

-----Original Message-----

**From:** John F. McGuire [mailto:john-mcguire@tampabay.rr.com]

**Sent:** Monday, April 27, 2009 3:29 PM

**To:** 'Bentley, Lee (USAFLM)'

**Subject:** RE: Unopposed Motion to Strike and Remove from Docket the Affidavit of Jeffrey J. Del Fuoco

Mr. Bentley,

Thank you for your email. In response to same I have clarified a few matters. Specifically, referring to your email by numbered paragraph:

[1] I am unaware of any "*false and unfounded accusations*" in Del Fuoco's Affidavit. I have performed due diligence and have documents in my possession from The Office of Professional Responsibility, Department of Justice, as well as from The Florida Bar stating that there *are* matters pending concerning alleged misconduct of AUSA O'Neill. I have no evidence that any of the complaints alleged by Mr. Del Fuoco have been dismissed besides your assertions in the email.

[2] I informed you that the Affidavit was part of an upcoming motion and I would dismiss it and re-file it with the upcoming motion or file the motion which will be done today. You asserted: "*that won't do a damn thing...you can't file it [the Affidavit of Del Fuoco] ever.*" This is not your decision to make.

[3] I explained to you my outrage at the conduct of the US Attorney's office in this case, including but not limited to presenting false information, threatening the life of a witness, prosecuting a witness for perjury for the defense but not the witness that also committed perjury for the prosecution [for example see Dkt.44 of the aforementioned case and the Appeal Briefs filed at the 11<sup>th</sup> Circuit Court of Appeals]. Your response that you were familiar with this case and do not need to defend AUSA O'Neill's prosecution of this case as his immediate supervisor leaves me no choice but to move forward with the motion and Affidavit so that the court may look into these serious matters. The credibility of the prosecutor turned witness is key in this case,

[4] It appears that Mr. Del Fuoco may have knowledge about the conduct of Mr. O'Neill that is of interest to the Spellissy, et.al. case.

[5] I only agree that the Affidavit was not immediately attached to a pending motion which will be rectified with the filing of a motion.

Mr. Del Fuoco's truth and veracity is to be measured by the trier of fact, not by undersigned defense counsel. Everything that I have reviewed, other than your email, supports Mr. Del Fuoco's position.

You asked that I put something "*in writing*" in a Motion stating that "*the information Del Fuoco put in his Affidavit was false*". I find this to be the most bizarre request I have ever seen in all my years of practice. I am not aware of Del Fuoco's statements being false; I am only aware of the complaints pending regarding AUSA O'Neill.

Further disturbing to me is that you threatened that if I did not "*strike*" this Affidavit you would report me to The Florida Bar, the Middle District Grievance Commission as well as "*haul you into court in front of Judge Whittemore who knows Bobby O'Neil very well and approves of his work and would not be happy with you.*"

I hope this clarifies our conversation and my position on this matter. Furthermore, given your demeanor on the phone with not only myself but my staff and the confusion of your bizarre email I would respectfully request that all further communications be in writing.

Respectfully submitted,

John F. McGuire, Esquire

-----Original Message-----

**From:** Bentley, Lee (USAFLM) [mailto:Lee.Bentley@usdoj.gov]

**Sent:** Friday, April 24, 2009 7:22 PM

**To:** john-mcguire@tampabay.rr.com

**Subject:** Unopposed Motion to Strike and Remove from Docket the Affidavit of Jeffrey J. Del Fuoco

Mr. McGuire:

This afternoon, I called you about the "Evidentiary Affidavit of Former Assistant United States Attorney Jeffrey J. Del Fuoco, Middle District of Florida," which you recently filed in United States v. Thomas J. Spellissy, et al., No. 8:05-CR-475-T-27TGW. I demanded that you file a motion to strike the affidavit and remove it from the docket. In support of my demand, I set forth the following grounds:

1. The affidavit and its attachments contain numerous false and unfounded accusations against an Assistant United States Attorney, including that he violated several federal criminal statutes;
2. The affidavit was not filed in support of any motion pending before the District Court;

3. Many of the defamatory statements made by Mr. Del Fuoco are completely unrelated to the Spellissy case;
4. Mr. Del Fuoco does not possess any personal knowledge regarding the Spellissy case; and
5. The affidavit was filed in violation of Florida Bar Rule 4-8.4(c), which provides in pertinent part that “[a] lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice, including to knowingly, or through callous indifference, disparage . . . other lawyers on any basis.”

With respect to the final point, it seems obvious that, at a minimum, you showed “callous indifference” in filing the defamatory affidavit. You said that you did “not know anything about Del Fuoco,” and that you first met him when he came to your office to prepare the affidavit. You acknowledged recognizing that Mr. Del Fuoco was a “disgruntled” former Assistant United States Attorney. From the face of the affidavit, it is clear that Mr. Del Fuoco was separated from the U.S. Attorney’s Office long before the Spellissy case was tried and has no personal knowledge regarding any pertinent issues.

Mr. Del Fuoco states in his affidavit that for the past four years he has been “repeatedly” filing allegations of misconduct against Mr. O’Neill with the Department of Justice, “all to no avail.” The fact that his complaints repeatedly have been dismissed as meritless obviously put you on notice that Mr. Del Fuoco was prone to making unsubstantiated allegations against Mr. O’Neill. And yet, with no due diligence, you filed in federal court a defamatory affidavit prepared by someone you did “not know anything about.”

During our telephone conversation, you did not dispute any of the five grounds I set out in support of my demand, and you agreed to file a motion to strike the affidavit and remove it from the docket by the close of business on Monday, April 27. You asked only that I send you an e-mail memorializing our conversation and explaining what you should do to have the offending affidavit stricken.

#### **HOW TO HAVE THE AFFIDAVIT STRICKEN**

In order to have the affidavit stricken and removed from the docket, you will need to file a motion. You should do the following:

1. The caption of the motion should be: **UNOPPOSED MOTION TO STRIKE AND REMOVE FROM DOCKET THE AFFIDAVIT OF JEFFREY J. DEL FUOCO.**

2. The motion obviously should state that you are moving to strike the affidavit **and** to have it removed from the docket.

3. You will need to state the grounds that support your motion. You should simply list the following three grounds: (a) the affidavit contains false and unfounded accusations against an Assistant United States Attorney; (b) the affiant does not have any personal knowledge regarding the Spellissy case; and (c) the affidavit was not filed in support of a pending motion. There is no need to further elaborate.

4. **Finally, you should not use Mr. O'Neill's name in the motion, apart from on the certificate of service.** You should simply refer to an Assistant United States Attorney. Identifying Mr. O'Neill as the subject of the defamatory statements may perpetuate the problem caused by the filing of the affidavit.

**Please file the motion by the close of business on Monday, April 27, as you have promised to do.**

First Assistant U.S. Attorney

Middle District of Florida