

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA
Statesboro Division

IN RE:)	Chapter 7 Case
)	Number <u>90-60141</u>
RONALD F. MAYHEW)	
CONNIE B. MAYHEW)	
)	
Debtors)	
_____)	

ORDER

After notice and hearing by order filed June 24, 1994, I imposed sanctions against the above-named debtors pursuant to Federal Rule of Bankruptcy Procedure 9011 for debtors' continued violations of the February 8, 1993 order of this court. The debtors have never appealed any ruling of this court, but still continue to file various papers and "responses" to this court's orders. The most recent filing being a filing titled "Notice to Creditors and Parties in Interest of Fraud and Embezzlement from the Estate by Government Officials," (hereinafter referenced "Notice to Creditors") prepared and filed pro se one week after the June 24 sanction order. In my June 24 order I determined that debtors' earlier filings contained unfounded allegations of fraud and deceit by this court and its officers and disregarded the authority of this

court in core matters involving the debtors' voluntary bankruptcy case. Debtors' "Notice to Creditors" is a continuation of such behavior and illustrates that the sanctions ordered have not deterred the debtors' continued abuse of the judicial process. Consequently, it is now necessary to impose upon debtors a filing restriction limiting their ability to file matters with the clerk of this court.

Debtor's "Notice to Creditors" is the latest in a series of miscellaneous and inappropriate papers filed with this court. This court has afforded the debtors leniency in their pro se filings, however, in these filings the debtors merely complain about actions, both perceived and actual, undertaken by individuals involved with the debtors' bankruptcy case rather than seek any legal remedy or attempt to relitigate settled matters. Some of the inappropriate matters submitted are as follows.

(1) January 17, 1992, Ronald Mayhew filed a letter addressed to me to update the court on the status of debtor Connie Mayhew's health. By order dated September 5, 1991, I ordered debtor's counsel to keep me informed of her health. The primary purpose of Mr. Mayhew's correspondence was to allege that the complications with Mrs. Mayhew's pregnancy were caused by the attorney for the trustee.

(2) "Plaintiff's Petition to Remove the Attorney for the Trustee and Settle Case" was filed April 9, 1992 by a so called "creditor's committee" consisting of four unsecured creditor and headed by the

father of debtor Connie Mayhew, alleging criminal acts by the attorney for the trustee and demanding that criminal charges against the debtors be dropped. From the tone and content of this lengthy document I conclude it was orchestrated by the debtors, was another attempt to level accusations against the trustee, and presents matter not capable of being resolved in this court, namely the dismissal of the criminal charges then pending against the debtors. Following hearing May 7, 1992 by order entered June 5, 1992 I found no basis for removal of the trustee's attorney and no appeal was taken from that order.

(3) After this court's denial of debtor Ronald Mayhew's "Response and Objection to Order Striking Amended Schedules" which was treated as a Motion for Reconsideration, Ronald Mayhew filed a "Response to February 25, 1993 Order" to criticize my denial of the motion and to allege deceit and fraud by this court in so denying reconsideration. No appeal was taken and no legal remedy was sought by this filing.

(4) Ronald and Connie Mayhew filed "Debtor's Amended Schedules B-2 and B-4" with the court July 16, 1993, which contained 5 pages of actual schedules and 25 pages of other unrelated papers for this court to process, which the Mayhews present as "proof" of their allegations of improper and criminal activity. The amended schedule, filed in defiance of my February 8, 1993 order, was used as a vehicle for the entry into the record of the Mayhews' continued accusations of fraud and deceit by various court officers. These

allegations were addressed by my orders of June 5, 1992 and February 8, 1993. Having barred the debtors from filing any further schedule exemption amendments by the February 8, 1993 order, this filing fails to request any relief in this court.

(5) On July 31, 1993, Ronald Mayhew filed a document titled "Retransmittal of Debtor's Letter Firing D. Duston Tapley, Jr. for Cause" with said letter attached, notwithstanding the January 16, 1992 order permitting the withdrawal of Mr. Tapley as attorney for the debtors, and again failed to seek any legal remedy.

(6) Ronald Mayhew filed "Debtors' Amended Schedule B-4" January 14, 1994, again in defiance of the order of February 8, 1993 which also including papers described therein as, "summariz[ing] a portion of the evidence the Debtors intend to produce should the Chapter 7 Trustee or any other party in interest, have any objections to the lawful use of our bankruptcy exemptions contained in this amendment," threatening further "disclosure" if any objection to the amendment is raised. No legal remedy was sought or available as I had barred such amendments by the February 8, 1993 order.

(7) Ronald and Connie Mayhew together filed an "Amended Schedule B-4 -- Property Claimed as Exempt" March 3, 1994, which schedule consisted of one page, and to which was attached an additional four pages of allegations of fraud, embezzlement and extortion by the Trustee, and three pages of a copyrighted account of the "Watergate" political scandal of the 1970's. The schedules were again filed in

defiance of the order of February 8, 1993 and were improperly augmented with accusations against this court and papers unrelated to any legal remedy available.

(8) On June 30, 1994, Ronald Mayhew filed the aforementioned "Notice to Creditors and Parties in Interest of Fraud and Embezzlement from the Estate by Government Officials." This "notice" is not a pleading, motion, or any other type of request for relief.

This list is only partial, but is representative of the quantity and nature of the miscellaneous papers which the debtors continually submit to this court but which are unrelated to any relief available in their bankruptcy case and all of which increasingly show disdain and disregard for the authority of this court. All of the above filings which include extraneous materials present an unnecessary addition to the workload of this court.

The "Notice to Creditors" filed by the Mayhews evidences the manner in which the Mayhews have inundated this court with papers and documents, even audio tapes, intended to make various accusations of fraudulent, deceitful, malicious and criminal activity without substantiating those claims or advancing any substantive arguments appropriate for resolution by this court. All of debtors accusations were addressed at hearing on May 7, 1992 and again on March 29, 1994 and resolved by orders entered June 5, 1992 and June 24, 1994 which were not appealed and are final. The

debtors are using this court as a forum merely to launch attacks rather than to seek relief under Title 11 and thereby limit the judicial resources available for the resolution of other appropriate matters. The allegations of the debtors have been addressed. Enough.

This Court has the authority under both 28 U.S.C. § 1651 (the "All Writs Statute") and Bankruptcy Code § 105 to issue any order in aid of its jurisdiction.¹ The All Writs Statute is made applicable to this court by 28 U.S.C. § 451 as amended. Norton Bankruptcy Code Pamphlet 1993-1994 Edition, 85 (ref. H.R. 8200 § 213). Section 105 appears within the Bankruptcy Code for purposes

¹28 U.S.C. § 1651 provides that,

(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

(b) An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction.

11 U.S.C. § 105 provides in relevant part that,

(a) The court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

of continuity from former law and ease of reference, Id., as well as to cover any powers traditionally exercised by the bankruptcy court that are not encompassed by the All Writs Statute. 2 Collier on Bankruptcy, § 105.01[1] (1994).

The All Writs Statute has been used to impose filing restrictions where litigants have abused the judicial process with the character and quantity of their various pleadings. In Winslow v. Hunter (In re Winslow), 17 F.3d 314 (10th Cir. 1994), the debtors' filings of seventeen matters, each one accusing various courts of fraud, criminal conduct and conspiracy but each failing to advance substantive arguments, constituted abusive and repetitive filings warranting the imposition sua sponte, of filing restrictions pursuant to the court's inherent power under 28 U.S.C. § 1651 requiring the debtors to obtain leave of court before proceeding pro se, and otherwise barring the debtors from any further filings without representation by an attorney. 17 F.3d at 316. See also Yocum v. Dixon, 729 F.Supp. 616 (C.D. Ill. 1990) (ordering plaintiff to seek leave of court prior to filing other pleadings in light of plaintiff inundating the court with frivolous pro se pleadings and motions and creating enormous workload for court's staff), Cofield v. Alabama Public Service Commission, 936 F.2d 512 (11th Cir. 1991), (district court's filing restriction requiring a prefiling screening of claims where the plaintiff had repeatedly filed frivolous actions). In Cofield, the court found that courts must at times

take "creative actions to discourage hyperactive litigators as long as some access to the courts is allowed," citing Procup v. Strickland, 792 F.2d 1069 (11th Cir. 1986), and that "requiring pre-filing screening of claims leaves sufficient access to the courts." 936 F.2d at 518.

I find that the debtors in this case have abused the judicial process of this court by diverting its resources and attention, with the debtors' repeated and abusive filings, to matters either previously resolved by order, to matters clearly beyond the jurisdiction of this court or to disjointed filings not seeking any legal remedy. In view of debtors' refusal to desist when faced with the imposition of sanctions, I find that a filing restriction in the nature of a pre-filing screening by me is both justified and appropriate.

I also find that the "Notice to Creditors" contains rehashed accusations against this court, its officers and employees and new allegations of wrongdoing by the District Court and therefore would violate Rule 12(f) of the Federal Rules of Civil Procedure² if this "Notice to Creditors" could be construed a

²Federal Rule of Civil Procedure 12(f) provides that,

Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 20 days after the service of a pleading upon the party or upon the court's own initiative at any time, the court may order

stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. (emphasis added)

Federal Rule of Civil Procedure 12 is made applicable to contested matters and adversary proceedings, respectively, by Bankruptcy Rules 9014 and 7012. Bankruptcy Rule 9014 provides that,

In a contested matter in a case under the Code not otherwise governed by these rules, relief shall be requested by motion, and reasonable notice and opportunity for hearing shall be afforded the party against whom relief is sought. No response is required under this rule unless the court orders an answer to a motion. The motion shall be served in the manner provided for service of a summons and complaint by Rule 7004, and, unless the court otherwise directs, the following rules shall apply: 7021, 7025, 7026, 7028-37, 7041, 7042, 7052, 7054-56, 7062, 7064, 7069, and 7071. The court may at any stage in a particular matter direct that one or more of the other rules in Part VII shall apply. An entity that desires to perpetuate testimony may proceed in the same manner as provided in Rule 7027 for the taking of a deposition before an adversary proceeding. The clerk shall give notice to the parties of the entry of an order directing that additional rules of Part VII are applicable or that certain of the rules of Part VII are not applicable. The notice shall be given within such time as is necessary to afford the parties a reasonable opportunity to comply with the procedures made applicable by the order. (emphasis added.)

In turn, Bankruptcy Rule 7012(b) provides that,

Rule 12(b)-(h) FR Civ P applies in adversary proceedings. A responsive pleading shall admit or deny an allegation that the proceeding is core or non-core. If the response is that the proceeding is non-core, it shall include the

pleading in a contested proceeding before this court. Each of the papers outlined above as inappropriately filed by debtors also contain such matter. See, Skolnick v. Hallett, 350 F.2d 861 (7th Cir. 1965) (a complaint alleging that a state court judge and attorney conducted a "kangaroo court" with the plaintiff as a victim was stricken under Rule 12(f)). While Rule 12(f) does not apply to the "Notice to Creditors" because it is neither a pleading in a pending contested matter or adversary proceeding nor a motion to this court for relief, both in spite of and partially due to its nature as a miscellaneous paper, I am obligated to strike it from the record under §105(a).

The "Notice to Creditors and Parties in Interest of Fraud and Embezzlement of the Estate by Government Officials" filed by debtors is ORDERED stricken.

It is further ORDERED that any further filings the debtors wish to make in this court must first be submitted to me through the Clerk of Court for my approval as being meritorious and advancing legal issues appropriate for resolution in this court before they may be filed.

It is further ORDERED that the Clerk of Court note the

statement that the party does or does not consent to entry of final orders or judgment by the bankruptcy judge. In non-core proceedings final orders and judgments shall not be entered on the bankruptcy judge's order except with the express consent of the parties.

date and time received on the document offered for filing by the debtor and submit same to me for my approval for filing. If the document is found acceptable for filing the court will enter an order to that effect and the pleading shall be filed effective as of the noted date and time. If the proposed pleading is found unacceptable an order will be entered to that effect and the filing will be denied and returned to the debtors. In the latter case, the proposed pleading shall not appear of record, only the order denying entry of same.

JOHN S. DALIS
UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia
this _____ day of July, 1994.