

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)
_____)

OMNIBUS ORDER ON PENDING MOTIONS

This order addresses various of the pending motions.

1. On October 3, 2007, I issued an order denying Mr. Thompson's motion for recusal pursuant to 28 U.S.C. § 455(a) [D.E. 153]. Since then, Mr. Thompson has filed five more motions and/or documents (some verified) seeking recusal [D.E. 156, 163, 167, 179, 187]. These motions are all DENIED.

Mr. Thompson repeats many of the same bases that he had previously asserted (e.g., my issuance of the order to show cause based on his public filing of graphic sexual images and my order referring him to the Ad Hoc Committee for appropriate action), and which I have already found insufficient to warrant recusal. In addition, he also adds the following bases: (1) I have been invited to speak at an ethics symposium at the University of Miami (with others, including Judge Paul Huck, who handled another of Mr. Thompson's cases against the Florida Bar) by Steve Chaykin, who is Mr. Thompson's designated bar reviewers in the disciplinary proceedings (and who, according to Mr. Thompson, supports gay adoption), and this shows that I am part of a "club" (made up of the "in crowd" in the legal community who are trying to get Mr. Thompson) that participates in these "incestuous" events; (2) I showed my bias by not agreeing with Mr. Thompson's metaphoric self-characterization as a modern-day Paul Revere; (3) Mr. Thompson is not going to be treated fairly by the Ad Hoc Committee (to which I previously referred him) because certain of the Committee's members are biased against him or favor the Florida Bar and/or his antagonists; (4) federal judges can seek reimbursement of Bar fees from the federal treasury; (5) I improperly denied his motion to amend his complaint a fourth time to add me as a defendant; (6) and my rulings in the case have

allowed Mr. Kent (whom Mr. Thompson has accused of violating federal and state obscenity laws) to seek to intervene.

In relevant part, § 455(a) provides that a judge shall recuse “in any proceeding in which his impartiality might reasonably be questioned.” “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). None of these new asserted bases, either alone or in conjunction with the prior asserted bases, warrant recusal. 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 – here Mr. Thompson’s public filing of graphic sexual images and the claims and assertions he has made in his numerous filings – “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 551.¹ Moreover, the fact that I issued an order to show cause and referred Mr. Thompson to the Ad Hoc Committee – a referral which I later vacated based on Mr. Thompson’s promise not to file any such graphic sexual images in the future and his acknowledgment that such filings could subject him to disciplinary action – does not require recusal. A judge is not required to step aside just because he has referred an attorney or litigant to a disciplinary committee for appropriate action. *See, e.g., In re Adams*, 31 F.3d 389, 396 (6th Cir. 1994). The order to show cause and the referral to the Ad Hoc Committee were not based on any personal attacks that Mr. Thompson made against me, and I did not recommend that any particular discipline be imposed on Mr. Thompson. I have not become personally embroiled with Mr. Thompson in this case, and Mr. Thompson’s attacks on me cannot be used by him to disqualify me. *Cf. Offet v. United States*, 348 U.S. 11, 14-18 (1954). That I have ruled against Mr. Thompson on various matters, and have not seen things his way, does not warrant

¹“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).

recusal either. My agreeing to speak at seminars or symposiums at the University of Miami before Mr. Thompson filed suit in this case does not make me a member of a “club” which is out to get Mr. Thompson. Finally, I have never sought reimbursement from the U.S. government for payment of my Florida Bar dues, and this case does not in any event involve any monetary issues (e.g., dues, assessments) pertaining to members of the Florida Bar in general.

2. Since I have already issued a written order vacating the order to show cause and the referral to the Ad Hoc Committee, Mr. Thompson’s motion for clarification/entry [D.E. 193] is DENIED AS MOOT.

3. Mr. Thompson’s emergency motion to depose John Berry of the Florida Bar [D.E. 157] is DENIED. Whether or not Mr. Thompson’s claims are sufficient to survive the motions to dismiss must be determined from the face of the latest complaint, and not from evidence outside the four corners of the complaint. If Mr. Thompson’s complaint is not dismissed, Mr. Thompson may renew his motion.

4. Mr. Thompson’s notice to the court [D.E. 159], construed as a motion for a judicial request that the U.S. Attorney to initiate a federal prosecution of Norman Kent, is DENIED. Mr. Thompson is free to contact the U.S. Attorney’s Office if he wishes to do so.

5. Mr. Thompson’s motion for clarification [D.E. 145] is DENIED. Mr. Thompson is not entitled to an advisory opinion as to what issues are relevant in this case. Mr. Thompson, however, is directed to Local Rules 7.1.A & 7.1.C, which provide that the only permitted filings are a motion (supported by a memorandum of law), a memorandum of law in opposition to the motion, and a reply memorandum of law in support of the motion. Under Local Rule 7.1.C, “[n]o further or additional memoranda of law shall be filed without prior leave of court.” This means that Mr. Thompson, once he responds to a pending motion, cannot continue to file supplemental “notices” or additional memoranda. And when Mr. Thompson files a motion himself, he can only reply once after the defendants have filed their memorandum of law in opposition.

6. Mr. Kent’s motion for permissive intervention [D.E. 181] is DENIED. This case is about the Florida Bar’s disciplinary proceeding against Mr. Thompson. It does not involve Mr. Kent, despite some of Mr. Thompson’s filings. If all that Mr. Kent wants is a copy of the graphic images filed by Mr. Thompson, he can contact chambers to pick up a copy.

7. Mr. Thompson's *second* response [D.E. 189] in opposition to Mr. Kent's motion to intervene is STRICKEN as a filing that is not authorized by the Local Rules. Mr. Thompson filed one response [D.E. 185], and that authorized filing was considered.

7. Mr. Thompson's motion for an order to show cause why the Florida Bar should not be held in indirect contempt [D.E. 194] is DENIED. First, Mr. Gopman is not a party to this action. Second, Mr. Thompson, who is appearing pro se in this case, cannot file any motions on behalf of Mr. Gopman. Third, the Bar's alleged statements to Mr. Gopman that he "work with the Bar" and "not continue to fight with the Bar," without more, are not contemptuous.

8. Mr. Thompson's motion for leave to amend his complaint yet again [D.E. 174], this time to add Mr. Kent as a defendant, is DENIED. If Mr. Thompson and Mr. Kent have separate legal disputes, they are free to file separate lawsuits against each other. Those disputes will not become a part of this case, which deals with Mr. Thompson's current disciplinary proceeding.

9. Mr. Thompson's motion for leave to file documents [D.E. 171] is GRANTED. I cannot consider those documents in ruling on the facial sufficiency of Mr. Thompson's complaint, but if necessary I will determine whether they are relevant to the bad faith issue under *Middlesex*.

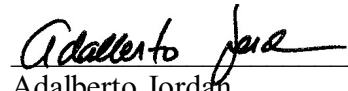
10. Mr. Thompson's notice to the court concerning rulings by the Third District Court of Appeal in separate cases presided over by Florida Circuit Judge Ronald Friedman (e.g., a landlord-tenant dispute) [D.E. 169] is STRICKEN as irrelevant. Any rulings made by the Third District with respect to Judge Friedman's unrelated cases have no bearing on the defendants' motions to dismiss in this case. To the extent that Mr. Thompson is alluding to Judge Friedman's alleged failure to swear out his bar complaint against Mr. Thompson, that cannot help Mr. Thompson on the motions to dismiss if that allegation is missing from his complaint.²

11. Mr. Thompson's motion for leave to file with the court a document describing in words the graphic images he previously filed in the public record [D.E. 170] is DENIED. The images were of adult men engaging in oral and genital sex, as previously noted in court orders.

²Also irrelevant to this case are Mr. Thompson's statements about Dr. Walsh and the National Institute on Media and Family.

12. Mr. Thompson's motion for mediation and supplement for mediation [D.E. 173, 190] are DENIED WITHOUT PREJUDICE. If Mr. Thompson's complaint survives the motions to dismiss, in whole or in part, I will order mediation in a scheduling order.

DONE and ORDERED in chambers in Miami, Florida, this 15th day of October, 2007.



Adalberto Jordan
United States District Judge

Copy to: All counsel of record & Norman Kent