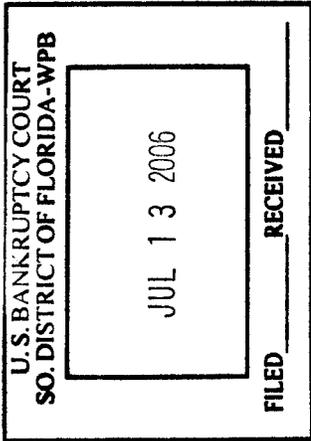


ORDERED in the Southern District of Florida on JUL 13 2006




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 THIS COURT'S "ORDER DENYING... REQUESTED RELIEF IN MARY ALICE GWYNN'S AMENDED REPLY" (D.E.# 1602) DATED JUNE 27, 2006 [C.P. 1633]; 2) DENYING RELIEF REQUESTED IN MARY ALICE GWYNN'S SUPPLEMENT TO HER MOTION FOR REHEARING. . . [C.P. 1642]; AND 3) DENYING MARY ALICE GWYNN'S MOTION FOR EVIDENTIARY (SIC) ON ALL THE ISSUES RAISED ... [C.P.1641]

THIS MATTER came before the Court on July 7, 2006, and on July 11, 2006 upon Mary Alice Gwynn's ("Gwynn") filing of her Motion for Rehearing and Reconsideration of This Court's "Order Denying... Requested Relief in Mary Alice Gwynn's Amended Reply" (D.E. # 1602) Dated June 27, 2006 [C.P.1633] ("Motion for Rehearing"); Supplement to Her "Motion for Rehearing and Reconsideration of This Court's

Order Denying Requested Relief in Mary Alice Gwynn's Amended Reply (D.E. # 1602) Dated June 27, 2006" Filed on July 7, 2006 (D.E.#1633) [C.P.1642] (the "Supplement"); and Motion for Evidentiary (sic) on All of the Issues Raised in Gwynn's "Amended Reply" (DE #1599), and the Court's "Order Denying...Requested Relief in Mary Alice Gwynn's Amended Reply" (D.E. #1602) Dated June 27, 2006 [C.P.1641] (the "Motion for Evidentiary Hearing") (collectively the "Pleadings").

The Motion for Reconsideration seeks reconsideration of the Court's referral of Gwynn to The Florida Bar pursuant to the Court's: a) Memorandum Order [C.P.1472]; b) Order: 1) Denying Mary Alice 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 [C.P. 1550] (the "June 7, 2006 Order"); and c) Order. . . Denying Requested Relief in Mary Alice Gwynn's Amended Reply [C.P.1602] (the "June 27, 2006 Order"). The stated basis for the relief requested in Gwynn's Motion for Reconsideration is Gwynn's belief that the Court should recuse itself and Gwynn's belief that the grievance committee members of The Florida Bar are prejudiced against her. Gwynn also requests that the Court reconsider the Court's sanction of her in the amount of \$250 pursuant to the July 27, 2006 Order.

Gwynn filed Notices of Appeal [C.P.1484 and C.P. 1574]

wherein, with the exception of the June 27, 2006 Order, Gwynn appealed all of the orders for which she now seeks reconsideration of the Court's referral of her to The Florida Bar. Gwynn has also appealed the Court's *Order Denying Gwynn's Emergency Motion for Recusal of the Honorable Paul J. (sic) Hyman Pursuant to Bankruptcy Rule 5004, 28 U.S.C. § 455 and § 144 [C.P. 1309]* (the "Recusal Order"), and the *Order Denying Motion for Rehearing and Reconsideration on the Court's [Recusal Order] [C.P. 1319]*. The filing of a Notice of Appeal transfers jurisdiction from this Court to the District Court. *Matter of Urban Development Ltd., Inc.*, 42 B.R. 741 (Bankr. M.D. Fla. 1984). Thus Gwynn's Notices of Appeal divested the Court of jurisdiction to consider the relief requested in the Motion for Rehearing based upon Gwynn's belief that the Court should recuse itself.

The Court is also without jurisdiction to consider any of the allegations raised by Gwynn regarding the Florida Bar or the members of its committees. The authority and responsibilities of The Florida Bar are established by the Supreme Court of Florida. *See Rules Regulating the Florida Bar: Introduction*. Furthermore, the Florida Constitution provides that: "The supreme court shall have **exclusive jurisdiction** to regulate admission of persons to the practice of law and the discipline of persons admitted." *See The Florida Bar v. Pape*, 918 So.2d 240 (Fla.2005) (citing Art. V, §15, Fla. Const.) (emphasis added). Thus Gwynn's allegations relative to

The Florida Bar are not within this Court's jurisdiction.

While Gwynn's Motion for Rehearing was timely filed to permit the Court to reconsider the June 27, 2006 Order, Gwynn has presented no grounds that would warrant modification of the June 27, 2006 Order. On May 15 2006, the Court entered a *sua sponte* Order *Directing Mary Alice Gwynn to Stop Filing Notices of Filing* [C.P. 1510] (the "Order to Stop") wherein Gwynn was ordered to **immediately** stop filing Notices of Filing. On May 24, 2006 Gwynn **defied** the Court's Order to Stop by filing two additional Notices of Filing and by attempting to file a third Notice of Filing which was refused by the Clerk's Office. On May 24, 2006, Gwynn filed a *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] which was heard by the Court on May 26, 2006. At that hearing, Gwynn **admitted** that her filing the Notices of Filing was an attempt to influence the Court in a manner that the Court found to be improper. *See June 7, 2006 Order*. Despite having been sanctioned for defying the Court's Order to Stop, and despite being warned that she would be sanctioned for any future improper attempts to prejudice the Court, Gwynn was undeterred. The June 27, 2006 Order found that:

Based upon Gwynn's statement in the Amended Reply that the Response to the Continuance Motion was filed in order to give "the Court and the public-at-large the true picture of what occurred in this Bankruptcy proceeding . . .," the Court finds that Gwynn continues to seek to prejudice this Court in

violation of the Florida Bar Rules of Professional Conduct and in violation of the Sanctioning Order. Rule 4-3.5(a) of the Florida Bar's Rules of Professional Conduct prohibits a lawyer from seeking to influence a judge except as permitted by law or rules of the court.

June 27, 2006 Order at 7.

The Court's referrals of Gwynn to The Florida Bar for investigation of her unprofessional conduct are warranted and proper pursuant to the Code of Conduct for United States Judges, Canon 3(B)(3) which states that, "A judge should initiate appropriate action when the judge becomes aware of reliable evidence indicating the likelihood of unprofessional conduct by a judge or lawyer." The commentary to Canon 3(B)(3) states that, "Appropriate action may include direct communication with the judge or lawyer who has committed the violation, other direct action if available, and reporting the violation to the appropriate authorities." In this case, the proper authority is The Florida Bar.

As to Gwynn's request for an evidentiary hearing, the Court does not find this to be an evidentiary matter. The Court's opinion regarding Gwynn's unprofessional conduct is based upon the Court's observations of Gwynn's conduct over a significant period of time, it is not a disputed question of fact to be determined in an evidentiary hearing before this Court. Gwynn's failure to remain familiar with the various rules of procedure and the law as described in previous orders of this Court coupled with Gwynn's filing of irrelevant hearsay documents pursuant to Notices of Filing in an attempt to improperly influence this Court is

unprofessional conduct that cannot be ameliorated by conducting an evidentiary hearing.

The Court has inherent power to manage its affairs including "the power to control and discipline attorneys appearing before it." *In re Mroz*, 65 F.3d 1567,1575 (11th Cir. 1995). It appears that Gwynn is repeatedly and improperly attempting to re-argue matters that have been determined by final orders of this Court. To the extent that Gwynn seeks relief from the Court's final Orders, the proper procedure is to timely file an appeal.¹ Gwynn's filing of frivolous and improper pleadings regarding individuals and matters over which the Court lacks jurisdiction wastes this Court's time and resources. The Court's imposition of sanctions to date seems to have had no deterrent effect upon Gwynn's conduct. If Gwynn persists in her admitted efforts to improperly influence this Court, the Court will have no choice but to fashion an appropriate sanction designed to deter such conduct.

The Court having reviewed Gwynn's Pleadings, and being otherwise fully advised in the premises, hereby

ORDERS AND ADJUDGES that:

1. The Motion For Reconsideration is **DENIED**.
2. The relief sought in the Supplement is **DENIED**.
3. The Motion for Evidentiary Hearing is **DENIED**.

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¹Gwynn having timely filed several appeals in this case should be familiar with the correct procedure for taking an appeal,.

Copies Furnished to:

Mary Alice Gwynn, Esquire

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