U.S. Department of Justice

Office of Professional Responsibility

950 Pennsylvania Avenue, N.W., Suite 3266
Washington, DC 20530
(202) 514-3365

December 19, 2024

By Email

[redacted]
CREW
[redacted]

Re: OPR FOIA No. F22-00034 Fifth Interim Response (2nd Referral)

Dear [redacted]

This letter is in response to your January 30, 2022 Freedom of Information Act (FOIA)/Privacy Act (PA) request to the Department of Justice (DOJ) Office of Professional Responsibility (OPR) seeking the following records from January 1, 2010, to the date we began to process your request:

1. All complaints or other submissions to DOJ's Office of Professional Responsibility ("OPR") regarding possible professional misconduct by any federal court of appeals judge, district court judge, magistrate judge, or bankruptcy judge.
2. All referrals made by OPR to any judicial disciplinary authority, state bar, or any other external entity regarding possible professional misconduct by any federal court of appeals judge, district court judge, magistrate judge, or bankruptcy judge.
3. All OPR reports, conclusions, or findings relating to items 1 or 2 above.

OPR received your request on January 20, 2022, and has assigned to it tracking number **F22-00034**. Please refer to this number in any correspondence pertaining to this matter.*

For this fifth interim response to your request for records related to the second judicial misconduct referral, OPR processed a total of 168 pages responsive to your request. Enclosed please find 11 pages responsive to your request. Of the 11 pages, four pages (Bates-numbered F22-00034 00627 to 00630) are appropriate for release without excisions and seven pages (Bates-numbered F22-00631 to 00637) are appropriate for release with excisions made pursuant to Exemptions 5, 6 and 7(C) of the FOIA, 5 U.S.C. § 522(b)(5), (b)(6) and (b)(7)(C). Exemption 5 pertains to certain inter- and intra-agency communications protected by the deliberative process

* *For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c) (2006 & Supp. IV 2010). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.*

privilege. Exemption 6 pertains to information the release of which would constitute a clearly unwarranted invasion of the personal privacy of third parties. Exemption 7(C) pertains to information compiled for law enforcement purposes which could reasonably be expected to constitute an unwarranted invasion of the personal privacy of third parties. Please be advised that we have considered the foreseeable harm standard when reviewing records and applying FOIA exemptions.

OPR determined that 11 pages (Bates-numbered F22-00034 00638 to 00648) contained information of interest to the Executive Office for U.S. Attorneys (EOUSA) and two pages (Bates-numbered F22-00034 00649 to 00650) contained information of interest to the Criminal Division (CRM); we will send these pages for consult to EOUSA and CRM pursuant to 28 C.F.R. § 16.4(d). Upon receipt of the consultation responses, OPR will finalize and provide these pages, as appropriate, to you.

Because 111 pages of responsive records originated with EOUSA (Bates-numbered F22-00034 00651 to 00761), OPR will refer these pages to EOUSA for processing and direct response to you.

Twenty-seven pages (Bates-numbered F22-00762 to 00788) were withheld in full pursuant to Exemptions 5, 6 and 7(C) of the FOIA, 5 U.S.C. § 522(b)(5), (b)(6) and (b)(7)(C). Exemption 5 pertains to certain inter- and intra-agency communications protected by the deliberative process privilege. Exemption 6 pertains to information the release of which would constitute a clearly unwarranted invasion of the personal privacy of third parties. Exemption 7(C) pertains to information compiled for law enforcement purposes which could reasonably be expected to constitute an unwarranted invasion of the personal privacy of third parties. Please be advised that we have considered the foreseeable harm standard when reviewing records and applying FOIA exemptions.

The six remaining pages were determined not to be responsive to your request.

Although I am aware that your request is the subject of ongoing litigation and that appeals are not ordinarily acted on in such situations, I am required by statute and regulation to inform you of your right to file an administrative appeal with the Office of Information Policy.

Sincerely,

Carmen Smith Carter

Carmen Smith Carter
Assistant Counsel for the
Freedom of Information and Privacy Acts

Attachment: F22-00034 Processed and Produced Page Counts Chart

cc: Taylor Pitz
Trial Attorney
Federal Programs Branch
Civil Division

Attachment F22-00034 Processed and Produced Page Counts Chart						
Interim/ Monthly Interim	**Bates Nos.**	**No. of Pages Processed**	**Blank, Duplicate, Non-responsive Pages**	**Produced to Sus=S Consult=C Referral=R Withheld in Full=WIF**	**No. of Pages Produced**	**Pages Produced and Processed**
FEB 2023	1-66	66	62	S=4	66	66[†]
MAR 2023	67-283	217	0	S=1 R=137 (EOUSA) R=73(FBI) WIF=6	217	217
3rd Interim (Jan 29, 2024)	284-491	614	406	C=1 (EOUSA, CRM, FBI) R=182 (EOUSA) R=11 (CRM) R=14 (FBI)	208	614
4th Interim (Sept. 23, 2024)	492-626	561	426	S=84 C=15 (CRM) C=17 (CRM,PRAO) WIF=19	135	561
5th Interim	627-788	168	6	S=11 C=11 (EOUSA) C=2 (CRM) R=111 (EOUSA) W=27	162	168
				Total Produced	**788**	
				Total Produced and Processed		**1,626**

[†] For the February 2023 interim response, 62 of the 66 pages produced were discovered to be nonresponsive post-production, but are counted here as part of the total number of pages actually produced (and processed).

Texas 8.3(b)

Rule 8.03. Reporting Professional Misconduct (a) Except as permitted in paragraphs (c) or (d), a lawyer having knowledge that another lawyer has committed a violation of applicable rules of professional conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate disciplinary authority. (b) Except as permitted in paragraphs (c) or (d), a lawyer having knowledge that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority. (c) A lawyer having knowledge or suspecting that another lawyer or judge whose conduct the lawyer is required to report pursuant to paragraphs (a) or (b) of this Rule is impaired by chemical dependency on alcohol or drugs or by mental illness may report that person to an approved peer assistance program rather than to an appropriate disciplinary authority. If a lawyer elects that option, the lawyer's report to the approved peer assistance program shall disclose any disciplinary 116 violations that the reporting lawyer would otherwise have to disclose to the authorities referred to in paragraphs (a) and (b). (d) This rule does not require disclosure of knowledge or information otherwise protected as confidential information: (1) by Rule 1.05 or (2) by any statutory or regulatory provisions applicable to the counseling activities of the approved peer assistance program. (e) A lawyer wh who has been convicted or placed on probation, with or without an adjudication of guilt, by any court for barratry, any felony, or for a misdemeanor involving theft, embezzlement, or fraudulent or reckless misappropriation of money or other property—including a conviction or sentence of probation for attempt, conspiracy, or solicitation—must notify the chief disciplinary counsel within 30 days of the date of the order or judgment. The notice must include a copy of the order or judgment. (f) A lawyer who has been disciplined by the attorney-regulatory agency of another jurisdiction must notify the chief disciplinary counsel within 30 days of the date of the order or judgment. The notice must include a copy of the order or judgment. Comment: 1. Self-regulation of the legal profession requires that members of the profession initiate disciplinary investigations when they have knowledge not protected by Rule 1.05 that a violation of these rules has occurred. Lawyers have a similar obligation with respect to judicial misconduct. Frequently, the existence of a violation cannot be established with certainty until a disciplinary investigation has been undertaken. Similarly, an apparently isolated violation may indicate a pattern of misconduct that only a disciplinary investigation can uncover. Consequently, a lawyer should not fail to report an apparent disciplinary violation merely because he cannot determine its existence or scope with absolute certainty. Reporting a violation is especially important where the victim is unlikely to discover the offense. 2. It should be noted that this Rule describes only those disciplinary violations that must be revealed by the disclosing lawyer in order to avoid violating these rules himself. It is not intended to, nor does it, limit those actual or suspected violations that a lawyer may report. However, if a lawyer were obliged to report every violation of these rules, the failure to report any violation would itself be a professional offense. Such a requirement existed in many jurisdictions but proved to be unenforceable. This Rule limits the reporting obligation to those offenses that a self-regulating profession must vigorously endeavor to prevent. A measure of judgment is, therefore, required in complying with the provisions of this Rule. Similar considerations apply to the reporting of judicial misconduct. The term "substantial" refers to the seriousness of the possible offense and 117 not the quantum of evidence of which the lawyer is aware. The term "fitness" has the meanings ascribed to it in the Terminology provisions of these Rules. 3. A report of professional misconduct by a lawyer should be

made and processed in accordance with Article X of the State Bar Rules. A lawyer need not report misconduct where the report would involve a violation of Rule 1.05. However, a lawyer should encourage a client to consent to disclosure where prosecution of the violation would not substantially prejudice the client's interests. Likewise, the duty to report professional misconduct does not apply to a lawyer retained to represent a lawyer whose past professional conduct is in question. Such a situation is governed by the rules applicable to the client-lawyer relationship. 4. Paragraphs (e) and (f) are added under section 81.081 of the Government

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE
NEW ORLEANS, LA 70130

June 21, 2019

Corey R. Amundsen
Director and Chief Counsel
Office of Professional Responsibility
U.S. Department of Justice
950 Pennsylvania Ave, N.W., Suite 3266
Washington, D.C. 20530-0001

RE: Judicial Misconduct Complaint No. 05-19-90076

Dear Mr. Amundsen:

Please find enclosed a self-explanatory order regarding the above-referenced judicial misconduct complaint matter.

Sincerely,

LYLE W. CAYCE, Clerk

By _____
Shelley E. Saltzman, Deputy Clerk

Encl.

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE
NEW ORLEANS, LA 70130

March 19, 2019

Corey R. Amundsen
Director and Chief Counsel
Office of Professional Responsibility
U.S. Department of Justice
950 Pennsylvania Ave, N.W., Suite 3266
Washington, D.C. 20530-0001

Dear Mr. Amundsen:

Please be advised that your complaint of judicial misconduct against United States District Judge Lynn N. Hughes has been assigned the following complaint number:

05-19-90076

Please include the caption "Re: Judicial Misconduct Complaint No. 05-19-90076" in all further correspondence regarding this matter.[1]

You will be advised, by mail, of the Chief Judge's action on your complaint.

Sincerely,

LYLE W. CAYCE, Clerk

By _____
Shelley E. Saltzman, Deputy Clerk

[1] Please note that pursuant to Fifth Circuit Procedure 6(c), "[o]nce a complaint has been filed, it may not be supplemented by additional statements or documents except to correct inaccuracies in the original complaint. Supplements submitted after the complaint has been filed will be returned to the complainant if they do not comply with this section."

U.S. Department of Justice

Office of Professional Responsibility

950 Pennsylvania Avenue, N.W., Suite 3266
Washington, D.C. 20530

March 11, 2019

The Honorable Carl E. Stewart
Chief Judge, U.S. Court of Appeals for the Fifth Circuit
300 Fannin Street, Suite 5226
Shreveport, Louisiana 71101-3074

Re: Judicial Referral

Dear Chief Judge Stewart,

On behalf of the U.S. Department of Justice, I write to provide information concerning the conduct of U.S. District Judge Lynn Hughes of the Southern District of Texas that may implicate provisions of the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-364, and may otherwise be prudent to report given the mission of Title VII of the Civil Rights Act.

Based on the facts and circumstances discussed below, the Department believes that Judge Hughes demeaned Assistant United States Attorney (AUSA) (b) (6) of the U.S. Attorney's Office for the Southern District of Texas (USAO) because of her gender, falsely accused AUSA (b) (6) and other members of the USAO of mischaracterizing his misconduct in an appellate brief, and improperly barred AUSA (b) (6) from his courtroom because the government revealed his misconduct to the Fifth Circuit Court of Appeals. The Department believes that Judge Hughes has engaged in conduct that is prejudicial to the effective and expeditious administration of the business of the courts and the government.

In 2017, Judge Hughes presided over (b) (6) (b) (6) in which (b) (6) was charged with two counts of mail fraud and two counts of wire fraud in violation of 18 U.S.C. §§ 1341, 1343. AUSA (b) (6) who prosecuted the case, produced some discovery late, prompting the defense to file a motion to dismiss. During the hearing on the motion, Judge Hughes criticized AUSA (b) (6) performance regarding discovery production and attributed the shortcomings to her gender, stating: (b) (6) (b) (6) One of the female agents in the courtroom, (b) (6), (b) (7)(C) , responded, (b) (6), (b) (7)(C) ." Judge Hughes responded, (b) (6) This comment referred to AUSA (b) (6) and her co-counsel, AUSA (b) (6) . *See* (b) (6) Transcript of Hearing on Motion to Dismiss in (b) (6), at 8-9. Judge Hughes then granted the defense motion and dismissed the indictment with prejudice.

The government appealed the dismissal order to the Fifth Circuit Court of Appeals, arguing, *inter alia*, that the court abused its discretion in dismissing the case with prejudice. In its

brief, the government accurately described Judge Hughes' improper remarks to AUSA (b) (6) The Fifth Circuit reversed the dismissal, finding, *inter alia*, that the prosecutor's "mishaps" were "benign mistakes," that did not warrant dismissal with prejudice. (b) (6) (b) (6) The Fifth Circuit directed the case be reassigned to another judge, and characterized Judge Hughes' gender-based remarks as "demeaning, inappropriate, and beneath the dignity of a federal judge." *Id.* at 681 n.3.

On (b) (6), AUSA (b) (6) next appeared before Judge Hughes at a pre-trial conference in (b) (6), an unrelated matter. He promptly "excused" AUSA (b) (6) from the case, causing her to leave the courtroom without comment. Five days later, AUSA (b) (6) appeared before Judge Hughes at another hearing on the same matter, and again, Judge Hughes "excused [her] from the trial." When AUSA (b) (6) asked for an explanation for her dismissal, Judge Hughes refused to provide one. *See* Transcript of (b) (6) proceedings in (b) (6), at 3.

U.S. Attorney Ryan Patrick, who also attended the hearing, then asked Judge Hughes to explain AUSA (b) (6) dismissal. Judge Hughes responded that AUSA (b) (6) (b) (6) complaining that U.S. Attorney Patrick was (b) (6) *Id.* at 5, 7. Judge Hughes also accused the government of filing a (b) (6), and asserted that U.S. Attorney Patrick (b) (6) in the brief by failing to withdraw it. *Id.* at 5, 7. Judge Hughes claimed that his comment about dress was (b) (6) (b) (6) *Id.* at 5. After U.S. Attorney Patrick left the courtroom, the government sought a continuance to explore possible appellate options. Judge Hughes stated, (b) (6) (b) (6) (b) (6) (b) (6) *Id.* at 12, 13. Judge Hughes then criticized the Fifth Circuit's opinion in (b) (6) *id.* at 14-15, and denied the government's motion to continue the (b) (6) trial.

The government filed a petition for a writ of mandamus seeking Judge Hughes' recusal from (b) (6) and rescission of his order disqualifying AUSA (b) (6) from prosecuting the case. (b) (6) The government also filed a motion in (b) (6) requesting that Judge Hughes recuse himself. The Fifth Circuit denied the mandamus petition without comment and Judge Hughes denied the recusal motion. The government then filed a notice of appeal of Judge Hughes' denial of the recusal motion, which is pending. Trial proceeded on (b) (6), without AUSA (b) (6), after Judge Hughes refused to stay the proceedings pending appeal. The defendant was convicted, and the case is pending sentencing.

Enclosed please find copies of: (1) (b) (6) Transcript of Hearing on Motion to Dismiss in (b) (6); (2) July 3, 2018 Appeal from the U.S. District Court for the Southern District of Texas in (b) (6); (3) Fifth Circuit Opinion in (b) (6) (b) (6); (4) (b) (6) Transcript of Pretrial Hearing in (b) (6); (5) January 19, 2019 Government's Emergency Petition for Writ of Mandamus and Emergency Motion to Stay Proceedings in the District Court in (b) (6)

(b) (6); (6) January 19, 2019 Motion for Recusal in (b) (6); and (7-8) court dockets in (b) (6) and (b) (6). If you need additional information, please do not hesitate to contact me at (b) (6) (b) (6) or OPR Senior Counsel Lyn Hardy at (b) (6)

I declare under penalty of perjury that the statements made in this complaint are true and correct to the best of my knowledge.

By: _____ Date: _____

Corey R. Amundson
Director and Chief Counsel
Office of Professional Responsibility
U.S. Department of Justice

Enclosures

cc: U.S. Attorney Ryan K. Patrick (w/ encl.)

FOR IMMEDIATE RELEASE:

LOCAL ATTORNEYS GATHER IN SUPPORT OF FEDERAL JUDGE

Contact: (b) (6)

February 18, 2019

Houston, Texas - Attorneys from all segments of Houston's legal community will hold a press conference on Tuesday, February 19, at 4:00 pm in front of the federal courthouse at 515 Rusk Street. The attorneys will gather to show support for U.S. District Judge Lynn Hughes, who has been battling with the DOJ over who controls his courtroom.

Attorney and former U.S. Congressman Craig Washington will speak on behalf of the group at the courthouse. The group includes large law firm attorneys, solo practitioners, civil attorneys, corporate general counsels, criminal defense attorneys, and former federal prosecutors.

After a variety of incidents involving misconduct by government attorneys, Judge Hughes has been attacked by the DOJ for expelling some prosecutors from his courtroom. Many attorneys are concerned that these attacks are just another example of recent efforts by the government to intimidate federal judges. The independence of the federal judiciary is threatened by the DOJ's efforts against Judge Hughes.

Statement of Attorneys Supporting U.S. District Judge Lynn Hughes

We are here today because of yet another attack on the independence of our federal judiciary. The past few years have seen repeated, unfounded, and unprecedented attacks on the federal judiciary by the executive branch. These attacks, often coming from the President of the United States, are dangerous to our democracy. These attacks challenge the basic concept of separation of powers which is a critical part of our nation.

A federal district judge has the right and duty to control what happens in the courtroom. A judge's power to punish improper conduct by an attorney - even a government attorney - is substantial. Instead of encouraging professionalism by it's prosecutors, the DOJ elected to attack the professionalism of the Honorable Lynn Hughes. In attacking Judge Hughes, the DOJ has blatantly misrepresented Judge Hughes's comments.

Judge Hughes has a long history of holding all attorneys to high standards of conduct. There is no exception for DOJ lawyers. Judge Hughes recently ejected two DOJ lawyers for being inappropriately attired for federal court. This apparently did not sit well with the DOJ. Perhaps the DOJ, as part of the Executive Branch, expects preferential treatment.

Judge Hughes and his fellow judges stand between the overwhelming power of the government, and every citizen's constitutional rights and freedoms.

The transcripts of the proceedings at issue clearly show that the Government's claims are simply false.

The DOJ's attempt to distract from the conduct of its prosecutors should not fool anyone. Judge Hughes is a valuable member of our local judiciary. As members of the Bar, sworn to support the Constitution, we will not remain silent while the DOJ, representing the Executive Branch, perpetuates yet another wrongful attack on an esteemed member of our federal judiciary.

From: Ragsdale, Jeffrey (OPR)
Sent: Friday, February 15, 2019 11:15 AM
To: Hardy, Lyn (OPR)
Subject: OPR-#437202-v1-Self_Report_of_Judge_Lynn_Hughes_Criticism
Attachments: OPR-#437202-v1-Self_Report_of_Judge_Lynn_Hughes_Criticism.docx.DRF

Lyn

(b) (5), (b) (6) The first time was when Judge Hughes dismissed the indictment in the (b) (6) case with prejudice that resulted in an appeal to the 5th Circuit. (b) (5)

(b) (5)

This memo is waiting for Corey to sign and then this matter will be closed. Technically this is a draft.

Jeff

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

IN RE:

The Complaint of United States Department of Justice Against
United States District Judge Lynn N. Hughes, Southern District of Texas,
Under the Judicial Improvements Act of 2002.

Docket Number: 05-19-90076

ORDER

The United States Department of Justice has filed a complaint against United States District Judge Lynn N. Hughes. Allegations in the complaint overlap with issues pending in (b) (6) .

Pursuant to Fifth Circuit Procedure 8 of the Rules for Judicial-Conduct and Judicial-Disability Proceedings, which provides for abeyance of complaints raising issues which are raised in pending litigation, it is ordered that the complaint be held in abeyance pending the disposition of Case No. (b) (6) .[1] The Department of Justice is directed to notify the Clerk of Court in writing of the ultimate disposition of the case, including any appeals.

Carl E. Stewart
Chief Judge

June 17, 2019

[1] *See also* Commentary to Rule 4 (formerly Rule 3) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings (". . . there may be occasions when appellate and misconduct proceedings overlap, and consideration and disposition of a complaint under these Rules may be properly deferred by the chief judge until the appellate proceedings are concluded . . .")