No. 20-20209

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

JOANNA BURKE, ET AL,

Plaintiffs-Appellants,

v.

MARK HOPKINS, ET AL,

Defendants-Appellees.

On Appeal from the United States District Court
For the Southern District of Texas, Houston Division;
USDC No. 4:18-CV-4543

FIRST OPPOSED JOINT MOTION TO STAY PROCEEDINGS AND MOTION TO HOLD CASE IN ABEYANCE

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Pro Se Appellants

Appellants, Joanna Burke and John Burke ("Burkes"), now file a Motion to Stay Proceedings[1] for 4 [four] months or until the pending matters which affect this appeal are resolved. The Burkes rely upon the following facts:-

(i) The lower court decided the case *prematurely*, (ROA.1116 –1266) and;

(ii) Dismissing the Burkes case in violation of an *executive order*[2] and in advance of an agreed postponement by the parties to reschedule the in-person court hearing - due to COVID-19 - thus denying the Burkes their constitutional rights to a fair hearing.[3] Rendering judgment punished[4]

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[1] See *Consumer Fin. Prot. Bureau v. Source for Pub. Data, L.P.*, 903 F.3d 456 (5th Cir. 2018) "Accordingly, the district court ordered Public Data to respond to the CID, but this court granted a stay pending the resolution of this appeal."

And; *Burgess v. Fed. Deposit Ins. Corp.*, 871 F.3d 297 (5th Cir. 2017) "For the following reasons, we grant Burgess's motion and stay the FDIC's order pending resolution of the merits of the petition or further order of this court."

And; *Natl Federation of Indep Bus v. R. Acosta, Secretary LABR* (17-10054) COURT ORDER granting motion to stay. Document 504035357, Jun 15, 2017.

[2] See *In re Abbott*, No. 20-50264 (5th Cir. Apr. 7, 2020) and; "The judicial power and the executive power over sentences are readily distinguishable. To *render judgment* is a judicial function. To carry the judgment into effect is an *executive* function." - *United States v. Benz*, 282 U.S. 304, 311 (1931).

[3] See ROA.1171 referencing footnote 18 and the Burkes Complaint re Hittner in general; ROA.1169 – 1176.

[4] "The general rule is that judgments, decrees and orders are within the control of the court during the term at which they were made. They are then deemed to be "in the breast of the court" making them, and subject to be amended, modified, or vacated by that court. *Goddard v. Ordway*, 101 U.S. 745, 752... In the present case the power of the court was exercised to mitigate the punishment, not to increase it, and is thus brought within the limitation. Wharton, in Criminal Pl. and Pr., 9th ed., § 913, says: "As a general practice, the sentence, when imposed by a court of record, is within the power of the court during the session in which it is entered, and may be amended at any time

the Burkes by extending litigation to an appeal and increasing the Burkes injury-in-fact due to the additional time and delay to correct the order and remand the case to the lower court. Without appeal by the Burkes, Judge Hittner's entry of judgment would have the effect of accelerating the current order of foreclosure issued by this court in *Deutsche Bank Nat'l Tr. Co. v. Burke*, 902 F.3d 548 (5th Cir. 2018), in violation of the due process clause. Carrying the judgment into effect is not a judicial act, it is a ministerial act[5], which violated Gov. Abbott's executive order and;

(iii) The pending request for reconsideration with *BODA* (Supreme Court of Texas) re Mark Daniel Hopkins complaint, (EXHIBIT BODA) and;

(iv) The pending complaint against S.D. Texas Judge David Hittner (ROA.1167 – 1176) which includes a request for impeachment[6], and;

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during such session, provided a punishment already partly suffered be not increased." *United States v. Benz*, 282 U.S. 304, 306-07 (1931).

[5] In discussing the independence of the Judiciary in his famous Lectures on Law, James Wilson, an Associate Justice of the Supreme Court, said this: "When the decisions of courts of justice are made, they must, it is true, be executed; but the power of executing them is ministerial, not judicial." 1 JAMES WILSON, Of Government (1790), reprinted in COLLECTED WORKS OF JAMES WILSON 689, 703 (Kermit L. Hall & Mark David Hall eds., 2007).

[6] See; The branches of government have the power to correct one another's legal errors. If Congress passes and the President signs a law, its constitutionality is not beyond question. *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803). If an officer incorrectly exercises his statutory powers, he can be sued. - *Little v. Barreme*, 6 U.S. (2 Cranch) 170, 170 (1804). If the

(v) For the reasons stated in the related case against *Ocwen*, as per the third motion to stay filed with this court on July 5th, 2020 (EXHIBIT OCWEN).

Conclusion: Until such times as the pending filings and opinions are issued, the Burkes now request this court grants an expedited Motion to Stay Proceedings until the pending matters described above are ruled upon, *OR* in the alternative, stay proceedings for a period of no less than *four* months. The Motion to Stay Proceedings and Motion to Hold Case in Abeyance is not brought for the purpose of delay and therefore Appellants respectfully requests this court grants the joint Motion.

Respectfully submitted,

DATED: July 6th, 2020

JOANNA BURKE

By *s/ Joanna Burke*
JOANNA BURKE

JOHN BURKE

By *s/ John Burke*
JOHN BURKE

President commits a high crime or misdemeanor, he can be impeached - U.S. CONST. art. II, § 4. **So can judges** - 135 CONG. REC. H1811 (1989) and *See* Act, SECTION 354 - citing ROA.1173, footnote 31.

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Pro Se for Plaintiffs-Appellants

CERTIFICATE OF CONFERENCE

We hereby certify that on July 6th, 2020, we did not confer with Appellants Mark D. Hopkins and Shelley L. Hopkins of Hopkins Law, PLLC, as this was prepared and filed on Independence Day (out of office hours). We assume the joint MOTION is OPPOSED.

CERTIFICATE OF SERVICE

We hereby certify that, on July 6th, 2020, a true and correct copy of the foregoing Motion for Extension of Time was served via the Court's EM/ECF system on the following counsel of record for Appellees:

Mark D. Hopkins
Shelley L. Hopkins
HOPKINS LAW, PLLC
3809 Juniper Trace, Suite 101
Austin, Texas 78738
Telephone: (512) 600-4320
Facsimile: (512) 600-4326

s/ Joanna Burke
JOANNA BURKE

s/ John Burke
JOHN BURKE

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 858 words according to Microsoft Word's word count, excluding the parts of the motion exempted by Fed. R. App. P. 32(f).

s/ Joanna Burke
JOANNA BURKE

s/ John Burke
JOHN BURKE

EXHIBIT BODA

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July 3, 2020

Board of Disciplinary Appeals
Attn: Jenny Hodgkins
Executive Director / GC
PO Box 12426, Austin, TX, 78711

Via Email: appeal@txboda.org

Dear Ms. Hodgkins

COMPLAINT RE: MARK DANIEL HOPKINS

We refer to your delayed letter dated 25 June, 2020, received via email on July 2, 2020, wherein you write;

*"After reviewing your grievance as you originally filed it **and no other information**, the Board has determined that the conduct **you described** in the grievance does not violate the Texas Disciplinary Rules of Professional Conduct or is otherwise not actionable under the Texas Rules of Disciplinary Procedure."*

We specifically asked Ms Claire Reynolds, Public Affairs Counsel, Office of the Chief Disciplinary Counsel in a lengthy and detailed email thread prior to submitting our appeal to BODA that she was going to furnish BODA the email thread as part of the 'appeal file'. On May 4th, 2020, in her email responses she wrote;

"I am happy to answer any other questions you have".

We also confirmed this in our email/complaint to BODA.

Relying upon Ms. Reynolds statement as standard practice, we seek your earliest clarification of BODA's decision included reviewing the ***"other information".***

This other information is critical as it revolved around a sole issue which is disputed. Mr Hsu, the Classification Attorney, rejected the Burkes case(s) against Hopkins as Ms Reynolds states in the email thread;

"When we say "these allegations have been previously dismissed by BODA" we are just stating that the allegations in this grievance were presented in your prior dismissed grievance, and that BODA upheld that dismissal. In other words, the classification attorney believed that you had presented basically the same set of facts."

This Error Can be Resolved Quickly.

Hopkins lied when he stated aggressively and dishonestly to the court – not once – but twice – that the Burkes wanted ***"certain judges to be shot"***.

This has never ever been stated before in prior facts presented to Mr. Hsu or in a prior grievance filed by the Burkes against Hopkins.

If you read the complaint and the "other information", it clearly disposes of the statement by Classification Attorney, Mr. Hsu, as factually erroneous.

Surely BODA is not condoning this abhorrent, felonious and premeditated evil conduct as 'zealous advocacy' and acceptable practice by a Bar registered attorney in Texas?

Returning to that horrific day, included in the detailed complaint documentation BODA 'has reviewed', is this snippet from the transcript of the conference before Judge Bray, wherein he states;

6 THE COURT: -- and I'm not your lawyer, but if
7 you're doing that, that's why more serious than any kind of
8 counterclaim.

There is only one way his words can be 'textually' interpreted, which we will discuss herein. (Note: there are many typographical errors and omissions from the transcript. The error in the above snippet; "why" should be replaced with "way").

After reading your resume on the BODA website Ms Hodgkins, we are confident you know most judges and lawyers in the circuit and can recite Texas rules and laws better than most.

That said, Peter Bray was a public defender who was struggling to make a living, supplemented his job with a part-time retail position and could not subscribe to the pension plan as he could not afford it.

Clearly, he has achieved financial freedom when he upgraded to a Magistrate Judge and we assume he will no longer find it necessary to work a second job and can catch up with those missing pension payments to secure his retirement.

That said, considering the unnerving events which took place in rapid succession in 2018, an honest and outstanding predecessor left the bench to be replaced by Bray.

We remember our first meeting with Judge Bray, where he went from telling Hopkins in a packed courtroom at the initial scheduling conference something along the lines of; "*I hear you don't like magistrate judges…Well, we'll deal with that later.*" - to his complete reversal at the September 2019 conference discussed herein.

Quite frankly, the optics would indicate to us and as former Texas Supreme Court Justice Tom Phillips stated on 60 Minutes 33 years ago (accurately named "Justice for Sale in Texas") and again in a 2019 Texas Chapter of the Federalist Society, *"I took him at his word, but it didn't look good…".*

Unfortunately, Judge Bray's [in]action from the bench[1], his prejudgment [believing Hopkins lies at face value instead of controlling the courtroom and a rogue attorney]

[1] See; former Goodwin Procter, LLP, 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*.

and pervasive bias from the bench including his resulting M&R in the Burkes case has only increased the constitutional "injury-in-fact" and further delayed justice.

Judge Bray's history as a public defender is very relevant and extremely important in our case(s) before you and the circuit. We've *ferreted out* the relevant sections as Judge Bray likes to refer to;

Count I
If BODA were to maintain the current untenable position by affirming Mr. Hsu's erroneous statement, you would be overturning recent Texas Supreme Court precedent in *Comm'n for Lawyer Discipline v. Mark Cantu* (2019).

Count II
If BODA were to maintain the current untenable position by affirming Mr. Hsu's erroneous statement, you would, in effect, be repealing Disciplinary Rule(s) per *Comm'n for Lawyer Discipline v. Mark Cantu* (2019);

"The obligation to report attorney misconduct applied doubly to Judge Isgur, who is not only a judge but a licensed Texas attorney."

Under Texas Disciplinary Rule of Professional Conduct 8.03(a).[2]

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[2] As we reminded the Virginia State Bar earlier this week, they are lawyers themselves and have a duty to report misconduct. See their own presentation - and now based on our answer herein - the same standard must apply in Texas;

"*For example, we assume pro se, as own counsel, are under "other lawyers" or perhaps "concerned citizens". Either way, it is clear parties or non-parties can file a complaint* ***at any time*** *– see* ***https://iclr.net/wp-content/uploads/2016/04/VirginiaDisciplinaryOverview.pdf*** *, in part;*

WHO FILES BAR COMPLAINTS
The BAR: in the course of investigating misconduct, the BAR investigator or Assistant Bar Counsel may discover conduct by the lawyer or some other lawyer that violates the Rules of Professional Conduct.*"*

Count III

Peter Bray was the Public Defender in the case; *United States v. Yarbrough* (4:14-cr-00526), District Court, S.D. Texas which is where Yarbrough threatened federal Judge David Hittner and was sentenced to 21 months in prison and 3 years supervised release for that threat. As such, Judge Bray was fully aware of the seriousness and criminal implications of Hopkins false statements on that fateful day. The above snippet from the transcript along with the Burkes affidavits confirm that when he shouted at John Burke "Are YOU a CRIMINAL?".[3]

Count IV

The complaint included Judge Bray's M&R which includes;

"Even if the Burkes had shown that Defendants are "debt collectors," they have not alleged sufficient facts to show that Defendants engaged in prohibited conduct under either statute. Both statutes prohibit debt collection methods that threaten, harass, abuse, or deceive a debtor. Examples of prohibited methods include: sending a letter to a debtor that looks like it is from a government agency, using obscene or profane

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Note: We have not included the full list, which you will see in the PDF referenced above. In short order, if you are a lawyer and you spot misconduct, you have a duty to report and/or investigate.

[3] See Judge confirming it is normal practice for the federal court to apply States Rules in federal court cases re attorney misconduct charges, in this case, Michigan:

"Ethical rules involving attorneys practicing in the federal courts are ultimately questions of federal law. The federal courts, however, are entitled to look to the state rules of professional conduct for guidance.

In re Snyder,472 U.S. 634, 645 n. 6 (1985); see *National Union Fire Ins. Co. v. Pittsburgh, Pa. v. Alticor, Inc*.,466 F.3d 456, 457-58 (6th Cir. 2006), vacated in part on other grounds,472 F.3d 436 (6th Cir. 2007) (applying Michigan Rules of Professional Conduct). The district judges of this court have determined that the ethical obligations of attorneys practicing before it will generally be governed by Michigan Rules of Professional Responsibility. See W.D. MICH. LCIVR 83.1(j); City of *Kalamazoo v. Michigan Disposal Serv. Corp*.,125 F. Supp. 2d 219, 231 (W.D. Mich. 2000)."

El Camino Resources, Ltd. v. Huntington National Bank, 623 F. Supp. 2d 863, 876 (W.D. Mich. 2007)

language when contacting a debtor, and threatening a debtor with violence or illegal action. See 15 U.S.C. §§ 1692d-1692j; Tex. Fin. Code Ann.§§ 392.301-392.307 (West).

Hopkins 'live' actions in Judge Bray's courtroom that day alone is actionable per the above and shows the court the very "low bar" of this illegal debt collector, who is willing break the law and risk his State Bar license to win the case at any and all cost.

Count V
At the top of the Burkes Objection to M&R;

THE BURKES' ATTACHING AFFIDAVITS: The Burkes attach individual affidavits pointing out the MJ shouted at John Burke the following question;

"Are you a CRIMINAL?"

John Burke, calmly replied;

"Do I look like a CRIMINAL, your honor?".

No Bar or Court of Law can defend Hopkins nor say Judge Bray didn't take the false allegations seriously. It's slander in civil language, its criminal in law. And disciplinary proceedings are quasi-criminal. The Burkes complaint(s) against Hopkins are valid.

Count VI
In our email thread with Ms. Reynolds we explained our argument and citing;

"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).[4]

[4] Looking outwith Texas for comparison, the Burkes cite;

A proceeding for the discipline of an attorney instituted by the Practice of Law Committee of the Minnesota State Bar Association is considered in a different light from an ordinary action; it is a proceeding "sui generis"

Relying holistically on our response herein, we are convinced beyond a reasonable doubt, Mr. Hsu's rejection is error.

The Rules

See footnotes.[5] Note: Nowhere could we find a local rule that says a rogue lawyer can falsely accuse opposing counsel (pro se's) of wanting certain judges to be shot as being acceptable conduct becoming of the bar. Furthermore, we've included S.D. Tex LR, TRDPC and ABA Model Rules of Professional Conduct based on *In re Dresser Industries, Inc*., 972 F.2d 540 (5th Cir. 1992)

Summary

The Burkes truly believe this delayed letter must have been issued by mistake.

Comm'n for Lawyer Discipline v Daniel Rizzo (May 2020) is an example of Texas perhaps trying to correct grave error and a travesty of justice in the Alfred Dewayne Brown case.

Fortunately, via this timely intervention, the Burkes case can be quickly rectified. BODA should correct this error and injustice by returning the Burkes complaint(s) to the Commission as a formal complaint.

[a Latin phrase that means "of its/his/her/their own kind, in a class by itself", therefore "unique" – Wikipedia].

It is not the trial of an action or suit between adverse parties but an investigation or inquiry by the court into the conduct of one of its officers. **– In this complaint, it unequivocally presents NEW [MIS]CONDUCT by HOPKINS - again rebuffing Mr. Hsu.**

The question before the court is the fitness of the attorney to continue as a member of the legal profession, and the test is whether the conduct of the attorney comes up to the standards set by the canons of ethics.

***Held**, under the record here, the findings of the referee justify a disbarment of the respondent.*

In re Application for Discipline of Peterson, 260 Minn. 339 (Minn. 1961)

[5] See Appendix A

We look forward to your earliest expedited response. Thanking you in advance for your continued assistance.

Stay safe. Happy Independence weekend to you and yours.

Respectfully

s/ Joanna & John Burke

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"We're blessed with the opportunity to stand for something—for liberty and freedom and fairness. And these are things worth fighting for, worth devoting our lives to." – Ronald Reagan

Appendix A

In order to assist, the Burkes now provide their own [pro se level of evidence/rules/citations/supporting documents] for your perusal and consideration:

Hopkins has already admitted to his lies on that day and there were several witnesses who can confirm this, including Magistrate Judge Peter Bray.

We are more than confident when Hopkins is questioned, he would also confirm that the Burkes and/or **Hopkins never made the same statement in the 'prior grievance'** which Mr. Hsu relied upon to dismiss the complaint(s) as an inquiry.

The above facts are the substance of the Burkes complaint(s) against Hopkins and clearly show bad faith[1], actual malice and reckless disregard as to the truth or falsity of his statements.[1]

The Texas Disciplinary Rules of Professional Conduct

BODA should not need any assistance here. Hopkins has breached several Rules. The Burkes would point to the following categories, wherein there are Rule violations, namely; Client-Lawyer Relationship, Advocate, Non-Client Relationships, Law Firm and Associations and Maintaining the Integrity of the Profession.

The ABA Standards

5.1 FAILURE TO MAINTAIN PERSONAL INTEGRITY
Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, or in cases with conduct involving dishonesty, fraud, deceit, or misrepresentation:

5.11 Disbarment is generally appropriate when:
(a) a lawyer engages in serious criminal conduct a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses; or
(b) a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

LOCAL RULES OF THE United States District Court FOR THE SOUTHERN DISTRICT OF TEXAS

S.D. Tex. Local Rules, Appendix C, N. "Avoid disparaging remarks and acrimony toward counsel, and discourage ill will between the litigants. Counsel must abstain from unnecessary references to opposing counsel, especially peculiarities."

S.D. Tex. Local Rules, Appendix D, Guidelines for Professional Conduct, A-K.

EXHIBIT OCWEN

No. 19-20267

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

JOANNA BURKE; JOHN BURKE,

Plaintiffs-Appellants,

v.

OCWEN LOAN SERVICING, L.L.C.,

Defendant-Appellee.

On Appeal from the United States District Court
For the Southern District of Texas, Houston Division;
USDC No. 4:18-CV-4544

THIRD OPPOSED JOINT MOTION TO STAY PROCEEDINGS AND MOTION TO HOLD CASE IN ABEYANCE

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Pro Se Appellants

Appellants, Joanna Burke and John Burke ("Burkes"), now file a Third Motion to Stay Proceedings[1] for 4 [four] months or until the sister circuit, the Court of Appeals for the Eleventh Circuit releases their Opinion in the Burkes Appeal, (case #19-13015) and related judicial matters. (See footnote 4 for reasoning of time).

In support thereof, would respectfully show the court as follows:

US Supreme Court: On Monday, June 29, 2020, the U.S. Supreme Court opinion was released finding the CFPB is unconstitutional[2]. That said, the overall result is to sever, ensuring the marauding anti-consumer CFPB and the laws therein remain unscathed; SEILA LAW LLC V. CONSUMER PROTECTION BUREAU (Case #19-7).

Court of Appeals for the Eleventh Circuit:

[1] See *Consumer Fin. Prot. Bureau v. Source for Pub. Data, L.P.*, 903 F.3d 456 (5th Cir. 2018) "Accordingly, the district court ordered Public Data to respond to the CID, but this court granted a stay pending the resolution of this appeal."

And; *Burgess v. Fed. Deposit Ins. Corp.*, 871 F.3d 297 (5th Cir. 2017) "For the following reasons, we grant Burgess's motion and stay the FDIC's order pending resolution of the merits of the petition or further order of this court."

And; *Natl Federation of Indep Bus v. R. Acosta, Secretary LABR* (17-10054) COURT ORDER granting motion to stay. Document 504035357, Jun 15, 2017.

[2] Ratifying Judge Jerry Smith's dissent and in opposition to Judges Patrick Higginbotham and Stephen Higginson as being a "power" decision. "This case is absolutely about power. The majority declares open season on the en banc court." *Consumer Fin. Prot. Bureau v. All Am. Check Cashing, Inc.*, No. 18-60302, at *19 (5th Cir. Mar. 3, 2020)

Perjury, withholding evidence and more: During the Burkes appeal at the 11th Cir., they uncovered that the lower court - S.D. Fl court, Judge Kenneth Marra presiding – committed perjury[3] when he denied the Burkes intervention. The eye-popping and irrefutable *facts* are detailed on the Burkes appeal docket at the 11th Circuit, but a summary is warranted and provided below.

Judicial Complaint[4] Against Judge Marra: Judge Marra knowingly committed perjury, which equates to withholding evidence from the Burkes and denying rightful intervention when lawyers for a couple, the Greens, in Bankruptcy court (who reside in Humble, practically a stones-throw from the Burkes) were busy requesting documentation[5] from the same Florida case (*CFPB v. Ocwen et al*).

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[3] **Perjury** resulting in impeachment and removal from office;

1988; *Alcee Hastings* of the United States District Court for the *Southern District of Florida*. Charges: **Perjury** and conspiring to solicit a bribe. **Convicted**: By the Senate and removed from office on October 20, 1989.

1989; *Walter Nixon* of the United States District Court for the *Southern District of Mississippi*. Charges: **Perjury** before a federal grand jury. **Convicted**: By the Senate and removed from office on November 3, 1989.

2010; *Thomas Porteous* of the United States District Court for *the Eastern District of Louisiana*. Charges: Accepting bribes and making false statements under penalty of **perjury**. **Convicted**: By the Senate and removed from office on December 8, 2010.

[4] The Burkes submitted the complaint via ECF/Pacer to the 11th Circuit and have sent a reminder. To date, no acknowledgment has been received. Below there is a table extracted from the Breyer Report which shows that the ave. time to respond to a judicial complaint at the 11th Circuit is 109 days. Hence the Burkes reasoning for the 120 day stay request.

[5] Case 18-03351, Document 9, Filed in TXSB on 01/01/19.

During this time, the Burkes were unaware of the Greens case. Ocwen aggressively tried to quash the request from S.D. Tex. Bankruptcy Judge Isgur, but he denied Ocwen's attempts.[6] They appealed to the district and Judge Atlas affirmed[7] Isgur's order and denied Ocwen's attempts to demand an interlocutory appeal to this court.[8]

The Burkes intervened in the Florida case to obtain evidence for the lower court case in S.D. Texas court, as well as seeking financial restitution by becoming a plaintiff-intervenor.

In Texas, the Burkes case(s) against Ocwen [and Hopkins] were not randomly assigned. No, the Burkes were to come before Judge David Hittner once again and after a disputed *snap removal*[9] from State to Federal Court. This was executed by

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[6] See; Case 18-03351, Document 32, Filed in TXSB on 02/27/19.

[7] *Green v. Ocwen Loan Servicing, LLC (In re Green)*, Bankruptcy No. 12-38016 (13) (S.D. Tex. Aug. 26, 2019)

[8] Note: The documents recovered from the Fl. Case by the Greens are under a sealed order.

[9] "Although this sort of gamesmanship is clearly contrary to the spirit and the intent of the federal removal statute, some courts have ruled that such snap removals are permitted by a plain reading of the text. It is important, therefore, that Congress clarify the statute to put an end to this dubious maneuver.

Not only do snap removals tilt the legal playing field in favor of large corporations, they also drain judicial resources, impose needless costs on the parties, and delay justice for plaintiffs seeking to hold wrongdoers accountable for the injuries they cause.

the rogue and unlicensed, unbonded illegal debt collection Texas lawyers and house jackers for the banks, nonbanks Hopkins Law, PLLC, an alter ego of BDF Law Group[10]. The Burkes case was dishonestly dismissed by Hittner and now on appeal.

This evasion of the well-established forum defendant rule also threatens state sovereignty and violates federalism principles by denying state courts the ability to shape state law. State courts should be the final arbiters of state law, but snap removals are increasingly putting new state-law questions into federal court.

Snap removals also increase the complexity, duration, and cost of civil litigation, placing further burdens on plaintiffs, who tend to have fewer resources than comparatively well-funded corporate defendants.

This issue may seem obscure, but it is a growing problem, and it has a very real impact on the lives of people seeking redress in their state courts. In an era where the courthouse doors are increasingly closed to ordinary Americans, snap removal can seem like just another turn of the deadbolt."

- House Committee on the Judiciary, Chairman Jerrold Nadler, Nov. 14, 2019

[10]Hittner allowed the forbidden snap removal and this court has now duly obliged, approving snap removal in a published opinion. See TEX. BRINE CO. V. AM. ARBITRATION ASS'N, No. 18-31184 (5th Cir. Apr. 7, 2020). Two of the panel judges in this case sat on the Brine case and one authored it.

This, despite (i) Congress and the Judiciary Committee rejecting this conniving behavior (as per above footnote) and;

(ii) as BDF Hopkins long time attorney CRYSTAL 'GEE' GIBSON, (nee Roach)* was recently admonished by brave senior S.D. Tex. Judge Hilda Tagle for similar actions of deception and unlawfulness.

"Defendants' Response to the Court's order [Doc. 41] was wholly inadequate and fails to exemplify the more studied approach to the practice of law that counsel demands of herself, and what is expected from her law firm and the judiciary.

As an officer of the Court, counsel has a duty to only make truthful, diligent representations to the Court. See Fed. R. Civ. P. 11.

Judicial Complaint Against Judge Hittner: As this court is aware, the Burkes filed a complaint way back on March 27, 2020, via the courts' mandated pro_se@ca5.uscourts.gov email address, due to COVID-19. However, two months went by and nothing was received from the court regarding the Burkes complaint and yet historical court data for all the circuits shows the 5th Circuit has an average 13-day disposal rate.

Table 6. Time to Disposition by Chief Judge

	Complaints (with no petitions to council)	Days to resolve 50% of complaints	Percent consuming more than 60 days
All circuits	2,034	45	38%
1st	38	74	60%
2d	202	150	98%
3d	96	25	12%
4th	170	24	3%
5th	196	13	2%
6th	181	45	35%
7th	116	8	6%
8th	206	62	54%
9th	390	48	19%
10th	90	29	10%
11th	283	109	78%
D.C.	55	26	9%
Fed.	5	56	60%
CIT	2	164	100%
CFC	6	226	83%

Implementation of the Judicial Conduct and Disability Act of 1980, A Report to the Chief Justice, Sept. 2006 ("The Breyer Report").

That makes an attorney's good faith not a defense to sanctions under Rule 11.

Gibson violated Rule 11 with the removal of the case and did not live up to her obligations as an officer of the Court. See Fed. R. Civ. P. 11(b)(1)."

- *Schmitgen et al v. Servis One, Inc. et al* (S.D. Tex., Corpus Christi, 16 Jan, 2020)

*Mark and Shelley Hopkins defended Roach (Gibson) in a PERSONAL REAL ESTATE MATTER. They lost the judgment re attorney fees on appeal to the Fifth District, Dallas (affirmed, Feb. 11, 2019).

On June 8th, 2020, Ms. Saltzman made contact with the Burkes and she advised of a 'technical difficulty' with email during the short window the Burkes sent the complaint via email in March. Ms Saltzman has been extremely diligent and helpful. At the time of this filing, the complaint against Hittner remains pending before this court. As a result of the 'lost' complaint, this has interfered with the timeline of this case. It is now merging with a decision in this case.

In summation, the judicial complaint could have a major impact on any ruling by the 3-panel in this case and the Burkes pending [submission] complaint against Magistrate Judge Peter Bray.

State Bar Complaints Against Ocwen's Fl. Lawyers at Goodwin: At this time, the Burkes have focused on Goodwin Procter, LLP, one of the named law firms representing Ocwen in the civil action by the Bureau in Fl. Again, the appeal docket at the 11th Circuit has a full and detailed record of current events.

So far, the Burkes have filed ethics complaints against some of the registered Goodwin lawyers[11] on the Fl. Case at their respective State Bars. Unexpectedly, that has proven quite a challenge.

[11] The 'CIP' list is lengthy as Goodwin Procter, LLP, is known to stack counsel onto cases to MAXIMIZE BILLING AND FEE INCOME.

Attorney's Hefferon and Sheldon were first, as they had a lead role in not only the Fl. Action but related cases for Bank of America in Georgia and Illinois, which the Burkes refer to as the "Hot Potato" cases. These two complaints were submitted to the Virginia State Bar by the Burkes. In record time, they were dismissed at the inquiry stage. The Burkes have disputed their dismissals. A copy of the Burkes response, dated June 29, 2020, is attached as EXHIBIT VSB.

Attorney Rose-Smith (or Rose Smith) was next on the complaint list and is a member of the D.C. Bar. Rose-Smith signs most of the filings in the Fl. Lower court cases and appeal. She is also counsel on the hot potato cases. Her complaint was filed on Monday, June 15, 2020 and the Burkes have received formal acknowledgement of their complaint on June 24th. At the time of this filing, no decision has been rendered.The Bar says a *preliminary review* can take up to 45 days.

Attorney Catalina Azuero is registered with the Fl. Bar. Her complaint was filed on Thursday, June 18, 2020, however despite reminders the Bar has refused to communicate with the Burkes. The airwaves remain silent.

Judge Jill A. Pryor: The Burkes requested the financial disclosure reports for the judges at the 11th Circuit. Based on Pryor's one report, (the other being tardy), the Burkes filed a Motion to Disqualify. This would be denied. A few weeks later,

Pryor sealed the Burkes motion and the Burkes responded with a motion to unseal which was denied. The Burkes filed a second Motion to Disqualify and this is pending before the 11th Circuit. However, in the interim period, the Burkes filed a Motion to Clarify which was answered by Judge Liz Branch. Branch is not part of the assigned 3-Panel in this case and the Burkes have requested clarification that Pryor has recused and has been replaced by Branch. This answer is also pending.

The Universal Effect: The Burkes went to Florida as inexperienced 'intervenors' as a result of an erroneous and mendacious judgment of foreclosure by this court at the hands of Judge Catharina Haynes and indorsed by the two other panel judges (#18-20026).[12]

In 2019, the Burkes uncovered the conflict of interest between Haynes, Thompson & Knight[13] and the 'broken chains' case involving Petrobras. The lower

[12] Haynes was also on the Burkes first appeal panel (#15-20201).

[13] Where she worked and her husband, Craig Haynes, is a partner to this day. One of their main clients is Petrobras and Thompson & Knight regularly laterally hire Petrobras executives.

Matter of Billedeaux, 972 F.2d 104, 107 (5th Cir. 1992) ("Under the facts of this case the question becomes, would the average person be reasonable in questioning the impartiality of a Trial Judge in a personal injury action where the judges' spouse was a partner in a major law firm that represented the corporate defendant in other litigation matters, but not in the case before the judge. … it is my perception that the average person would doubt the ability of a judge and spouse to maintain a "Chinese wall" between their professional responsibilities. … I think that question is reasonable; and the mandatory language of § 455 requires recusal.")

court judges in both the *Petrobras* and *Burkes* civil actions were former Magistrate Judge Stephen Wm. Smith and Judge David Hittner.

Judge Catharina Haynes successfully forced herself onto 2 separate appeal panels in 2018. One for financial greed and favoritism[14] to Petrobras, a major client of her Husband, Craig Haynes, who lost at S.D. Tex. District Court before Hittner/Smith. The other for personal, pervasive bias and antagonism towards the Burkes, who had defeated Deutsche Bank twice at S.D. Texas before Hittner/Smith.

Haynes was on the first appeal panel in *Deutsche Bank Nat'l Tr. Co. v. Burke*, 655 F. App'x 251 (5th Cir. 2016) and forced herself onto *Deutsche II's*[15] panel to ensure her reversal in favor of the Bank in *Deutsche I* would stand.

Between *Deutsche I* and *Deutsche II* the Burkes were represented at S.D. by revered Texas Attorney Constance Pfeiffer, a Partner at Beck Redden, who agreed with S.D. Judge Smith that the 5th Cir. reversal was in error.[16]

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[14] **Favoritism** that led to impeachment and removal from office:

1936; *Halsted Lockwood Ritter* of the United States District Court for the *Southern District of Florida*. Charges: **Favoritism** in the appointment of bankruptcy receivers and practicing law while sitting as a judge. **Convicted**: By the Senate and removed from office on April 17, 1936.

[15] *Deutsche Bank Nat'l Tr. Co. v. Burke*, 902 F.3d 548 (5th Cir. 2018), and which was upgraded from unpublished to published 5 days later.

[16] Pfeiffer also made it clear, the Fifth Circuit's opinion in Deutsche II (18-20026), was wrong in law and to interpret centuries of precedent pertaining to property law the way in which this court did in the Burkes' case with Deutsche Bank was a clear abuse of power.

For *Deutsche II*, the Burkes approached Steve Berman of Hagens Berman. He has just been named 2020 TITAN OF THE PLAINTIFFS BAR (in pursuit of justice). Berman accepted the Burkes' appeal because property and case law was supportive of the Burkes' judgment by honest Judge Smith. Hagens' lawyers were waiting for approval of oral argument and instead were sideswiped by a rapid opinion in favor of *Deutsche Bank*. They were completely flabbergasted. It was an injustice to the Burkes as opposing counsel had brought no sustainable arguments to the table which could possibly warrant reversal, the Hagens' lawyers stated to the Burkes. The 5th Circuit had to affirm the judgment of the lower court. However, as now well documented, the *Haynes II* panel reversed and rendered in favor of the bank.

The record confirms a reverse and render judgment of foreclosure against the *Burkes* and *Petrobras* miraculously came out with a reverse and remand for trial.[17]

Ms. Pfeiffer: " . . . And I do want to make an important clarification, which is we don't necessarily agree that the Fifth Circuit was correct in reversing this Court's judgment. . . . And I will add –and Ms. Hassan Ali might want to comment on this as well – I do think the Court's hypothetical and understanding of centuries of common law is correct, and it may just be that MERS is unique." – *Deutsche Bank v. Burke*, Transcript, Doc. 126, p. 34/35. Case 4:11-cv-01658, Filed in TXSD on 02/06/17.

[17] The *Petrobras* case has created another storm. S.D. Judge Hittner wants to proceed to trial in July 2020 during the middle of an international pandemic. *Cadenas* are a European company, they are HQ'd in Spain. They appealed via mandamus to this court, which was denied on June 17, 2020. The 3-panel who issued the ruling mirrors the panel assigned in this case, namely Judges Higginbotham, Southwick and Willett.

However, Judge Haynes[18] procured the judgments by arbitrary and oppressive [or capricious] conduct, abuse of power, improper business relationships with litigants, favoritism, antagonism, and fraud, all aided and abetted by fellow judges and colleagues in this circuit. It is a very serious issue and a thorny one for the Burkes to raise. It has been stated that ***"the judiciary could not function as a viable institution in a democracy if the public lost faith in the impartiality and integrity of its judges."***[19] The Burkes have completely lost faith – based on their own experiences - and also relying upon independent legal experts, qualified in law in the areas relevant to the Burkes case(s).

The 2015 judgment in favor of the Burkes by the lower court should have been affirmed on appeal. Indeed, the arrival and appeal by Hopkins was prohibited by his firms failure to hold a surety bond in the State of Texas and fraudulent arguments

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[18] What's the Commonality Between Judge Catharina Haynes (5th Cir.) and former Judge Robert Wodrow Archibald (3rd Cir.)?

Answer: Greed, Favoritism, Antagonism and Personal Bias (Pervasive).

After Wrisley Brown investigated charges that Judge Archbald bought coal lands at cheap prices for his personal benefit ... the House Judiciary Committee recommended to the United States House of Representatives that he be impeached. Archbald was convicted on Articles I, III, IV, V and XIII and was accordingly removed from office.

[19] Seth E. Bloom, Judicial Bias and Financial Interest as Grounds for Disqualification of Federal Judges, 35 Case W. Res. L. Rev. 662 (1984 - 1985).

raised in both the *Ocwen* appeal and the *Hopkins* appeal [which will be briefed in due course].

Returning to Florida. As stated above, the Burkes went to the Sunshine State to obtain information, a seat with the plaintiffs with a goal of restitution and helping other homeowners in the process. They were deceivingly rejected as intervenors by Judge Ken Marra at the S.D. Fl. District Court and the Burkes timely appealed.

It was during the appeal the Burkes uncovered further judicial chicanery which also involved all the other parties in the Florida proceedings. The detail you can obtain from the judicial complaint against Judge Marra, which is enclosed as EXHIBIT MARRA and the Goodwin lawyer complaints.

In summation, Judge Marra illegally denied the Burkes access to information which could help the Burkes in their lower court case(s) in S.D. Texas. A complaint is pending as is the decision in the Burkes appeal at the 11th Circuit. Clearly, this is a constitutional violation which will demand correction, assuming the Burkes prevail and based on the compelling evidence to secure intervention and removal of Judge Marra from the proceedings.

The judges nor the Burkes are allowed to speculate. Judge Marra and Judges Higginbotham and Higginson both tried to speculate in the *Selia Law* case. For Marra, in the Fl. case.

For Higginbotham and Higginson, in the *All American Check Cashing* decision. Judge Jerry Smith refers to their rash decision in *All American*, as a 'power' move. The Burkes interpret the textual meaning of 'power' as being; *abuse of power*, *pervasive [personal] bias and issuing judgments and orders by arbitrary and oppressive [or capricious] conduct*. Judge Smith, in his extensive and detailed dissent, cites to the historical record for Higginbotham [and Higginson], who volunteered to renege and contradict his own prior case opinions, in violation of this circuits' own standards.[20] As speculation is not allowed, the Burkes motion should be granted.

Conclusion: Until such times as the pending filings and opinions are issued, the Burkes now request this court grants an expedited Motion to Stay Proceedings until the pending matters described above are ruled upon, *OR* in the alternative, stay proceedings for a period of no less than *four* months. The Motion to Stay Proceedings and Motion to Hold Case in Abeyance is not brought for the purpose of

[20] For example, in Judge Jerry Smith's dissent; "Collins [authored by Judge Willett, with a classic line that the Burkes apply to the Judiciary; "Congress created FHFA amid a dire financial calamity, but expedience does not license **omnipotence**."] winds up in the dustbin because two judges say it should. At one time, those judges thought it beyond the pale "to rely on strength in numbers rather than sound legal principles in order to reach their desired result in [a] specific case." Now, they suddenly discover that stare decisis is for suckers."

Consumer Fin. Prot. Bureau v. All Am. Check Cashing, Inc., No. 18-60302, at *19 (5th Cir. Mar. 3, 2020).

delay and therefore Appellants respectfully requests this court grants the joint Motion.

Respectfully submitted,

DATED: July 5th, 2020

JOANNA BURKE

By *s/ Joanna Burke*
JOANNA BURKE

JOHN BURKE

By *s/ John Burke*
JOHN BURKE

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Pro Se for Plaintiffs-Appellants

CERTIFICATE OF CONFERENCE

We hereby certify that on July 5th, 2020, we did not confer with Appellants Mark D. Hopkins and Shelley L. Hopkins of Hopkins Law, PLLC, as this was prepared and filed on Independence Day (out of office hours). We assume the joint MOTION is OPPOSED.

CERTIFICATE OF SERVICE

We hereby certify that, on July 5th, 2020, a true and correct copy of the foregoing Motion for Extension of Time was served via the Court's EM/ECF system on the following counsel of record for Appellees:

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Shelley L. Hopkins
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Austin, Texas 78738
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s/ Joanna Burke
JOANNA BURKE

s/ John Burke
JOHN BURKE

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 3,527 words according to Microsoft Word's word count, excluding the parts of the motion exempted by Fed. R. App. P. 32(f).

s/ Joanna Burke
JOANNA BURKE

s/ John Burke
JOHN BURKE

EXHIBIT DCBAR

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 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 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 themself 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
alsation123@gmail.com

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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

Financial Industry Litigation
Fintech

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

EXHIBIT FLBAR

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 .

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. 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 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. 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 25th, 2020) to fend for themself 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. 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

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
46 Kingwood Greens Dr.,
Kingwood, TX, 77339

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

- END -

EXHIBIT MARRA

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);

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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

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

46 Kingwood Greens Dr.,
Kingwood, TX, 77339

- END -

EXHIBIT VSB

Joanna Burke and John Burke
46 Kingwood Greens Dr.,
Kingwood, TX, 77339
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Fax: (866) 705-5076
Email; kajongwe@gmail.com

June 29, 2020

Virginia State Bar
Attn: Karen A. Gould, COO
1111 East Main Street Suite 700
Richmond, Virginia 23219-0026

cc.

United States Senate Committee
On Banking, Housing and Urban Affairs
534 Dirksen Senate Office Building
Washington, D.C. 20510

By Fax: (202) 224-5137

Dear Ms. Gould

Re: Complaint about Matthew Stephen Sheldon and Thomas Michael Hefferon

We refer to the Virginia State Bar's ("VSB's") response letter. This was received at 3.57 pm CST today, Monday 29th June, 2020 via email.

Despite the author's attempts to silence these elderly citizens of the United States, we reject this warning as intimidation. The condescending and insensitive tone of this letter is ominously similar to that of the now former Chief Judge for the Central District of California, as discussed in the article published in the LA Times (June 28, 2020). We respectfully ask you cease and desist from intimidation when penning future letter(s).

Just as alarming, this response does not even attempt to address the questions by the Burkes nor provide confirmation or assurance that the VSB even looked at the Fl.

Docket or case(s). The letter indicates quite the opposite if you review our facts as discussed herein.

In order to assist the VSB, we now attach a copy of the 'open letter' we sent to the Senate Committee on Friday[1] which summarizes our current status(es).

Even if the reply was legally accurate, which we dispute, the VSB's answer could not possibly be followed due the extreme level of premeditated collusion and corruption in the stated case(s). As you will see, our complaint(s) include not only lawyers, but several judges.

The first issue is the lower court judge in the *CFPB v Ocwen* case in S.D. Fl., Judge Kenneth Marra, has a complaint filed against him. Secondly, we no longer have standing in the lower court. Our attempts to intervene were denied.

Moving onto the appeal at the Court of appeals for the Eleventh Circuit. We would be unable to follow your instructions here as well. First, we are still waiting for a decision to recuse Judge Jill A. Pryor (second motion). In the interim, a new judge, namely Elizabeth "Liz" Branch, has issued an order in our case which convincingly shows she is also impartial and bias. This judge is/was not part of our 3-panel and hence we've sought clarification if she is replacing Judge Pryor (A review of the record will provide you all the details). As it stands, we do not have an impartial panel nor quorum to decide our appeal.

In relation to the two Goodwin lawyers, Tom Hefferon and Matt Sheldon, they are involved in two related federal court cases in Illinois and Georgia, as per the complaint filed by us. We are not parties to these proceedings and lack standing to ask for sanctions.

That allows us to address further inaccuracies in your latest response, namely, our legal entitlement to file a complaint during a live case or controversy. We rely upon (i) the issues as described above (ii) the unanswered questions from our first reply and (iii) *In*

[1] Conveniently, after radio silence from the VSB for nearly 2 weeks, this 'reply' is received after our open letter was submitted on Friday, 26th June, 2020.

re Moseley, 273 Va. 688 (Va. 2007), which is one of the cited cases in our formal complaint(s) against Tom Hefferon and Matt Sheldon, it clearly confirms our arguments that courts have their own inherent powers, which are separate from the Bar. In (ii) we ask the VSB to cite the laws/statutes which prove otherwise, as you claim we cannot file our own complaint against unethical lawyers unless the court sanctions or disciplines or refers the lawyers to the Bar, which we dispute as drivel.[2]

Summary

We sincerely hope that the VSB will provide a timely and courteous response to our letter, addressing and answering the specific and detailed legal questions raised.

[2] For example, we assume pro se, as own counsel, are under "other lawyers" or perhaps "concerned citizens". Either way, it is clear parties or non-parties can file a complaint **at any time** - see https://iclr.net/wp-content/uploads/2016/04/VirginiaDisciplinaryOverview.pdf , in part;

WHO FILES BAR COMPLAINTS

• **The client:** Most bar complaints are filed by the lawyer's client.
• **The concerned relative**: Parents, Spouses, and friends frequently file complaints on behalf of their incarcerated child, spouse, or friend.
• **The Judge:** From time to time, the bar receives complaints by judges against the lawyers who practice before them.
• **Self-report:** Rule 8.3(e) of the Rules of Professional Conduct require lawyers to inform the bar if the lawyer has been disciplined by a state or federal disciplinary authority, agency or court in any state, U.S. territory, or the District of Columbia for violations of professional conduct in that jurisdiction. The lawyer must report any felony convictions and convictions for crimes involving theft, fraud, extortion, bribery or perjury, or attempts, solicitation, or conspiracy to commit such crimes. A recent amendment to the Rule requires the report to be in writing to the Clerk of the Disciplinary System at the Virginia State Bar within 60 days following the entry of any final order or judgment of conviction or discipline.
• **The concerned citizen:** Occasionally, citizens will forward newspaper articles concerning the publicized conduct of lawyers. These Complainants have no personal knowledge of misconduct, but feel the need to voice their concern.
• **Other lawyers:** Rule 8.3(a) of the Rules requires lawyers having reliable information that another lawyer violated an ethics rule that raises a substantial question as to the lawyer's honesty, trustworthiness, or fitness to practice law have a duty to report the misconduct to the bar.
• **The BAR:** in the course of investigating misconduct, the BAR investigator or Assistant Bar Counsel may discover conduct by the lawyer or some other lawyer that violates the Rules of Professional Conduct.

If you have any comments, questions or concerns related to the above or our filings, please contact us in writing, via email or fax. The contact information is shown below.

Stay Safe. Respectfully

s/ Joanna & John Burke

Joanna Burke & John Burke
46 Kingwood Greens Dr.,
Kingwood, TX, 77339
Tel: (281) 812-9591
Fax: (866) 705-5076
Email; kajongwe@gmail.com

"The great object of my fear is the Federal Judiciary. That body, like gravity, ever acting with noiseless foot and unalarming advance, gaining ground step by step and holding what it gains, is engulfing insidiously the special governments into the jaws of that which feeds them."

– Thomas Jefferson *(Letter to Judge Spencer Roane, 1821)*

Virginia State Bar

1111 East Main Street Suite 700
Richmond, Virginia 23219-0026
Telephone: (804) 775-0500

Fax: (804) 775-0501 TDD: (804) 775-0502

June 29, 2020

Joanna Burke
46 Kingwood Greens Dr.
Kingwood, TX 77339

via email only: kajongwe@gmail.com

Re: Complaint about Matthew Stephen Sheldon and Thomas Michael Hefferon

Dear Mrs. Burke:

Pursuant to your latest communication, we reviewed our decision regarding your complaint. We see no reason to change the prior decision. Therefore, the Virginia State Bar will not take any further action on your complaint.

You complain about the attorneys' statements and actions on behalf of their client, Ocwen, in a court case filed by the Consumer Financial Protection Bureau (CFPB) in which you sought to intervene as a party. As Mr. Bodie previously informed you, the Virginia State Bar does not substitute for a court in such ongoing matters. If you dispute the statements or actions of an attorney in a pending matter, you may file your own pleadings stating the case according to your legal theory, and the judge will decide which side's theory of the case to adopt. If you believe that a lawyers' statements and actions have exceeded what is allowed by a zealous advocate, you may raise those issues with the presiding court and seek sanctions or other appropriate remedies. If the court does issue such sanctions or remedies, you may share that information with us for our further review.

It seems that you are not represented by an attorney. As an attorney would likely be very helpful to you in navigating the complex litigation you reference, we urge you to contact a lawyer of your choice. If you do not know a lawyer to consult, you should seek out a lawyer referral service in the state in which your case is pending. Virginia has such a referral service. If you ever need a Virginia lawyer, you may find a lawyer through the Virginia Lawyer Referral Service (VLRS). The VLRS will collect a $35.00 fee from you at the time of the referral. For information about VLRS, visit its website at www.VLRS.net or call (800) 552-7977 (toll-free) and (804) 775-0808.

The VSB has now re-reviewed your complaint and determined that there is no basis on which we can proceed. The VSB does not to respond to multiple requests for reviews of a complaint.

We appreciate your concerns; however, your complaint remains closed.

Very truly yours,

Jane A. Fletcher
Deputy Intake Counsel

JAF/ar

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 25th, 2020) to fend for themself 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).

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…"

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

46 Kingwood Greens Dr.,

Kingwood, TX, 77339

GOODWIN

THOMAS M. HEFFERON

Partner
thefferon@goodwinlaw.com
Washington, DC +1 202 346 4029

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

Lawyer Complaint (Virginia Bar) : Matthew S. Sheldon

This complaint is against an attorney registered with the State Bar of Virginia. The lawyers' name is Matthew S. Sheldon 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. Sheldon 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. Sheldon is counsel. It is Mr. Sheldon who is in front of Judge Bucklo (N.D. Ill.) discussing what the Burkes believe to be, as violations of **Rules 1.7, Conflict of Interest; 1.9** and **1.16** and **1.10** with respect to Mr. Sheldon. 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. Matthew Sheldon 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. Sheldon's filings and statements to be false and untruthful. Mr. Sheldon'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. Sheldon 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. Sheldon, represented the Bank in the Illinois case and he 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.

Once Mr. Sheldon left that hearing Goodwin promptly discarded the new witnesses (Doc. 83, March 25th, 2020) to fend for themself 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).

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 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…"

Mr. Sheldon's Actions are Below the Bar

Mr. Sheldon'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. Sheldon violated the terms of Rule 5.1(b).

In the Cobb cases, the fact Mr. Sheldon was directly in front of Judge Bucklo and attempted 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. Matthew Sheldon'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. Sheldon 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. Sheldon'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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GOODWIN

MATTHEW S. SHELDON

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Matt Sheldon is a partner in Goodwin's Financial Industry and Consumer Financial Services Litigation practices. His practice centers on the representation of financial services institutions in government investigations and litigation matters, with a focus on class action litigation. Mr. Sheldon counsels and represents clients regarding an array of financial services and products, including mortgages, credit cards, insurance and reinsurance, and ERISA-covered retirement plans.

In the litigation context, Mr. Sheldon’s practice focuses on defending financial service providers facing class action lawsuits in federal and state courts across the nation. His broad experience includes successfully defending a variety of clients in cases challenging fair lending compliance, financial product sales and marketing practices, reinsurance structures, and ERISA compliance.

Mr. Sheldon regularly represents financial institutions facing regulatory proceedings and government investigations by federal and state administrative agencies, including the Consumer Financial Protection Bureau (CFPB), the Department of Housing and Urban Development, the Federal Deposit Insurance Corporation and state attorneys general. He also provides fair lending and regulatory compliance advice, including representing clients on matters relating to federal banking and consumer finance regulations, such as the FCRA, ECOA, RESPA, TILA and FDCPA, as well as state banking and consumer protection statutes.

AREAS OF PRACTICE

Consumer Financial Services Litigation
Consumer Financial Services
Consumer Financial Services Enforcement + Government Investigations
Fair + Responsible Lending
Litigation + Dispute Resolution
Financial Industry

Financial Industry Litigation

EXPERIENCE

Mr. Sheldon's representations include:

- Part of the Goodwin team that represented Quicken Loans, Inc. before the U.S. Supreme Court, in *Freeman v. Quicken Loans, Inc*. The case involved an important consumer credit question under RESPA, which the Court decided unanimously in Quicken's favor.
- Multiple mortgage lenders in putative class actions alleging mortgage insurance captive reinsurance arrangements violated RESPA; secured summary judgment on plaintiffs' claims on statute of limitations grounds.
- A mortgage lender in investigation by CFPB of mortgage brokerage relationship; proceeding was dropped without charges or action.
- Mortgage lenders in numerous putative class actions challenging loan origination, servicing, modification, and/or foreclosure practices; dismissal secured and/or class certification denied in multiple actions.
- Mortgage lenders in multiple Fair Housing Act lawsuits filed by municipalities alleging discriminatory lending practices.
- Advisory counsel for Mortgage Bankers Association on regulatory comment and amicus issues.
- The Joyful Heart Foundation in its nationwide "End the Backlog" project seeking to eliminate the accumulation of untested rape kits throughout the country.
- Representative clients include Quicken Loans, Flagstar Bank, First Horizon National Corporation, PHH Mortgage Corporation, Mortgage Bankers Association and IQor Holdings, Inc.

PROFESSIONAL ACTIVITIES

Mr. Sheldon is a member of the Virginia State Bar and the Virginia Trial Lawyers Association.

PROFESSIONAL EXPERIENCE

Prior to joining Goodwin, Mr. Sheldon was an attorney with the law firm Williams Mullen, P.C.

RECOGNITION

Mr. Sheldon has been named a 2014, 2015 and 2016 "rising star" in consumer law by *D.C. Super Lawyers*.

CREDENTIALS

EDUCATION

J.D., 2006
William & Mary School of Law

B.A., 2002
College of William and Mary

ADMISSIONS

BAR

District of Columbia
Virginia

COURTS

U.S. Supreme Court
Virginia Supreme Court
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 Eleventh Circuit
U.S. District Court for the Eastern District of Virginia
U.S. District Court for the Western District of Virginia
U.S. District Court for the District of Columbia
U.S. District Court for the Northern District of Illinois
U.S. Bankruptcy Court of Eastern District of Virginia