

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 Rules of the Judicial Council of the Eleventh Circuit Governing Complaints of Judicial Misconduct or Disability.

CONFIDENTIAL

IN THE MATTER OF A COMPLAINT FILED BY:

Mary Alice Gwynn, Esq.
805 George Bush Boulevard
Delray Beach, FL 33483
561-330-0633

PLEASE DATE STAMP
AND RETURN

AGAINST:

Judge Paul G. Hyman
Bankruptcy Court for the Southern District of Florida

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.)

U.S. Bankruptcy Court, Southern District of Florida
Case No.: 03-32158-PGH In re: James F. Walker, Debtor
Eleventh Circuit Court of Appeals
Case No.: 06-11743-HH Walden v. Walker
Case No.: 07-14049-H Gwynn v. Walker

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:

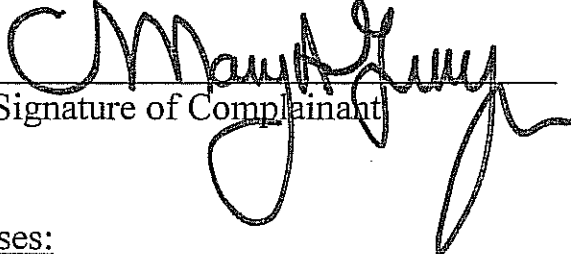
2. **Have you filed a lawsuit against the judge?** Yes No

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.**

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 Complaint 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

9/25/07
Date

Witnesses:

Mary Alice Gwynn, Esq.
Gary Murphree, Esq.
Linda Walden, CPA - Creditor-Elected Trustee
Eleanor Cole - Judgment Creditor
Carl Shuhi - Judgment Creditor
Paula Arntz - Paralegal to Mary Alice Gwynn, Esq.
Heidi Feinman, US Trustee
Marcia T. Dunn, Panel 7 Trustee

**BACKGROUND FACTS AND
DESCRIPTION OF JUDICIAL MISCONDUCT**

The Complainant has been a practicing attorney in the State of Florida for the past 17 years, and has never filed a Judicial Complaint. Ms. Gwynn was retained by Eleanor Cole, in 2002, to assist her in executing her 1989 Civil Judgment for civil theft against convicted felon, James F. Walker. Cole, an ailing, elderly woman, located property owned by Walker in the Cat Cay, Bahamas. Ms. Gwynn had CPA, Linda Walden, appointed as a Receiver over the property. Days before the Receiver was about to take control of the property, felon, James Walker, filed a Chapter 7 no asset proceeding, claiming the Cat Cay home was exempt, which was later reversed on Appeal. The Creditors elected Ms. Walden, a non-Region 21 Trustee, over the appointed Region 21, Panel 7 Trustee, Deborah Menotte. When Cole ran out of funds to pay her Bankruptcy counsel, Ms. Gwynn agreed to represent her without upfront compensation, having no idea what unfair **judicial misconduct** she, Walden and Cole would receive as **non-members** of the “Region 21 Bankruptcy clan”.

Judge Hyman has a judicial obligation to act as an impartial court and to apply the law and rules evenly to all parties, to avoid the appearance of impropriety pursuant to the Judicial Canons. Judge Hyman failed to uphold the integrity and act impartially in the *In re: Walker* proceeding by favoring the Region 21 “clan”.

Judge Hyman’s lack of impartiality destroyed the Court’s integrity from the very beginning. The Bankruptcy Court routinely allowed Debtor’s counsel, a

Region 21 Bankruptcy counsel, to draft virtually all of the Court's Orders, which were adopted "verbatim" by the Court, without any changes or evidence of independent Judicial thought. The Orders entered contained fabricated, detrimental findings, never articulated in the Court's "ore tenus" rulings. As a result, Ms. Gwynn, the only two Creditors, and the Creditor-Elected Trustee (all **non-Region 21** parties) were deprived of their due process rights and suffered damages.

In compliance with the Judicial Committee's request for brevity, the Complainant briefly outlines only a few of the most egregious acts of misconduct by Judge Hyman.

I. On June 14, 2004, the Court signed an order drafted by Debtor's counsel Granting the Debtor's Motion for Rule 9011 Sanctions against the Complainant, which included the fabricated finding never articulated by the Court, nor reflected in the hearing transcript:

"Accordingly, **this Court finds** that Debtor's counsel properly served and notified Creditor Cole's counsel, Gwynn of an intention to seek sanctions pursuant to Bankruptcy Rule 9011 (Exhibit #1)

The Court's actual, ore tenus ruling of April 28, 2004, **denied** the Debtor's Motion to Shorten the 21 day notice under Bankruptcy Rule 9011. (Exhibit #2 pgs. 40-44)

Complainant filed two separate motions, a Motion to Strike and a Motion to Amend, alerting the Court the June 14, 2004 Order contained findings never

articulated in the “ore tenus” ruling, which were both denied by the Court. (Exhibits #3 and #4) Mr. Rotella was awarded an \$80,000 judgment, which was later reversed by the District Court who found that the Debtor’s counsel **did not comply** with the notice requirement. (See Exhibit #5) On September 6, 2006, after the Appellate Court vacated the Bankruptcy Rule 11 sanctions Order for \$80,000, the Court attempted to mitigate his unfair practice of allowing Mr. Rotella to include unspoken findings in his proposed orders, by admitting the following:

“...the proposed Erroneous Order was entered by the Court in misplaced reliance that Rotella would submit a proposed order that accurately reflected the Court’s ruling. It did not.” (Exhibit #6)

II. In November of 2004 - Judge Hyman removed the Creditor-Elected, **non-Region 21 Trustee**, based on an immaterial non-disclosure, that somehow became fraud on the court when Mr. Rotella drafted the Order. (Exhibit #7)

Ironically, in In re: Baron’s Stores, Inc. 2007 Bankr. LEXIS 1372, Judge Hyman when faced with a **Region 21 Panel 7, Trustee’s** non-disclosure held:

“Generally speaking, only the most egregious misconduct, such as bribery of a judge or members of a jury, or the fabrication of evidence by a party in which an attorney is implicated, **will constitute fraud on the court.** Less egregious misconduct, such as nondisclosure to the court of facts allegedly pertinent to the matter before it, will not ordinarily rise to the level of fraud on the court.” [**Emphasis added**] (Exhibit #10)

On December 1, 2004, despite objections by Ms. Walden’s counsel, Judge Hyman entered a second Removal Order with **an additional finding of perjury**, never articulated in the Court’s earlier “ore tenus” ruling. (Exhibit #8 and #9 -

This matter is presently on appeal in this Court, Case #06-11743)

On April 6, 2005, the Bankruptcy Court heard the Complainant's Motion to Clarify, which was denied by the Court. The Order, drafted by Mr. Rotella and signed by the Court, instead of being an Order denying Ms. Gwynn's Motion to Clarify, was an Order Granting Debtor's Emergency Motion to Strike Ms. Gwynn's Motion to Clarify Based on Fraud on the Court. (Exhibit #11)

At the May 20, 2005 hearing, the Court once again was alerted of this continual problem of orders containing extra findings not made by the Court. (Exhibit #12 - page 19-30) At page 28 and 30, the Court admits the Order is accurate as the order "reflects my thought process at the time".

III. As stated above, Judge Hyman removed the Creditor-Elected Trustee, Linda Walden for an alleged and immaterial failure to disclose that she had been a Registered Agent of one of the Creditor's corporations some ten years prior.

In direct conflict to the strict application of the disclosure rules to **Ms. Walden, a non-Region 21 Trustee**, the Court completely refused to investigate or admonish in any way, the law firm of Ferrell Schultz, for their fraud on the Court in failing to disclose a severe and damaging conflict of interest; to wit: while representing the Creditor-elected Trustee, the firm's Senior Partner was President of the Cat Cay Yacht Club, which controlled all the property in Cat Cay. This conflict of interest was also known and ignored by the successor Region 21 Panel

Trustee, Patricia Dzikowski. (Exhibits #15, 17 and 17A)

Again in contrast to the Court's strict application of the disclosure rules for Creditor-Elected Trustee, Judge Hyman refused to investigate or sanction the Debtor's counsel for his breach of disclosure Rules 2014 and 2016, in failing to disclose that he owned a 50% interest in the only Estate asset, the Cat Cay property., as payment for his fees. (Exhibit #13 and #14)

Again, in **Baron** cited above, the Court held that a failure to disclose fee arrangements was a **material nondisclosure**. In contrast to his own opinion, Judge Hyman ruled Mr. Rotella's nondisclosure was not important and immaterial.

IV. In further support that the Court applies the Rules more harshly against the "**non-Region 21 clan**", the Court unfairly requested the Florida Bar open an investigative file on the alleged unprofessional (not unethical) conduct of the Complainant. Yet in contrast, the Court refused to request a similar investigation into the Ferrell firm's blatant ethical violation, and the Panel 7, Region 21 Trustee's failure to disclose the Ferrell conflict. (Exhibit #17, 17A, 18)

Federal Courts have the power to improve or destroy the lives of individuals. Judge Hyman has destroyed a considerable portion of the Complainant, the Creditors, and the former Trustee's lives.

The Complainant respectfully requests the opportunity to submit further documentation of misconduct to the Committee in support of this Complaint.

EXHIBIT REGISTER TO JUDICIAL COMPLAINT

1. June 15, 2004 Order Awarding Rule 9011 Sanctions Against Complainant
2. April 28, 2004 - Transcript of Court's ore tenus ruling denying Debtor's Motion to Shorten 21 Day Notice Under Bankruptcy Rule 9011
3. Motion to Strike June 15, 2004 Order Awarding Rule 9011 Sanctions
4. Motion to Amend, Correct or Withdraw... Order dated June 15, 2004 Order Awarding Rule 9011 Sanctions
5. March 20, 2006 District Court Order Vacating the Final Judgment of the Bankruptcy Court Awarding Rule 9011 Sanctions
6. September 6, 2006 Order admitting that the Court relied on Mr. Rotella to draft accurate proposed orders for the Court
7. November 18, 2004 Order Removing Creditor Elected Trustee, Linda Walden
8. Creditor-Elected Trustee's Objection to Mr. Rotella's second proposed Removal Order
9. Order Granting Debtor's Emergency Motion for Removal of the Creditor-Elected Trustee, Linda Walden for Fraud on the Court
10. In re: Baron's Stores, Inc. 2007 Bankr. LEXIS 1372 - Judge Hyman's opinion regarding Region 21, Panel 7 Trustee's non-disclosure
11. Motion to Strike and/or Vacate Order Granting Debtor's Emergency Motion to Strike Gwynn's Motion to Clarify the Record for Fraud Upon the Court
12. May 20, 2005 hearing transcript
13. Motion for All Remedies Available for Debtor's Counsel, Gary Rotella's Breach of Mandatory Disclosure Requirements
14. July 1, 2005 hearing transcript excerpts of ruling of Judge Hyman on Debtor's counsel's failure to disclose
15. Motion to Compel Investigation by Trustee into Ferrell conflict
16. June 26, 2007 hearing transcript of the Court's Order on the Motion to Compel Investigation
17. Motion for Rehearing of the Court's Order Denying Motion to Compel Investigation - including Court's letter to Fla. Bar requesting an investigation against Complainant

- 17A. Supplement to Motion for Rehearing - containing documentation of the Ferrell conflict
18. August 16, 2007 - Order Denying Motion for Rehearing