

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' MOTION
FOR RECONSIDERATION RE
MOTION TO CLARIFY, IN PART,
REGARDING CIP**

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**APPELLANTS BURKES' MOTION FOR
RECONSIDERATION RE MOTION TO CLARIFY,
IN PART, REGARDING CIP**

Appellants, Joanna Burke and John Burke (“Burkes”), now file a Motion for reconsideration [FED. R. APP. P. 27.2] of single Circuit Judge Elizabeth L. Branch’s Order dated Thursday 25th June, 2020.

Questionably, this Judge is not part of the assigned 3-panel in this matter:

The 3 judges are Judges Martin, Pryor, J., and Wilson. This commands affirmation and confirmation that the Burkes second motion to recuse Judge Jill A. Pryor, filed 18th May, 2020, has been granted and Judge Branch designated as her replacement.¹

Certificate of Interested Persons (“CIP”): Judge Branch claims that the CFPB’s reply offers ‘sufficient clarification’.

First, the CFPB filed the “response” not just late², but 25 days tardy. As such, it should be discounted and/or stricken as grossly untimely per Rule 27(a)(2).

Secondly, the Judge’s opinion is erroneous. If the court takes the time to “pull the lower court docket” (relying on Judge Branches own words – at the Federalist

¹ The Burkes are addressing the CIP in this reconsideration, leaving the other parts of the order pending for reconsideration. Why? The Burkes respectfully seek formal clarification of Judge Branch’s role in this appeal and the status of Judge Jill A. Pryor’s second recusal motion as filed by the Burkes.

² Any party may file a response to a motion; Rule 27(a)(2) governs its contents. The response must be filed within 10 days after service of the motion unless the court shortens or extends the time.

Society - as discussed herein) or review the full appeal record, it makes a mockery of these claims.

The Burkes impression is that the 11th Circuit's local rules are there for a reason and as such should be followed strictly. However, Judge Branch's order would make you believe that the Rules are superfluous in relation to CIP's. In other words, contrary to the Rules, she does not mandate as necessary, a complete, up-to-date and accurate at all times CIP.³

CIP's filed during 11th Circuit Appeal: The Burkes downloaded from the 11th Circuit website, the Pro Se CIP Form (referenced as Pro_Se_CIP_Form_DEC19). The footer labels FRAP 26.1 and runs page number 91-94. The Burkes assume the court is familiar with the Rule(s) and what its textual meaning says on the page(s).

ALL Lawyers are mandated by the Eleventh Circuit to file into the case. By that statement, illustrated in a graphic screenshot from this court's website today, it confirms the importance (including the visual aid, a bold red background) assigned to CIP's.

³ In part; "Failure to complete the web-based CIP will delay processing of the motion, case, or appeal, and may result in other sanctions under 11th Cir. R. 26.1-5(c).

11th Cir. R. 26.1-4 CIP: Amendments. Every filer is required to notify the court immediately of any additions, deletions, corrections, or other changes that should be made to its CIP.

The failure to comply with 11th Cir. Rules 26.1-1 through 26.1-4 may result in dismissal of the case or appeal under 11th Cir. R. 42-1(b), or other sanctions on counsel, the party, or both."

Web-Based CIP

IMPORTANT: All filings with the court – including attachments – must comply with Fed. R. App. P. 25(a)(5) and 11th Cir. R. 25-5: Social Security numbers and taxpayer-identification numbers; names of minor children; dates of birth; financial account numbers; and home addresses, may not appear except as allowed by 11th Cir. R. 25-5, Fed. R. Civ. P. 5.2, Fed. R. Crim. P. 49.1 or Fed. R. Bankr. P. 9037.

Web-Based CIP Login

All attorneys are required to complete the web-based CIP. They must either enter:

- the stock (ticker) symbols of all publicly traded corporations on the paper CIP
- or
- declare that they have nothing to declare.

Enter Your EDF ID #:

USCA Docket #:

Just the numeric portion of the Docket Number (i.e., "99-99999")

Submit

Hence, the argument presented by Barrett, Bernard, John or Jack of the CFPB can only be described as complete drivel.⁴ Or as the Burkes have noted, a popular term in court opinions is ‘fantastical’.

Turncoat Tony Alexis has not filed into the appeal court case as shown above as counsel with an interest in the case - as that would be a *conflict of interest*. Legally,

⁴ The reply from CFPB; “The Bureau understands Eleventh Circuit Rules 26.1-1 and 26.1-2 to require the disclosure of anyone with *an arguable interest* at any time over the course of the district court and court of appeals proceedings.

As noted in the “Motion to Clarify”, Anthony Alexis was the Enforcement Director at the Bureau when this enforcement action was filed in the district court.

For that reason, the Bureau has listed Mr. Alexis as an attorney with *an arguable interest* in the outcome of this appeal for purposes of Eleventh Circuit Rule 26.1-2.”

Tony Alexis has no standing to have ‘*an arguable interest*’ in this appeal (or at the lower court, after he switched sides and without timely notice to the court).

CIP’s filed during District Court proceedings: The Burkes rely upon the fact that CIP’s are required, in most part, to alert the court(s) and the parties to any potential “conflicts of interest”. To illustrate this, the Burkes visited the Judge Kenneth Marra’s page at the S.D. Florida website, but this proved fruitless. His page offers no guidance to parties. The Burkes rely upon a document uploaded by Judge Roy B. Dalton, Jr. (District Court, Middle District, Fl.) which affirms the Burkes argument, *e.g.* that filing a CIP or amended CIP is a time sensitive matter (14 days per Judge Dalton and the court’s local rules) and is used to identify grounds for judicial recusal and/or conflicts between parties.

That stated, even considering the fantastical idea presented by the Bureau that an attorney with ‘*an arguable interest*’ can remain on the case, turncoat Anthony ‘Tony’ Alexis now works for opposing counsel, namely Goodwin Procter, LLP (since late 2017). The named law firm represents Ocwen, which is a clear and unambiguous conflict of interest. Apparently, Tony Alexis can work at the CFPB one day, and then at Goodwin the next day, without a non-compete agreement. The CFPB would also appear, rather alarmingly, to have this court convinced it’s perfectly rational and acceptable to walk across the street to opposing counsel and remain on the docket as an interested party for your former employer, who your law firm is now opposing.

The Burkes reject this proposition. It is a blatant and obvious conflict of interest.

This is especially true if the court had *ferreted* out the relevant entries and filings from the lower court docket.

The Burkes now provide this information which is fact and not fantasy. In the revised CIP submitted by the CFPB and which Judge Branch now relies, it reads;

No. 49, Singlemann, Jan E., Former attorney for Plaintiff-Appellee Consumer Financial Protection Bureau **until left Bureau**.

Upon review of the lower court docket, **Doc. 412**, Jul 10, 2019: MOTION to Withdraw as Attorney by **Jan Singelmann** for / by Consumer Financial Protection Bureau. Responses due by 7/24/2019 (Singelmann, Jan).

Per Jan Singelmann's Linkedin Profile, he moved sideways from the Bureau to Counsel, Committee on Banking, Housing, and Urban Affairs at U.S. Senate in July 2019. His withdrawal from the case aligns with his resume. So therefore, the argument that anyone can leave the Bureau and do so without filing a withdrawal with the court is without merit. Indeed, even considering the fantastical idea that an attorney with 'an arguable interest' can remain on the case, as discussed above, Singelmann, as counsel in the Senate, would be more qualified than turncoat Tony Alexis who works for opposing counsel Goodwin Procter, LLP.

Taking this fantastical theory to its outer limits, the Burkes would draw this court's attention to the withdrawal of none other than attorney Eugene Scalia from representing invited 'third party' Altisource.

Upon review of the lower court docket, **Doc. 471**, Sept. 24, 2019, MOTION to Withdraw as Attorney Eugene Scalia by Suria M. Bahadue for / by Altisource Solutions, Inc. Responses due by 10/8/2019 (Attachments: # 1 Text of Proposed Order)(Bahadue, Suria). Scalia left Gibson and the motion (Doc. 471) states, in part, "The President has nominated Mr. Scalia to a position in his Administration, and Mr. Scalia no longer represents Altisource."

So why did Scalia not also 'remain on the docket with *an arguable interest*'? After all, he's now the Secretary of Labor for President Trump. If anyone has a case for 'an arguable interest' as presented and interpreted by the Bureau, it would be Scalia. The answer is simple. The Rules demand immediate and timely withdrawal. The CFPB's suggestion, *if* it had been presented in a timely manner, would still be complete drivel.

Wretchedly, that makes Judge Branch another impartial and bias judge.⁵ There is no way it can be interpreted in any other way. It is way too scandalous an order from an experienced judge.

Judge Branch has stated (See Federalist Society, January Chapter Conference

⁵ "An impartial judiciary, while a protean term, translates here as the state's interest in achieving a courtroom that at least on entry of its robed judge becomes a neutral and disinterested temple, in appearance and fact - an institution of integrity, the essential and cementing force of the rule of law. That this interest is compelling cannot be gainsaid."

- Before HIGGINBOTHAM, WIENER and CLEMENT, Circuit Judges. PATRICK E. HIGGINBOTHAM, Circuit Judge for the panel in *Jenevein v. Willing*, 493 F.3d 551 (5th Cir., 2007)

in Fl.). that she has a “sixth sense” and “a lawyers’ reputation can be ruined very quickly”. The Burkes agree. Judge Branch’s integrity is now completely and irreversibly corrupted.

Conclusion: The Burkes respectfully requests this Honorable Court (i) clarify how the Eleventh Circuit and lower Court Rules pertaining to Certified Interested Persons (CIP’s) should be interpreted and applied [as intended] and (ii) confirm the argument presented by the CFPB is both frivolous and fantastical.

In turn, that result would require a reversal of the order by Judge Branch in relation to the CIP.

As previously intimated, the Burkes rely on this courts own inherent powers in relation to any and all relief that the Burkes may obtain in this appeal and any sanctions or penalties that may be deemed necessary against opposing counsel for this flagrant abuse and disregard for the Rules in relation to CIP’s, a frivolous and fantastical theory as presented in the Bureau’s [untimely] reply⁶, as well as tardy filing of response(s).

As stated above, the 3 judges who were assigned to this case included Judges Martin, Pryor, J., and Wilson. This commands affirmation and confirmation that the Burkes second motion to recuse Judge Jill A. Pryor, filed 18th May, 2020, has been

⁶ “An attorney who presents any "written motion" to the court "certifies" that "legal contentions" contained therein "are warranted by existing law or by a nonfrivolous argument . . . for establishing new law." Fed. R. Civ. P. 11(b). ” *Hajdasz v. Magic Burgers, LLC*, No. 19-12528, at *7 (11th Cir. Mar. 11, 2020, 3 panel of BRANCH, Martin and Rosenbaum).

granted and Judge Elizabeth Lee 'Liz' Branch was formally designated as her replacement. The Burkes have received no notice of any such change prior to yesterday's order.

In this highly publicized case, the people and the press will no doubt be highly concerned, along with the Burkes, that citizens are not being afforded fair and impartial proceeding(s), access to justice, liberty and due process per the Constitution and the Magna Carta⁷ of the United States.

Respectfully submitted,

Dated: 26th June, 2020

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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⁷ "To no one will We sell, to no one will We deny or delay, right or justice."

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/ 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

CLARKE, EDWINA

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; 26th June 2020;

/s/ John 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 UNKNOWN.

CERTIFICATE OF SERVICE

We hereby certify that, on June 26th, 2020, a true and correct copy of the foregoing Motion for Reconsideration 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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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 1,814 words according to Microsoft Word's word count, excluding the parts of the motion exempted by Fed. R. App. P. 32(f).

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