Judicial Complaint: United States District Judge Kenneth Marra

As relevant here in a live case and controversy, judicial disqualification under § 455(a) is required when an alleged bias is personal in nature. *United States v. Ramdeo*, No. 17-10297, at *5 (11th Cir. Aug. 11, 2017). The Burkes rely upon the facts presented herein, combined with the Judicial Oath and Canons (e.g. Canon 3) and in conjunction with the legal definition of 28 U.S.C. § 455(a). See *Potashnick v. Port City Constr. Co*., 609 F.2d 1101, 1115 (5th Cir. 1980); 13A WRIGHT & MILLER, supra note 15, § 3551, at 630.

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 Judge Marra's denial of Intervention is an 'abuse of

discretion' and erroneous in law in the appeal case. Here, the Burkes only address the judicial complaint requirement, a showing of [pervasive] bias.

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).

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)

As such, the Burkes hold Judge Marra's assertions to be false, untruthful and for the purposes of this judicial complaint, personal and pervasive bias

against these pro se elderly citizens from Texas. Judge Marra should be disqualified from the case.

Note: The Burkes admit due to their pro se education of federal laws, they were completely oblivious to the fact you could request documents and evidence from other cases without intervention, for example, even if the *Greens* were entering or conducting 'discovery' in their Texas case (based on the request being made in the Joint Case Management Plan). The Burkes relied on the more legally known and accepted path - intervention - and not just for permissive intervention but also to become a plaintiff. As such, formal intervention in the Florida case would still be necessary to achieve that end goal.

The Impact of the Judge in Delaying his Original Ruling: The Burkes were looking to intervene both as a right *or* permissively and a timely response by Judge Marra was necessary, due to their ongoing Texas cases. The judge could allow intervention in any form, for example, for the sole purposes of the Burkes obtaining documents for their Texas case, as the *Greens* achieved. But Judge Marra flat out denied any type of intervention, in contradiction and conflicting with the *Greens* case. The Burkes, at a minimum, were seeking to obtain evidence which would aid the Burkes cases in Texas and intervention would be necessary. This is supported by the docket. At the time the Burkes filed the motion to intervene, there was a live case against *Ocwen* in S.D. Texas District court. By the time Judge Marra issued his

opinion, which was only after prodding by the Burkes, (See; https://www.law.com/dailybusinessreview/2020/01/09/motions-in-slo-mo-3-south-florida-federal-judges-dinged-for-slow-responses/) conveniently the Burkes case in Texas against Ocwen had been dismissed by the lower court, leaving an appeal as the only option (noticed 18th Apr., 2019, Case No. 19-20267, 5th Cir.) to return that case to the docket.

Conclusion

Not only do parties regularly intervene for *evidence* in their 'other' civil actions, the *Greens* case proves that litigants can obtain discovery from related cases directly from their civil actions. *Permissively*, the Burkes looked to seek or recover *evidence* for their ongoing *Ocwen* action in Texas. Judge Marra's personal bias was proven when he denied the Burkes intervention when the *Greens* recovered documents from the very same court. There is also a strong argument by the Burkes that Judge Marra must have colluded with both Ocwen and CFPB counsel to ensure his written opinions would not be contradicted in any filing(s). Judge Marra, Ocwen and CFPB knew about the *Greens* case. Judge Marra lied to the Burkes and so did opposing counsel. That's pervasive bias and prejudice. See "Among these is a proceeding in which the judge "has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding."" - Disqualification of Federal Judges for Bias or Prejudice, Uni of Chicago Law.

Submitted this day, Tuesday, June 9, 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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