

JUDICIAL COUNCIL OF THE ELEVENTH CIRCUIT

COMPLAINT OF JUDICIAL MISCONDUCT OR DISABILITY

MAIL THIS FORM TO THE CLERK, UNITED STATES COURT OF APPEALS, 56 FORSYTH STREET, N.W., ATLANTA, GEORGIA, 30303-2289. MARK THE ENVELOPE "JUDICIAL MISCONDUCT COMPLAINT" OR "JUDICIAL DISABILITY COMPLAINT." DO NOT PUT THE NAME OF THE JUDGE OR MAGISTRATE ON THE ENVELOPE.

SEE RULE 2(e) FOR THE NUMBER OF COPIES REQUIRED

1. Complainant's name: LESTER SWARTZ
Address: P.O. BOX 27-3225
Daytime telephone: (407) 392-1761

2. Judge or magistrate complained about:
Name: CIRCUIT CHIEF JUDGE TJOFLAT
Court: U.S. COURT OF APPEALS

3. Does this complaint concern the behavior of the judge or magistrate in a particular lawsuit or lawsuits? JUDICIAL MISCONDUCT COMPLAINTS
 Yes No

If "yes," give the following information about each lawsuit (use the reverse side if there is more than one):

Court:

Docket number:

Are (were) you a party or lawyer in the lawsuit?

Party Lawyer Neither

If a party give the name, address, and telephone number of your lawyer:

Name:

Address:

Telephone number: ()

Docket number of any appeals to the 11th Circuit:

4. Have you filed any lawsuits against the judge or magistrata?

() Yes

(X) No

If "yes," give the following information about each lawsuit (use the reverse side if there is more than one):

Court:

Docket number:

Present status of suit:

Name, address, and telephone number of your lawyer:

Court to which any appeal has been taken:

Docket number of the appeal:

Present status of appeal:

5. On separate sheets of paper, not larger than the paper this form is printed on, describe the conduct or the evidence of disability that is the subject of this complaint. See rule 2 (b) and 2 (d). Do not use more than 5 pages (5 sides). Most complaints do not require that much.

6. You should either

(1) check the first box below and sign this form in the presence of a notary public; or

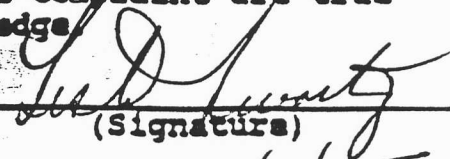
(2) check the second box and sign the form. You do not need a notary public if you check the second box.

(X) I swear (affirm) that--

(X) I declare under penalty of perjury that--

(1) I have read rules 1 and 2 of the Rules of the 11th Circuit Governing Complaints of Judicial Misconduct or Disability, and

(2) The statements made in this complaint are true and correct to the best of my knowledge.



(Signature)

Executed on 2/21/95

(Date)

Sworn and subscribed
to before me _____
(Date)

(Notary Public)
My commission expires:

THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

COMPLAINT OF JUDICIAL MISCONDUCT

COMPLAINANT

Lester Swartz
P.O. Box 27-3225
Boca Raton, Florida 3327-3225
(407) 392-1761

JUDGE COMPLAINED OF:

U.S. Circuit Chief Judge the
Honorable Gerald Bard Tjoflat of the
United States Court of Appeals
for the Eleventh Circuit

FACTS AND ALLEGATIONS

This complaint is brought pursuant to 28 U.S.C.S., Section 372(c) against Circuit Chief Judge Tjoflat, of the United States Court of Appeals for the Eleventh Circuit, and for reasons would show that:

1. On or about November 6, 1993, complainant filed three Judicial misconduct complaints, to wit: Nos. 93-1239, 1240, and 1241. Nearly six months later, on May 4, 1994, Chief Judge Tjoflat, dismissed all of the subject complaints, inferring that complainant was employing Section 372(c) of Title 28 of the United States Code "as a surrogate for a motion to recuse, or, after a party has lost its case, as a means for setting aside the court's decision."

2. Complainant, upon information and the belief that Chief Judge Tjoflat's dismissals were knowingly, made in bad faith and an abuse of his discretion, office and power, on or about May 29, 1994, petitioned the Judicial Council to review the Chief Judge's subject three orders.

3. Irrefutably, Chief Judge Tjoflat and subsequently the voting members of the judicial council, reasonably, knew or should have known that the graphic material before them, crystal clearly alleged:

a) That Florida Bar Officials ("Bar officials") fruitfully schemed to put on a sham disciplinary trial before a Florida Supreme Court appointed referee to the end the respondent, Peter Margolin ("Margolin"), would be held harmless from disciplinary action. The named Bar officials were:

- 1) A former President of the Florida Bar and member of the Florida Commission on Ethics
- 2) The Executive Director of the Florida Bar
- 3) The Staff Counsel of the Florida Bar
- 4) The Director of Lawyer Regulation of the Florida Bar
- 5) The Asst. Director of Lawyer Regulation of the Florida Bar
- 6) The Branch Counsel of the Florida Bar
- 7) The Assistant Branch Counsel of the Florida Bar

b) That complainant had sued the Bar officials and the named others, all of whom were attorneys ("Bar officials et al.") for the civil remedies available for their alleged trespasses of the criminal statutes below:

- 1) Title 18 U.S.C. Section 241 (Conspiracy against rights)
- 2) Title 18 U.S.C. Section 1341 (Mail Fraud)
- 3) Title 18 U.S.C. Section 1343 (Wire Fraud)
- 4) Title 18 U.S.C. Section 1961 et seq. (Racketeering)
- 5) Chapter 812 of the Florida Statutes (Theft)

- 6) Chapter 817 of the Florida Statutes (Fraudulent Practices)
- 7) Chapter 895 of the Florida Statutes (Racketeering)

- c) Subsequently, the Bar officials et al., knowingly, engaged in illicit conduct and set in motion untold unconscionable schemes and artifices to defraud calculated to actively conceal their prohibited and unscrupulous acts by perpetrating frauds on the Federal District and Circuit Courts in order to deprive complainant his meaningful access to, and day in, court. The alleged seemingly never-ending frauds included, but were not limited to: unwarranted defenses and assertions, false and misleading statements of fact and law, overreaching, an undue wall of silence, perjury, false evidence, moral coercion, undue influence, in addition to the already reasonably known, four blatant false letters and two crystal clear false affidavits fashioned to mislead the court and complainant of a material and reasonably assumed, insurance fraud that the Margolins' allegedly perpetrated against their legal malpractice insurance carrier.
- d) That it was also alleged the Bar officials et al., had also combined to knowingly engage in unprofessional conduct, including, but not limited to: fraud, deceit, misrepresentation, dishonesty, conduct involving moral turpitude, lack of candor toward the tribunals, and, undue silence.
- e) That such aforesaid claims of improper conduct, when substantiated, reasonably, should have constituted major violations of a lawyer's Code of Professional Responsibility, Oath of Admission to the Bar, Oath of Office, and Creed of Professionalism, and, due cause for discipline.
- f) That the Bar officials et al., in fact, were all members of at least one state Bar group; many were also members of the Bar of the subject Federal Courts; and, some, including, but not limited to, the two subject lead counsels, were even members of the Bar of the United States Supreme Court and, reasonably, all were duly bound by the Rules of Conduct of the pertinent Courts, and thus should have been, but evidently were not, held to account for their actions regarding the alleged unethical conduct.
- g) There were also claims involving the appearances of impropriety on the part of the subject opinion panel Circuit Judge Hatchett who, was or is, a member of the Florida Bar and a former Justice of the Florida Supreme Court. Complainant alleged, inter alia., Judge Hatchett, had unethically, secretly, and wrongfully remained on the opinion panel although it was reasonably clear his impartiality towards these most sensitive issues involving the Bar officials, et al., could reasonably be questioned, and therefore, reasonably, should have been, but was not, disqualified.
- h) That complainant also alleged that the other opinion panel members, the Honorable Judges Dubina and Anderson, reasonably, were aware of Judge Hatchett's biography; that after both of the said judges supposedly had duly and fairly read the certificate of interested persons, reasonably, it was also their duty to question Judge Hatchett's impartiality and to solicit his disqualification, which they both failed so to do.
- i) That as a result of the subject opinion panel members' utter failure to duly so act, reasonably, they allegedly had violated at least one or more of the Canons of their Code of Judicial Conduct, including, but not limited to, Canons 1; 2 (A),(B); 3 (A)(1),(B)(1),(3);(C)(1)(a), and, reasonably, allegedly had seriously breached their Oath of Office.

4. Chief Judge Tjoflat and the council voting judges, reasonably,

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clearly knew or prudently should have known by the prima facie evidence and the attachments before them, or had guilty knowledge, that there was more than probable cause to believe the said claims of flagrant attorney and judicial misconduct complained of and contained therein, reasonably, were in fact, real. Thus, reasonably, it was within all of these subject judges' power, and it was indeed their duty to protect, the integrity of the court, its judgments, and any aggrieved party, by duly causing a reasonably good faith, zealous, and diligent inquiry into the serious allegations of misconduct, which all the judges plainly failed so to do.

5. Chief Judge Tjoflat and all of the subject council voting judges, and even the trial judge, reasonably, clearly knew or should have known, and/or had guilty knowledge, that there was more than probable cause to believe that: the subject courts clearly had been defiled; the judiciary had been brought in profound disrepute, and reasonably, it was within all of these subject judges' power, and it was indeed their duty, to cause a good faith, zealous, and diligent inquiry into such claims of outrageous conduct, to duly make certain there was no clear or present danger to our courts, but, the judges allegedly, knowingly and unduly, failed so to do.

6. Based upon information and belief, the said judges, presumably, after careful considering: the subject misconduct complained of and contained therein; all the additional material filed therein; and, the Chief Judge's obvious bad faith orders dated May 4, 1994; on or about July 8, 1994, allegedly, in blatant wrongful solidarity; with reckless disregard of this complainant's rights and the standards of fidelity and diligence requisite to their sworn or affirmed to office; each said judge affirmed the specious grounds of Chief Judge Tjoflat's dismissal of the opinion panel misconduct complaints. As a result, complainant, in good faith, filed judicial misconduct complaints against each subject council judge, case numbers to wit: 95-1012; 95-1013; 95-1014; 95-1015; 95-1016; 95-1017; 95-1018; 95-1019; 95-1020; 95-1021; 95-1022; 95-1023; 95-1024; 95-1025; 95-1026; and, 95-1027 for grounds therefore, stated:

a) That the undisputed facts dictated it was also within all of these subject judges' power and it was their duty to reasonably cause a good faith, zealous, diligent inquiry into such serious claims in order to be certain the trial machinery had not been sabotaged and, most importantly, that complainant's Constitutional rights clearly had not been violated, but each subject judge allegedly, knowingly and unduly, failed so to do.

b) Based upon information and belief, it was each council judge's duty, reasonably, to cause to be made, a good faith, zealous and diligent inquiry into the serious claims of judicial misconduct in order to be assured that Judges Hatchett, Anderson and Dubina had not violated their Code of Judicial Conduct or Oath of Office; and, to prudently determine whether the subject lawyers and Bar officials had breached the Canons of a Lawyers Code of Professional Responsibility or Oath of Admission to the Bar. That in light of all the serious undisputed facts and prima facie evidence before all of the said judges, reasonably, Canon 3B (1),(3) of the Code of Judicial Conduct, mandated disciplinary action be initiated, but the judges allegedly, knowingly and unduly failed so to do.

c) Consequently, all of the subject council judges, allegedly as a result of their actions and inactions, reasonably, had knowingly desecrated the rolls of the pertinent Bars wherever these said attorneys and judges had been admitted, and by so doing, reasonably, were falsely misrepresenting to the courts and the American people that these subject attorneys and

judges are upright; are being guided by a promised fundamental sense of honor, integrity and fair play; and, that they were in compliance with the Rules of Conduct and of the Court, when, reasonably, the Chief Judge et al. knew or should have known, in this case, nothing could be farther from the truth. By so doing, these subject judges, reasonably, had made a mockery and a sham of the attorney disciplinary process, a Lawyer's Code of Professional Responsibility, Oath of Admission to the Bar, Creed of Professionalism, and, the entire legal profession.

d) Reasonably, by allegedly so doing, each of the subject council judges' unduly failed to keep their promised standards of fidelity and diligence requisite to their office, and by so doing, they also had made a mockery and a sham of their Code of Judicial Conduct by allegedly violating at least one or more of the clear and unambiguous Canons of the same, to wit: 1; 2 A, B; 3 A(1),(2),(3),(4),(5); 3 B (1),(2),(3); and 3 C (1)(a), and, allegedly, had violated their sworn to or affirmed Oath of Office.

7. Notwithstanding all the above, on or about January 27, 1995, the Chief Judge dismissed each of the council judicial misconduct complaints as frivolous and appended to each order an obviously superfluous Exhibit A, which seemed to connote bad-faith; malice; an abuse of his discretion, office and power; and, reasonably and substantially infers his rulings were carefully orchestrated to further provoke, oppress, intimidate, and harass this complainant, while under the guise of Chief Judge Tjoflat's outwardly laudable goal of acting in good faith with the high standards of fidelity and diligence requisite to his sworn to or affirmed office.

8. Based upon information and belief, and in all candor, complainant alleges Chief Judge Tjoflat and the subject voting judges of the council, reasonably, all had guilty knowledge of the truth of the material facts and the prima facie evidence in this matter; but, despite their mandates they illegally and unethically chose to further conspire to conceal the Bar officials et al. and opinion panel members' prohibited and iniquitous acts. By allegedly so doing, Chief Judge Tjoflat et al., acted, and will likely continue to act in the said judicial and lawyer misconduct matters with aroused passions, bent of mind, and evil spirit towards complainant calculated to foreclose due fundamental impartiality deemed inconsistent with their hopefully otherwise balanced and impartial judgment, which has resulted in, and will likely continue to result in, more grave trespasses of complainant's secured intangible rights: to the good faith performance of Chief Judge Tjoflat's et al.'s incumbent duties inherent to their office; to a "meaningful day in court"; to due process of law; and, to due meaningful justice, to which this complainant is manifestly entitled, but, has to date, been so unjustly and outrageously denied.

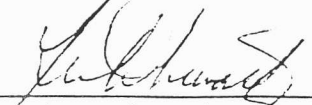
9. Because this complainant chose to duly protect his property and challenge the subject perverse Bar officials et al.'s ongoing unlawful and unethical conduct which has placed the judiciary in a most precarious situation, the undersigned and his family have been unduly subjected to obvious retaliatory, unconscionable, cruel and unusual punishment and tyranny by Chief Judge Tjoflat et al. By their allegedly so doing, the latter, allegedly have maliciously, unconscionably, wrongfully, illegally and unduly: deprived me, and pathetically, my estranged wife, of the most precious years of our lives; they deprived us of a meaningful opportunity to perhaps save a marriage of thirty-two years that had gone awry; they deprived us of untold occasions to be near or take part in our children's lives in Ohio, mainly our son Craig, who recently underwent a bone marrow transplant; they deprived us of many opportunities to duly experience the

typical joys of grandparenting; they deprived our treasured children and grandchildren of their right to have our undivided love and attention; they deprived us of a chance to give financial relief to our children in their time of need; they deprived both of our parents, now in their final years, of their due fruits of knowing their children were happy, healthy, secure, and successful; they deprived us of a due opportunity to have a meaningful alliance with our friends; they deprived us of a due and well earned right to a decent lifestyle; they deprived us of our good health; and, they deprived us of any and all hope for a well earned and enjoyable retirement. We also have been disgraced; oppressed; intimidated, subject of ridicule; and wholly stripped of any and/or all human dignity. We have been left: irreparably scarred and emotionally distressed; destitute; without a home; without a future; and, our hard earned excellent credit reputation has been completely destroyed. Chief Judge Tjoflat and each and every judge and lawyer involved in this matter have allegedly, unduly and knowingly, betrayed us and their country. One reasonably would think they would have been more American and mindful of their duties of office as well as their private and social duties to the accepted and customary standard of right which decent persons owe to one another or to society in general. There was a just and right course to resolve this matter, but they allegedly, knowingly and maliciously, clearly chose the wrong way.

10. Chief Judge Tjoflat et al. were situated in their positions as fiduciaries of the public trust based upon good faith and the judicial community's supposed sense of decency and fair play. The American people justifiably relying upon the same, even acquiesced to the judiciary's need for their independence that was so crucial to the public interest in principled and fearless decision making; but the sort of decision making in these subject matters could hardly be construed as principled or for the benefit of society. State Bar groups were granted awesome powers to duly regulate lawyers, but in this case, have used that license for their own self serving interests to mandate to the people the crystal clear low threshold of integrity that we are forced to accept in our legal system.

11. Chief Judge Tjoflat et al., in this case, have clearly broken their promises to protect the people, our courts and the Constitution, and, reasonably, as a result, the same have been placed in jeopardy, which now raises some very serious questions, i.e., whether full faith and credit can be given to federal or state courts or their judgments; whether our judiciary can really be trusted; and whether the judiciary should be allowed to retain their independence! In light of all of the above, and given the mood of the already outraged American citizens, the judiciary's reasonably undue, bad faith, arrogance, and ongoing breaches of duty in these disciplinary matters is unacceptable and such conduct, when fully related, surely will not be tolerated by the American people!

WHEREFORE, the undersigned respectfully requests, for the reasons complained of and contained herein, in light of these subject judges' aforescribed alleged bad faith to date, the sense of due right and substantial justice demands both this and my October 31, 1994 complaint against Chief Judge Tjoflat et al., be reviewed by the Circuit Justice, the Honorable Anthony M. Kennedy of the U.S. Supreme Court, for his sure good faith resolution of Chief Judge Tjoflat's alleged misconduct and these most crucial issues.



Lester Swartz, pro-se