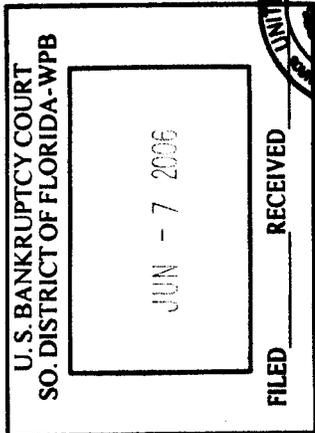


ORDERED in the Southern District of Florida on JUN - 7 2006



A handwritten signature in black ink, appearing to read "Paul G. Hyman".

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 ON ORDER TO SHOW CAUSE WHY MARY ALICE GWYNN, ESQ., SHOULD NOT BE SUSPENDED FROM PRACTICE BEFORE THE COURT, REPRIMANDED OR OTHERWISE DISCIPLINED PURSUANT TO LOCAL RULE 2090-2 [C.P.1473]

THIS MATTER came before the Court for hearing on May 26, 2006, upon the Court's sua sponte *Order to Show Cause Why Mary Alice Gwynn, Esq., Should Not Be Suspended from Practice Before the Court, Reprimanded or Otherwise Disciplined Pursuant to Local Rule 2090-2 [C.P. 1473]* (the "Order To Show Cause"), which was entered April 26, 2006. On May 22, 2006, Mary Alice Gwynn, Esquire, ("Gwynn") filed a *Response to the Court's Order to Show Cause* (the "Response") [C.P.1527].

Preceding the Court's entry of the Order To Show Cause, the

Court entered an *Order Directing Mary Alice Gwynn, Esquire, to File Sworn Certification of Qualification to Practice Before This Court* [C.P. 1444] ("Order To Certify Qualifications"). The Order to Certify Qualifications was prompted by the Court's observations of Gwynn's conduct in this Court over an extended period of time. The Order to Certify Qualifications directed Gwynn to file the details of her qualification to practice before this Court in accordance with Local Rule 2090-1(A),¹ on or before April 14, 2006. On April 17, 2006, Gwynn filed her *Sworn Certification Detailing Her Qualifications to Practice Before This Court* [C.P.1456] ("Sworn Certification"), which indicated to the Court that she was not in compliance with Local Rule 2090-1(A), despite her assertions to the contrary.

The required qualifications for an attorney to practice in this Court are detailed in Local Rule 2090-1 (A) which states:

Except as provided in subdivision (B) of this rule, to be qualified to practice in this court an attorney must:

- 1) be a member of the Bar of the United States District Court for the Southern District of Florida under the Special Rules Governing the Admission and Practice of Attorneys in the District Court;
- 2) read and remain familiar with these rules, administrative orders, the Federal Rules of Bankruptcy Procedure, the Federal Rules of Evidence, The Florida Bar's Rules of Professional Conduct, and the Bankruptcy Code; and

¹The United States Bankruptcy Court for the Southern District of Florida promulgates Local Rules that "apply to all cases and proceedings arising in, under, or related to cases pending under Title 11 of the United States Code." L.R. 1001-1.

- 3) earn at least 12 credit hours from the Florida Bar for attending or participating in CLE courses related to the subject area of "Bankruptcy Law" during each attorney's Florida Bar three-year CLE reporting requirement. This provision will not preclude an attorney from appearing who is within a three-year CLE reporting period but has not yet earned the required 12 credit hours for that period.

Attorneys appearing pursuant to this subdivision must include on all papers the certification contained in Local Rule 9011-4(B).

Local Rule 9011-4 "Signatures", subsection (B) "Certification of Attorney" states in pertinent part:

Papers filed by an attorney appearing:

- (1) as a qualified attorney pursuant to Local Rule 2090-1(A) must contain this certification:

"I hereby certify that I am admitted to the bar of the United States District Court for the Southern District of Florida and I am in compliance with the additional qualifications to practice in this court set fourth in Local Rule 2090-1(A)".

For voluntary petitions, this certification shall be included in the Local Form "Disclosure of Compensation of attorney for Debtor". For involuntary petitions, adversary complaints, motion and all other papers, the certification shall be included above the signature block for the attorney filing the petition, complaint, motion or paper.

- (2) pro hac vice pursuant to Local Rule 2090-1(B)(2) must contain this certification: "I hereby certify that the undersigned attorney is appearing pro hac vice in this matter pursuant to court order dated (date)". This certification shall be placed in papers in the locations described in subdivision (1) above.

Thus Local Rule 2090-1(A) requires that **all** papers filed by a qualified attorney contain the certification **required** by Local Rule 9011-4(B).

Gwynn, having been admitted to the Bar of the United States District Court for the Southern District of Florida, is in compliance with Local Rule 2090-1(A), subsection (1). However, the Court finds that she has not been in compliance with the additional qualifications to practice in this Court as set forth in Local Rule 2090-1(A), subsections (2) and (3). In regard to Local Rule 2090-1(A) subsection (2), Gwynn's conduct before this Court, has on several occasions demonstrated her lack of familiarity with the Court's Local Rules, administrative orders, the Federal Rules of Bankruptcy Procedure, the Federal Rules of Evidence, The Florida Bar's Rules of Professional Conduct, and the Bankruptcy Code. See e.g. *Memorandum Order* (April 26, 2006) [C.P. 1472] (finding Gwynn engaged in unprofessional conduct before this Court and referring the matter to the Florida Bar for investigation); *Order Directing Mary Alice Gwynn Esq to Read and Comply with the Court's Local Rules and Administrative Orders* [C.P.1398] (identical orders were entered for Aviva Wernick, Esq., and Gary J. Rotella, Esq.); *Order Directing Mary Alice Gwynn, Esq. to Read Administrative Order 05-2 in its Entirety* [C.P. 1432]; *United States District Court Order (Judge Alan S Gold) Denying Emergency Motion for Withdrawal of Reference, Case No.06-80332-CIV-GOLD/ TURNOFF* [C.P.1467] (noting Gwynn's filing of a nearly identical motion directly with the District Court in Case No. 05-CIV-80714-GOLD/TURNOFF); *Order to Show Cause* [C.P. 1473]; *Order Denying Without Prejudice Motion to*

Transfer Hearing to District Court [C.P.1509]; Order Directing Mary Alice Gwynn, Esquire to Stop Filing Notices of Filing [C.P. 1510]; and Order: 1)Denying Mary Alice's Gwynn's Motion for Rehearing and Reconsideration of the Court's Sua Sponte Order Directing Mary Alice Gwynn, Esquire to Stop Filing Notices of Filing [C.P.1531]; 2) Imposing Sanctions; and 3)Striking Court Paper Nos. 1529 and 1530, entered contemporaneously herewith.

Gwynn has maintained, in her Sworn Certification, her Response, and her statements before the Court, that she is qualified to practice in this Court and that she has not violated the Local Rules because: 1) the pleadings she filed prior to October, 2003, contain **no** certification; 2) her reporting period ended September 30, 2003, is "irrelevant" and "not applicable to the Court's request for certification of her qualifications"; 3) she didn't really start signing pleadings until mid October of 2004; and 4) she "merely appeared as Mr. Angueira's substitute counsel in the early stages of this Bankruptcy matter".

With regard to Gwynn's assertion that she "merely appeared as Mr. Angueira's substitute counsel in the early stages of this Bankruptcy matter", the Court notes that Local Rule 2090-1(B) provides the **only** exceptions for appearances in this Court by an attorney lacking the required qualifications to practice. Local Rule 2090-1(B)(2) permits *pro hac vice* appearances with Court approval as provided by the rule. In this case, Gwynn never filed

a motion requesting permission to appear *pro hac vice*. Local Rule 2090-1(B)(1) permits appearances by an attorney in limited instances² as provided by the rule. In this case, Gwynn did not restrict her appearances to the limited instances permitted by Local Rule 2090-1(B)(1). However apart from these only exceptions which are inapplicable, an attorney like Gwynn, who represents a client in a contested matter, *must* meet the qualifications to practice. See L.R. 2090-1(B)(1). Gwynn's implying that she was somehow exempt from the qualifications to practice because she "merely" appeared as substitute counsel for Mr. Anguiera evidences her lack of familiarity with the Local Rules which provide no special exception to the qualification requirements for substitute counsel.

Gwynn's statement to this Court at an April 17, 2006 hearing that she "didn't start really signing pleadings and representing Cole until after Mr. Anguiera stopped representing [Cole], which was . . . sometime in mid October of 2004" is simply not true. As early as July 8, 2003, Gwynn *filed and signed* "Creditor Eleanor C. Cole's Response to Creditor Robert S. Pettus' Objection to the Motion to Resolve the Report of Disputed Election and to Ratify the

² The five limited instances permitting appearances by an attorney lacking the required qualification to practice in this Court are: a) preparation and filing of a notice of appearance pursuant to B.R. 9010; b) a request for service of notices; c) the preparation and filing of proofs of claim in chapter 7, 11,12 or 13 cases or ballots in chapter 11 cases; d) attendance and inquiry at a §341 meeting of creditors; and e) attendance and representation of a creditor at a hearing which has been noticed to all creditors. See L.R. 2090-1(B)(1).

Election of Linda Walden S (*sic*) Permanent Chapter 7 Trustee" [C.P. 41]. The first sentence of Court Paper 41 states, "Comes now Creditors, Eleanor C. Cole ["Cole"] and Florida Precision Calpers, Inc. ["FPC"], *by and through her undersigned counsel* files this Response . . ." (emphasis added). This was a vigorously contested matter and Gwynn was the sole undersigned counsel. Having thus represented a client in a contested matter as early as July 8, 2003, Gwynn should have been qualified to practice pursuant to Local Rule 2090-1(A) at that time. The Court docket reveals that Gwynn filed 11 documents as undersigned counsel for Cole and/or FPC, prior to the October 1, 2003 start of her current Florida Bar CLE three-year reporting period. These filings included, but were not limited to, notices of filing, motions for protective orders, response to motion to stay sale, and notices of Rule 2004 examination duces tecum. Despite Gwynn's assertions to the contrary, her qualification to practice, or lack thereof, during her reporting period ended September 30, 2003 is indeed relevant to the Court's inquiry.

The Court finds that the pleadings filed and signed by Gwynn prior to September 30, 2003, contained no certification³ and thus were filed by Gwynn in violation of the Local Rules. Gwynn's assertion, that by **failing** to include the required certification

³ Gwynn's first pleading that included the required certification was court paper 197 which she filed as undersigned counsel for Eleanor C. Cole on December 18, 2003.

she was in compliance with the Local Rules, demonstrates either her failure to understand the rules of this Court or her willful disregard of the rules.

With regard to Local Rule 2090-1(A) subsection (3), Gwynn's Sworn Certification fails to indicate that she earned any of the required credit hours from the Florida Bar for attending or participating in CLE courses related to the subject area of "Bankruptcy Law" during her CLE reporting period ended September 30, 2003. This Court views the satisfaction of the Local Rule's qualification to practice as analogous to a license to practice in this Court. Extending the analogy, Gwynn's representation of clients in contested matters, without having satisfied the required qualification (and without familiarity or understanding of the rules) is tantamount to the unlicensed practice of law before this Court.

Gwynn asserts that the continuing education classes she attended during her current CLE reporting period are "related to the area of Bankruptcy Law." Gwynn's Sworn Certification indicates that she completed a Florida Bar sponsored Wills, Trusts, and Estates Certification Review Course in April, 2004, and an American College of Forensic Examiners International sponsored course entitled "Examining the Numbers for Evidence of Fraud" in October, 2003. She also provided an invoice showing that she purchased an American Bar Association self-study course entitled "What Every

Lawyer Should Know About Money Laundering and What Can Happen If You Don't" on June 17, 2003.⁴ Given the nature of bankruptcy law, an argument can be made that any continuing legal education classes, be they family law, criminal law, securities law, or maritime law, are related to Bankruptcy Law because bankruptcy proceedings can, and often do, implicate diverse areas of the law. However, the intent of the Local Rule is to qualify attorneys who can effectively represent clients in this Bankruptcy Court. In the Court's view, the continuing education requirement in the subject area related to "Bankruptcy Law", means the subject area directly related to Title 11 of the United States Code and its attendant procedural rules. The continuing education courses that Gwynn completed do not purport to study Title 11 and therefore are not sufficiently related to "Bankruptcy Law" to satisfy the Local Rule CLE requirement. Although Local Rule 2090-1(A) (3) does not prohibit an appearance by an attorney "who is within a three-year CLE reporting period but has not yet earned the required 12 credit hours for that period", Gwynn's Sworn Certification shows that Gwynn has made no attempt to comply with the "Bankruptcy Law" CLE requirement during the first two and one-half years of her current reporting period from October 1, 2003 through September 30, 2006.

Gwynn has violated the Local Rules with respect to

⁴Gwynn's Sworn Certification states that she is currently obtaining her CLE certificate from the American Bar.

qualification to practice in this Court by not remaining familiar with the Court's Local Rules, administrative orders, the Federal Rules of Bankruptcy Procedure, the Federal Rules of Evidence, The Florida Bar's Rules of Professional Conduct, and the Bankruptcy Code, and by not satisfying the CLE requirements during her three-year CLE reporting period ended September 30, 2003. Gwynn's current three year reporting period will end in only four months and yet she still has made no attempt whatsoever to satisfy the education requirements for qualification to practice in this Court. Gwynn's misunderstanding of bankruptcy law and the bankruptcy rules of procedure has worked to the detriment of her former clients and has unnecessarily increased the cost, time, and resources expended by the Court, and the parties in this case.

The Court, having reviewed the Response, the Sworn Certification, the docket in this case, having observed Gwynn's conduct in this Court during the past three years, and being otherwise fully advised in the premises, hereby:

ORDERS AND ADJUDGES that Gwynn shall be prohibited from representing any parties before the United States Bankruptcy Court for the Southern District of Florida until she earns 12 credit hours from the Florida Bar for attending or participating in CLE courses related to the subject area of "Bankruptcy Law" which shall mean courses directly related to Title 11 of the United States Code and the Bankruptcy Rules of Procedure.

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Copies furnished to:

Mary Alice Gwynn, Esq

AUST