

TY CLEVINGER
21 Bennett Avenue #62
New York, New York 10033

telephone: 979.985.5289
facsimile: 979.530.9523

tyclevenger@yahoo.com
Texas Bar No. 24034380

January 18, 2015

Judicial Conference Committee on Judicial Conduct and Disability
Attn: Office of General Counsel
Administrative Office of the United States Courts
One Columbus Circle, NE
Washington, D.C. 20544

Re: Complaint of Judicial Misconduct Against United States District Judge
Walter S. Smith, Jr. Under the Judicial Improvements Act of 2002; Docket
No. 05-15-90120 (Judicial Council of the Fifth Circuit)

Members of the Committee:

I write to appeal the decision of the Judicial Council of the Fifth Circuit in the case listed above. In a September 8, 2014 complaint against Judge Walter S. Smith, Jr. and Senior Judge Harry Lee Hudspeth, I presented evidence that Judge Smith forcibly grabbed and groped a female deputy clerk (hereinafter "E.S.") in his chambers while he was drunk, and that Judge Hudspeth covered up the incident. *See* Exhibit A.

On or about October 29, 2014, Chief Judge Carl E. Stewart appointed a special committee to investigate the complaint. In a December 4, 2015 order reprimanding Judge Smith, the Judicial Council seems to have concluded that the incident occurred as alleged by E.S., the victim. *See* Exhibit B. At both the time of the incident and the time of my complaint, such an unwelcome assault would have been classified as a felony. *See* 18 U.S. Code § 2244 ("abusive sexual contact"). Yet the Judicial Council imposed only a reprimand, a reduction in workload, and sensitivity training. *Id.*

I'm sure most felons wish they could receive such lenient treatment. It seems the Fifth Circuit has created a new category of crime – the *de minimis* felony – for those cases where the perpetrator is a federal judge. Granted, the assault of E.S. occurred in 1998, but she followed the proper reporting procedures at the time, and the delay in prosecution was no fault of hers. If Judge Hudspeth buried the complaint, she cannot be blamed for that.

Furthermore, I do not believe that the assault of E.S. was an isolated incident. At the request of the Judicial Council, I submitted the names of witnesses to other alleged incidents wherein Judge Smith sexually harassed women in the courthouse.

See Exhibits C and D. I suppose it's possible that none of those witnesses were willing to cooperate with the investigation, but that seems highly unlikely.

Regardless, one must wonder how many felonies a judge needs to commit before the Judicial Council is willing to recommend impeachment. Is one not enough? If a courthouse security officer had forcibly groped E.S., he would have been fired summarily and probably arrested. He certainly would not have gotten away with a reprimand, sensitivity training, and a reduced workload at full pay.

By the Judicial Council's own admission, "Judge Smith does not understand the gravity of such inappropriate behavior and the serious effect that it has on the operation of the courts." Does anyone seriously think that sensitivity training will be able to fix that kind of problem in an unrepentant 75-year-old man? One must wonder whether the Judicial Council itself understands "the gravity of such inappropriate behavior and the serious effect that it has on the operation of the courts."

In less than one year, *every* federal sex crime case and *every* civil sexual harassment case in the Waco Division will be assigned to none other than Judge Smith. (He is the only district judge in that division). Who would want to be a female sexual harassment plaintiff or sexual assault victim in Judge Smith's court?

I would remind the Committee of the case of Judge Samuel B. Kent, wherein the Fifth Circuit originally ordered relatively light punishment for the judge, an alcoholic sex offender. But for the dogged reporting of the *Houston Chronicle* and the public outcry that it created, Judge Kent would probably still be on the bench in Galveston. Unfortunately, it seems the Fifth Circuit has learned nothing from that experience.

If the federal judiciary is truly concerned about "the gravity of such inappropriate behavior and the serious effect that it has on the operation of the courts," then the Committee should suspend Judge Smith from the bench immediately and recommend impeachment. As it stands, his punishment is far too lenient. I therefore urge you to suspend Judge Smith, recommend impeachment, and order the Fifth Circuit to publicly release the investigative file of the special committee assigned to investigate Judge Smith.

If the federal judiciary wishes to maintain public confidence, it should err on the side of transparency. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ty Clevenger', with a long horizontal flourish extending to the right.

Ty Clevenger