

## **Lawyer Complaint (Virginia Bar) : Thomas M. Hefferon**

This complaint is against an attorney registered with the State Bar of Virginia. The lawyers' name is Thomas M. Hefferon and he works for Goodwin Procter, LLP. His law firm represents *Ocwen* in the cited case below and he is one of the named counsel of record. The Burkes claim that Mr. Hefferon 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 the Matter of William Franklin Burton*, VSB Docket No. 19-051-115210 and; **Rule 3.3, Candor Toward the Tribunal**; The 'comment' section from VSB website also apply here and *Moseley v. Virginia State Bar*, 280 Va. 1 (Va. 2010), **Rule 4.4, Respect For Rights Of Third Persons**; See *Barrett v. Virginia State Bar*, 272 Va. 260 (Va. 2006); **Rule 5.1 Responsibilities Of Partners And Supervisory Lawyers**; See *Morrissey v. Virginia State Bar*, (ORDER), 181311 (Va. 2019); **Rule 8.4, Misconduct**; See *Moseley v. Virginia State Bar*, 280 Va. 1 (Va. 2010). Then there's the *Cobb County* cases described herein, of which Mr. Hefferon is counsel. It is Mr. Hefferon who provided a declaration trying to substantiate the "representation of former employees" (Doc. 66.3, p.7) and which the Burkes believe to be in violations of **Rules 1.7, Conflict of Interest; 1.9 and 1.16 and 1.10** with respect to Mr. Hefferon. See *Lavender v. Protective Life Corp.*, Civil Action No.

2:15-cv-02275-AKK, at \*25-26 (N.D. Ala. Jan. 31, 2017).

**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, Mr. Thomas Hefferon 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 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 Mr. Hefferon's filings and statements to be false and untruthful. Mr. Hefferon's responses went further than zealously defending his client, he 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 he had an ethical duty to tell the truth, he 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**

Mr. Hefferon 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. (See; “Edwin Montgomery Cook, William Vance Custer, IV, Bryan Cave, LLP, Atlanta, GA, *Matthew S. Sheldon, Thomas M. Hefferon, Goodwin Procter LLP*, Washington, DC, for Defendants.” *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. Mr. Hefferon and his law firm represented the Bank in the Illinois case and his 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).

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..."

### **Mr. Hefferon's Actions are Below the Bar**

Mr. Hefferon's resume identifies his seniority in the law firm (Partner, resume attached), his experience in litigation in consumer related cases and his many years of attorney experience. In the *CFPB v. Ocwen* case, he is listed as counsel. As a

partner, he is also overseeing a team of lawyers at Goodwin Procter, assigned to this case. Mr. Hefferon violated the terms of Rule 5.1(b).

In the Cobb cases, the fact Mr. Hefferon provided a detailed declaration (Doc. 66.3), outlining his decades of experience (a Partner since 1995 at Goodwin Procter) and being involved in well over 100 civil actions for these Banks. Mr. Hefferon's attempts to defend this unethical approach to witnesses, merely reaffirms the cold and calculated deceitfulness he is and was prepared to take *e.g.* risking his 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 Mr. Thomas Hefferon's dishonesties and deception are on the record and cannot be contested and he personally elected to commit this fraudulence in court filings.

### **Elder Abuse Demands Revocation of License**

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

In conclusion, the Burkes contend Mr. Hefferon's actions are so egregious against the elder Burkes, his 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 8, 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

alsation123@gmail.com

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# THOMAS M. HEFFERON

Partner

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Tom Hefferon, partner and former co-chair of Goodwin's Financial Industry practice, focuses his practice on civil litigation and government enforcement matters, with particular emphasis on the banking and consumer financial services industries. Mr. Hefferon frequently provides compliance advice and litigation risk analysis to industry clients.

## AREAS OF PRACTICE

Consumer Financial Services Litigation

Class Actions

Appellate Litigation

Consumer Financial Services Enforcement + Government Investigations

Fair + Responsible Lending

Litigation + Dispute Resolution

Financial Industry

Financial Industry Litigation

Fintech

## EXPERIENCE

Mr. Hefferon has a national practice concentrating on defending prominent financial institutions facing class action lawsuits pending in a large variety of state and federal courts. These cases typically arise under state and federal laws, including the Real Estate Settlement Procedures Act (RESPA), the Fair Housing Act (FHA), the Truth in Lending Act (TILA), the Fair Credit Reporting Act (FCRA), the Fair Debt Collection Practices Act (FDCPA), the Telephone Consumer Protection Act (TCPA), state and federal unfair and deceptive acts and practices laws (UDAP), other consumer lending statutes and regulations, bankruptcy laws and the common

law.

The matters at issue in these cases include fair lending; the legality under RESPA of a variety of business practices; federal preemption; arbitration; assignee liability; loan servicing; foreclosure, bankruptcy and default issues; and claims that challenge various lending practices under a wide variety of federal and state statutes, including UDAP laws. He has an active practice before numerous state and federal courts. In the last several years, Mr. Hefferon and others in the group have defended more than 200 putative class actions, most of which were brought as nationwide class actions, and have been lead counsel in four multidistrict litigation proceedings. He also is acting and has previously acted as lead counsel to mortgage industry trade associations appearing as amicus curiae in cases that present significant issues for the consumer credit industry, and as counsel to trade associations in connection with regulatory comment letters.

In the 2011 Term, Mr. Hefferon argued in the United States Supreme Court, for the Respondent in *Freeman v. Quicken Loans, Inc.* The case involved an important consumer credit question under RESPA, which the Court decided unanimously in his client's favor. Mr. Hefferon also has presented oral argument in most federal circuit courts and in a number of state supreme and lower appellate courts.

Mr. Hefferon also represents financial institutions and trade groups in a variety of contested matters in court and before federal and state administrative agencies, including the Consumer Financial Protection Bureau (CFPB), the Federal Trade Commission, the Department of Housing and Urban Development, the Federal Deposit Insurance Corporation, numerous state attorneys general, and state banking agencies. He is actively representing consumer finance companies in CFPB examinations and enforcement proceedings.

In addition to his specialty area, Mr. Hefferon has represented a range of corporate and individual clients, and has substantial experience in complex commercial disputes, including contract litigation, insurance disputes, lender liability cases and litigation arising in connection with bankruptcies filed under Chapters 7, 11 or 13. He has been sole or joint lead counsel in the trial of cases in federal and state courts in Massachusetts, Connecticut, New York, Missouri, Texas and Illinois.

## **PROFESSIONAL ACTIVITIES**

Mr. Hefferon is a member of the American Bar Association, and other state and local bar associations.

## **PROFESSIONAL EXPERIENCE**

During the 1989-1990 academic year, Mr. Hefferon was an adjunct assistant professor of law at Boston College Law School while on leave of absence from Goodwin.

## **RECOGNITION**

Mr. Hefferon has been selected repeatedly for inclusion in *Chambers USA: America's Leading Lawyers for*

*Business*, *U.S. News-Best Lawyer's* and *The Legal 500 U.S.* He also has been named to BTI Consulting Group's "2013 Client Service All-Star Team."

## AWARDS





## **PUBLICATIONS**

Mr. Hefferon frequently appears as a panelist at continuing legal education seminars and Mortgage Bankers Association and American Bar Association meetings. He has co-chaired numerous seminars on consumer credit litigation issues, including, for more than a decade, a twice-annual American Conference Institute program on class action litigation in consumer lending.

## **CREDENTIALS**

### **EDUCATION**

**J.D., 1986**

The University of Chicago  
*(magna cum laude)*

**B.A., 1982**

Trinity College  
*(magna cum laude)*

### **ADMISSIONS**

#### **BAR**

Virginia  
Massachusetts  
District of Columbia

#### **COURTS**

U.S. Supreme Court  
U.S. Court of Appeals for the District of Columbia Circuit  
U.S. Court of Appeals for the Eleventh Circuit

U.S. Court of Appeals for the First Circuit  
U.S. Court of Appeals for the Second Circuit  
U.S. Court of Appeals for the Third Circuit  
U.S. Court of Appeals for the Fourth Circuit  
U.S. Court of Appeals for the Fifth Circuit  
U.S. Court of Appeals for the Sixth Circuit  
U.S. Court of Appeals for the Seventh Circuit  
U.S. Court of Appeals for the Eighth Circuit  
U.S. Court of Appeals for the Ninth Circuit  
U.S. District Court for the District of Massachusetts  
U.S. District Court for the District of Columbia  
U.S. District Court of Maryland  
U.S. District Court for the Eastern District of Michigan  
U.S. District Court for the Eastern District of Virginia  
U.S. District Court for the Eastern District of Wisconsin  
U.S. District Court for the Northern District of Illinois  
U.S. District Court for the Central District of Illinois  
U.S. District Court for the Western District of Michigan  
U.S. District Court of North Dakota  
U.S. Bankruptcy Court of Massachusetts  
U.S. Bankruptcy Court of Maryland  
U.S. Bankruptcy Court for the Eastern District of Michigan