CASE NO. 19-13015-D

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

CONSUMER FINANCIAL PROTECTION BUREAU,
Plaintiff - Appellee

v.

OCWEN FINANCIAL CORPORATION,
a Florida Corporation,

OCWEN MORTGAGE SERVICING,
INC., a U. S. Virgin Islands corporation,

and

OCWEN LOAN SERVICING, LLC, a
Delaware limited liability company.

Defendants - Appellees

v.

JOANNA BURKE, JOHN BURKE,
Intervenor Plaintiffs – Appellants.

On Appeal from the United States District Court
For the Southern District of Florida, Houston Division;

District Court Docket No. 9:17-cv-80495-KAM

APPELLANTS BURKES' SECOND MOTION TO DISQUALIFY JUDGE JILL A. PRYOR

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APPELLANTS BURKES' SECOND MOTION TO DISQUALIFY JUDGE JILL A. PRYOR

Appellants, Joanna Burke and John Burke ("Burkes"), now file a second motion to disqualify Circuit Judge *Jill A. Pryor*. This is based solely on Judge Pryor's actions *after* the Burkes first motion had been denied.

DISCLOSURE

In the Burkes' first electronically filed initial brief (stricken due to a 90-day extension of time[1]), they alerted the court of the request for the judges' financial disclosure reports which were requested but pending. Those reports, in the majority have now been received in a letter dated January 13, 2020. In the letter it was advised that 3 reports for the fiscal year 2018 were not included and would be sent when 'released'. Judge *Jill A. Pryor* is named in that list. The Burkes followed up on this request in email communication with the Financial Disclosure Committee on Friday 17th April 2020 and they replied; "Due to challenges in dealing with the Coronavirus, delays have emerged in the process of releasing reports. We are working toward releasing the reports to you as soon as possible and apologize for the inconvenience. Thank you for your patience." The Burkes advised this court and requested an extension of time (30 days) to receive and analyze the report, which was denied.

[1] Refiled on 26 January 2020 (without disclosure).

BACKGROUND

The Burkes invoked their rights to review the financial disclosure record(s) of Judge *Jill A. Pryor* as a named panel judge for the Burkes appeal re *Ocwen* Altisource. As highlighted, the Burkes can only currently review 2017[2] as 2018 was not supplied. That itself is *alarming* as is indicative that the filing is tardy, there can be no other logical reason for the missing annual report.[3]

Even so, relying upon this single and redacted financial disclosure report combined with a rather 'low-level' audit of the same, the Burkes findings meant that Judge Pryor could not be impartial in this case. The Burkes filed a detailed motion to disqualify which was denied in a 'one liner'.[4]

However, Judge Pryor was not finished. On March 6, 2020, she sealed the Burkes motion to disqualify. On Saturday, the 7th of March, 2020, the Burkes requested the motion be unsealed. She denied that request on March 31st. This is extremely disquieting as the law is unambiguous - court records are public records.

In this court, the Burkes were denied all but one extension of time relative to the missing judges' report and/or the motions to stay pending the Supreme Court decision in the *Selia Law* case.

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[2] Exhibit A2.

[3] See ABA reporting requirements.

[4] See recent sister court opinion which disfavors 'one-liners'; *Equal Emp't Opportunity Comm'n v. Vantage Energy Servs.*, No. 19-20541 (5th Cir. Apr. 3, 2020).

THE LAW ON RECUSAL OF AN APPELLATE 3-PANEL JUDGE

The Appellate Judge and legal 'Omnipotence' Will Decide this Disqualification Motion

In the federal court system, a federal statute governs judicial *recusal*.[5] The statute describes two categories for disqualification. The first being that a judge "*shall disqualify ~~himself~~ herself in any proceeding in which ~~his~~ her impartiality might reasonably be questioned*."

The second situation in which recusal is necessary arises if a judge (1) has actual bias or prejudice concerning a party; (2) has a direct financial interest, however small, in a party; (3) has served as lawyer in the matter in controversy while in private or governmental practice; or (4) has a spouse or child who is a party, lawyer or witness in the proceeding.[6]

The Burkes studied these 'ground rules' and considered them prior to filing. In 2020, the judicial system in the United States still allows the judge whose recusal is sought to decide whether she is biased and whether her *impartiality*[7] might reasonably be questioned. In the first motion to disqualify the Burkes outlined their arguments. The motion was denied. The Burkes also updated those arguments when they recently

[5] 28 U.S.C. § 455 (Current through P.L. 116-78 (12/05/2019))

[6] See 28 U.S.C. § 455(b)

[7] See ABA Canon 2 with emphasis on 2.2.

filed a second motion to stay (and which, unsurprisingly, was also denied). Namely, the brouhaha at the Fifth Circuit wherein the 3-panels' decision in *All American*[8] was vacated en banc and is currently pending the *Selia Law* decision.

This second motion to disqualify questions the judges impartiality and bias based on her actions in the intervening period and as described herein.

In summation, the Burkes are left to rely upon the judges' own ethical compass, combined with the Judicial Oath and Canons[9] when asking the judge to recognize the legitimate arguments and concerns presented by the Burkes' in this motion and in conjunction with the legal definition of 28 U.S.C. § 455(a)[10], which the Burkes rely upon[11] along with a reminder that 'the duty to sit' rule was repealed in 1974.

LEGAL STANDARD FOR DISQUALIFICATION

The governing standard under Section 455(a) is well settled: "It is of no consequence that the judge is not *actually* biased because § 455(a) concerns not only fairness to individual litigants, but, equally important, it concerns "the public's confidence in the judiciary, which may be irreparably harmed if a case is

[8] *Consumer Fin. Prot. Bureau v. All Am. Check Cashing, Inc.*, No. 18-60302 (5th Cir. Mar. 2020)

[9] For example, Canon 3.

[10] See *Potashnick v. Port City Constr. Co.*, 609 F.2d 1101, 1115 (5th Cir. 1980); 13A WRIGHT & MILLER, supra note 15, § 3551, at 630.

[11] Section 455 - Disqualification of justice, judge, or magistrate judge; (a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

allowed to proceed before a judge who *appears* to be tainted."" *In re Kensington,* 353 F.3d at 220 (quoting *Alexander* v. *Primerica Holdings, Inc.,* 10 F.3d 155, 162 (3d Cir. 1993), in tum quoting *In re School Asbestos Litigation,* 977 F.2d at 776) (emphasis added by this Court). "[A]ny tribunal permitted by law to try cases and controversies not only must be unbiased but also must avoid even the appearance of bias." (quoting *Haines* v. *Liggett Group Inc.,* 975 F.2d 81, 98 (3d Cir. 1992), in tum quoting *Lewis* v. *Curtis,* 671 F.2d 779, 789 (3d Cir. 1982)). Recusal is required if "a reasonable person *knowing all the circumstances* would harbor doubts concerning the judge's impartiality." (quoting *Jones* v. *Pittsburgh Nat'l Corp.,* 899 F.2d 1350, 1356 (3d Cir. 1990)).

Secondly, should a judge refuse to recuse, The Judicial Conduct and Disability Act (1980) ("the Act") authorizes any person to file a complaint alleging that a federal judge has engaged in conduct "prejudicial to the effective and expeditious administration of the business of the courts." The Burkes have also acquired and read IMPLEMENTATION OF THE JUDICIAL CONDUCT AND DISABILITY ACT OF 1980, A REPORT TO THE CHIEF JUSTICE (2006) ("the Breyer Report") and rely upon its content, "Standards" and findings in this second motion to dismiss.

ARGUMENT

The Government Spies Were Caught By an Elderly Homeowner and

Honest Citizen

When the Burkes submitted their first motion to disqualify[12] Judge Pryor,[13] within 48 hours two government agents (*e.g.* US Marshall's Service/Judicial Security[14]) were detailed outside the Burkes home attempting to disguise themselves as 'flood road department workers'. They arrived in what could be conceived to be local city workers' clothing and a white truck to make it all seem very authentic. The disguise did not pass muster. These two government agents assembled a tripod with a camera pointed directly toward the Burkes residence, cloaked to look like road measuring equipment. These two agents spent several hours at the same exact location on the road - never moving the camera or their location - except when Joanna Burke noticed one of the men, for no excusable reason, at the Burkes front security door, peering into the internal courtyard and residence. She went outside and tapped him on the shoulder as he attempted to scramble back to the safety of the road and truck.

Joanna Burke specifically asked this suspicious individual how she could help this person - as he was at her front door and why was he just loitering there and peering inside without attempting to ring the bell? (He never went to any other home

[12] Jan 28, 2020; TIME SENSITIVE MOTION for recusal filed by John Burke. Opposition to Motion is Unknown. [8992909-1] [19-13015] (ECF: John Burke).

[13] This coincided with the long 'Superbowl' weekend and Florida Chapter of the Federalist Society annual conference in Orlando Florida, which commenced on Friday, 31st January, 2020.

[14] See https://www.usmarshals.gov/judicial/

in the neighborhood, nor did his partner). He was surprised and claimed to be 'checking road flood levels'. Joanna Burke replied with, "Yeah, right..." as she looked at him in distrust and abruptly turned around and went back into her residence as she had more important and pressing deadlines that afternoon. The Burkes left the residence shortly thereafter and drove past these two agents and the fake road setup to attend Mr. Burkes hip-replacement surgery rehabilitation appointment. Upon return a couple of hours later, the Burkes noted that these suspect individuals had left.

The Burkes are aware of unjustified government monitoring and 'tapping' of citizens homes and devices. They know their privacy has been invaded by the government repeatedly during their years in litigation. Despite the constant harassment, they are left to take solace in the fact that they have absolutely 'nothing to hide' as they are honest citizens.[15] However, they certainly do not excuse the illegal spying. In the matter of the Burkes, this invasion of their liberty it is not warranted, nor is it acceptable. It is a violation of their civil and constitutional rights when all the

[15] Apparently, the same cannot be said about President Donald Trumps' tax returns nor Judge Jill Pryors' financial disclosure report audit by the Burkes, when both are seeking to hide documents and motions from public disclosure. The Burkes are sure it is a time for non-partisan allegiance between these polar opposites when referencing Judge Jill Pryor (D) and President Trump (R) in the same sentence.

As the supreme court heard arguments concerning Donald Trump's tax returns on Tuesday, justice Sonia Sotomayor told a lawyer for the president *"there is a long, long history of Congress seeking records and getting them"* from occupants of the Oval Office. The same applies to unsealing documents relative to a motion to recuse a judge.

Burkes have cited in a motion to disqualify is public information about Judge Pryor. There was absolutely no "threat" that would justify an "emergency visit" by these novice agents. It is an abuse of power.

Judge Jill A. Pryor Seals the Public Record

After a period of time, the judge issued a one liner denying the first motion to disqualify and the Burkes thought that was the end of the matter. No, it wasn't. Within a few short weeks, the judge issued an order to seal[16] and the Burkes have described the events thereafter in the background above. This is disturbing for the following reasons; (i) The records are public[17] and a judge is fully cognizant of the law(s). Despite this, she is violating the law(s) for her own personal bias[18] towards the Burkes and her own benefit, and; (ii) In the underlying case, the main focus and argument presented on appeal by the Burkes pertains, in majority, to access to records in the case and the laws surrounding sealing and unsealing these documents for public inspection and/or by an intervenor.[19] (iii) The judge should recuse where the judge

[16] ORDER: The Clerks Office is DIRECTED to seal Appellants Burkes Motion to Disqualify Judge Jill A. Pryor. ENTERED FOR THE COURT BY DIRECTION [Entered: 03/06/2020 09:36 AM]

[17] For example, 5th Circuit Judge Graves for the Panel in *Bradley ex rel. AJW v. Ackal*, No. 18-31052 (5th Cir. Mar. 23, 2020), unsealing records, even when it involves a minor.

[18] See the Breyer Report A-6 FAILURE TO INQUIRE ABOUT CLAIMS OF A JUDGE'S BIAS TOWARD A LITIGANT, p. 50 (Standard 3).

[19] The opposing parties contend that sealing and unsealing is irrelevant to the case but the Burkes reply brief and the *Green v. Ocwen (In re Green)* case in S.D. Tex. (Bankruptcy Case No. 12-38016

would reasonably find it difficult to disregard previously expressed views, erroneous findings of fact, or factual findings that were prematurely based on contested evidence. *Alexander v. Primerica Holdings*, 10 F.3d 155 (3d Cir. 1993); *Torkington*, supra, 874 F.2d at 1447; *White*, supra, 846 F.2d at 696. In the case at bar, Judge Pryor would reasonably find it grueling to disregard her erroneous sealing of the Burkes first motion to disqualify and that she would probably hold true that *Ocwen* Altisource and the CFPB claims that access to judicial records by the proposed intervenors was correctly denied by Judge Marra. This position would be even more problematic, given the reply brief filed by the Burkes, wherein it was newly discovered that neither *Ocwen* Altisource nor Judge Marra ever disclosed at any time the *Greens* case.[20]

Judge Pryor's latest act demands recusal as she cannot say she is impartial in this appeal and furthermore, in deciding who, why and when parties and the lower court may seal and unseal court records, when she just flouted the law herself.[21]

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(13) Adversary Case No. 18-3351 CIVIL ACTION NO. H-19-2690, Decided; 08-26-2019) ends that frivolous debate.

[20] And even discounting the fact that Judge Pryor held/holds property assets which matched the vanity named LLC's which she claimed to be 'empty' in documents and testimony at her congressional review and subsequent appointment to the 11th Circuit - for the purposes of this motion.

[21] The Burkes could find no 'extraordinary' reason wherein Judge Jill A. Pryor could seal the motion and even if she did, the judge fails to meet the burden and standards demanded therein.

The only extraordinary case law the Burkes could locate from the 11th Circuit in recent times was the en banc reversal of Judge Wilson's authored opinion for the panel (*Pitch v. United States*, 915

As previously intimated in motions before this court, Judge Pryor had every opportunity to respond to the Burkes motion. She chose a 'one liner' response.

She also had the opportunity to reasonably[22] 'redact' any information that she may have felt was not open for public inspection. She never did so.

Judge Jill Pryor's actions demand recusal.[23]

F.3d 704 (11th Cir. 2019) in the Grand Jury case, which overturned precedent in order to keep documents from a civil rights author and historian. - *Pitch v. United States*, No. 17-15016 (11th Cir. Mar. 27, 2020).

Such a drastic measure is not required here, the 'secrecy' laws are inapplicable in this case and the Burkes could provide a mini-wikipedia of case law from around the country courts and law professors supporting their arguments. (They have cited a few cases in this motion and the earlier reply briefs).

[22] See Law Professor E. Volokh, Reason article and filings re judge 'heavy redactions' regarding her 'beach property'; He leads with the following question; "If a motion to recuse argues that the judge has a conflict of interest because she owns particular property, can the judge order the redaction of all the details related to the location of the property?" and asks the court; "The petitioner therefore respectfully moves this Court to unseal the entirety of the motion to disqualify and the brief in support of the motion, or at least to minimize the amount of material that is redacted in those documents." Volokh's motion was granted.

[23] Under section 455, a judge has a "self-enforcing obligation to recuse himself where the proper legal grounds exist." Id. at 1540. Most important, the benefit of the doubt must be resolved in favor of recusal. Id. We review a judge's decision to recuse for abuse of discretion. *McWhorter v. City of Birmingham*, 906 F.2d 674, 678 (11th Cir. 1990). - *Murray v. Scott*, 253 F.3d 1308, 1310 (11th Cir. 2001)

And;

"We appreciate that judges are often reluctant to recuse themselves and, thereby, to send a tough or unpleasant case to a colleague...So, many factors make recusal an unattractive course. But Congress has directed federal judges to recuse themselves in certain situations, and we accept that guidance…Still, federal judges must early and often consider potential conflicts that may arise in a

Judge Pryor's Order to Seal the Burkes Motion to Disqualify is unlawful and unconstitutional, pure and simple. The Burkes have provided several cases in their motions in favor of unsealing records and do so again along with more recent cases; (a) *Bradley ex rel. AJW v. Ackal*, No. 18-31052 (5th Cir. Mar. 23, 2020) and; (b) *Abibou v. RHO Inc.*, No. 3:16-CV-2418-D-BH (N.D. Tex. Apr. 9, 2020) denying request to seal records permanently to improve employment opportunities and citing; "In exercising its discretion to seal judicial records, the court must balance the public's common law right of access against the interests favoring nondisclosure." Id. Having public access to judicial records "serves to promote trustworthiness of the judicial process, to curb judicial abuses, and to provide the public with a more complete understanding of the judicial system, including a better perception of its fairness." Id. at 849 (quoting *Littlejohn v. BIC Corp*., 851 F.2d 673, 682 (3d Cir.1988)) and; (c) *King & Spalding, LLP v. U.S. Department of Health & Human Servs*., Civil No. 1:16-cv-01616 (APM) (D.D.C. Apr. 7, 2020); Judge denying King & Spalding ("K&S") request to seal attorney billing fees and/or 'destroy' records, resulting in K&S withdrawing $665,000 attorney fee request and; (d) *Indian Land Ventures v. Fonville & Co.*, South Carolina Court of Common Pleas, Sixth Judicial District. (Unsealing order 3/2/2020). Relevant to the CFPB, Mick Mulvaney's real estate lawsuit was

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case and, in close cases, must err on the side of recusal. And if a judge must step aside, it is better to do it sooner instead of later." - *Murray v. Scott*, 253 F.3d 1308, 1313 (11th Cir. 2001).

intervened by Paul Levy of Public Citizen[24] with a motion to unseal the records and it was granted. As a high ranking member of Trumps cabinet at the time and former acting director of the Consumer Financial Protection Bureau, this determination shines the spotlight back on Judge Pryor's motion to seal as being improper, especially after an immediate request to unseal was filed within 24 hours of her sealing the motion.[25]

THE KAPLAN v. REGIONS BANK CASE AND 11TH CIRCUIT ORAL ARGUMENT

This brings the Burkes forward 2020 and specifically to the *Regions Bank v. Kaplan*, No. 18-14010 (Revised final opinion; 11th Cir. Mar. 19, 2020) case ("Kaplan"). In the intervening period between the Burkes initial brief and the reply briefs of *Ocwen* Altisource and CFPB, the Burkes have highlighted in their reply briefs the issues with the lower court and the opposing parties non-disclosure pertaining to the *Greens* case.

In the *Kaplan* case, the Burkes found further alarming conduct by another 11th Circuit panel which included Judge Jill A. Pryor (along with Judges William Pryor

[24] See Public Citizen; https://www.citizen.org/litigation/indian-land-ventures-v-fonville-co/

[25] MOTION to unseal filed by John Burke. Opposition to Motion is Unknown. [9028354-1] [19-13015] (ECF: John Burke) [Entered: 03/07/2020 04:08 PM]

and Luck). The case has a convoluted and salacious[26] history, but the facts are very specific - they address the responsibility of the judges to report **fraud** by attorneys before them. In this case, Judge Pryor and her fellow judges failed to do so. Indeed, reading the revised final opinion, the Kaplan lawyers/firm involvement is not even a part of the summary nor discussion. You are forced to 'ferret'[27] the record and listen to the oral argument audio file to recover the sordid conspiracy.

The attorneys for Messrs. Kaplan (and by association, former Congressman and now Manatee County Supervisor of Elections Michael Bennett) were co-conspirators to **fraud**. The issue which concerns the most is the 3-panel effectively "laughed it off" with a warning at the oral argument and after newly appointed Judge Luck (who moved from the Florida Supreme Court no less) roasted counsel with the undeniable evidence. The evidence presented by the lower court judge in the Kaplan case concluded that the law firm knowingly conspired with the Kaplans' to

[26] Including but not limited to Kaplans' lawyer, Jon Douglas Parrish, a good friend and founder of the law firm before this court (before his voluntary disbarment) being arrested for false imprisonment and other related charges too graphic for this motion; Kaplans' alleged involvement in a check-kiting and ponzi scheme, where he escaped from a lengthy federal prison term by claiming to be the victim but his partners were not so lucky; to the former congressmans' alleged questionable conduct on the floor of the senate (watching porn); to expedited disposal of the Ellenton "ice-rink" commercial property which was questioned in this case but nobody apparently uses google search to find out (11th Opinion; "Marvin suggested it might have come from selling an ice rink, but he could not identify the buyer…"). The list of sex, lies, fraud and videotape goes on.

[27] Ferret; A legal term for "scouring the Burkes voluminous filings for legal argument", according to Magistrate Judge Peter Bray, S.D. Tex., but wherein all you manage to achieve is to ignore most of the relevant case law and filings in their entirety, as did *Ocwen* Altisource and CFPB in the lower court case here.

'overcharge and overbill' its legal fees. This, the lower court concluded, was both intentional and **fraudulent**. The conversation between Judge Luck and Kaplan's counsel starts at appx. 2.57 minutes into oral argument. However, after the conversation between Luck and Kaplan's counsel, the 3-panel refocuses on the parties, namely the involvement and knowledge of Kaplan and his wife in the **fraudulent** scheme. Judge Jill Pryor was on this panel. This shows she knew Kaplan's counsel were co-conspirators to a **fraud** and yet she did nothing after oral arguments where Luck had essentially grilled counsel and warned them about the fact he knew their arguments were not only frivolous they were **fraudulent**.[28]

Judges are also registered State Bar lawyers and as such have a duty to report and/or sanction attorney bad faith and misconduct. Here, the lawyers are guilty of bad faith, malicious misconduct, persistent perjury[29] and conspiring with the Kaplans to commit **fraud**.[30] Despite having an attorney and his law firm creating fake and

[28] The same can be said of Judges William Pryor and Luck, but a judge is an independent mind on a 3-panel and her oath and own responsibilities to report attorney fraud and conspiring with the client should be reported to the relevant authorities. This was no small disciplinary matter, it involved hundreds of thousands of dollars over-billing and as Judge luck states in oral questioning, over $300k of that overbilling ended back "in Mrs. Kaplan's pocket".

[29] It is axiomatic that a lawyer may not knowingly present false evidence to the Court: "In his Report (DE 76) Magistrate Judge Matthewman discusses the application of the Rules Regulating the Florida Bar (hereinafter "Florida Bar Rules") to potential conflicts of interest and ethical and professional choices faced by the lawyer representing a client who may commit perjury. " *United States v. Stewart*, 931 F. Supp. 2d 1199, 1201 (S.D. Fla. 2013).

[30] This court found that an attorney who allegedly was the "mastermind" of his client's **fraudulent**

fabricated invoices as admitted in front of the 3-panel, no misconduct charges or referral to the prosecutor was forthcoming.[31] This only reinforces the Burkes arguments that Judge Pryor failed in her own duty to report the above and as such it is mandatory that she should recuse.

At the case at bar, Judge Pryor will be reviewing the malicious misconduct, conspiracy, bad faith and perjury by the lower court judge and the opposing counsel as raised in the reply briefs in this case as well as any and all other relief the law allows. It involves trust, truth-seeking, application of both federal and state law, codes of conduct and legal ethics. However, based on her inaction in the *Kaplan* case, clearly Judge Pryor could not possibly meet the legal standards mentioned above to retain her current position in this panel, *e.g.* Judge Jill Pryor's appearance of bias, impartiality and previously expressed views **as well as** her failure to apply her own standards of review to herself warrant recusal. This, also taking into consideration the judicial canons, oath and ethics as a lawyer to report **fraud** which has been committed by a law firm, who conspired with their client to ' **fraudulently** convey'[32] hundreds

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transfer of settlement funds through the attorney's trust account could be held liable as an "initial transferee" upon a showing of the attorney's **lack of good faith**. *In re Harwell*, 628 F.3d 1312 (11th Cir. 2010).

[31] The Florida Bar's rules of conduct make it unethical for an attorney to participate or assist a crime or fraud. https://www.floridabar.org/rules/rrtfb/

[32] "The district court ruled that three of the Kaplans' companies had fraudulently conveyed $742,543 to Kathryn to avoid paying Regions for preexisting debt. " *Regions Bank v. Kaplan*, No. 18-14010,

of thousands of dollars for their own law firms' benefit and that of Mrs. Kaplan, as discussed above. This is also applicable to Judge Pryor. The Burkes have previously reported (in the first motion to dismiss Judge Pryor) the tax **fraud** cases[33] wherein she holds an interest, and which are currently set for trial. **Fraud** is the emphasized keyword in both cases.[34] It is a serious matter and hence could not possibly be viewed as insignificant in this motion.

CANON 3C ALONE WOULD WARRANT DISQUALIFICATION

The drafters of Canon 3C of the Code of Judicial Conduct clearly intended an appearance-of-bias standard.

The Reporter's Notes to the Code state that *"[a]ny conduct that would lead a reasonable man knowing all the circumstances to the conclusion that the judge's 'impartiality might reasonably be questioned'* is a basis for the judge's

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at *2 (11th Cir. Mar. 19, 2020)

[33] It is also worthy to note that Judge Jill Pryor RECUSED from en banc in the following lengthy Tax case; *United States v. Stein*, 864 F.3d 1258 (11th Cir. 2017). – See quick summary; "Estelle Stein appeals the grant of summary judgment in favor of the United States for unpaid federal income taxes, late penalties, and interest accrued for five tax years. " *United States v. Stein*, 889 F.3d 1200 (11th Cir. 2018)

[34] See First Motion to Disqualify (den.); "After reading Exhibit T, you will note on the 10th of December, 2019, the tax judge in the case(s) ordered the case proceed to trial. The IRS assessed an $8.3 million dollar adjustment to income based on 2010 filings by the *Rivers* entity and $8.6 million for the *Dashers* entity, wherein the IRS determined they did not qualify for a claimed charitable contribution deduction."

disqualification."[35] Further, the Notes indicate that disqualification would be required if "*participation by the judge in the proceeding . . . creates the appearance of a lack of impartiality*." The legislative history of the 1974 amendments also supports the use of an appearance-of-bias standard.[36]

CONCLUSION

Public confidence is essential to effective functioning of the judiciary because, "*possessed of neither the purse nor the sword*," the judiciary depends primarily on the willingness of members of society to follow its mandates.[37]

Individually, the Burkes' list of judicial violations present insurmountable hurdles for this judge and when reviewing the *appearance* of bias. Cumulatively[38],

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[35] See E. THODE, REPORTER'S NOTES TO CODE OF JUDICIAL CONDUCT 60 (1973) (quoting 28 U.S.C. § 455(a)).

[36] See H.R. REP. No. 1453, supra note 52, at 6354-55.

[37] Kaufman, *Lions or Jackals: The Function of a Code of Judicial Ethics,* 35 LAW & CONTEMP. PROBS. 3, 5 (1970) (quoting Baker v. Carr, 369 U.S. 186, 267 (1962) (Frankfurter, J., dissenting)).

[38] The Fourth Circuit Court of Appeals has stated that "the question is not whether the judge is impartial in fact" but whether a reasonable person might doubt the judge's impartiality on the basis of all the circumstances.

See *Rice v. McKenzie*, 581 F.2d 1114, 1116 (4th Cir. 1978); accord *United States v. Ritter,* 540 F.2d 459, 461-62 (10th Cir.), cert. denied, 429 U.S. 951 (1976); *United States v. Cowden*, 545 F.2d 257, 265 (1st Cir.), cert. denied, 430 U.S. 909 (1976).

This standard makes disqualification more likely than the bias-in-fact test, and therefore is

and reviewing her own actions between the first denial and this motion, Judge *Jill A. Pryor* cannot ethically withstand the legal and judicial standards to prevent disqualification. It is an impossibility - if you adhere strictly to the law when reviewing one's own bias and impartiality.

Human nature is protective by default. It is difficult to see fault in oneself and this statement was also made in the Burkes first motion to disqualify. Judge Pryor denied the Burkes motion. Not finished, she went onto seal the motion, which goes against the transparency laws and legal standards applied in federal and circuit courts nationwide.

And the Burkes prior arguments and statements were ratified on Tuesday by Justice Elena Kagan, who, like Justice Sotomayor an Obama appointee, told Trump lawyer Jay Sekulow a *"fundamental precept of our constitutional order is that the president is not above the law*". The Burkes maintain that fundamental precept also applies to recusal of bias and impartial judges. Judge Jill A. Pryor is one such judge.

Ultimately, this judge will be allowed for a second time to select one of two options; (i) the legally right choice, or (ii) the biased and legally flawed choice. The

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consistent with one of the main purposes of the 1974 amendments - to broaden the grounds for judicial disqualification. See H.R. REP. No. 1453, supra note 52, at 6351.

Burkes now ask for due process[39] of law and for this 'court' to decide which option it will be.

Respectfully submitted as *pro se* and is also submitted as an affidavit of the entire contents of this motion.

I declare under penalty of perjury that the foregoing is true and correct and the certificates that follow are also correct.
(28 U.S.C. § 1746 - U.S. Code.)

/s/ John Burke

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I declare under penalty of perjury that the foregoing is true and correct and the certificates that follow are also correct.
(28 U.S.C. § 1746 - U.S. Code.)

[39] Due process may require recusal, even if a judge has no actual bias, in situations in which the objective probability of actual bias is too high to be constitutionally acceptable. See *Rippo v. Baker*, 137 S. Ct. 905 (2017).

/s/ Joanna Burke

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CERTIFICATE OF INTERESTED PERSONS ("CIP") AND CORPORATE DISCLOSURE STATEMENT

US District Judge;

Marra, Kenneth A.

US Magistrate Judge;

Matthewman, William

Consumer Financial Protection Bureau ("CFPB");

Brenowitz, Stephanie C.

Baez, Tianna Elise

Chin, Shirley T.

Cohen, Adam Harris

Demille-Wagman, Lawrence

Desai, Atur Ravi

Healey, Jean Marie

Kelly, Erin Mary

Nodler, Gregory Ryan

Posner, Michael

Roberson, Amanda Christine

Savage, James Joseph

Singelmann, Jan Edwards

Wilson, Jack Douglas

Office of the Attorney General &
Office of Financial Regulation;
Fransen, Scott Ray
Granai, Sasha Funk
Pinder, Jennifer Hayes
Winship, Blaine H.

Intervenor Plaintiff;
Burke, Joanna
Burke, John
Fauley, Robynne *(TERMINATED)*
Subramaniam, Denise *(TERMINATED)*

Ocwen Financial Corporation &
Ocwen Loan Servicing, LLC &
Ocwen Mortgage Servicing, Inc.;
Azuero, Catalina E.
Berry, Bridget Ann
Craven, Laura S.
Hefferon, Thomas M.
Previn, Matthew P.
Protess, Amanda B.
Riffee, Matthew L.
Rose-Smith, Sabrina M.
Sheldon, Matthew S.
Smith, Tierney E.
Stoll, Laura

Tayman, W. Kyle

Wein, Andrew Stuart

Law Firms;

Buckley, LLP ("Buckley")

Greenberg Traurig ("GTLaw")

Goodwin Proctor, LLP ("Goodwin")

Dated; May 16, 2020;

/s/ John Burke

_____

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/s/ Joanna Burke

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CERTIFICATE OF CONFERENCE

The Burkes' have not conferenced with any of the parties. Any opposition to the MOTION is hereby classified as UNKOWN.

CERTIFICATE OF SERVICE

We hereby certify that, on May 16, 2020, a true and correct copy of the foregoing Motion to Stay Proceedings was served via the Court's EM/ECF system to the attorneys of record per the CIP listing enclosed herein.

/s/ John Burke

_____

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/s/ Joanna Burke

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CERTIFICATE OF COMPLIANCE

The undersigned counsel certify that this motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because this motion contains 4,995 words according to Microsoft Word's word count, excluding the parts of the motion exempted by Fed. R. App. P. 32(f).

/s/ John Burke
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/s/ Joanna Burke
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