

### **Lawyer Complaint (Fl. Bar) : Catalina E. Azuero**

This complaint is against an attorney registered with the Florida State Bar. The lawyers' name is Catalina Azuero 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. Azuero violated (at a minimum) "Based on these facts, the Florida referee found Hagendorf guilty of violating **rules 4-3.3 (candor toward the tribunal), 4-3.4 (fairness to opposing party and counsel), 4-4.1 (truthfulness in statements to others), 4-8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), and 4-8.4(d) (conduct prejudicial to the administration of justice)** of the Rules Regulating the Florida Bar." - *The Florida Bar v. Hagendorf*, 921 So. 2d 611, 613-14 (Fla. 2006).

"The referee recommended that Niles be found guilty of violating the following provisions of the **Rules Regulating the Florida Bar: Rule 3-4.3 (misconduct and minor misconduct) of the Rules of Discipline; Rules 4-1.2(a) (scope of representation), 4-1.4 (communication), 4-1.5 (fees for legal services), 4-1.6(a) (confidentiality of information), 4-1.7(b), 4-1.8(b), (d), (i), 4-1.9(b) (conflict of interest), 4-1.15 (safekeeping property), 4-2.1 (adviser), 4-4.1(a) (truthfulness in statements to others), 4-4.4 (respect for rights of third persons), and 4-8.4(b), (c), (d) (misconduct) of the Rules of Professional Conduct.**" - *Florida Bar v.*

*Niles*, 644 So. 2d 504, 506 (Fla. 1994).

Then there's the *Cobb County* cases described herein, of which Ms. Azuero is counsel. Then there is the violation of "The trial court found that the attorneys had violated **Florida's Rule of Professional Conduct 4–1.7**, governing conflicts with current clients, and **Rule of Professional Conduct 4–1.9**, governing conflicts with former clients." *Young v. Achenbauch*, 136 So. 3d 575, 579 (Fla. 2014) with respect to Ms. Azuero. This resulted in suspensions for both lawyers, see; *The Florida Bar v. Steven Kent Hunter*, Case No.: SC16-1006, TFB No. 2014-70,728(11C) and *The Florida Bar v. Philip Maurice Gerson*, Case No.: SC16-1009, TFB No. 2014-70,729(11C). The April 11, 2018 Supreme Court opinion is here:

[https://efactssc-public.flcourts.org/casedocuments/2016/1006/2016-1006\\_disposition\\_141625\\_d31a.pdf](https://efactssc-public.flcourts.org/casedocuments/2016/1006/2016-1006_disposition_141625_d31a.pdf).

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/](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. Catalina Azuero 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 courts 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 Intervenor. (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. Azuero's filings and statements to be false and untruthful. Ms. Azuero'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. Azuero 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. Azuero 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 25<sup>th</sup>, 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 10<sup>th</sup>, 2020). As of Monday, June 8<sup>th</sup>, 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 30<sup>th</sup> 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 22<sup>nd</sup> June, 2015) and after affidavit (Doc. 53.3, signed 26<sup>th</sup> 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](https://www.hofstra.edu/faculty/fac_profiles.cfm?id=1410)

### **Ms. Azuero's Actions are Below the Bar**

Ms. Azuero's resume identifies her role in the law firm (Attorney, resume attached), her experience in litigation in consumer related cases and her many years of attorney experience (Admitted to the Fl. Bar in 2004). In the *CFPB v. Ocwen* case, she is listed as counsel.

Ms. Azuero'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. Azuero'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. Azuero has violated the Rules of Professional Conduct, has abused her attorney role and experience of many, many years, which was used to act unlawfully and substantively injured the Burkes in their ongoing case(s).

Indeed, in Michigan, the Judge summed up 'big law firms' as being more accountable than smaller firms; see *El Camino Resources, Ltd. v. Huntington National Bank*, 623 F. Supp. 2d 863 (W.D. Mich. 2007). , citing; “This Court is fully aware of the “changes” in the “legal world” and attempts to stay abreast of them and deal with cases in an up-to-date fashion. Keeping that in mind, however, does not somehow lead this Court to believe that “changes” also mean adopting a

set of principles and ethics for “mega corporations” and “monster law firms” which is something less than that imposed on small companies and lesser-size law firms.

**Rule 1.7 stands as is for everyone.** This Court notes that, if anything, large law firms have *an even greater responsibility* to incorporate satisfactory computer conflicts check systems simply because of their size and the fact the lawyers in these firms are not able to manually check their client lists for potential conflicts.” -

*Lemelson v. Apple Computer, Inc.*, 28 U.S.P.Q.2d at 1419 (rejecting SWS’s approach of a size- dependent application of ethical rules regarding disqualification).

In conclusion, taking the repetitive offenses as described holistically, the Burkes contend Ms. Azuero’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, Thursday, June 18, 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

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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

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Burke, John and Joanna; Complaint re Attorney Catalina Azuero (Fl. 2020)

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