

LESTER SWARTZ  
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September 19, 1995

Hon. Miguel J. Cortez, Clerk  
United States Court of Appeals  
56 Forsyth Street, N.W.  
Atlanta, Georgia 30303

RE: Misc. Docket No. 95-1191, IN THE MATTER OF: LESTER SWARTZ

Dear Mr. Cortez,

I hereby petition the judicial council in good faith for its review of Chief Judge Tjoflat's believed unlawful order outrageously dismissing the above referenced matter. That this petitioner respectfully requests this petition be made part of the official record and transmitted to each and every member of the judicial council that will be casting a vote on this matter pursuant to this Circuit's Addendum III, Rule 7 (6).

However, petitioner believes that since each and every circuit judge in regular active service reasonably has been or are clearly disqualified in these Chief Judge Tjoflat et al. and "FLORIDA BARGATE" matters, then evidently the judicial council may be absent appellate members. Therefore, in the interests of right and substantial justice and in order to avoid any further appearances of impropriety, this petitioner respectfully directs the Judicial Council's attention to the following **ILLUSTRATIVE RULES GOVERNING COMPLAINTS OF JUDICIAL MISCONDUCT AND DISABILITY** ("ILLUSTRATIVE RULES") and its commentary. The ILLUSTRATIVE RULES state:

If a quorum of the judicial council cannot be obtained to act on a petition for review of the chief judge's order, there is no evident statutory vehicle for assigning the matter to another body, *but we believe it would be appropriate to do so. Among other alternatives, the court might ask the judicial council of another circuit to consider the petition or might ask the Chief Justice to assign the matter to either the judicial council of another circuit or the Judicial Conference Committee To Review Judicial Conduct and Disability Orders.*

Notably, in light of all of the said appearances of impropriety that looms over these

"FLORIDA BARGATE" matters to date, naturally petitioner would prefer for the Honorable Chief Justice of the Supreme Court of the United States to assign this matter to the seemly forum.

In addition and pursuant to said Addendum III, Rule 6 (e), this petitioner's reasons why the Chief Judge should not have invoked the "Rule of Necessity" or dismissed the said complaint are listed below.

First, the Chief Judge stated in his order that:

the statute makes no provision for an active member of any other court of appeals to assume, by intercircuit assignment, my duties under section 372 (c).

Petitioner believes the above statement is misleading. Clearly Title 28 U.S.C. Section 291 (a) does in fact provide for such intercircuit assignment of the Chief Judge's statutory duties. ***This section of the law expressly provides that:***

The Chief Justice of the United States may, ***in the public interest***, designate and assign temporarily any circuit judge to act as circuit judge in another circuit upon presentation of a certificate of necessity by the chief judge or the circuit justice of the circuit where the need arises. (emphasis added).

In further support of the above, the subject ***ILLUSTRATIVE RULES*** specifically state that:

If no circuit judge is available to serve as acting chief judge of the circuit, ***intercircuit assignment procedures under 28 U.S.C. Section 291 (a) can be used to assign a circuit judge from another circuit to perform the statutory duties of the chief judge.*** (emphasis added)

Pertinent to this instant matter, clearly no circuit judges were available to act as the chief judge. Under the subject statute and pursuant to the ***ILLUSTRATIVE RULES, the law, section 291 (a)***, crystal clearly contradicts Chief Judge Tjoflat's obvious egregious and self serving purpose for invoking the "Rule of Necessity". Therefore and reasonably, the Chief Judge's believed bad-faith order as said was not only unethical, but it appears that it was clearly unlawful.

In further support of petitioner's meritorious arguments, the undersigned now directs the judicial council's attention to the ***United States Supreme Court's*** holding in ***Meeropol v Nizer***, 429 US 1337. Petitioner, while recognizing the fact that ***Meeropol*** did not involve a judicial misconduct complaint but rather an appeal from a district court, reasonably, its subsequent message straightforwardly suggests what a court properly did and should do when such circumstances arise. The ***Meeropol*** Court stated:

***.....[28 USCS Section 291 (a)] assignments have been made where an entire court of appeals has disqualified itself from hearing a case. See, e.g., United States v***

*Isaacs*, 493 F.2d 1124,1167-1168 (CA7), cert.. denied, 417 US 976, 41 L.Ed. 2d 1146, 94 S.Ct. 3183 (1974); cf. *United States v. Manton*, 107 F.2d 834 (CA 2 1938), cert. denied 309 US 664, 84 L.Ed. 1012, 60 S.Ct. 590 (1940). In such cases, however, the circuit judges themselves make the decision not to sit, thereby making it impossible to designate a panel to hear an appeal, and causing the "need" under Section 291(a) for the issuance of a certificate of necessity. ***Such need is plain to anyone looking at the situation, and the duty to issue the certificate must be considered purely an administrative act to deal with an administrative problem, whether performed by the chief judge of the circuit or the circuit justice.*** See "An Act to amend the Judicial Code to authorize the Chief Justice of the United States to temporary duty in circuits other than their own." 56 Stat 1094 (Dec. 29, 1942); HR Rep No. 2501, 77th Cong 2d Sess (1942); S Rep No. 1606, 77th Cong 2d Sess (1942). (emphasis added).

Reasonably, it was thus Chief Judge Tjoflat's duty either to issue the certificate of need or to cause the same to be issued.

Furthermore, in order for Chief Judge Tjoflat to have avoided any further appearances of impropriety and for him to have acted in a manner that would promote public confidence in the integrity and impartiality of the judiciary pursuant to his Code of Conduct, the circuit justice, the Honorable Anthony M. Kennedy, most assuredly would have been competent to sit as a circuit judge pursuant to Title 28 U.S.C. Section 43 which provides in pertinent part:

**(b) Each court of appeals shall consist of the circuit judges of the circuit in regular active service. *The circuit justice...designated or assigned shall also be competent to sit as judges of the court.***(emphasis added)

Once again, Chief Judge Tjoflat indeed had the duty pursuant to Title 28 U.S.C. Section 291(a), but if for no other reason but to avoid any further appearances of a cover-up, to refer this matter to the Honorable Justice Kennedy for his assured just disposition of the same in the public interests and in the interests of justice.

**Additionally, if Chief Judge Tjoflat really wanted to be fair and wanted the real truth in this matter known**, he reasonably should well know that the Chief Justice of the United States maintains a roster of senior judges of the United States who are willing and able to undertake special judicial duties from time to time outside of their own circuit pursuant to Title 28 U.S.C. Section 294:

**(a) Any retired Chief Justice of the United States or Associate Justice of the Supreme Court may be designated and assigned by the Chief Justice of the United States *to perform such judicial duties in any circuit, including those of a circuit justice....***(emphasis added)

Moreover, Section 296 of this same title states:

A justice or judge shall discharge, during the period of his designation and assignment, ***all judicial duties for which he is designated and assigned. He may be required to perform any duty which might be required of a judge of the court or district or circuit to which he is designated and assigned.*** (emphasis added).

Besides, this Circuit's own Judge Edmondson reasonably put the Chief Judge, other judges junior to him in date of commission, and ultimately this judicial council on notice when the former suggested in his order disqualifying himself, "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." Clearly, Chief Judge Tjoflat either knew, or should have known, that he was obliged to use Section 291 (a) as the just means to having this matter heard free from any appearances of corruption, bias, prejudice, cover-up and/or other improprieties.

Additionally, the ILLUSTRATIVE RULES most importantly state:

...we have concluded that the appearance of justice is best served by adherence to the traditional principles ***that matters should be decided by disinterested judges.***

Accordingly, most thinking persons would have to agree that the Chief Judge could hardly be considered a "disinterested judge" in this particular misconduct situation since the complaint clearly alleged that he had conspired with the above referenced subject judge and others who obviously had engaged in serious judicial and official misconduct. Reasonably, there could be no question that Chief Judge Tjoflat had a very substantial interest in the outcome of his subject decision and therefore it was wholly improper for him to decide his own fate and act as his own judge and jury.

Further, as each and every Circuit Judge and certain members of the Eleventh Circuit Judicial Council should know, petitioner alleged in all of his judicial misconduct complaints that have been filed in these "FLORIDA BARGATE" matters in this circuit, that the Florida Bar officials and endless others had been engaged in overt and seemingly never-ending criminal and unethical misconduct by conspiring to conceal four known, wilful and intentional fraudulent letters; two false affidavits; an insurance fraud; etc. There can be no question that such claims, when and if substantiated would be an embarrassment to the all of the judiciary. That since the Chief Judge is a member of the Florida Bar, it could reasonably and substantially be inferred that he would also have an interest in covering up this matter and thus an interest in the outcome of the decision. In short, when the Chief Judge invoked the "Rule of Necessity" and dismissed the complaint against himself, it was and still is very highly suspect and reasonably most improper.

As was stated in *United States v. Will*, 449 US 200:

"[I]f there is [any] reasonable factual basis for doubting the judge's impartiality, he should disqualify himself and ***let another judge preside over the case.*** S Rep No. 93-419 p 5 (1973) HR Rep No 93-1453, p 5 (1973)(emphasis in original)

Such reasonable factual basis crystal clearly did exist for doubting Chief Judge Tjoflat's impartiality, but notwithstanding those facts, he wrongfully and unduly did not disqualify himself.

***The declared purpose of Section 455 is to guarantee litigants a fair forum in which they can pursue their claims.***

It could never be said that this petitioner has had a fair forum in which he could pursue his claims.

Using some other most appropriate phrases found in *Will*, as Pollack put it, "... a judge had better not, if it can be avoided, take part in the decision of a case in which he has a personal interest...[unless] the case cannot be heard otherwise." (emphasis added)

In further discussing the Rule of Necessity in *Will*, the Supreme Court stated that a judge can only sit in a matter where he has an interest "*-where no provision is made for calling in, or where no one else can take his place-*"(emphasis added))

Crystal clearly, alternatives existed for others to decide this most serious matter and thus it was an obvious gross abuse of Chief Judge Tjoflat's discretion to invoke the "Rule of Necessity".

Petitioner believes that in order to further conceal the known criminal and unethical acts of the Florida Bar officials et al., Chief Judge Tjoflat not only betrayed this petitioner, but reprehensibly, he has betrayed his country, by knowingly, wilfully, and intentionally failing to duly act and in so doing has made himself and others above the law.

In turning the pages of history, the Supreme Court held in an 1882 decision, *United States v. Lee*, 106 U.S. 196, 220, 1 S.Ct. 2450, 261, 27 L.Ed. 171 that:

No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All the officers of the government, from the highest to the lowest, are creatures of the law, and are bound to obey it.

It is the only supreme power in our system of government, and every man who by accepting office participates in its functions is only the more strongly bound to submit to that supremacy, and to observe the limitations which it imposes upon the exercise of the authority which it gives.

In conclusion, it is incredulous and profoundly shameful, how any federal judge could even think of stooping to such said low levels of moral turpitude, much less engage in such inhuman and criminal acts to knowingly, wilfully, and intentionally participate in this flagrant "FLORIDA BARGATE" cover-up and illicit conspiracy. Cover-ups do not sit well with the American people and when this matter is fully related, this judiciary can rest assured knowing the citizens will be absolutely outraged and as a result, perhaps the judiciary might be forced to

forfeit its independence.

Further, the subject members of this judiciary could never fairly say that this petitioner did not attempt to have this matter resolved in an appropriate manner. Because this petitioner would like very much to get on with his life, he has always been willing and continues to be willing to discuss this matter face to face with the judiciary in order to arrive at a viable solution to this matter. Of course, this is entirely up to the judiciary.

Notwithstanding all of the above, the undersigned respectfully requests that this Circuit's Judicial Council review Chief Judge Tjoflat's obvious egregious order dismissing the subject judicial misconduct complaint. Hopefully the voting judges of the subject Council will start anew and act in good faith, pursuant to their Code of Conduct, Oath of Office, according to law and treat the review of this misconduct complaint proceeding as a matter of public business and in the best interests of their country, rather than treating the review of this petition as the property of this petitioner.

Most sincerely,

A handwritten signature in cursive script, appearing to read "Lester Swartz".

Lester Swartz