UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

MIAMI DIVISION

CASE NO. 07-21256-CIV-JORDAN

JOHN B. THOMPSON	)
Plaintiff	)
	)
vs.	)
	)
THE FLORIDA BAR, et al	)
Defendants	)
	)

ORDER DENYING VERIFIED MOTION TO RECUSE

For the reasons which follow, Mr. Thompson's verified motion for recusal [D.E. 143] is DENIED.

The recusal statute invoked by Mr. Thompson provides that a judge shall recuse "in any proceeding in which his impartiality might reasonably be questioned." 28 U.S.C. § 455(a). "The test is whether an objective, disinterested, lay observer fully informed on the facts underlying the grounds on which recusal was sought would entertain a significant doubt about the judge's impartiality." *Parker v. Connors Steel Co.,* 855 F.2d 1510, 1524 (11th Cir. 1988). Recusal is required "only if it appears that [a judge] harbors an aversion, hostility, or disposition of a kind that a fair-minded person could not set aside when judging the dispute." *Liteky v. United States,* 510 U.S. 540, 558 (1994) (Kennedy, J., concurring in the judgment).

On September 19, 2007, Mr. Thompson filed a motion for leave to file a document [D.E. 115]. Along with that motion, Mr. Thompson also filed, in the court's public electronic filing system, a copy of a letter he had sent to various state and federal officials about the alleged activities of another Florida attorney, Norm Kent. Mr. Kent, according to Mr. Thompson, had filed various SLAPP complaints against Mr. Thompson with the Florida Bar. In his letter – addressed to the Governor of Florida, the Attorney General of Florida, the State Attorney for the Seventeenth Judicial Circuit in and for Broward County, and the U.S. Attorney for the Southern District of Florida – Mr. Thompson asked that Mr. Kent be criminally prosecuted for violating state and federal obscenity laws. Mr. Thompson alleged in his letter that Mr. Kent's legal website had a link to a website for "national gay news." This second website allegedly had a link to an adult website. This third web

site, in turn, allegedly had links to various pornographic websites. Mr. Thompson included within his letter three graphic photographic images, taken from the pornographic websites, of adult men engaged in oral and genital sex. Mr. Thompson did not seek prior permission before filing these images. Nor did not file the images under seal, thereby making them available to anyone who might review the filings in this case on the court's public electronic filing system.

Upon receiving Mr. Thompson's motion and attachment, I had the clerk's office block public access to the letter and the images included within the letter. On September 25, 2007, I issued an order to Mr. Thompson to show cause (by October 5, 2007) why he should not be referred to the court's Ad Hoc Committee on Attorney Admissions, Peer Review, and Attorney Grievance for appropriate action concerning his public filing of the graphic images [D.E. 119]. As of yesterday, Mr. Thompson had filed fourteen separate responses to the order to show cause.

On October 1, 2007, I denied Mr. Thompson's motion to vacate the order to show cause, and referred Mr. Thompson to the Ad Hoc Committee for appropriate action [D.E. 148]. On that same day, I also issued an order advising Mr. Thompson that he could not continue filing papers and documents at any time he wished, and that he had to limit his filings in this case to matters that were relevant to the issues presented [D.E. 141].

In his recusal motion, Mr. Thompson asserts that the September 25 and October 1 orders show that I am patently biased against him and that I am unable to judge this case impartially. Mr. Thompson begins by noting that I was appointed by a President "who could not decide what the meaning of the word 'is' is and who told the nation that 'he did not have sexual relations with that woman" [D.E. 143 at 2]. Mr. Thompson then states that the order to show cause was a "masterwork in mendacity" and that I misrepresented a Ninth Circuit case cited in the order [D.E. 143 at 2]. Mr. Thompson continues that the order to show cause is the "single worst disregard of truth by a court" he has seen in his 31 years of practicing law, and that I have tried to silence him because he has caught me in a "gross abuse of discretion" [D.E. 143 at 2]. Moving on, Mr. Thompson says that I incorrectly indicated that he was using this case as a platform for his social views and agenda [D.E. 143 at 3]. To this Mr. Thompson adds that the September 25 and October 1 orders are not clothed with judicial immunity, apparently suggesting that he may decide to file a lawsuit against me [D.E.

143 at 4-5].[1] Finally, Mr. Thompson states that I, as a member of the Florida Bar, am not able to rule impartially due to "my loyalty to the Florida Bar's elitists and their ilk who call themselves the 'Guardians of Democracy'" [D.E. 143 at 5].

Mr. Thompson's request for recusal is based on the orders I issued in response to his public filing of the graphic images. As a general matter, the fact that a judge has acquired a certain view of matters in a case based upon what was filed or presented by the parties "is not thereby recusable for bias or prejudice, since his knowledge and the opinion it produced were properly and necessarily acquired in the course of he proceedings[.]" *Liteky,* 510 U.S. at 551.[2] Furthermore, none of Mr. Thompson's asserted bases for recusal have merit. First, the actions of President Clinton have no bearing on my impartiality in this case (or, for that matter, the impartiality of any federal judge appointed by President Clinton). Second, contrary to his accusations, I have not precluded Mr. Thompson from filing appropriate motions, responses, or documents in this case. Instead, I have told Mr. Thompson that he is not at liberty to file anything he wants at any time he wants. Like all other litigants, Mr. Thompson is bound by, and must follow, the Federal Rules of Civil Procedure and the Local Rules of this court. Nevertheless, I have not stricken all of Mr. Thompson's repetitive filings. For example, although I do not know of any rule that allows a party to file multiple responses to a single order to show cause, I considered all of Mr. Thompson's fourteen responses to the order to show cause, and did not strike any of them. Third, in my opinion, the content of the numerous filings submitted by Mr. Thompson indicate that he has difficulty separating the legal issues in this case from broader social issues on which he has strongly-held beliefs. Mr. Thompson unfortunately appears to believe that every act taken against him, and any judicial ruling adverse to him, are part of a vast conspiracy designed to silence him and destroy him. Fourth, the order to show cause correctly quoted language from the Ninth Circuit's decision in *Adams v. Nankervis,* 1990 WL 61990, * 3 (9th Cir. 1990) ("No court need tolerate the use of obscene, indecent, and scandalous pleadings."), and

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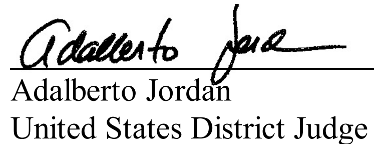
[1]In a subsequent filing [D.E. 149], Mr. Thompson made it clear that he intends to file a lawsuit against me.

[2]"Under 28 U.S.C. § 455, it is well settled that the allegation of bias must show that 'the bias is personal as distinguished from judicial in nature.'" *Bolin v. Story,* 225 F.3d 1234, 1239 (11th Cir. 2000) (citation omitted).

then applied that language to Mr. Thompson's public filing of the graphic images. Mr. Thompson may believe that he did nothing wrong in filing the graphic images in the public record, but that does not mean I have to agree with him, or that I need to recuse.[3] Fifth, Mr. Thompson's threat of a lawsuit is insufficient to warrant recusal. If a judge were required to recuse whenever a litigant threatened to sue him, disgruntled parties would be able to forum shop by the simple expedient of filing a civil action against the presiding judge. *See In re Taylor,* 417 F.3d 649, 652 (7th Cir. 2005); *United States v. Studley,* 783 F.2d 934, 940 (9th Cir. 1986); *United States v. Martin-Trigona,* 759 F.2d 1017, 1020-21 (2nd Cir. 1985). Sixth, the fact that I am a member of the Florida Bar would not lead an informed objective lay observer to question my impartiality. Mr. Thompson is seeking an injunction to stop a particular Florida Bar disciplinary proceeding currently pending against him, on the ground that his constitutional rights are being violated. Any ruling I issue in this case will not affect me as a member of the Florida Bar.

DONE and ORDERED in chambers in Miami, Florida, this 3rd day of October, 2007.



Adalberto Jordan
United States District Judge

Copy to: All counsel of record

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[3]To the extent Mr. Thompson does not think that *Adams* is in any way relevant to his conduct, there is also Rule 11 of the Federal Rules of Civil Procedure. The advisory committee notes to Rule 11 state that the "former reference to the inclusion of scandalous or indecent matter, which is itself strong indication that an improper purpose underlies the pleading, motion, or other paper, has been deleted as unnecessary. Such matter may be stricken under Rule 12(f) as well as dealt with under the more general language of amended Rule 11." Rule 12(f) provides in relevant part that a court may strike from a pleading "any immaterial, impertinent, or scandalous matter."