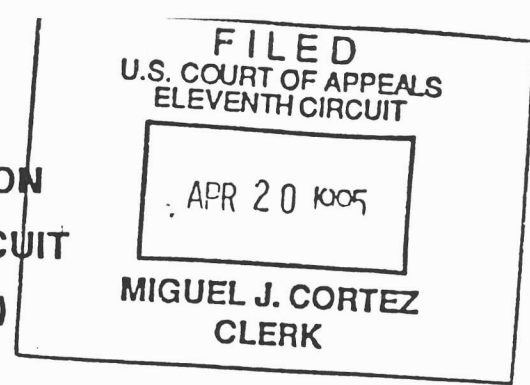


BEFORE JUDGE J. L. EDMONDSON
OF THE ELEVENTH JUDICIAL CIRCUIT
(Miscellaneous Docket 94-1244)



IN RE: The complaint of L. S. against United States Circuit
Chief Judge Gerald Bard Tjoflat under the Judicial Conduct
and Disability Act of 1980, 28 U.S.C. § 372(c).

O R D E R

A person has filed a Section 372(c) complaint that complains of the conduct of the Chief Judge of the Circuit. The complaint has come to me to review because the judges of the Circuit Court who were senior to me in active service disqualified themselves or were otherwise unavailable.

I have decided to recuse myself too. But, because the situation facing me is capable of repetition before other circuit judges, I will set out briefly some observations (not about the merits of the complaint, but about procedure) as a possible guide for future use.

The background of this complaint is complicated. For my purposes, I think it can be summarized pretty quickly, however. Mr. S. first filed 372(c) complaints [hereinafter, collectively, Complaint X] against three judges who made up a panel of this Court of Appeals and who decided Mr. S.'s appeal against him. The Chief Judge seemingly reviewed this complaint; concluded that the complaint, in reality, was a challenge related to the merits of an appeal; and dismissed the complaint per Section 372(c)(3)(A). Mr. S., as was his right, petitioned the Circuit's Judicial Council to review the Chief Judge's dismissal order. The Judicial Council affirmed the dismissal.

Mr. S then filed a new Section 372(c) complaint [hereinafter Complaint Y] against the Chief Judge alleging that he had wrongfully dismissed Complaint X. In Complaint Y, Mr. S. charges that the Chief Judge has conspired with many other persons to deprive Mr. S. of important rights: words such as

"prejudiced," "biased," "fraud," and "bribed" are used in the complaint. It is that complaint that is before me.

While Complaint Y has been pending, Mr. S. filed new Section 372(c) complaints [hereinafter, collectively, Complaint Z] against each member of the Judicial Council. The Chief Judge dismissed those complaints, that is, Complaint Z.

Important for the purpose of my opinion is that Mr. S. asserts in Complaint Y that the Chief Judge did wrong in dismissing Complaint X against the panel judges; and, Mr. S. says in Complaint Z that the members of the Judicial Council acted improperly in affirming the Chief Judge's decision. I was one of the Judicial Council members about whom Mr. S. complained in Complaint Z.

Stripped to its essence then, I am asked to review the Chief Judge's decision to dismiss Mr. S.'s first complaint, Complaint X, when Mr. S. also filed a similar complaint, Complaint Z, against me about my acts toward Complaint X and when the

Chief Judge has dismissed Complaint Z against me. Because the circumstances underlying Complaint Y against the Chief Judge are closely tied to the same circumstances that underlay Complaint Z against me, I think it would appear to be of questionable propriety for me to rule on the complaint against the Chief Judge.

I recall that the Code of Conduct for United States Judges says that "a judge should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary" and that "a judge shall disqualify himself in a proceeding in which the judge's impartiality might reasonably be questioned." Given the close tie between Complaint Z against me and Complaint Y against the Chief Judge, I conclude that -- if I were to dismiss the complaint against the Chief Judge -- it might appear to a reasonable person that the Chief Judge and I have exchanged favors about these complaints. This appearance of impropriety seems especially likely considering that I

cannot say with reasonable certainty that the 372 process will break down in this instance if I do not act. No necessity compels me to act; alternatives seem to exist.

Assuming (but not deciding for other judges) that all other active circuit judges who were members of the Judicial Council that upheld the dismissal of Mr. S.'s original 372 complaint, that is, Complaint X, would be disqualified on the grounds of appearance of impropriety, I see that at least one circuit judge, Judge Barkett, is not a member of the Judicial Council. She has taken no part in the review of Mr. S.'s 372 complaints and was not subject to Mr. S.'s Complaint Z. She then seems to be able to act on this complaint against the Chief Judge.* Considering her availability and seeming ability to act, no necessity compels me

* Mr. S.'s original federal law suit arises out of his dealings with the Florida Bar about which he complains. Judge Barkett was earlier Chief Justice of the Supreme Court of Florida. Judge Barkett may ultimately decide that she too is disqualified or should recuse herself. But I cannot say that she is so plainly disqualified as to treat her as unavailable for the purposes of deciding whether necessity compels me to act.

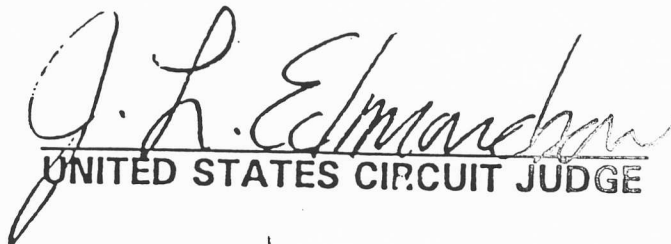
to act; therefore, for me to act now would, I think, raise questions about the appearances of impropriety under the circumstances.

Also, even if no active circuit judge of this Circuit could act (because of reasons of disqualification or otherwise) to review this 372 complaint against the Chief Judge, I think the Chief Justice of the United States, acting per 28 U.S.C. § 291(a), could designate a circuit judge from outside the Circuit to review the complaint. Again, I cannot conclude that a necessity exists that justifies my acting on the present complaint for the purposes of Sections 372(c)(1), (2), and (3), given the potential appearance of impropriety that I think looms over this matter.

I therefore will recuse myself from handling this matter as a kind of "acting chief judge" per 28 U.S.C. § 372(c)(2). I do not, however, say that I would be disqualified from later acting on this complaint if it comes to the Circuit's Judicial Council per 28 U.S.C. § 372(c)(10) for review. In that circumstance, ne-

cessity may demand that I -- as a council member -- act, considering that no alternative means of review seems to be obviously available under the law. See Complaint of John Doe, 2 F.3d 308 (8th Cir. [Jud. C] 1993). Necessity makes that lawful which otherwise is not lawful.

I hereby return the pertinent complaint to the Clerk of the United States Court of Appeals for the Eleventh Circuit. I direct the Clerk to transmit the complaint along with a conspicuous copy of this opinion to the circuit judge in regular active service next junior to me in date of commission. Each judge of the court can decide for himself or herself whether to act or not to act.


UNITED STATES CIRCUIT JUDGE