Attachment 1

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ONE HUNDRED ELEVENTH CONGRESS

Congress of the United States
House of Representatives

COMMITTEE ON THE JUDICIARY

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October 29, 2009

Richard Westling, Esq.
Ober Kaler Grimes & Shriver
1401 H Street, N.W., Suite 500
Washington, D.C. 20005

Re: Impeachment Inquiry of Judge G. Thomas Porteous, Jr.

Dear Mr. Westling:

It has come to the attention of the Impeachment Task Force that you may currently represent Louis M. Marcotte, III, and Lori M. Marcotte in connection with civil litigation arising out of their operation of Bail Bonds Unlimited, Inc. (Bartholomew v. Bail Bonds Unlimited, Inc. et al, Case No. 2:05-cv-04165-ILRL-JCW (E.D. La.), and that you previously represented Louis M. Marcotte, III, in his criminal case (U.S. v. Marcotte, Crim. No. 04-061 (E.D. La.)).

As you know, Judge Porteous's relationship with Louis Marcotte and Lori Marcotte may be at issue in the pending Impeachment Inquiry being conducted by the Task Force for the House of Representatives, Committee on the Judiciary, and either or both may be called as witnesses at a hearing adverse to Judge Porteous.

As we are also sure you are aware, because of your duties of loyalty to current and prior clients and duties to protect confidential information, if there were to be a hearing where the relationship between the Marcottes and Judge Porteous is at issue, there would be significant conflict of interest issues arising from your participation. Further, those conflict issues may be implicated by your participation in the formulation of a factual defense of Judge Porteous where you are constrained from providing advice due to your ongoing ethical obligations.

As you know, the ethical bar rules in the District of Columbia, Maryland and Louisiana require informed consent by all clients in order to permit waivers of conflicts, and two of these jurisdictions require that such informed consent be in a signed writing. See, e.g., District of Columbia Rules of Professional Conduct, Rule 1.7(c); Louisiana Rules of Professional Conduct, Rule 1.7(b)(4) (requires writing); Maryland Lawyer's Rules of Professional Conduct, Rule 1.7(b)(4) (requires writing). We request that you promptly provide the Task Force with signed consent forms from all three of these clients. Until the Task Force and Committee are fully apprised, we will not be in a position to make a determination of the appropriate treatment of this situation in the event that the Marcottes are called as witnesses adverse to Judge Porteous.

We write now to put you and Judge Porteous on notice of the House's concern and so that you and he can take appropriate steps promptly to deal with this situation. We are aware that, in the past, Judge Porteous sought delays in Fifth Circuit proceedings in order for him to obtain new counsel. No delays in our schedule will be permitted to accommodate any search for additional or replacement counsel for Judge Porteous. If a hearing is scheduled at which the Marcottes are to testify, the Task Force will not postpone it in order for Judge Porteous to obtain new or different counsel.

We look forward to your providing the Task Force with the information we seek and your response to our concerns at your earliest opportunity so that the Task Force and the Committee can determine how we will proceed in light of this situation.

Please respond to Alan I. Baron, Esq., Seyfarth Shaw, 975 F. Street, N.W., Washington, D.C., 20004 (202-828-3589).

Sincerely,

Adam Schiff
Chairman
Impeachment Task Force

Bob Goodlatte
Ranking Member
Impeachment Task Force

Attachment 2

Congress of the United States
Washington, DC 20515

April 13, 2010

The Honorable Claire McCaskill
Chairman, Senate Rule XI Impeachment Committee
United States Senate
Washington, D.C.

The Honorable Orrin Hatch
Vice Chairman, Senate Rule XI Impeachment Committee
United States Senate
Washington, D.C.

Re: Impeachment of Judge G. Thomas Porteous, Jr. – Preliminary Matters

Dear Senator McCaskill and Senator Hatch:

The purpose of this letter is to address the questions set forth in the March 31, 2010 email from Senate Legal Counsel Frankel relating to certain preliminary procedural issues in connection with the impeachment trial of Judge Porteous.

Pretrial Motions. The House may raise pre-trial motions regarding the following matters:

- Motion to admit as substantive evidence specific prior sworn testimony at the Fifth Circuit Special Investigative Committee Hearing [the Fifth Circuit Hearing] and at the House Impeachment Task Force Hearings where Judge Porteous or his counsel has either cross-examined the witness or has been provided the opportunity to do so;

- Motion to admit as substantive evidence the sworn testimony and other statements of Judge Porteous at the Fifth Circuit Hearing;

- Motion to admit certain documents into evidence, the authenticity and relevance of which are not in dispute. These would include, for example, court records (the curatorships, the Liljeberg proceedings, and the bankruptcy proceedings) or other similar documents. It is possible that this motion will be unnecessary, or will be limited in scope, depending on whether a stipulation can be reached with Judge Porteous's counsel on this topic;

- Motion to permit or admit expert testimony; and

- Motion relating to stipulations, if appropriate.

Stipulations as to the authenticity of documents. The House believes that the authenticity of the documents that are relevant to the impeachment trial is beyond real dispute. These documents generally consist of court records, transcripts, financial records, public records and certain business records. The House has already identified those documents which are likely to be used in the Senate trial (using the same exhibit numbers from the Report that accompanied the Impeachment Resolution), and has provided counsel for Judge Porteous a disc containing the documents and an exhibit list. By separate letter dated April 9, 2010, the House has requested that Judge Porteous stipulate to the authenticity of the documents on the exhibit list.

Stipulations as to facts. The House believes that a significant portion of the facts that are alleged in the Articles are uncontested or have been established beyond legitimate dispute. As an example, Judge Porteous has admitted to pertinent facts surrounding his relationship with attorneys Jacob Amato and Robert Creely – including his financial relationship with them prior to becoming a Federal judge, his handling of the Liljeberg case, his solicitation and acceptance of cash from Amato when the case was pending, and his acceptance of other things of value from Amato and Creely while the case was pending. Similarly, the essential facts surrounding Judge Porteous's handling of his personal bankruptcy are not in dispute. The House is in the process of preparing a number of proposed factual stipulations, and will soon be providing them to Judge Porteous's counsel for review.

Nonetheless, to expedite the stipulation process, the House suggests that at the time the Committee sets a motions schedule in this case, it direct each party to consider stipulations proposed by the other party. The House further suggests that "any proposed stipulation of fact [or as to authenticity] . . . be accepted as true unless the opposing party file[s] an objection which include[s] a proffer as to why the proposed stipulation of fact [or authenticity] should not be accepted as true."[1] The House urges that the Committee direct that this process be completed as of the date that responses to motions are due to be filed.

Evidence from prior proceedings. It is the position of the House that all the testimonial or documentary evidence that was admitted into evidence in the Fifth Circuit proceeding is admissible in the Senate trial. (As noted, the House may file a motion seeking to admit particular evidence in advance of the Senate trial.) At this point in time the House does not anticipate seeking to admit testimony or witness statements that have not been subject to cross-examination. The House cannot rule out the possibility that circumstances may arise where it would seek to have the Committee consider sworn prior recorded testimony or other statements of witnesses whose credibility had not been questioned or whose statements relate to facts not in

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[1]"Report of the Impeachment Trial Committee on the Articles Against Judge Alcee L. Hastings," S. Rept. No. 101-156, 101st Cong., 1st Sess. 169 (1989).

substantial dispute.[2]

Witnesses. The House may call the following witnesses. The nature of the testimony of the respective witnesses is generally described in the Report that accompanied the Articles of Impeachment. Depending on the nature of the cross-examination or the defense case generally, it is likely that it will not be necessary to call all of them, and, of course, it may be necessary to call other witnesses to address factual contentions that may be raised by the defendant. Those who sought immunity in connection with the House investigation are indicated.

Article 1

1. Robert Creely [Immunity]
2. Jacob Amato [Immunity]
3. Leonard Levenson [Immunity]
4. Donald Gardner
5. Joseph Mole
6. Rhonda Danos [Immunity]

Article 2

7. Louis Marcotte
8. Lori Marcotte
9. Ronald Bodenheimer
10. Bruce Netterville [Immunity]
11. Mike Reynolds
12. Jeffrey Duhon
13. Aubrey Wallace

Article 3

14. Claude Lightfoot
15. FBI Special Agent DeWayne Horner
16. FBI Financial Analyst Gerald Fink
17. Richard Greendyke

Article 4

18. Former FBI Agent Cheyanne Tackett
19. Former FBI Agent Robert Hamill

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[2]See, e.g., "Report of the Impeachment Trial Committee on the Articles Against Judge Alcee L. Hastings," S. Rept. No. 101-156, 101st Cong., 1st Sess. 170 (1989).

Length of the case-in-chief. The House believes it can put on its case-in-chief in 30 hours of direct testimony.

Other. On March 23, 2010, the House provided to Judge Porteous all the exhibits cited in the House Report, as well as other materials marked as exhibits and an accompanying Exhibit List. (In that the Report refers to matters such as procedural and litigation background that are not going to be part of the trial in this case, the Exhibit List contains numerous documents which will not constitute evidence at trial.) The House also made available other documents and records for inspection. Judge Porteuos's attorneys have already made an initial review of these other documents. (A copy of the letter and Exhibit List is attached.)

A review of the Exhibit List provided to Mr. Westling reveals that there are virtually no materials with which Judge Porteous is unfamiliar. A significant portion of the documents on the Exhibit List were provided to Judge Porteous in connection with the Fifth Circuit Hearing or consist of testimony taken at that Hearing.[3] Other significant sets of records include: 1) various documents describing the procedural background in this case; 2) court documents with which Judge Porteous is personally familiar, such as the records from the Liljeberg case, over which Judge Porteous presided; and 3) documents consisting of the grand jury-related litigation in this case.[4]

Though the Committee on the Judiciary's Impeachment Task Force developed additional corroboration for certain of the allegations – such as by obtaining the curatorship orders issued by Judge Porteous to Robert Creely, obtaining records of bails set by Judge Porteous that benefitted the Marcottes, obtaining the orders by which Judge Porteous set aside convictions, or engaging in further analysis of Judge Porteous's financial records related to his bankruptcy – a review of the Articles demonstrates they set forth virtually no substantive allegation of which Judge Porteous and his attorney were not personally aware:

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[3]These include a substantial portion of Exhibits 11-49, relating to Amato, Creely, Gardner, Levenson and Danos; Exhibits 100-114, consisting of Judge Portoues's financial disclosure reports; Exhibits 120-124, consisting of the Lightfoot grand jury testimony; exhibits 124-149, consisting of various bankruptcy records; and Exhibits 301-343, consisting of casino records and a few other miscellaneous bankruptcy-related records.

[4]Exhibits 1-10 are background documents related to the procedural history of this case; Exhibits 50-68 are Liljeberg court records; Exhibits 400-436 are the litigation documents related to Judge Porteous's efforts to keep relevant materials from the House and Senate. In addition, Exhibits 150 through 200 generally consist of records related to Judge Porteous's seeking and acceptance of trips and gifts from various parties that are not charged in the Articles but are contained in the Report. Exhibits 200 through 300 are Depositions exhibits. Some of these are photographs (and some of the photographs include Judge Porteous), but many are duplicates of documents that were marked and listed in other places on the Exhibits List and include numerous exhibits related to matters not charged in the Articles.

Article I. Judge Porteous has been aware of the details and substance of the Liljeberg allegations since in or about late 2003. Judge Porteous was provided with the documents, including grand jury testimony, related to his relationships with the Robert Creely and Jacob Amato and his handling of the Liljeberg case in connection with the October 2007 Fifth Circuit Hearing. At that Hearing, he cross-examined Creely, Amato, and Joseph Mole – the critical fact witnesses. Judge Porteous was also present at the Task Force Hearing at which those three men testified and were cross-examined by his counsel.

Article II. Judge Porteous has been familiar with the Marcotte allegations since at least 2003. Indeed, in early 2004, Judge Porteous's criminal defense attorney at the time engaged in affirmative defensive efforts on Judge Porteous's behalf to keep him from being charged in the Marcotte corruption scheme. These efforts included obtaining from Louis Marcotte an affidavit that attempted to exculpate Judge Porteous from allegations that he (Judge Porteous) received cash in exchange for his taking official acts in lowering bonds. In addition, Judge Porteous's present counsel, Mr. Westling, is personally and intimately familiar with the Marcotte allegations – having represented Louis Marcotte in connection with his guilty plea in March 2004 and, in fact, having been present representing Louis Marcotte during Louis Marcotte's debriefing interviews with the FBI in 2004.[5] The allegations in Article II track the substance and detail of those interviews and Louis Marcotte's and Lori Marcotte's Task Force testimony, at which Judge Porteous was in attendance.

Article III. Judge Porteous has been aware of the details and substance of the bankruptcy allegations since at least 2004, when his bankruptcy attorney, Claude Lightfoot, was subpoenaed to the grand jury in connection with the Department of Justice criminal investigation. Judge Porteous was provided complete discovery on this topic at the Fifth Circuit Hearing, including Lightfoot's prior grand jury testimony and his files. He examined Lightfoot and other witnesses at the Fifth Circuit Hearing, and Mr. Westling was provided the opportunity to examine Lightfoot at the Task Force Hearing.

Article IV. As noted above, Judge Porteous is well aware of the allegations and evidence related to his relationships both with attorneys Robert Creely and Jacob Amato and with Louis Marcotte – information that Judge Porteous is alleged to have concealed in connection with his 1994 background check. Furthermore, the evidentiary materials memorializing his statements consist of but a handful of documents, some of which were disclosed at the House Task Force hearings in November of 2009.

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[5]In a letter dated October 29, 2009, Mr. Schiff and Mr. Goodlatte alerted Mr. Westling to the potential conflict of interest in his taking a role in these proceedings on behalf of Judge Porteous that would require him to take a position or actions adverse to the Marcottes. It would be appropriate that Judge Porteous affirmatively waive any objection to Mr. Westling representing him arising from Mr. Westling's potential conflict so that no issue emerges at trial that would cause Mr. Westling to seek to withdraw and thus delay the proceedings.

We look forward to working with the Committee to expedite the proceedings in this case.

Sincerely,

Adam Schiff
House Impeachment Manager

Bob Goodlatte
House Impeachment Manager

cc: Morgan Frankel
Senate Legal Counsel

Attachments