

Lawyer Complaint (D.C. Bar) : Sabrina Rose-Smith

This complaint is against an attorney registered with the District of Columbia (D.C.) State Bar. The lawyers' name is Sabrina Rose-Smith and she works for Goodwin Procter, LLP. Her law firm represents *Ocwen* in the cited case below and she is one of the named counsel of record. The Burkes claim that Ms. Rose-Smith violated (at a minimum) **Rule 4.1, Truthfulness in Statements To Others**; In the course of representing a client a lawyer shall not knowingly: (a) make a false statement of fact or law[.] See *In re Mitchell*, 822 A.2d 1106 (D.C. 2003) and; **Rule 3.3, Candor Toward the Tribunal**; *In re Uchendu*, 812 A.2d 933 (D.C. 2002), **Rule 4.4, Respect For Rights Of Third Persons**; See *In re Pelkey*, 962 A.2d 268 (D.C. 2008); **Rule 5.1 Responsibilities Of Partners And Supervisory Lawyers**; See *In re Cohen*, 847 A.2d 1162 (D.C. 2004); **Rule 8.4, Misconduct**; See *In re Mitchell*, 822 A.2d 1106 (D.C. 2003). Then there's the *Cobb County* cases described herein, of which Ms. Rose-Smith is counsel. Then there is the violation of **Rules 1.7, Conflict of Interest; 1.9 and 1.16 and 1.10** with respect to Ms. Rose-Smith. See *Lavender v. Protective Life Corp.*, Civil Action No. 2:15-cv-02275-AKK, at *25-26 (N.D. Ala. Jan. 31, 2017).

Other cases specific to Goodwin are discussed below. The Burkes also draw the Bar's attention to; *Cruickshank v. Dixon (In re Blast Fitness Grp., LLC)*, No.

16-10236-MSH (Bankr. D. Mass. Jan. 8, 2019)

And there's also former Goodwin lawyer, now law professor, Associate Professor Luke M. Scheuer who previously held adjunct positions at Boston College Law School, the University of Massachusetts School of Law, and Boston University School of Law and his paper; "Duty to Disclose Lawyer Misconduct" (2010), Available at: https://works.bepress.com/luke_scheuer/2/, wherein he discusses cases like *In Re Himmel*.

The Burkes Motion to Intervene in Consumer Fin. Prot. Bureau v. Ocwen Fin. Corp., No. 9:17-CV-80495-MARRA-MATTHEWMAN (S.D. Fla. 2017-2020)

Background: The CFPB initiated the civil case on April 20, 2017, alleging that *Ocwen*, in servicing borrowers' loans, engaged in various acts and practices in violation of federal consumer financial laws. On January 4, 2019, Joanna and John Burke sought leave to intervene under Federal Rule of Civil Procedure 24. (Doc. 220). The CFPB and *Ocwen* jointly opposed the motion to intervene (Doc. 224) and the Burkes filed a reply brief (Doc. 237). On May 30, 2019, the district court denied the Burkes' motion to intervene (Doc. 375). The Burkes moved for reconsideration (Doc. 408). The Court denied that motion on July 3, 2019, (Doc. 411), and the Burkes noticed an appeal on August 2, 2019 to the Eleventh Cir., Case No. 19-13015.

The Burkes have argued that *Ocwen*'s counsel, Ms. Sabrina Rose-Smith knowingly committed perjury and withheld evidence of the *Greens* case from the Burkes.

Denial of Intervention 'As of Right': Judge Marra denied the Burkes intervention as of right (Doc. 375, p. 4).

Denial of Intervention 'Permissively': Judge Marra also concluded the Burkes should be denied permissive intervention.

Analysis of Judge Marra's Order [Reconsideration]: The Burkes then asked Judge Marra to reconsider. The court's fleeting order follows (Doc. 411, p. 3);

"In addition to the grounds stated in the Court's Order Denying Intervention (ECF No. 375), the Court notes that intervention is **not** permitted to allow a party to seek or obtain evidence for other litigation as asserted by the proposed Intervenors. (See ECF No. 408 at 4)."

Judge Marra's Implausible Statement: The Burkes address the proclamation that the '*intervention is **not** permitted for the purposes of seeking or obtaining evidence for other litigation*' and which refers to p. 4 of the Burkes motion for reconsideration (wherein the Burkes detail reasons for their request to intervene, included obtaining documentation to assist with their ongoing and active litigation in Texas against *Ocwen*).

Obtaining "Evidence" as a Non-Party Without a Motion to Intervene: Recently, and most certainly after Doc. 411 was published by Judge Marra, the pro se Burkes were researching cases and citations which would help prove their

arguments for their current appeal at the Eleventh Cir. (Case No. 19-13015). The results now raise a serious question as to the truth of the uncorroborated statement in law by United States District Judge Kenneth A. Marra (Doc. 411, p.3).

Disclosure; While it is a thorny issue, the Burkes have been left no alternative but to [separately] file a judicial complaint against Judge Marra. This *CFPB v Ocwen* case indirectly involves important matters pertaining to the Burkes litigation and homestead. When they located this titanic case, which could provide a vehicle for the Burkes to obtain either documentation and information that would assist in the Texas case(s) or could provide relief directly, they did so in a quick and legally correct basis. This is why the Burkes intervened in the S.D. Fl. Action. The Burkes allege there had to be joint collusion between counsel for *Ocwen*, CFPB and Judge Marra to unlawfully deny rightful intervenors Burkes from joining the lawsuit, which is proven by the filings on the docket itself.

In the Texas case of *Green v. Ocwen Loan Servicing, LLC* (In re Green), Bankruptcy No. 12-38016 (13) (S.D. Tex. Aug. 26, 2019), which will be referenced as “*Greens*” for short, is one of a series of actual cases by the *Greens*, who are Texas homeowners, at the S.D. Tex. court against *Ocwen*. The order *In Re Green* was published on August 26th, 2019, *e.g.* After Judge Marra had disposed of the Burkes motion to intervene and reconsideration and after the Burkes Notice of Appeal (Doc.

414, Aug. 2, 2019).

A summary of the *Greens* own foreclosure case(s) is provided by U.S. District Judge Nancy Atlas's order affirming Bankruptcy Judge Marvin Isgur's order, and allowing the *Greens* to retain access to 'discovery' documents as evidence for their own case against *Ocwen*.

The documents which the *Greens* actually obtained and *Ocwen* attempted to quash, would be from the lower court case in Florida. That is correct, these are documents (currently under seal at S.D. Tex.), from the *CFPB v. Ocwen* case before Judge Marra. See *Green v. Ocwen Loan Servicing, LLC* (In re Green), Bankruptcy No. 12-38016 (13), at *2-4 (S.D. Tex. Aug. 26, 2019).

The Burkes hold Ms. Rose-Smith's filings and statements to be false and untruthful. Ms. Rose-Smith's responses went further than zealously defending her client, she viciously maligned these pro se elderly citizens from Texas and all the while knowingly committing perjury in signed statements and filings in the lower court.

"Ocwen and the CFPB jointly opposed the Burkes' motion, which the district court denied. On appeal, the Burkes repeat many of the same **conspiracy theories** and unsupported **attacks** on Ocwen and the CFPB that they alleged below, while **failing to articulate any comprehensible, legally-supported rationale** for why their intervention in this case is warranted. The Court should ignore the Burkes' **baseless and irrelevant attacks** on the parties and affirm the district court's well-reasoned decision."

Then, without a flicker of foreboding that as an attorney she had an ethical duty to tell the truth, she repeated these lies again, months later, at the appeal court level. This was prejudicial to the Burkes by premeditated cheating and trickery *e.g.* lying and knowingly hiding the *Greens* case from the Burkes. Below is the introduction from Burkes' reply brief on appeal at Eleventh Circuit (No. 19-13015):-

PREAMBLE AND DISCLAIMER

“First, a rather lengthy reply brief, including a recap of the case is necessary due to the **bad faith conduct of the parties**, the appellees in this appeal. While the Burkes wished to keep the reply short and concise, this has proven impractical due to the **[mis]conduct** as detailed here. The Burkes summary argument truly attempts to focus on the evidence, the facts, the pleadings and the law, **but it ends up being sabotaged by a litany of ethical violations** which include, but are not by any means exhaustive;

- (i) Collusion and Conspiracy.
- (ii) Bad Faith Conduct.
- (iii) Dishonesty towards the Tribunal.
- (iv) New evidence showing the Court and the parties must have known about the Greens case in S.D. Tex.

Second, the pro se Burkes have been left **searching for the truth**, rather than focusing on the appeal, **due to apparent known concealment and dishonesty by the lower court.**”

The Cobb County Federal Court Cases in Illinois and Georgia

Ms. Rose-Smith is counsel in the two actions the Burkes wish to reference in this matter. These are; *Cobb County v. Bank of America Corporation* (1:14-CV-

02280), District Court, N.D. Illinois and *Cobb County v. Bank of America Corporation* (1:15-cv-04081-LMM), District Court, N.D. Georgia where the Burkes recently uncovered more unethical practices. *Cobb Cnty. v. Bank of Am. Corp.*, 183 F. Supp. 3d 1332, 1333 (N.D. Ga. 2016)).

Here, Goodwin Procter approached the County's named eleven witnesses, former loan officers who signed affidavits which explained the illegal loans the banks were issuing for financial avarice and not in the interests of consumers. Once Goodwin contacted them, these ex-employees of the Bank recanted in the majority, their claims from their first affidavit. Both the Illinois and Georgia judges stated that they were very troubled by the actions of Goodwin. In the Illinois case, there is a transcript of the hearing. Ms. Rose-Smith and her law firm represented the Bank in the Illinois case and her fellow partner, Matthew Sheldon was grilled by Judge Bucklo. (See transcript from Dec. 5, 2019 hearing, which was submitted to Judge May in Georgia; Doc. 53.14, *Cobb County v. Bank of America Corporation* (1:15-cv-04081-LMM) District Court, N.D. Georgia). Here's a snippet; "I really don't understand how you can represent them." - "I do find it DISTURBING."- Judge Bucklo.

After that hearing Goodwin promptly discarded the new witnesses (Doc. 83, March 25th, 2020) to fend for themselves and after signing agreements to represent

them.

The courts found that this meant the witness statements were moot [at this time]. While the Burkes dispute that opinion in law, the purpose of this complaint is the Rules of Professional Conduct. The Burkes now highlight the fact that ethically, the lawyer(s) actions are certainly not ‘moot’. Actually, in the Georgia action, Judge May has kept the ‘sanctions’ against Goodwin Procter, LLP, firmly on the table (Doc. 86, April 10th, 2020). As of Monday, June 8th, 2020, the Cobb County lawyers have officially filed for sanctions. See Doc’s 493/494.

Furthermore, it was clear that the judges and all counsel recognized that these witnesses could be charged with perjury upon independent review. Goodwin dropped them faster than a hot potato but the ‘hot potato rule’ does not support that decision; Under the “hot potato” rule, a “law firm that knowingly undertakes adverse concurrent representation **cannot avoid disqualification by withdrawing** from the representation of the less favored client.” The “hot potato” rule reflects that the “duty of loyalty to an existing client is so important, so sacred, so inviolate that **“not even by withdrawing** from the relationship can an attorney evade it. See also; <https://definitions.uslegal.com/h/hot-potato-rule/> and *State Comp. Ins. Fund v. Drobot*, 192 F. Supp. 3d 1080 (C.D. Cal. 2016)

Certainly, from afar, the Burkes performed a quick audit and now question

witness Jim Morelli's employment history. Mr. Morelli is also a licensed notary public. So from a truth-seeking viewpoint, the fact that his Linkedin profile shows he worked from 1999-2007 - 8 years+ at First Franklin. But his affidavit states; "I worked as an account executive at First Franklin from 2002 to 2006." (Doc. 53.11, signed 30th Sept., 2019 by Mr. Morelli) – That's 4 years. It begs the question - which is the truth?

As another example, when you look at Arnold "Arnie" Fishman's before (Doc. 53.19, signed 22nd June, 2015) and after affidavit (Doc. 53.3, signed 26th July, 2019), it is extremely troubling. Mr. Fishman is a licensed mortgage broker and very active in the mortgage industry, currently employed by BMO Harris Bank for the last 8+ years as a mortgage loan originator, according to his Linkedin profile. From the outside looking in, it appears Mr. Fishman now does not wish to jeopardize the mortgage and banking industry, where he's spent the best part of his career as a mortgage loan originator. It is indicative that if Mr. Fishman was interviewed, his statements could form the basis of perjury as a result of intimidation. See "Courts have noted that "a unilateral communications scheme . . . is rife with potential for coercion." *Kleiner v. The First Nat'l Bank of Atlanta*, 751 F.2d 1193, 1202 (11th Cir. 1985)". This is also affirmed by the expert report and declaration of Professor Roy D. Simon, Jr., an expert in the field of legal ethics and professional

responsibility.

“Prima facie evidence exists that Goodwin Procter suborned perjury from the confidential witnesses by obtaining false declarations under penalty of perjury and, by analogy to the “sham affidavit doctrine...”

Please review Law professor Roy Simon’s credentials, including his declaration and opinion that these lawyers violated Georgia’s professional codes of conduct.

In connection with this motion, the Counties retained Professor Roy D. Simon, Jr., a leading expert in the field of legal ethics. He is the Distinguished Professor of Legal Ethics Emeritus at Hofstra University School of Law, serves as a legal ethics advisor to law firms, and is the author of the twenty editions of Simon’s New York Rules of Professional Conduct Annotated, as well as other books in the field of professional responsibility. (See Declaration of Roy D. Simon (“Simon Decl.”), ¶¶ 1, 4, Ex. A.) and his profile; https://www.hofstra.edu/faculty/fac_profiles.cfm?id=1410

Ms. Rose-Smith’s Actions are Below the Bar

Ms. Rose-Smith’s resume identifies her seniority in the law firm (Partner, resume attached), her experience in litigation in consumer related cases and her many years of attorney experience. In the *CFPB v. Ocwen* case, she is listed as

counsel. As a partner, she is also overseeing a team of lawyers at Goodwin Procter, assigned to this case. Ms. Rose-Smith violated the terms of Rule 5.1(b).

Ms. Rose-Smith's attempts to defend this unethical approach to witnesses, merely reaffirms the cold and calculated deceitfulness she is and was prepared to take *e.g.* risking her reputation and law license to win the case. Aggregating the CFPB case and the Cobb cases, the evidence is sufficient to show by clear and convincing proof that Ms. Rose-Smith's dishonesties and deception are on the record and cannot be contested and she personally elected to commit this fraudulence in court filings.

Elder Abuse Demands Revocation of License

The Burkes point to the conduct of the lawyer in the filing of this complaint, and rely upon the local Supreme Court in Texas when citing; for example the 1994 case before the Texas Supreme Court where they concisely summarized the difference, rejecting the Texas Bar's argument;

"Our inquiry relates to the classification of the crime, not the tribunal's subjective judgment of character of the particular lawyer convicted. In short, we classify the crime, not the lawyer." *Thacker, Matter of*, 881 S.W.2d 307, 309 (Tex. 1994).

Due to the seriousness of her harmful acts against the Burkes who are in their 80's, in poor health and litigating to keep their home, this is elder abuse fraud when the Burkes' legal and civil rights have been completely violated. Ms. Rose-Smith

has violated the Rules of Professional Conduct, has abused her senior position which was used to act unlawfully and substantively injured the Burkes in their ongoing case(s).

In conclusion, the Burkes contend Ms. Rose-Smith's actions are so egregious against the elder Burkes, her license should be revoked, sending a strong message to lawyers that this type of behavior will not be tolerated and is 'Below the Bar'.

Submitted this day, Monday, June 15, 2020

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

(28 U.S. Code § 1746)

s/ Joanna Burke

Joanna Burke

kajongwe@gmail.com

46 Kingwood Greens Dr.,

Kingwood, TX, 77339

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

(28 U.S. Code § 1746)

s/ John Burke

John Burke

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SABRINA M. ROSE-SMITH

Partner

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Sabrina Rose-Smith is a partner in Goodwin's Financial Industry and Consumer Financial Services Litigation practices. Her nationwide practice includes both defending financial institutions against consumer class actions and government enforcement actions, and regulatory compliance counseling for banks, credit card issuers, mortgage lenders and specialty finance companies. She is the lead editor of two firm blogs: LenderLaw Watch and Consumer Finance Enforcement Watch. Goodwin's LenderLaw Watch blog monitors, chronicles and analyzes news and legal issues affecting clients and others in the consumer finance industry; Goodwin's Consumer Finance Enforcement Watch blog is the marketplace's first resource for real-time reporting on the full range of public federal and state consumer finance enforcement activity. She also serves as chair of the firm's Committee on Racial and Ethnic Diversity.

Ms. Rose-Smith defends financial services clients in cases involving the Truth In Lending Act (TILA), the Fair Debt Collection Practices Act (FDCPA), the Real Estate Settlement Procedures Act (RESPA), the Fair Housing Act (FHA), the Equal Credit Opportunity Act (ECOA), the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), the Telephone Consumer Protection Act (TCPA), state and federal unfair and deceptive trade practices (UDAP) statutes and other alleged violations of law arising from her clients' lending, servicing and/or collections activity.

Ms. Rose-Smith serves as Chair of CRED@Goodwin.

AREAS OF PRACTICE

Litigation + Dispute Resolution

Consumer Financial Services Litigation

Consumer Financial Services Enforcement + Government Investigations

Fair + Responsible Lending

Financial Industry

EXPERIENCE

Her areas of experience include:

- Class action defense, including successful methods for defeating class certification in both consumer finance and business litigation matters involving banks and other financial services businesses
- Assisting financial institutions in the creation and licensing of new specialty finance products, such as debit and stored value cards, installment loans and money transmission
- Developing and implementing effective internal compliance auditing procedures for financial institutions and counseling on problems that may arise in external government audits

She has recently represented:

- A nationwide mortgage lender in a government enforcement action based on alleged failure to comply with Federal Housing Administration guidelines for FHA – insured loans
- A national bank in a lawsuit alleging systemic violations of the Fair Housing Act
- A venture capital firm in a nationwide class action alleging that a company the firm invested in committed unfair and deceptive trade practices in the marketing and servicing of small dollar loans
- A mortgage lender in a class-wide federal jury trial involving lender's alleged violations of RESPA's affiliated business rules
- A national bank against civil claims arising out of its mortgage default servicing activity, including UDAP claims regarding fees charged and breach of contract claims for wrongful foreclosure or the conduct of vendors involved in the foreclosure/collections process
- A regional bank regarding its compliance with HUD regulations for FHA lenders and loan servicers
- A nationwide lender in a multi-district litigation (MDL) based on alleged unfair and deceptive sales and marketing of loan products

PROFESSIONAL ACTIVITIES

Ms. Rose-Smith is a member of the American Bar Association (Business Law, Litigation and Minority Trial Lawyer sections) and has served on executive committees within NAWL, the National Association of Women Lawyers. She is fellow for the Leadership Council on Legal Diversity (LCLD) and mentor to women and minorities within the firm and the broader legal profession. She is also a District Activist Leader for the National MS Society, and in that role she advocates for individuals with MS and serves as a liaison between elected officials and the National MS Society.

PUBLICATIONS

Ms. Rose-Smith's recent publications include:

- "The CFPBs Proposed Prepaid Card Regulations: A Primer," *LenderLaw Watch*, November 17, 2014
- "Plaintiffs Find Little Traction In Suits Against Banks Over "Payday" Loans," *LenderLaw Watch*, November 13, 2014
- "Supreme Court Will Not Review Third Circuit FDCPA Decision," *LenderLaw Watch*, November 10, 2014
- "D.C. District Court Strikes Down HUD's Disparate Impact Rule," *LenderLaw Watch*, November 6, 2014
- "CFPB Spotlight Still On Student Loans," *LenderLaw Watch*, October 30, 2014
- "CFPB Finalizes Mortgage Rules Amendments," *LenderLaw Watch*, October 27, 2014
- "CFPB Takes Action to Enforce New Mortgage Servicing Rules," *LenderLaw Watch*, October 13, 2014
- "Goodwin Procter's Ben Saul Comments On CFPB Enforcement of New Mortgage Servicing Rules," *LenderLaw Watch*, October 8, 2014
- "CFPB Sets Sights On Payday Lending 'Cycle Of Debt'," *Law360*, March 25, 2014
- "Small-Dollar Lenders Under Fire From AGs And CFPB," *Law360*, February 20, 2014

Ms. Rose-Smith's recent speaking engagements include:

- "American Bar Association 2017 Business Law Section Spring Meeting," April 6, 2017, New Orleans, LA
- "ACI's 28th National Consumer Finance: Class Actions & Litigation Conference," April 4, 2017, New York, NY
- "Payday Loan Bar Association 2016 Annual Meeting," November 9, 2016, Santa Barbara, CA
- "Payday Loan Bar Association 2015 Annual Meeting," November 4, 2015, Scottsdale, AZ
- "Consumer Protection Agency Limits Payday Lenders: Understanding Proposed Regulation LIVE Webcast," August 26, 2015
- "ACI Women Leaders in Financial Services Industry Law," June 15, 2015, New York, NY
- "2015 Business Law Section Spring Meeting," April 16, 2015, San Francisco, CA
- "LegalTech® New York 2015," February 3, 2015, New York, NY
- "Payday Loan Bar Association 2014 Annual Meeting," November 9, 2014, Kiawah Island, SC
- "The American Lawyer's New Partner Forum," November 4, 2014, New York, NY

CREDENTIALS

EDUCATION

J.D.

Vanderbilt University Law School

B.A.

Hollins University

ADMISSIONS

BAR

District of Columbia
Virginia

COURTS

U.S. Court of Appeals for the Second Circuit
U.S. Court of Appeals for the Fourth Circuit
U.S. Court of Appeals for the Eleventh Circuit
U.S. Court of Appeals for the District of Columbia Circuit
U.S. District Court for the Eastern District of Virginia
U.S. District Court of Maryland
U.S. District Court for the District of Columbia
U.S. District Court for the Eastern District of Michigan
U.S. District Court for the Northern District of Illinois