the findings of Dr. Gabbard's team as being limited to a "two and a half day evaluation." Quite to the contrary, the Committee's psychiatric expert, Glen O. Gabbard, M.D., had access to and use of all medical records compiled by Porteous's health care professionals. Dr. Gabbard wrote in his report of October 10, 2007:[5]

> Records from a prior psychiatric evaluation completed by Dr. Howard Osofsky on May 9th, 2006, as well as psychological testing by Dr. Jill Hayes Hammer (administered on May 2nd and 3rd of 2006) were made available to us prior to the evaluation. In addition, treatment records from the current treating psychiatrist, Dr. James Barbee, and the treating therapist, Ms. Susan Hoffman, LMSW . . . were received and reviewed by the evaluating team.

Porteous fails to acknowledge the extent of work performed by Dr. Gabbard and his diagnostic team prior to their personal evaluation of Porteous. He also fails to acknowledge Dr. Gabbard's conclusions that: (1) at the present time, "he

[5] See Exhibit C in Index of Exhibits Attached to Confidential Report.

[Porteous] is clearly not clinically depressed" and "it is quite likely that the treatment he has had since that time, plus the abstinence from alcohol, has resulted in considerable clinical improvement"; and (2) "Judge Porteous is not disabled."[6]

C. Witness Issues

Porteous cites a host of procedural complaints involving DOJ witnesses and his inability to inquire of them why they made certain decisions, such as "their reasons for their decision not to prosecute." The Committee correctly concluded that the prosecutor's strategies and mental impressions, to the extent not detailed in the Complaint, were not appropriate for review in the hearing on judicial misconduct.

II. ALLEGED SUBSTANTIVE CLAIMS

A. Bankruptcy Fraud and Violations of the Order of the Bankruptcy Court

1. False names in Chapter 13 voluntary bankruptcy petition

Porteous does not deny that he used aliases in an official court document filed under penalty of perjury, but argues that in so doing he had no intent to defraud creditors. Whatever his motives or reasons, he intentionally and admittedly provided false information on a document that he signed under the penalty of perjury. The jurat on the petition simply reads, "I declare under penalty

[6] *Id.*

of perjury that the information provided in this petition is true and correct."[7] Porteous disregarded the plain meaning of the words comprising the jurat, knowingly provided false information, and thereby committed perjury.

2. Gambling Markers

Porteous now argues that a marker "operates as a check" and therefore cannot operate as an "extension of credit." However, in the hearing before the Special Investigatory Committee, Porteous agreed with the definition of a "marker" as explained in the Charge,[8] i.e., "[a] marker is a form of credit extended by a gambling establishment. . . ."[9] Porteous also fails to acknowledge the documentary and testimonial evidence that some markers were carried for weeks before being negotiated against his bank account; in other words, that some markers were extensions of credit.

3. Fleet Credit Card

Porteous blames the pre-bankruptcy and post-bankruptcy use of the Fleet credit card on his deceased wife. He also persists in his inability to recall the payment of the balance on that card five days prior to the filing of bankruptcy. He does not mention Rhonda Danos's testimony that she (Danos) wrote a check to Fleet to pay off the balance at his instruction.

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[7] See hearing Exhibit 1, SC 123.
[8] See Exhibit B of Index of Exhibits attached to Confidential Report, p. 9, fn. 1.
[9] See transcript of hearing, p. 64.

4. Fidelity Account

Porteous excuses its omission from the bankruptcy schedules as an "oversight."

5. Tax Refund

Porteous claims his attorney, Claude Lightfoot, advised him to deposit the refund in his (Porteous's) account, even though Lightfoot testified that he had no recollection of an expected refund prior to bankruptcy being filed. While Porteous addresses what he was allegedly advised to do with the refund after its receipt, he does not address the fact that he previously omitted the contingent $4,143.72 refund from Schedule B of his bankruptcy petition.

6. Understating Income

Porteous admits he understated income going into bankruptcy, and acknowledges that he used a pre-FICA pay stub as proof of income, but claims it "was not intentional." The understated income was not limited to a particular "pay stub" that Porteous provided to Lightfoot, but also included an undervalued Bank One account, an undisclosed Fidelity money market account, and an undisclosed tax refund in excess of $4,000.

B. Bank Fraud Involving a Loan at Regions Bank

Porteous simply states that "it was never my intention to harm Regions Bank," but later acknowledges that collateralizing the Regions Bank loan would

have "accomplished my intentions." Those intentions were to "negotiate a settlement with [other creditors] and still pay the bank 100% of my debt."

Porteous's last opportunity to truly help Regions Bank came and passed on January 17, 2001, when he obtained a second extension of the original unsecured $5,000 promissory note from the bank without disclosing his financial turmoil to that financial institution. By that date, no favorable responses had been received by his other unsecured creditors to the December 21, 2000, "workout" letter[10] sent by Claude Lightfoot.[11] The genesis of the plan to exclude Regions Bank from the workout for unsecured creditors was not from Lightfoot, but from Porteous.[12] In fact, Mr. Lightfoot had not even been advised by his client that he (Porteous) had sought and received a second extension of the loan in January of 2001.[13]

C. Receipt of Cash, Gifts, and Other Forms of Remuneration

Porteous's primary defense to evidence of cash, gifts, and other forms of remuneration, articulated during the hearing and in his Reply, is that he did not accept bribes from attorneys. However, since no specific allegations of bribery appear in the Complaint or in the Charge, he is defending against uncharged conduct.

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[10] See Exhibit F of Index of Exhibits attached to Confidential Report, pp. SC296 – 299.
[11] See transcript of testimony of Claude Lightfoot, pp. 443 – 444.
[12] *Id.*, at 434.
[13] *Id.*, at 434- 435.

Porteous admits, "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" and "[w]ith respect to the 1999 event, I have not disputed that they helped me."

What Porteous does not admit is that the "1999 event" includes two or three discrete events that occurred in May/June of 1999: (1) the Las Vegas bachelor party partially funded by Robert Creely in May of 1999; and (2) the request for money made to Jacob Amato during a fishing trip in May/June of 1999, which may have resulted in two cash payments to Porteous. According to Creely's recollection and testimony, $2,000 from Creely and Amato and/or the Creely & Amato law firm was placed in an envelope and picked up by Rhonda Danos for Porteous. According to Amato's recollection and testimony, he handed Porteous $2,000 to $3,000 cash without the involvement of Danos.

In his Reply, Porteous seems to suggest that the cash he received (and ultimately deposited into his bank account) may have been from gambling winnings in Las Vegas, and disputes "direct evidence of receiving that amount [$5,000] from Amato or Creely." The testimony of Creely and Amato belies that assertion by Porteous.

Porteous downplays the significance of his receipt of cash from Amato (and/or Creely and/or the Creely & Amato law firm) during the pendency of the

Liljeberg case. His only comments about the *Liljeberg* case are used to put him in a positive light ("there has been no claim of a lack of fairness or impartiality"), while not acknowledging the gross impropriety of accepting cash from Amato while the case was under submission. Ironically, Porteous cites the testimony of Joseph Mole to suggest that he (Porteous) was a very good trial judge.

The undisputed evidence is that Porteous never disclosed to the parties in *Liljeberg* that he had financial relationships with Amato or Leonard Levenson. Specifically, when the recusal motion was filed by Mole in October of 1996, neither Porteous nor Amato nor Levenson had disclosed the extent of their respective financial relationships with one another to Mole or his client. Neither Porteous nor Amato disclosed to Mole the cash transaction(s) between them in May/June of 1999, and Porteous did not sua sponte recuse himself at that time.

When quoting Mole's testimony in his reply, Porteous should have also included the following colloquy with Mole:

PORTEOUS: Are you aware that, again, while this case was under advisement, that your counsel Mr. Gardner accompanied me and my family to Las Vegas for a bachelor party?

MOLE: No, I did not know that.

PORTEOUS: So, he went – if I represent to you that he went, do you find anything wrong with that?

MOLE: You know, I find something wrong with the whole system that allows that to happen, Judge Porteous. So, yeah, I do.

PORTEOUS: Okay. But if he – should I have recused because I went with Gardner?

MOLE: Well, I'm not the judge here but –

PORTEOUS: I'll withdraw that question.

MOLE: Yeah, you should. I think you should.

D. Financial Disclosure Report Violations – Violations of the Code of Conduct For United States Judges

Regarding the financial disclosure report and ethical violations, Porteous admits, "I have no excuse for the inaccurate reports. . . ." He then asks the Committee to take into account his "worsening mental status during this period," which he places from 1999 to December of 2005.

It is not reasonable to excuse Porteous's judicial misconduct because of alcohol abuse, gambling addiction, loss of a loved one, and a natural disaster. While such unfortunate life events are difficult and often very challenging, some occurred late in his judicial tenure and none justified the ethical lapses charged in the Report by the Special Committee. Finally, Porteous asks for "mercy and help," in order to "be allowed to continue earning and keeping [the] support and trust" of the "innumerable attorneys who have expressed their support for me. . . ." Nothing

in his Reply adequately explains the numerous improprieties that he brought to and continued on the federal bench.

Edith H. Jones, Chief Judge

Fortunato Benavides, Circuit Judge

Jerry Smith

Date of Signatures: December 10, 2007