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February 17, 2016

The Hon. Carl E. Stewart, Chief Judge
U.S. Court of Appeals for the Fifth Circuit
600 S. Maestri Place
New Orleans, LA 70130

Re: Judge Walter S. Smith, Jr. (W.D.Tex.)

Chief Judge Stewart:

Judge Walter S. Smith, Jr. may have received free legal services from attorney Steven Gregory White in Judicial Council Docket No. 05-14-90120 according to documents that I recently obtained. For that reason, I wish to supplement my complaint in Docket No. 05-16-90014. I also ask that you refer the matter to the FBI and the Justice Department for further investigation.

On October 24, 2015, I filed a grievance against Mr. White with the State Bar of Texas ("SBOT") because of his undisclosed attorney-client relationship with Judge Smith. The SBOT directed Mr. White to respond to the grievance, and on January 29, 2016, attorney Ben Selman of Waco, Texas responded on behalf of Mr. White. *See* Exhibit 1. Strangely, Mr. Selman attached (as an exhibit to his letter) a January 27, 2016 memorandum from Mr. White that had been addressed to Mr. Selman. *See* Exhibit 2.

As I noted in a February 16, 2016 letter to the SBOT (Exhibit 3), it appears that Mr. White waived his attorney-client privilege with respect to Mr. Selman, and it further appears that Mr. White disclosed attorney-client communications with Judge Smith (I incorporate my letter to the SBOT herein by reference). More important, Judge Smith may have received free legal services from Mr. White, at least during the early stages of their attorney-client relationship.

As explained in my February 16 letter, a judge may not accept gifts from someone who has cases pending before that judge. And if there was a *quid pro quo* in exchange for free legal services, the violation is not merely civil but criminal. *See* 18 U.S. Code §201. Mr. White's own memorandum implies that his opposing counsel wondered whether a ruling by Judge Smith had been influenced by his undisclosed relationship with Mr. White. Nobody should have to wonder about that, therefore the matter should be investigated by the FBI and the Justice Department.

If Judge Smith received free legal services from Mr. White and failed to report the gift in his annual financial disclosures, that too could be a criminal violation. *See* 18 U.S.C. §1001. Likewise, if Mr. White and Judge Smith colluded while making misrepresentations in Judge Smith's "motion to dismiss" Case No. 05-14-90120, then they could be prosecuted for fraud. *See* 18 U.S.C. §371. Interestingly, Mr. White faults the Fifth Circuit's investigators for those misrepresentations.¹

I am sending copies of this letter directly to the FBI and the Justice Department, but I request that you and/or the Judicial Council make a formal referral to those agencies. As a practical matter, the FBI and the Justice Department generally will not investigate a federal judge unless they first get a "green light" from other members of the judiciary. Such apprehension is understandable, since nearly all of their cases go before federal judges, and the federal judiciary is a tight-knit community.

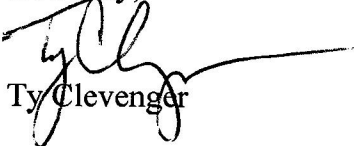
Finally, I must note that my misconduct complaint in Case No. Docket No. 05-16-90014 has been pending since October of 2015. According to Rule 11 of the Rules for Judicial-Conduct and Judicial-Disability Proceedings, a chief judge is supposed to conduct a *limited* preliminary review of the evidence to determine whether to dismiss a complaint or appoint a three-judge panel to investigate the charges.

In conducting the inquiry, the chief judge must not determine any reasonably disputed issue. Any such determination must be left to a special committee appointed under Rule and to the judicial council that considers the special committee's report.

Id. at Rule 11(b). My complaint has now been pending for almost four months. I understand that it might take four months or longer to investigate Judge Smith, but I do not understand why it should take four months to decide *whether* to investigate Judge Smith, particularly since the Judicial Council has already acknowledged the improper attorney-client relationship in Docket No. 05-14-90120. I urge you to refer Docket No. 05-16-90014 to an investigative committee as soon as possible.

Thank you for your consideration.

Sincerely,



Ty Clevenger

cc: The Hon. John Creuzot, Special Counsel
Special Investigative Committee, Fifth Circuit Judicial Council (cont.)

¹ I have also attached the "Statement of Tammy L. Hooks" that Mr. Selman referenced in his letter. It looks as if Ms. Hooks has been designated to take the fall for the undisclosed attorney-client relationship.

Mr. Raymond Hulser, Chief

Public Integrity Section, U.S. Department of Justice

Mr. Benjamin Farr, Supervisory Special Agent

Waco Resident Agency, Federal Bureau of Investigation