

William M. Windsor

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October 31, 2011

Clerk of the Court
United States District Court Northern District of Georgia
75 Spring Street, SW, 22nd Floor
Atlanta, Georgia 30303-3361

Re: 1:11-CV-01922-TWT

Dear Clerk:

When you read these words, the enclosed documents are filed. Please docket these filings immediately in this order:

Notice of Filing & Response to Order to Show Cause

Delivery of documents to the Office of the Clerk of the Court constitutes filing. The Office of the Clerk has no legal right to block the docketing of anything that I properly present to the Clerk of the Court.

Requests for Consent must also be filed as each one that is denied will be the subject of an appeal, and it is essential that these are part of the record. Requests for Consent are just another form of document that the Clerk must docket because these are filed upon delivery to the Office of the Clerk.

it is settled law that delivery of a pleading to a proper official is sufficient to constitute filing thereof. *United States v. Lombardo*, 241 U.S. 73, 36 S. Ct. 508, 60 L. Ed. 897 (1916); *Milton v. United States*, 105 F.2d 253, 255 (5th Cir. 1939). In *Greeson v. Sherman*, 265 F. Supp. 340 (D.C.Va.1967) it was held that a pleading delivered to a deputy clerk at his home at night was thereby "filed." (*FREEMAN v. GIACOMO COSTA FU ANDREA*, 282 F. Supp. 525 (E.D.Pa. 04/5/1968).)

FRCPP Rule 5(d)(2): "**A paper is filed by delivering it: (A) to the clerk...**"
FRCPP Rule 77 (a) "When Court Is Open. Every district court is considered

always open for filing any paper, issuing and returning process, making a motion, or entering an order.” **[emphasis added.]**

“The duty of the clerk is to make his record correctly represent the proceedings in the case...” (*WETMORE v. KARRICK*, 27 S. Ct. 434, 205 U.S. 141 (U.S. 03/11/1907).) **Failing to file documents presented and reflect the documents on the docket is a failure to perform the ministerial duties of the Clerk of the Court. [emphasis added.]**

“...his [Clerk of the Court] job is to file pleadings and other documents, maintain the court's files and inform litigants of the entry of court orders.” *Sanders v. Department of Corrections*, 815 F. Supp. 1148, H49(N.D. Ill. 1993). (*WILLIAMS v. PUCINSKI*, 01C5588 (N.D.Ill. 01/13/2004).)

The clerk of a court, like the Recorder is required to accept documents filed. It is not incumbent upon him to judicially determine the legal significance of the tendered documents. *In re Halladjian*, 174 F. 834 (C.C.Mass.1909); *United States, to Use of Kinney v. Bell*, 127 F. 1002 (C.C.E.D.Pa.1904); *State ex rel. Kaufman v. Sutton*, 231 So.2d 874 (Fla.App.1970); *Malinou v. McElroy*, 99 R.I. 277, 207 A.2d 44 (1965); *State ex rel. Wanamaker v. Miller*, 164 Ohio St. 176, 177, 128 N.E.2d 110 (1955.). (*Daniel K. Mayers Et Al., v. Peter S. Ridley Et Al.* No. 71-1418 (06/30/72, United States Court of Appeals for the DC Circuit.) **[emphasis added.]**

The specific allegation in Mr. Snyder's complaint is that Mr. Nolen, acting as the Circuit Court Clerk, refused to file or actually removed already filed papers from the court's docket. Under Illinois law, **the clerk simply has the ministerial duty to file papers** that conform to the technical rules of court. See *In re Estate of Davison*, 430 N.E.2d 222, 223 (Ill. App. Ct. 1981) (“Delivery alone has been held to constitute filing since the person filing has no control over the officer who receives documents. Subsequent ministerial tasks of the clerk evidence the filing of a document but are not essential to its perfection.” (internal citation omitted)); *Roesch-Zeller, Inc. v. Hollembeak*, 124 N.E.2d 662, 664 (Ill. App. Ct. 1955) (“**The duty of the clerk to file the document on the date it was presented to him was a ministerial act**, the performance of which could be compelled by writ of mandamus.”). (*Snyder v. Nolen*, 380 F.3d 279 (7th Circuit, 08/13/2004).) **[emphasis added.]**

The word "filed" the Act uses, is, as applied to court proceedings, a word of art, having a long established and well understood meaning, deriving from the practice of filing papers on a string or wire. It **requires of one filing a suit, merely the depositing of the instrument with the custodian for the purpose of being filed.** Except where some specific statute otherwise provides, and none such is present here, it charges him with no further duty, subjects him to no untoward consequences as a result of the failure of the custodian to do his duty, by placing the instrument on the file, or as in modern practice placing his file mark on the instrument. Collected in vol. 3 *Words and Phrases*, First Series, pp. 2764-2770, inclusive; vol. 2 *Words and Phrases*, Second Series, pp. 531, 534, may be found cases from many jurisdictions, all to the same effect, that **the filing of a paper is the delivery of it to the officer at his office,** to be kept by him as a paper on file, and that the file mark of the officer is evidence of the filing, but it is not the essential element of the act. A paper may be filed without being marked or endorsed by the clerk, *In re Conant's Estate*, 43 Or. 530, 73 P. 1018; *Holman v. Chevallier*, 14 Tex. 337; *Eureka Stone Co. v. Knight*, 82 Ark. 164, 100 S.W. 878; *Darnell v. Flynn*, 69 W.Va. 146, 71 S.E. 16. Perhaps the best statement of the meaning and consequences of filing is to be found in the *Chevallier* case, supra. "Though the ancient mode of filing papers has gone into disuse, the phraseology of the ancient practice is retained, in the common expressions 'to file,' 'to put on file,' 'to take off the file,' &c., from 'filum' the thread, string, or wire used in ancient practice, for connecting the papers together. The term 'file' is also used to denote the paper placed with the Clerk, and assigned by the law to his official keeping. A file is a record of the Court.(1 Litt., 112; Burr. L.D. tit. File.) It is the duty of the Clerk, when a paper is thus placed in his custody or 'filed' with him, to endorse upon it the date of its reception, and retain it in his office, subject to inspection by whomsoever it may concern; and that is what is meant by his 'filing' the paper. But **where the law requires or authorizes a party to file it, it simply means that he shall place it in the official custody of the Clerk.** That is all that is required of him; and if the officer omits the duty of endorsing upon it the date of the filing, that should not prejudice the rights of the party. And hence it is the common practice, where that has been omitted, for the officer, with the sanction of the Court, to make the endorsement now for then; the doing of the act now, that is, at the time when it is actually done, being allowed to operate as a substitute and equivalent for doing it then, or when it should have been done. And acts thus allowed to be done by the Clerk of the Court, with the sanction of the Court, have the same effect as if they had been done at the proper time. (1 Stra. 639; 2 Tidd's Pr. 932.) It

was the filing of the affidavit and certificate by the party, under the statute, and not the endorsement of the date of their reception, or the filing by the Clerk, which was a condition precedent to the issuing of the execution in this case. The object of the motion to obtain the authority of the Court for the filing of the clerk now for then was that the Court might receive evidence of the time of the actual filing by the party, in order that the filing by the Clerk might relate back, and take effect from that period, as though it had been done then, when it should have been done. (*Milton v. United States.*, 105 F.2d 253 (5th Cir. 07/06/1939).) *JOHANSSON v. TOWSON*, 177 F. Supp. 729 (M.D.Ga. 02/17/1959). [**emphasis added.**]

The Federal Rules of Civil Procedure provide that 'The district courts shall be deemed always open for the purpose of filing any pleading * * *' Rule 77(a); that 'The clerk's office with the clerk or a deputy clerk in attendance shall be open during business hours on all days except Sundays and legal holidays * * *', Rule 77(c); that 'A civil action is commenced by filing a complaint with the court', Rule 3 and that 'The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the clerk.' Rule 5(e), 28 U.S.C.A. The tracing of our word 'file' to the Latin word 'filum' and its reference to the ancient practice of placing papers on a thread or wire for safekeeping and later reference is done in many cases, notably in *United States v. Lombardo*, 1916, 241 U.S. 73, 36 S. Ct. 508, 60 L. Ed. 897 and more recently in *Milton v. United States*, 5 Cir., 1939, 105 F.2d 253, 255. The latter case points out that **all that is required on the part of a person filing a paper with an official is 'merely the depositing of the instrument with the custodian for the purpose of being filed'**. (See *Palcar Real Estate Co. v. Commissioner of Internal Revenue*, 8 Cir., 1942, 131 F.2d 210; *Schultz v. United States*, Ct.Cl.1955, 132 F.Supp. 953, 955; *McCord v. Commissioner of Internal Revenue*, 1941, 74 App.D.C. 369, 123 F.2d 164, 165; *Central Paper Co. v. Commissioner of Internal Revenue*, 6 Cir., 1952, 199 F.2d 902, 904. (*JOHANSSON v. TOWSON*, 177 F. Supp. 729 (M.D.Ga. 02/17/1959).) [**emphasis added.**]

The filing of a paper takes place upon the delivery of it to the officer at his office. *Milton v. United States*, 5th Cir. 1939, 105 F.2d 253; *Poynor v. Commissioner*, 5th Cir. 1936, 81 F.2d 521. When the mails are utilized for the purpose of filing an instrument, the filing takes place upon delivery at

the office of the official required to receive it. *Wampler v. Snyder*, 1933, 62 App. D.C. 215, 66 F.2d 195. (*Phinney v. Bank of Southwest National Association*, 335 F.2d 266 (5th Cir. 08/05/1964).) (See also *United States v. Missco Homestead Ass'n Inc.*, 185 F.2d 283 (8th Cir. 11/01/1950).) (*DIENSTAG v. ST. PAUL FIRE & MARINE INS. CO.*, 164 F. Supp. 603 (S.D.N.Y. 11/18/1957); *Thorndal v. Smith, Wild, Beebe & Cades*, 339 F.2d 676 (8th Cir. 01/04/1965); *LONE STAR PRODUCING CO. v. GULF OIL CORP.*, 208 F. Supp. 85 (E.D.Tex. 07/17/1962).) [**emphasis added.**]

Although *Lombardo* was decided before the Federal Rules of Civil Procedure were promulgated, courts have relied on it and *Federal Rules of Civil Procedure* 3, 5(e), and 77 for the same proposition. See, e.g., *Milton v. United States*, 105 F.2d 253, 255 (5th Cir. 1939) ("**The word 'filed' . . . requires of one filing a suit, merely the depositing of the instrument with the custodian for the purpose of being filed. Except where specific statute otherwise provides, and none such is present here, it charges him with no further duty, [and] subjects him to no untoward consequences.**"); *Greeson v. Sherman*, 265 F.Supp. 340, 342 (W.D. Va. 1967) ("[I]f rule 3 is read in conjunction with Rule 5(e) . . . [a complaint is filed when] the complaint is delivered to an officer of the court who is authorized to receive it."); *Freeman v. Giacomo Costa Fu Andrea*, 282 F.Supp. 525, 527 (E.D.Pa. 1968) ("[I]t is settled law that delivery of a pleading to a proper official is sufficient to constitute filing thereof.") In *Cintron v. Union Pacific R. Co.*, 813 F.2d 917, 920 (9th Cir. 1987), the court said: The consensus is that "[p]apers and pleadings including the original complaint are considered filed when they are placed in the possession of the clerk of the court." C. Wright & A. Miller, *Federal Practice and Procedure* § 1153 (1969). See *United States v. Dae Rim Fishery Co.*, 794 F.2d 1392, 1395 (9th Cir. 1986). The court then discussed earlier cases, including *Loya v. Desert Sands Unified School Dist.*, 721 F.2d 279 (9th Cir. 1983). . . . (*Stone Street Capital, Inc. v. McDonald's Corp.*, 300 F.Supp.2d 345 (D.Md. 11/06/2003).) [**emphasis added.**]

Filing is complete once the document is delivered to and received by the proper official. *United States v. Lombardo*, 241 U.S. 73, 76, 36 S.Ct. 508, 60 L.Ed. 897 (1916). Although *Lombardo* was decided before the Federal Rules of Civil Procedure were promulgated, courts have relied on it and Federal Rules of Civil Procedure 3, 5(e), and 77 for the same proposition. See, e.g., *Milton v. United States*, 105 F.2d 253, 255 (5th Cir. 1939); *Greeson v. Sherman*, 265 F. Supp. 340, 342 (W.D.Va. 1967) ("If Rule 3 is

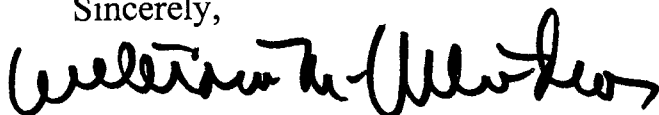
read in conjunction with Rule 5 (e) . . . [a complaint is filed when] the complaint is delivered to an officer of the court who is authorized to receive it."); *Freeman v. Giacomo Costa Fu Andrea*, 282 F. Supp. 525, 527 (E.D.Pa. 1968) ("[I]t is settled law that delivery of a pleading to a proper official is sufficient to constitute filing thereof."). (*CENTRAL STATES, SE & SW PENSION v. PARAMOUNT LIQUOR*, 34 F.Supp.2d 1092 (N.D.Ill. 02/09/1999).) [**emphasis added.**]

The docketing of filed documents is a ministerial act that the Office of the Clerk is obligated to perform. (See *RAY v. UNITED STATES*, 57 S. Ct. 700, 301 U.S. 158 (U.S. 04/26/1937).) [**emphasis added.**]

The employees of the Offices of the Clerk of the Court have violated their Oath of Office:

28 USC 951: Each clerk of court and his deputies shall take the following oath or affirmation before entering upon their duties: "I, ___ XXX, having been appointed ___, do solemnly swear (or affirm) that I will truly and faithfully enter and record all orders, decrees, judgments and proceedings of such court, and will faithfully and impartially discharge all other duties of my office according to the best of my abilities and understanding. So help me God."

Sincerely,



William M. Windsor