

JUDICIAL COUNCIL OF THE ELEVENTH CIRCUIT

COMPLAINT OF JUDICIAL MISCONDUCT OR DISABILITY UNDER CHAPTER 16

To file a complaint of judicial misconduct or disability, please answer all of the questions on this form and send three copies in an envelope to the Clerk, United States Court of Appeals, 56 Forsyth Street, N .W. Atlanta, Georgia 30303. Please write "Chapter 16 Complaint" on the envelope. Do not write the name of the complained-of judge on the envelope. This complaint must be legible; if possible, it should be typewritten. For other details, see the Rules of the Judicial Council of the Eleventh Circuit Governing Complaints of Judicial Misconduct or Disability.

IN THE MATTER OF A COMPLAINT FILED BY:

ALEX DAOUD

NAME OF COMPLAINANT

1750 MICHIGAN AVE. MIAMI BEACH, FLORIDA 33139

ADDRESS

(786) 346-3456

DAYTIME TELEPHONE NUMBER

AGAINST:

CHIEF JUDGE PAUL G. HYMAN JR.

NAME OF COMPLAINED-OF JUDGE

UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

COURT

1. Does this complaint concern a particular lawsuit? Yes No

If yes, please provide the following information about the lawsuit.

(If more than one lawsuit is involved, use additional pages, as necessary.)

MIAMI-DADE COUNTY, FLORIDA
COURT IN WHICH LAWSUIT WAS FILED

Case No: (LOCAL): 2012-044972-CA-01
DOCKET NUMBER
DOCKET NUMBER OF APPEAL, IF ANY: 3D14-2984

What is (or was) your role in the lawsuit?

Party (including pro se) Attorney Juror Witness None of these

Please provide the name, address, and telephone number of your attorney in this lawsuit: Alejandro Brito, Esq., 100 S.E. 2nd St., Miami Tower, Suite 2700, Miami, FL 33131

2. Have you filed a lawsuit against the judge? Yes No

If yes, please provide the following information about the lawsuit.
(If more than one lawsuit is involved, use additional pages, as necessary.)

3. On separate sheets of paper, no larger than the paper on which this form is printed, please describe the evidence of misconduct or disability that is the subject of this complaint. Do not use more than five single-sided pages. See attached.

4. Sign your name.

I declare under penalty of perjury that I have read Rule 1 of the Rules of the Judicial Council of the Eleventh Circuit Governing Complaints of Judicial Misconduct and Disability and that the statements made in this complaint are true and correct to the best of my knowledge.

SIGNATURE OF COMPLAINANT

DATE

Witnesses:

Mr. Alex Brito, Esq.
Mr. Jerrold Engelman, Esq.
Mr. Gerald Wald, Esq.

Ms. Valeriya Kuzema
Mr. Alexander Daoud
Mr. Peter Kerchner, Esq.

Mr. Lawrence D. Silverman, Esq.
Mr. John W. Salmon, Esq.
Mr. Mark Buckstein, Esq.

Officer K. Brian, City of Miami Beach

STATEMENT OF FACTS

This complaint consists of three main areas of misconduct by my son in law Judge Hyman. First is the abuse of his office to advance the private interests of his wife and himself, by threatening to negatively influence my son's (Judge Hyman's brother-in-law) admission into a local medical school. This area of misconduct also raises the question of a Federal Judge making a recommendation for admission into medical school at all. The consensus indicates that a recommendation would be acceptable, even if on judicial stationary, if in fact the person being recommended was a clerk and the Judge had personal knowledge of the basis of the recommendation.

In this case, Judge Hyman did more than merely provide a personal recommendation. Judge Hyman knew the medical school official personally, and Judge Hyman was **not** aware of the facts he intended to communicate concerning my son's admission into medical school. By his own words, Judge Hyman threatened to derail my son's medical school admission, using his judicial influence and contacts to impair my son's chances of admission. The main threat in the email is where Judge Hyman stated that: ". . . However, if you [*sic*] Dad says one more nasty thing to Kelly, I will tell my friend to pull his support." (*See Email from Judge Hyman to Alex Daoud, attached*).

When a Federal Judge, no less the Chief of the Bankruptcy Court, threatens to withdraw support that he claims to have given, common sense would inform anyone that a major ethical violation has been committed. This is not a case where a judge simply refused to provide a letter of recommendation. Here, Judge Hyman provided an initial positive recommendation, and then threatened to pull that support, to my son's detriment, if I did not abide by his threat concerning my communications with Kelly (my daughter, Judge Hyman's wife).

The power and prestige of the office of Judge Hyman is enormous and his actions drove my son into a deep depressed state of mind and strained his mental state during the most important decision of his life. To say this exacerbated any family internal strife would be an understatement, as my son was terrified as to exactly what Judge Hyman would do or say unless his threats were followed. Canon 2(A) states the a Judge "should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary and Canon 2(B) states "a judge should neither lend the prestige of the judicial office to advance the private interests of the judge or others..."

The second area of misconduct consists of a number of actions by Judge Hyman in the lawsuit concerning his wife and her father. While taking the stand is permissible as a witness, Judge Hyman consistently forced himself into the proceedings, interrupting the legal actions, used bullying tactics if he did not like what was going on in court, gave legal instructions to his wife's attorney thereby

acting as an attorney, frequently interrupted the presiding Judge Thornton, and continually advocated for his wife. Moreover, Judge Hyman repeatedly used his judicial standing to influence and intimidate presiding Judge Thornton, witness Jerrold Engelmann Esq., myself, and my attorney Alex Brito.

After a hearing in the private chambers of Judge Thornton, in the presence of Judge Thornton, his bailiff and my attorney, Judge Hyman began shouting at my attorney Alex Brito, pointing his finger in his face while making menacing gestures. I immediately moved between them and told Judge Hyman to stop threatening my attorney, he then pointed his finger at me and shouted “I should call the Marshalls and have you arrested.” His angry words and threatening gestures in front of my attorney, Judge Thornton, his bailiff, was intended to totally humiliate and eviscerate my credibility in front of Judge Thornton. It was so debasing, that Judge Thornton ordered us to take separate elevators to exit the courthouse.

During these legal proceedings (to which Judge Hyman was not even a party), Judge Hyman did not sit idly by, offering only support to his wife. Rather, Judge Hyman made sure everyone in that courtroom (and at all subsequent hearings) knew he was Chief Judge Paul Hyman, and he made sure even the court reporter knew who he was. He also insisted on attending five (5) mediation sessions, where he was clearly not a party or witness in the case, and was acting as an advocate for his wife. On June 25, 2013, Judge Hyman interrupted a court hearing and had a verbal exchange with Attorney Alex Brito who felt compelled to

state to the court, “And your honor I have a real problem with Judge Hyman addressing this court.” Judge Hyman once again interrupted and stated, “I am talking about my own issues”. Mr. Brito replied, “I have a problem with this, Judge. This is now becoming a pattern that Judge Hyman comes to court and has something to say. He is not a party to this case. He is not an attorney in this case. He is not relevant to these proceedings.” (*Attached is a copy of transcript, see pp. 9-10*).

On December 5, 2013, Judge Hyman again interrupted the court, to the point that Judge Thornton stopped him from speaking. Judge Hyman even went so far as to discuss how the court should handle its review of certain tax returns, stating “We are talking about the 2012 tax returns, and they will be returned when you are done?” and “We can redact the page, but what are you going to do with the redacted page, and - -” (*Attached is a copy of transcript, see pp. 78-79*). On May 30, 2013, Judge Hyman directed his wife’s attorney and told him, “Bernardo, don’t limit yourself.” He then told Judge Thornton “Your honor, what about the rents he’s collecting Wednesday?” (*Attached is a copy of transcript, see pp. 130-131*). Clearly, this goes far beyond being a supportive husband. Judge Hyman also decided after this exchange to go to my home and became directly involved with intimidation contained in the third area of misconduct.

Finally, the third areas of misconduct are a combination of actions by Judge Hyman that show a gross disrespect for the judicial office. This conduct includes

accompanying and interceding with bank officials; illegally posting eviction notices; appearing and attempting to bully and intimidate witnesses in a menacing manner, to the point the police had to be called for trespass and harassment. Judge Hyman accompanied his wife to my house to post an illegal eviction notice on my door. This was the subject matter of the pending lawsuit. While merely accompanying his wife to do this would not violate any Canon, he went much further by then going to my tenant. While his wife was at the door with the tenant (Ms. Kuzema), Judge Hyman was standing in background yelling instructions to her to demand a copy of the lease and all future rental payments. Ms. Kuzema knew he was a Federal Judge and felt the intimidation to the degree that she felt compelled to make a formal complaint to the Miami Beach Police Department and signed a sworn affidavit.

Judge Hyman accompanied his wife to BB&T Bank in Palm Beach, where using her maiden name made an unauthorized withdrawal of \$14,181.59 moments after leaving Judge Thornton's courtroom, knowing full well doing so was a defacto violation of lawsuit decorum and once again using his status to intimidate a bank official to do something that should not have been done. Judge Hyman was doing much more than merely supporting his wife. He was an active participant in this improper activity.

APPLICABLE LAW

The Canons regulating conduct for United States Judges are as follows:

Canon 1: A Judge Should Uphold the Integrity and Independence of the Judiciary

Canon 2: A Judge Should Avoid Impropriety and the Appearance of Impropriety in All Activities

Canon 3: A Judge Should Perform the Duties of the Office Fairly, Impartially and Diligently

Canon 4: A Judge May Engage in Extrajudicial Activities That are Consistent With the Obligations of Judicial Office

Canon 5: A Judge Should Refrain From Political Activity

The American Encyclopedia of Law, Corpus Juris Secundum ((Title 48A, "Judges")), provides this helpful summary of the law:

"(A) judge's conduct must be free from impropriety and the appearance of impropriety and that both his official and personal behavior be in accordance with the highest standard society can expect. The standard of conduct is higher than expected of lay people and also higher than that expected of attorneys. The ultimate standard must be conduct which constantly reaffirms fitness for the high responsibilities of judicial office, and judges must so comport themselves as to dignify the administration of justice and deserve the confidence and respect of the public."

Courts have spoken to the conduct cited in this complaint. For instance, the Massachusetts court system addressed the propriety of a judge participating in legal proceedings where a family member is a litigant. In a Judicial Ethics Opinion (Massachusetts CJE Opinion No. 2008-4), the Committee noted that:

As in the situation that Committee discussed in 20063, application of the quoted code provisions turns on the appearances attendance at the trial are likely to create. On the

one hand, you wish, understandably, to lend support to a family member in an emotionally trying situation. On the other hand, you do hold judicial office and members of the public, many of whom know very little about how the judiciary operates, **may see in your attendance an attempt, at the very least, to signal to the presiding judge your relationship to a litigant in the matter pending before him or her in the hope that that relationship may play a positive role in the litigation's outcome.**

The Ethics Committee went on to advise the judge that:

If you attend, you must take every reasonable precaution to prevent the appearance that you are seeking to influence the outcome. If circumstances arise to create that appearance, it would be necessary for you to immediately leave the proceeding.

A summary of Florida case law re: Judicial Misconduct seems to center on the arrogance of the judge in a way that reflects badly on the judiciary. See, for example *Inquiry Concerning a Judge (Schwartz)*, 755 So.2d 110 (Fla. 2000) (Violating judicial canon requiring that judge is patient, dignified, and courteous to litigants, lawyers, and others with whom judge dealt in an official capacity, resulting in a public reprimand.); *Inquiry Concerning a Judge (Richardson)*, 760 So.2d 932 (Fla. 2000)(where the Florida Supreme Court held that using inappropriate comments designed to obtain favored treatment and to avoid due process of the law constituted conduct unbecoming of a member of the judiciary, resulting in a public reprimand.); *In re Inquiry Concerning a Judge (Lantz)*, 402 So.2d 1144 (Fla. 1981)(where the Florida Supreme Court held that conduct,

including instances of arrogance, creation of appearance of impropriety, comments casting doubt on impartiality of judiciary....require a public reprimand.)

CONCLUSION

In the facts and law cited above, it should be clear an inquiry is needed to determine if the Canons of Ethics for Federal Judges have been violated. If that is akin to a probably cause standard, it would appear that standard has been met and surpassed. Here, there should be more than sufficient evidence to proceed with an inquiry and not just sweep this under the rug, thereby condoning this type of a conduct by a judicial officer. Many of the individuals in these matters are concerned about making such a high profile and powerful enemy, but if compelled they would verify all the matters alleged.