

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. 07-05-351-0086

IN RE: Complaint of Judicial Misconduct against United States District Judge Samuel B. Kent under the Judicial Conduct and Disability Act of 1980

ORDER

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 21, 2007, by Cathy McBroom (“complainant”) alleging that United States District Judge Samuel B. Kent (“Judge Kent”) has engaged in judicial misconduct. The Special Investigatory Committee conducted an extensive investigation.

Thereafter, on September 11, 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. The Judicial Council entered its Order on September 28, 2007.

The complainant in these proceedings filed a motion for reconsideration, seeking a determination under 28 U.S.C. § 354(b) that Judge Kent may have engaged in conduct in violation of specific federal criminal statutes which might constitute one or more grounds for impeachment, and also asks the Council to certify such a determination, if made, to the Judicial Conference of the United States. The complainant also alleges that there is additional evidence of misconduct by Judge Kent. Judge Kent opposes the motion to reconsider.

The United States Department of Justice has subsequently initiated a criminal investigation, with which the Council is cooperating in keeping with Rule 9(B) of the Rules Governing Complaints of Judicial Misconduct of the United States Fifth Circuit ("Rules").

The propriety of further discipline in this case, or a certification to the Judicial Conference of the United States, cannot be fairly evaluated without adversarial proceedings in which the witnesses are subject to cross-examination. Further, Judge

Kent has demanded an adversarial hearing, as is his right, if the Council grants the motion to reconsider. See Rule 14(B)(3) and (4). Conducting adversarial proceedings at this time, however, while a criminal investigation is underway, could prejudice that investigation or be perceived as interfering with it. When courts confront parallel criminal and civil proceedings, it is customary to defer to the criminal investigation to the extent consistent with the rights of all concerned.

Accordingly, it is ORDERED, that the Council will defer action on the motion for reconsideration in light of the ongoing investigation. If the investigation is not concluded within 3 months, the Council will revisit the issue. In the meantime, the Council may investigate any newly discovered evidence.

The Council finds that its deferral of the motion for reconsideration does not prejudice any substantial rights of the complainant.

During the pendency of the criminal investigation, Judge Kent has agreed he will not handle any civil or criminal cases in which the United States is a party or in which sexual misconduct of any kind is alleged.

DONE this 20th day of December, 2007.

FOR THE COUNCIL:



Chief Judge