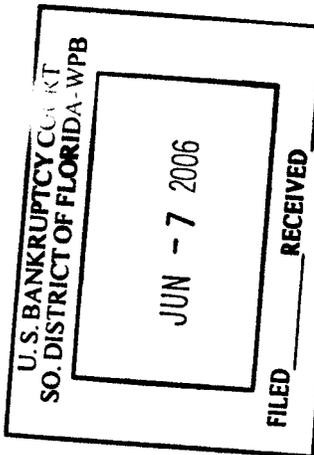


ORDERED in the Southern District of Florida on JUN - 7, 2006



Paul G. Hyman, Judge
United States Bankruptcy Court



UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
West Palm Beach Division

IN RE:

CASE NO: 03-32158-BKC-PGH

JAMES F. WALKER,

Chapter 7 Proceedings

Debtor.

ORDER: 1) DENYING MARY ALICE'S GWYNN'S MOTION FOR REHEARING AND RECONSIDERATION OF THE COURT'S SUA SPONTE ORDER DIRECTING MARY ALICE GWYNN, ESQ., TO STOP FILING NOTICES OF FILING [C.P.1531]; 2) IMPOSING SANCTIONS; AND 3) STRIKING COURT PAPER NOS. 1529 AND 1530

THIS MATTER came before the Court for hearing on May 26, 2006, upon Mary Alice Gwynn's ("Gwynn") Motion for Rehearing and Reconsideration of the Court's Sua Sponte Order Directing Mary Alice Gwynn, Esquire, to Stop Filing Notices of Filing (the "Motion For Reconsideration"). On May 15, 2006, the Court entered an Order Directing Mary Alice Gwynn to Stop Filing Notices of Hearing [C.P. 1510] (the "Order To Stop"). The Order To Stop directed Gwynn to

immediately stop filing documents pursuant to Notices of Filing. The Order To Stop was preceded by Gwynn having filed numerous documents pursuant to Notice of Filings or Notices to the Court (collectively, "Notices of Filing"). The Court entered the Order To Stop upon discovering that Gwynn had filed the following four Notices of Filing¹ on May 12, 2006:

1. *Notice of Filing Condensed Deposition Transcript of Deborah Menotte, Former Trustee, Taken On May 1, 2006.* In addition to the deposition transcript, which deposition was taken in connection with a case pending before Judge Friedman, the Notice attached a letter and e-mails to and between persons who are not parties in this case. The Notice of Filing also referenced docket entries in a bankruptcy case that is before Judge Friedman.
2. *Notice of Filing Shuhi v. Gatsos Complaint* which included a copy of a state court complaint.
3. *Notice of Filing Letter Dated May 9, 2006 from Gary J. Rotella, Esquire to the Florida Bar.*
4. *Notice to the Court of the Criminal Arrest of Bruce A. Kravitz, Esq.*

Gwynn's Notices of Filing have included correspondence by Gwynn's former clients to the Florida Bar lodging complaints about various attorneys who did not represent them, copies of newspaper articles, a copy of a complaint filed in state court, a deposition transcript from another bankruptcy case pending before Judge Friedman, as well as letters and e-mails between persons who are not parties in this case. The Order To Stop noted that it was

¹The Order To Stop directed the Clerk of the Court to return to Gwynn the four listed Notices of Filing.

impossible for the Court to determine what, if any, relevance Gwynn's Notices of Filing with attached letters, e-mails and documents from other cases, had to any pending motions before this Court. Mindful of protecting Gwynn's due process rights, the Order To Stop, while ordering Gwynn to stop filing Notices of Filing, directed that Gwynn would be permitted to file, in accordance with Administrative Order 05-2,² any relevant document(s) as an exhibit(s) to a specific motion or response, wherein she clearly explained its relevance.

Subsequent to entry of, and in violation of, the Order To Stop, Gwynn filed the following **additional** Notices of Filing on May 24, 2006: 1) "Notice of Filing Palm Beach Daily Business Review's Article Regarding Debtor's Witness, Elaine Gatsos, Esquire" [C.P. 1529]; and 2) "Notice of Filing Debtor's Counsel's Letter to Florida Bar Dated May 16, 2006" [C.P.1530]. Gwynn also attempted to file a third Notice of Filing entitled, "Notice of Intentional Interference by Debtor's Witness Steven Utrecht, Esquire", which alleges interference with Gwynn's representation of a client in an unrelated testamentary trust litigation matter. The Clerk of the

²Gwynn's having filing hundreds of pages of previously filed documents as exhibits to motions in contravention of the Court's Administrative Orders, prompted the Court on March 17, 2006 to enter an *Order Directing Mary Alice Gwynn, Esq., To Read and Comply with the Court's Local Rules and Administrative Orders* [C.P.1398], wherein Gwynn was specifically ordered to read and comply with Administrative Order 05-02. (Identical orders were entered for Aviva Wernick, Esq. and Gary J. Rotella, Esq.) On March 24, 2006, Gwynn filed a Notice of Compliance with Court Order [C.P.1417] indicating that she had read and would comply *only* with Section VII of Administrative Order 05-02. The Court thereupon entered a second *Order Directing Mary Alice Gwynn, Esq., to Read Administrative Order 05-02 in its Entirety* [C.P.1432].

Court is directed to return this document to Gwynn herewith.

Unlike Gwynn's previous Notices of Filing, the Notices of Filing that Gwynn filed subsequent to entry of the Order To Stop, now state what Gwynn believes to be the relevance to this case of the documents filed. Gwynn's action, i.e., indicating what she believes to be the relevance of the documents filed under Notices of Filing, does not cure her violation of the Order To Stop's plain directive which stated: "Gwynn shall immediately stop filing Notices of Filing and/or Notices to the Court". See *Order To Stop* ¶1.

At the May 26, 2006 hearing on Gwynn's Motion For Reconsideration, the Court asked Gwynn under what Rule of Civil Procedure or under what Local Rule she had filed her Notices of Filing. Gwynn was unable to provide an answer. When asked what the Court was supposed to do in this case, with her filing of a deposition transcript from another case, Gwynn answered, "The Court doesn't have to do anything, but it's building a record for appellate purposes." When asked what appellate matter, Gwynn responded, "Because I'm appealing Judge Friedman's recent ruling." The exchange between the Court and Gwynn continued as follows:

THE COURT: Can I ask you a question? How would you expect any appellate court to decide anything based on a notice of filing? How is that something that an appellate court is going to decide on appeal, irrespective that it goes to another case? Do you think a notice of filing just makes it part of a record that the appellate court is going to decide?

MS. GWYNN: No, but anybody -- you know what, it's a public record. If anybody wants to review the record and find out what happened, here it is.

THE COURT: Okay. I really don't need to hear any more, Ms. Gwynn, on this topic.

MS. GWYNN: Well, your Honor, can I just -- I wanted -- the other issues that you said were not relevant, if you recall, Ms. Gatsos, Elaine Gatsos, she was one of the rebuttal witness, one of the debtor's rebuttal witnesses, at the removal hearing, I think it's very relevant that the Court should know that she's presently being sued. It was even written up in the "Daily Business Review" that she's being sued based on her testimony in front of this Court.

THE COURT: Again, what pending contested matter does that relate to?

MS. GWYNN: It relates to the Eleventh Circuit Appeal in the removal of the creditor elected trustee.

THE COURT: It's your opinion that that notice of filing of a newspaper article is now going to become a part of the record on appeal of my order that was entered a year and a half ago, 2-1/2 years ago, that's up in the Eleventh Circuit, is that your opinion?

MS. GWYNN: No. I'm just saying -- I'm giving the Court notice of what transpired here. Ms. Gatsos -- and also, how about Mr. Kravitz --

THE COURT: Let me stop you. When you say "Court," you mean me?

MS. GWYNN: Yes, your Honor.

THE COURT: That is exactly the point that is so offensive to the Court about these notices of filings, because what you're really trying to do here is prejudice the Court with hearsay statements, things that are not before the Court, that are not related to any pending contested proceeding or adversary proceeding. That's exactly the reason I entered my order.

May 26, 2006 Transcript

The Court's Order To Stop specifically permitted Gwynn to

attach documents as exhibits to pleadings, such as motions or responses that seek specific relief. Unlike a notice of filing, the filing of a motion seeking specific relief triggers procedures that afford other parties the opportunity to respond, and if appropriate, to present evidence pursuant to the Federal Rules of Evidence at a properly noticed and scheduled hearing. The purpose of the Federal Rules of Evidence is "to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined." Fed.R. Evid. 102. The Federal Rules of Civil Procedure are similarly designed to be "administered to secure the just, speedy, and inexpensive determination of every action." F.R. Civ. P. 1.

The Court finds that Gwynn improperly attempted to influence this Court by filing numerous notices of filing containing inappropriate hearsay documents that are unrelated to any pending contested or adversary proceeding.³ In so doing, Gwynn engaged in unprofessional conduct before this Court. Gwynn admitted that her filing of newspaper articles, other hearsay documents, and documents from cases before other courts and judges, was to give

³Gwynn's practice of filing inappropriate documents pursuant to Notices of Filing is not unique to this case. On May 26, 2006, Judge Friedman ordered the sealing of three documents filed by Gwynn pursuant to Notices of Filing, in the chapter 7 case of *In re Mark A. Hussey and Jodi B. Hussey*. See *Order Sealing Court Papers #149, #154 and #204 and Denying Motion for Sanctions Against Mary Alice Gwynn* (Case No.: 05-30361-BKC-SHF) [C.P. #211].

the Court "notice of what transpired". The Court finds that Gwynn's filing of such documents pursuant to notices of filing was motivated by Gwynn's desire to prejudice this Court in violation of The Florida Bar Rules of Professional Conduct. Rule of Professional Conduct 4-3.5, "Impartiality and Decorum of the Tribunal", subsection (a) "Influencing Decision Maker" - prohibits a lawyer from seeking to influence a judge except as permitted by law or rules of the court. See THE FLA. BAR RULE OF PROF'L CONDUCT R. 4-3.5. The filing of such documents is inappropriate and unauthorized by any rule of civil procedure or other rules of the Court. Gwynn's action has been without concern for the rules of procedure, the rules of evidence, or the opportunity for anyone to respond. Gwynn's plethora of notices of filing have demonstrated her complete disregard for the fairness of the judicial process and the integrity of this tribunal. The Court is herewith forwarding a copy of this Order to the Florida Bar for inclusion in their investigation of Gwynn's unprofessional conduct.

The Court having heard Gwynn's argument, having reviewed the docket in this case, having reviewed the Motion For Reconsideration, and being otherwise fully advised in the premises, hereby **ORDERS AND ADJUDGES** that:

1. The Motion For Reconsideration is **DENIED**.
2. Gwynn shall pay \$500.00, made payable to the Clerk United States Courts, as a fine for having filed C.P. 1529 and C.P. 1530 subsequent to being ordered to "immediately stop filing notices of filing". Gwynn shall be similarly

fined, at the rate of \$250.00 each, for any future documents filed pursuant to notices of filing, unless Gwynn is specifically ordered to file such notice by the Court or is mandated to file such notice pursuant to the Federal Rules of Civil Procedure, the Bankruptcy Rules, or the Local Rules.

3. Court Papers No. 1529 and 1530 are hereby **STRICKEN**.
4. The Clerk of the Court is directed to return to Gwynn the document titled "Notice of Intentional Interference by Debtor's Witness Steven Utrecht, Esquire" that Gwynn attempted to file on May 24, 2006.
5. Gwynn may file, in accordance with the Court's Administrative Order 05-2, any relevant document(s) as an exhibit(s) to a motion or response that seeks specific relief, provided that the pleading clearly explains the relevance of the exhibit(s) to the specific relief requested.

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Copies Furnished to:

Mary Alice Gwynn, Esquire

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