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 MOTIONS TO RECUSE

For the reasons which follow, Mr. Thompson's verified seventh, eighth, ninth, and tenth motions for recusal [D.E. 217, 218, 229, 232], filed pursuant to 28 U.S.C. § 455(a), are DENIED.

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). 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]

[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).

In his seventh verified motion for recusal [D.E. 217], Mr. Thompson asserts that rulings I made in a recent omnibus order, and some of the language used in that order, require disqualification. Under *Liteky,* which is quoted above, Mr. Thompson is mistaken.

In his eighth verified motion for recusal [D.E. 218], styled as an addendum to the seventh verified motion for recusal, Mr. Thompson again points to the omnibus order. He also specifically refers to language in the order stating that "this case does not involve [Norman] Kent, despite some of Mr. Thompson's filings." Again, under *Liteky*, the omnibus order is not a basis for recusal. Moreover, Mr. Thompson is taking the quoted language out of context. The quoted language is in a portion of the order denying Mr. Kent's motion for permissive intervention, a motion which Mr. Thompson himself opposed [D.E. 185]. I understand that Mr. Thompson refers to Mr. Kent in his latest complaint, but that does not mean that anything that Mr. Kent may or may not have done after the filing of the complaint is relevant to the claims that Mr. Thompson has asserted in this case.

In his ninth and tenth verified motions for recusal [D.E. 229, 232], Mr. Thompson focuses on an administrative order that Chief Judge Moreno issued on October 5, 2007. In that order, Chief Judge Moreno modified Section 6 of the CM/ECF Administrative Procedures for the Southern District of Florida to address the "filing of materials which would otherwise be inappropriate for display or distribution to the public, including minors, through PACER or the CM/ECF System," including "images (not textual descriptions) depicting sexual acts or excretory acts that could be described as pornography or indecent or vulgar even if not legally obscene." Mr. Thompson seeks recusal because he says I failed to disclose this administrative order to him, and that he was being punished (through the order to show cause and the referral order [D.E. 119, 148]) for violating a rule that did not exist. These allegations do not warrant recusal. First, the show cause order and the referral order were not based on any alleged violation of the amended Section 6 of the CM/ECF Administrative Procedures, as the amended Section 6 did not exist at the time that Mr. Thompson filed graphic sexual images.[2] Second, at the hearing where I orally vacated the show cause order, Mr.

[2]Mr. Thompson also incorrectly assumes that the order to show cause [D.E. 119] and the order of referral [D.E. 148] directed the Ad Hoc Committee to discipline him. The order to show cause asked Mr. Thompson to explain why he should not be referred to the Ad Hoc Committee for appropriate action in light of his filing of graphic sexual images. The subsequent order referring Mr. Thompson to the Ad Hoc Committee instructed the Ad Hoc Committee to determine whether Mr.

Thompson promised that he would not file any sexually graphic images in the future, and acknowledged that any such future filings could subject him to discipline unless they were under seal or with the court's permission. In light of that acknowledgment, there was no need to advise Mr. Thompson of Chief Judge Moreno's administrative order amending Section 6, which is a public document available to everyone on the court's website.

In the tenth verified motion for recusal [D.E. 232], Mr. Thompon also seeks recusal based upon my failure to request the U.S. Attorney for the Southern District of Florida to prosecute Mr. Kent for alleged violations of federal obscenity laws. This too is not a basis for recusal. First, Mr. Thompson has already brought the alleged conduct to the U.S. Attorney's attention. It is now up to the U.S. Attorney to decide whether to investigate the matter. Second, I do not know whether the current allegations made by Mr. Thompson against Mr. Kent are true or not.

DONE and ORDERED in chambers in Miami, Florida, this 19th day of October, 2007.

Adalberto Jordan
United States District Judge

Copy to: All counsel of record

Thompson's public filing of graphic sexual images was "inappropriate," and, "if necessary," to recommend an "appropriate sanction."