

IN THE SUPREME COURT OF THE UNITED STATES

COMPLAINT OF JUDICIAL MISCONDUCT

COMPLAINANT:

Lester Swartz  
P.O. Box 4612  
Deerfield Beach, Florida 33442-4612  
(561) 392-1761

RESPONDENT:

Honorable Justice Anthony M. Kennedy  
Associate Justice of the Supreme Court  
of the Supreme Court of the United States

This complaint is brought pursuant to 28 U.S.C. Section 372(c) against the Honorable Associate Justice Anthony M. Kennedy of the Supreme Court of the United States Court for the reason Complainant believes Justice Kennedy has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts, and as grounds would show:

1. On May 30, 1996 Complainant filed with the Clerk of this Court an Application directed to the Honorable Justice Anthony Kennedy for Issuance of a Certificate of Necessity Under 28 U.S.C. Section 291(a), a copy of the seven page application and the fifty-seven pages of exhibits attached thereto is attached to this complaint and is labeled Composite Exhibit 1.
2. The application was docketed as A-988 on or about June 3, 1996.
3. On June 5, 1996 the Honorable Justice Kennedy denied the application.
4. A copy of the underlying subject complaint 94-1244 lodged against the former Chief Judge Tjoflat was attached to the A-988 application as part of composite Exhibit A. The conduct complained of in 94-1244 contained the following allegations:
  - a. that two known false affidavits were filed *in the United States District Court* by the Florida Bar officials, et al.
  - b. that both of the abovesaid known false affidavits were fashioned to further conceal an alleged known legal malpractice insurance fraud perpetrated by certain members of the Florida

Bar officials, et al.

c. that at material issue in the trial court and subject of complaint 94-1244 were four allegedly fraudulent and material letters all dated February 14, 1986.

d. that the abovesaid alleged specific allegations of serious criminal conduct by the Florida Bar officials et. al., on the federal level, when substantiated, may have consisted of countless violations of certain Sections of Title 18 U.S.C., such as: Sections 2, 3, 4, 241, 242, 371, 1001, 1341, 1343, 1503, 1621, and 1961 et seq.

e. that all of the above allegedly was being unlawfully and unethically misprisioned and/or concealed by the former Chief Judge Tjoflat who was the target respondent of the subject 94-1244 complaint, and who allegedly was also acting in concert with the members of the U.S. Eleventh Circuit Judicial Council, the Florida Bar officials et. al., and others.

f. that the former Chief Judge Tjoflat wilfully and knowingly failed to initiate appropriate disciplinary action against the Florida Bar officials et. al. pursuant to Canon 3(B)(3) of his Code of Judicial Conduct and pursuant to Rule 1(A) of Addendum VIII of the Eleventh Circuit Rules.

5. That all judges in regular active service of the United States Court of Appeals for the Eleventh Circuit had disqualified themselves from ruling on a 372(c) judicial misconduct complaint filed by the undersigned against the former Chief Judge Gerald Bard Tjoflat, Misc. Docket Number 94-1244. The recusals of those judges in regular active service in the said Eleventh Circuit Court of Appeals were attached to A-988 as part of the thereto Exhibit B.

6. That the former Chief Judge Tjoflat wilfully, knowingly, and with criminal intent failed to duly issue the subject certificate of necessity, but instead dismissed the complaint which had

been lodged against himself. A copy of former Chief Judge Tjoflat's order was also attached to A-988 as part of the thereto attached Exhibit C.

7. The Applicant therein cited to Justice Kennedy the decision in *Meeropol v. Nizer*, 429 U.S. 1337, where the late Justice Marshall stated "[s]uch need is plain to anyone looking at the situation, and the duty to issue the certificate must be considered purely a ministerial act to deal with an administrative problem."

8. Allegedly, Justice Kennedy totally failed and neglected to perform his duty to issue the certificate of necessity.

9. The failure of a judge of the United States to duly act or nonfeasance is cognizable under the 1980 Act, plainly does invoke and implicate the disciplinary statute, and does constitute conduct prejudicial to the effective administration of the business of the courts as envisioned by the statute. This was discussed by the National Commission on Judicial Discipline and Removal ("Commission") which stated:

"[b]y their terms, the 1980 Act's application is limited to situations in which 1) the judge or judicial officer has "engaged in conduct"; and 2) if the conduct is serious to be "prejudicial to the effective and expeditious administration of the business of the courts. The dictionary definition of "conduct" refers to the synonym "behavior", which in turn is defined as the manner in which one "act(s), react(s), function(s), or perform(s). One manner in which a person can react, function, or perform in response to a given situation, is not to act. Accordingly, inaction, at least in common parlance, qualifies for a form of behavior or "conduct."

10. Justice Kennedy took an oath in which he assumed an affirmative duty to " ... *faithfully and impartially discharge and perform all duties incumbent upon him...*" Justice Kennedy allegedly failed and neglected to perform the duties incumbent upon him here.

11. The judiciary of the United States Court of Appeals for the Eleventh Circuit was greatly

at stake and had plainly been brought into very serious disrepute. Corrections of conditions that interfered with the proper administration of the courts were manifest and sanctions to penalize the underlying subject respondent Chief Judge Tjoflat for such potentially impeachable conduct and to deter future conduct was well within the scheme of the 1980 Act and in order.

12. By Justice Kennedy's alleged failure and neglect to issue the certificate of necessity, Complainant alleges Justice Kennedy was grossly derelict in his peremptory, plainly defined, and ministerial duty and by so doing, he may have exhibited a reckless disregard for the rights of this Complainant, the law, and for those duties incumbent upon a Justice of the Supreme Court of the United States.

13. Justice Kennedy's alleged failure and neglect to issue the certificate of necessity may have given rise to the appearance of impropriety in this most Honorable Court.

14. The Commission makes it clear that allegations of ethical violations are manifestly cognizable under the 1980 Act. Complainant alleges that Justice Kennedy, by his alleged failure and neglect to perform his plainly defined ministerial duties, may have violated certain Canons of the Code of Conduct for United States Judges, including, but not limited to:

a. CANON 1 - A JUDGE SHOULD UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY;

b. CANON 2 - A JUDGE SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL ACTIVITIES;

i. 2A. - A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary;

c. CANON 3 - A JUDGE SHOULD PERFORM THE DUTIES OF THE OFFICE  
IMPARTIALLY AND DILIGENTLY;

i. 3(A)(1) - A judge should be faithful to and maintain professional competence in the law ... ;

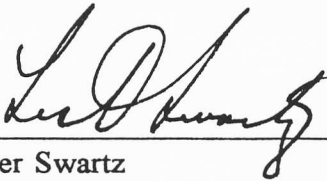
ii. 3(B)(1) - A judge should diligently discharge the judges administrative responsibilities, maintain professional competence in judicial administration, and facilitate the responsibilities of other judges and court officials;

iii. 3(B)(2) - A judge should require court officials, staff, and others subject to the judge's direction and control, to observe the same standards of fidelity and diligence applicable to the judge;

iv. 3(B)(3) - A judge should initiate appropriate action when the judge becomes aware of reliable evidence indicating the likelihood of unprofessional conduct by a judge or lawyer.

Complainant most respectfully and most regrettably requests proper action be initiated on this 372(c) complaint against the Honorable Associate Justice Anthony M. Kennedy.

**I hereby declare under the penalty of perjury that the forgoing is true and correct to the best of this petitioner's knowledge.**



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Lester Swartz  
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(561) 392-1761

*January 13, 1997*  
Dated

**SENT BY CERTIFIED PRIORITY UNITED STATES MAIL  
P-541-851-878-RETURN RECEIPT REQUESTED**

**COMPOSITE**

**EXHIBIT**

**"1"**