

DFC. 20 2007

Gregory A. Nussel
Secretary to the Council

THE JUDICIAL COUNCIL OF THE FIFTH CIRCUIT

Before: Edith H. Jones, Chief Judge, U. S. Court of Appeals for the Fifth Circuit; Jerry E. Smith, U. S. Circuit Judge; W. Eugene Davis, U. S. Circuit Judge; Jacques L. Wiener, Jr., U. S. Circuit Judge; Rhesa H. Barksdale, U. S. Circuit Judge; Emilio M. Garza, U. S. Circuit Judge; Fortunato P. Benavides, U. S. Circuit Judge; Carl E. Stewart, U. S. Circuit Judge; James L. Dennis, U. S. Circuit Judge; Priscilla R. Owen, U. S. Circuit Judge; Sarah S. Vance, U. S. District Judge; James J. Brady, U. S. District Judge; Tucker L. Melançon, U. S. District Judge; Michael P. Mills, U. S. District Judge; Louis Guirola, Jr., U. S. District Judge; Sam R. Cummings, U. S. District Judge; Hayden Head, U. S. District Judge; Thad Heartfield, U. S. District Judge; Fred Biery, U. S. District Judge

DOCKET NO. 07-05-351-0085

IN RE: Complaint of Judicial Misconduct against United States District Judge G. Thomas Porteous, Jr. under the Judicial Conduct and Disability Act of 1980

MEMORANDUM ORDER AND CERTIFICATION

A Special Investigatory Committee was appointed by the Chief Judge pursuant to 28 U.S.C. § 353(a) to investigate a complaint filed on May 18, 2007, by the United States Department of Justice alleging that United States District Judge G. Thomas Porteous, Jr. has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts. The Special Investigatory Committee conducted an extensive investigation

culminating in an adversary hearing on October 29 and 30, 2007. Judge Porteous appeared at the hearing and offered motions, oral argument, his own testimony, and the testimony of witnesses in his defense.

Thereafter, on November 20, 2007, the Special Investigatory Committee forwarded to the Judicial Council a comprehensive written Report presenting both the findings of the investigation and the Committee's recommendation for necessary and appropriate action by the Judicial Council. In addition to the Report, hyperlinks to relevant testimony, and two volumes of accompanying exhibits, the Special Investigatory Committee also filed the entire record before it, including grand jury records, business records of certain casinos, bank, and credit card companies, and testimony presented during the adversary hearing.

On November 20, 2007, the Judicial Council informed Judge Porteous that he could examine the Report and re-examine the evidence on which it is based at the headquarters of the Court of Appeals for the Fifth Circuit in New Orleans, Louisiana, and could file a written reply on or before December 4, 2007. Judge Porteous filed a timely Reply to the Report. In addition, on November 21, 2007, Judge Porteous was notified that he could appear at a meeting of the Judicial Council on December 13, 2007.

The Special Investigatory Committee filed its Response to Judge Porteous's Reply on December 10, 2007, and delivered a copy to the Judge.

At a meeting in New Orleans, Louisiana, on December 13, 2007, the Judicial Council of the Fifth Circuit fully considered the Report, Reply, and Response, and the record of proceedings before the Special Investigatory Committee. Judge Porteous appeared before the Council and spoke in his own defense.

By a majority vote, the Council determines that the Report and the record contain substantial evidence supporting the allegations listed in the Special Investigatory Committee Report, including the following:

- (a) Judge Porteous filed numerous false statements under oath during his and his wife's Chapter 13 bankruptcy, including filing the petition under a false name; concealing assets of the bankruptcy estate; failing to identify gambling losses; and failing to list all creditors. Judge Porteous additionally violated bankruptcy court orders forbidding him from incurring debt during the course of the Chapter 13 case without approval of the trustee or bankruptcy judge, in that he continued regularly to incur short-term extensions of credit from various casinos. Judge Porteous additionally made unauthorized and undisclosed payments to preferred creditors after the commencement of the bankruptcy case.
- (b) Judge Porteous engaged in fraudulent and deceptive conduct concerning the debt he owed to Regions Bank prior to bankruptcy.
- (c) Judge Porteous received gifts and things of value from attorneys who had cases pending before him. During one particular case (*Liljeberg*), Judge Porteous was requested to recuse from the case but instead ruled against the movant without disclosing to any party his history of financial

relationships with at least one counsel for the movant in the case.

- (d) Judge Porteous's financial disclosure statements for the years 1994-2000 are inaccurate and misleading because they fail to report the gifts and things of value he received from attorneys, and in the year 2000 failed to report accurately significant amounts of reportable indebtedness owed by Judge Porteous.

Based on the foregoing, the Judicial Council, by a majority vote, accepts and approves the Report of the Special Investigatory Committee, and the Judicial Council, by a majority vote, determines on the basis of the Complaint, the Report, and the record of the proceedings, that United States District Judge G. Thomas Porteous, Jr. has engaged in conduct which might constitute one or more grounds for impeachment under Article II of the Constitution for the above-described violations of law and ethical canons.

The Judicial Council further finds by a majority vote that, with respect to the Complaint, and the matters described therein, a certification should be made to the Judicial Conference of the United States in accordance with 28 U.S.C. § 354(b)(2)(A).

ACCORDINGLY, pursuant to 28 U.S.C. § 354(b)(2)(A), the Judicial Council of the Fifth Circuit CERTIFIES to the Judicial Conference of the United States its determination that United States District Judge G. Thomas Porteous, Jr. has engaged in conduct, described above, which might constitute one or more

grounds for impeachment under Article II of the Constitution. Together with such determination, the Judicial Council CERTIFIES to the Judicial Conference the Complaint filed by the United States Department of Justice, supplemented by the Complaint identified by the Chief Judge, and the record of associated proceedings and exhibits received by the Special Investigatory Committee and with the Judicial Council.

The Judicial Council sends forward to the Chief Justice of the United States, as presiding officer of the Judicial Conference: (1) the Complaints; (2) three copies of the Report and Recommendations of the Special Investigatory Committee, Judge Porteous's Reply and the Committee's Response; (3) the record of orders, notices, correspondence and other documents of the Special Investigatory Committee; (4) the record of grand jury proceedings received by the Special Investigatory Committee; (5) the record of the adversary hearing, including exhibits, before the Special Investigatory Committee; and (6) the record of proceedings before the Judicial Council. Item numbers (4) and (5) will be indexed and placed in numbered sealed boxes, and the indices will be forwarded to the Judicial Conference of the United States. The sealed materials will be retained by the Judicial Council of the Fifth Circuit pending shipping instructions from the Judicial Conference of the United States.

The Judicial Council further CERTIFIES that, pursuant to 28 U.S.C. § 354(b)(3), the delivery of copies of this Memorandum Order and Certification will constitute notice to the complainant and to Judge G. Thomas Porteous, Jr. of the action taken under 28 U.S.C. § 354(b)(2)(A).

The Judicial Council further ORDERS that pending a decision by the Judicial Conference of the United States, no bankruptcy cases or appeals or criminal or civil cases to which the United States is a party will be assigned to Judge Porteous, and he may continue his civil docket and administrative duties until it is determined that he must devote his time primarily to his defense.

Pursuant to Rule 16(E) of the Fifth Circuit Rules Governing Complaints of Judicial Misconduct or Disability, materials relating to this complaint “will be made public only as may be ordered by the Judicial Conference [of the United States].”

DONE this 20th day of December, 2007.

FOR THE COUNCIL:



Chief Judge