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April 25, 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: Misconduct Case Nos. 05-14-90121 (Judge Harry Lee Hudspeth) and
05-16-90014 (Judge Walter S. Smith, Jr.)

Chief Judge Stewart:

Per the enclosed letter, the State Bar of Texas filed disciplinary charges against Steven Gregory White, the attorney who represented Judge Walter S. Smith, Jr. in Case No. 05-14-90120. I filed the grievance against Mr. White concurrently with the judicial misconduct complaint that led to Case No. 05-16-90014, and I must wonder why you are still holding the latter case in limbo.

The state bar has conducted a significant investigation in the six months since I filed the complaint against Mr. White, whereas you have not yet appointed an investigative committee. As I explained in my February 17, 2016 letter, your role as chief judge is limited to determining whether my complaint credibly states a violation. If so, then you are supposed to appoint a special committee. If not, you are supposed to dismiss my complaint.

At some point, such an unexplained delay becomes judicial misconduct in and of itself. *See* Canons 3(A)(5), 3(B)(1), and 3(B)(5), Code of Conduct for U.S. Judges. In this case, the delay is even less defensible than usual, because the Judicial Council confirmed the secret attorney-client relationship in Case No. 05-14-90120 and acknowledged its impropriety in the December 4, 2015 order reprimanding Judge Smith.¹ What else needs to be done to warrant a formal investigation?

Furthermore, I am reliably informed that the special investigative committee in Case No. 05-14-90120 limited the scope of its investigation to the single sexual misconduct victim whom I had already deposed, *i.e.*, it did not investigate any of the other alleged incidents of sexual misconduct. This creates an appearance of impropriety, namely that the judiciary is more interested in containing the scope of the scandal than protecting the public from a bad judge.

¹ According to a January 13, 2016 email that I received from Shelley Saltzman, the Judicial Council's order terminated Case No. 05-14-90120 only, whereas Case Nos. 05-14-90121 and 05-16-90014 remain pending.

Finally, there is Case No. 05-14-90121, which has now been pending for more than 18 months. It is directly related to Case No. 05-14-90120, and the latter investigation was completed more than six months ago. In 90120, the special committee investigated whether Judge Smith grabbed and groped a female deputy clerk. In 90121, the committee was charged with investigating whether Senior Judge Harry Lee Hudspeth, who was chief district judge at the time of the incident, covered up Judge Smith's misconduct.

The facts of 90121 appear to be considerably less complex than those of 90120, and yet we have waited six months longer for an outcome. Judge Smith's misconduct was either reported to Judge Hudspeth or it wasn't, and Judge Hudspeth either took appropriate action or he didn't. It should not take 18 months to answer those two simple questions.

In light of the foregoing delays, and the resulting appearance that the Fifth Circuit is trying to contain the scope of the scandal, I ask that you transfer Case No. 05-16-90014 to Chief Justice John Roberts for reassignment to another circuit.

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

cc: Chief Justice John Roberts
Judge Catharina Haynes
Judge Carlton W. Reeves