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August 4, 2020

District of Columbia
Office of Disciplinary Counsel
Attn: Hamilton P. Fox, III
Disciplinary Counsel
515 5th Street NW,
Building A, Room 117,
Washington, DC 20001
Tel: 202-638-1501

By Fax: 202-638-0862

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 Mr. Fox

Re: Complaint about Sabrina Rose-Smith
Your Ref: Rose Smith/Burke, Burke; Undocketed No. 2020-U481

We refer to your office's ("DCB's") response letter. This was received at 11.42 am CST today, Tuesday 4th August, 2020 via email.

Despite the author's attempts to silence these elderly citizens of the United States, we reject this decision for the following reasons:

The response does not even attempt to address our grievances. Even if the reply was legally accurate, which we dispute, the DCB'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 judge(s).

The first issue is the lower court judge in the *CFPB v Ocwen* case in S.D. Fl., Judge Kenneth Marra. The Burkes have filed a judicial complaint with the Eleventh Circuit against him.

Nonsensically, DCB's reply states, in part;

> "The court exercised its discretion in declining your participation in the case. We will not interfere with the court's decision in this matter by investigating the facts you allege."

When the "court" is Judge Marra and there is a formal complaint he colluded with Goodwin Procter lawyers in committing perjury, including Sabrina Rose-Smith, DCB's arguments fail.

> "The essence of the judicial role is neutrality. *Byrd v. United States*, D.C.App., 377 A.2d 400, 404 (1977). A trial judge "must remain a 'disinterested and objective participant in the proceeding' " and "[o]nce his neutral position has been jeopardized, the judicial evenhandedness that should pervade the courtroom disappears and 'the right to a fair trial may be imperiled.' " *Haughton v. Byers*, D.C.App., 398 A.2d 18, 20-21 (1979) (citations omitted).
>
> It is difficult to imagine how the neutrality of a judge could remain free from compromise when it had been told by defense counsel that the government's case can be proved beyond a reasonable doubt and that the defendant intends to commit perjury. When the court has regard for the ability and honesty of the lawyer, as the court apparently did here, the credibility of the defendant would necessarily suffer in direct proportion to such regard. Under such circumstances recusal and certification, to another court is the desired procedure (see Thornton, supra) and we hold

> that it is mandated. Error in failing to do so is compounded when the judge sits as the trier-of-fact. The due process clause commands fundamental fairness in factfinding. See *McKeiver v. Pennsylvania*, 403 U.S. 528, 554, 91 S.Ct. 1976, 1990, 29 L.Ed.2d 647 (1971)." - *Butler v. United States*, 414 A.2d 844, 852 (D.C. 1980)

In the Burkes case, not only did the judge know that Sabrina Rose-Smith (and her fellow counsel) committed perjury, the judge committed perjury in his order (Doc 411) – as per the Burkes complaint and confirmed in this order by Judge Kenneth Marra on the record at the lower court - denying the Burkes intervention. (*e.g.* The Greens from Houston having received access to documents in the lower court case before Judge Marra, yet Judge Kenneth Marra denied the Burkes at least the same relief as the Greens). In summary, the DCB's arguments for dismissal are beyond meritless.

DCB's review of the docket does not address the key document(s), outlined in our complaint. Let's cut and paste one key section, so there can be no doubt;

> "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)."

We continue in our complaint, discussing both the Greens case and Judge Marra's collusion and perjury, which DCB does not even mention in their synopsis.

> "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."

DCB's review is clearly 'cherry-picking' what it wants to review, as detailed in the following extract from your reply letter'. Respectfully, for due process to work, that is not how the law work. Lawyers or judges who identify misconduct have a duty to report it, including their own misconduct.[1]

> "We reviewed the computer docket sheet and the court's response to your motion to intervene. By order dated May 30, 2019, the court denied your motion, explaining that (1) you failed to meet the requirements for intervention of a matter of right because you did not demonstrate that your interests would be harmed by the outcome of the case and (2) it would not grant permissive intervention because doing so would introduce facts not in issue. The court denied your motion to reconsider and you appealed its decision to the Eleventh Circuit."

In our complaint extract shown above, we discuss in detail Judge Marra's order

[1] See *Butler v. United States*, 414 A.2d 844, 852 (D.C. 1980), holding that the judge who presided over the defendant's bench trial should have recused himself after the defense counsel told him that "the government's case can be proved beyond a reasonable doubt and that the defendant intends to commit perjury" – and then in this case, Judge Marra facilitates that perjury by committing perjury himself in his order; "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)."

denying reconsideration, namely Doc 411. Your response summarized that document in one [final] sentence, ignoring the Burkes detailed account of the perjury committed by Judge Marra. You didn't need to even review the docket (apart from the necessity to confirm the wording of the order matched our statement). It was right there in the Burkes complaint – but you intentionally chose to ignore it, all of it. That's not acceptable and hence why we reject this dismissal as improvidently granted.

Secondly, the Bar is not there to supplement the court and its judges. DCB's function is to regulate its lawyers and investigate complaints by injured litigants. Complaints submitted directly to the DCB are valid and your argument that "We will not interfere with the court's decision in this matter by investigating the facts you allege" is again, erroneous in law. The courts have their own inherent equitable power to sanction lawyers and/or report them. That does not stop the Bar(s) from pursuing complaints either directly or via litigants who file complaints directly with the Bar – as is the case herein. We would ask you to cite the rules to which your office relies upon, should you disagree with our second argument.

Third, we don't even understand the response by the DCB, namely;

> "To the extent that Ms. Rose- Smith argued that your statements lacked merit, this was a legal argument, not a factual allegation that may be considered a misrepresentation."

The main complaint is the fact Rose-Smith committed perjury for the reasons outlined above and as detailed in the complaint. See for example;

> "On the basis of the false statements in the motion to recuse, Disciplinary Counsel charged appellant anew with violating Rules 3.3 (a)(1), 8.4 (c), and 8.4 (d).[2] An Ad Hoc Hearing Committee held an evidentiary

[2] **Rule 3.3 (a)(1)** provides generally that "[a] lawyer shall not knowingly . . . [m]ake a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer."

Rule 8.4 (c) provides that "[i]t is professional misconduct for a lawyer to . . . [e]ngage in conduct involving dishonesty, fraud, deceit, or misrepresentation."

Rule 8.4 (d) provides that "[i]t is professional misconduct for a lawyer to . . . [e]ngage in conduct that seriously interferes with the administration of justice."

> hearing on the new charges on May 5, 2015." - *In re Tun*, No. 17-BG-0769, at *5-6 (D.C. Oct. 18, 2018)

The same rule violations occurred with Ms Rose-Smith.

Finally, your review stopped at the lower court and refused to discuss the appeal at the Eleventh Circuit. As the facts above have shown your dismissal is error, we do not need to reach the 11th Circuit either in this response.

Summary

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

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
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Encl. copy of DCB's dismissal letter

"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)*

OFFICE OF DISCIPLINARY COUNSEL

Due to the limited capabilities of our Office at this time, there will be a delay in our receipt of regular mail. We do not accept correspondence by email in a preliminary, undocketed investigation. You may contact the undersigned at (202) 454-1745. It may take up to three business days to return your call. We appreciate your patience during this time.

August 4, 2020

CONFIDENTIAL

Joanna Burke
Kajongwe@gmail.com

John Burke
Alstation123@gmail.com

Re: Rose Smith/Burke, Burke
Undocketed No. 2020-U481

Dear Mr. and Mrs. Burke:

This Office has completed its review of the disciplinary complaint that you filed against Sabrina Rose-Smith, Esquire.

You state that Ms. Rose-Smith is an attorney with Goodwin Proctor, LLP, and that her law firm represents Ocwen Financial Corporation in Case No. 9:17-cv-80495 before the United States District Court for the Southern District of Florida.

You filed a motion to intervene in this matter. You claim that Ms. Rose-Smith "knowingly committed perjury and withheld evidence" in connection to your attempts to become a party to the case.

We reviewed the computer docket sheet and the court's response to your motion to intervene. By order dated May 30, 2019, the court denied your motion, explaining that (1) you failed to meet the requirements for intervention of a matter of right because you did not demonstrate that your interests would be harmed by the outcome of the case and (2) it would not grant permissive intervention because doing so would introduce facts not in issue. The court denied your motion to reconsider and you appealed its decision to the Eleventh Circuit.

Upon review of this information, we decline to open a formal investigation of this matter. You have raised your concerns regarding the truthfulness of Ms. Rose-Smith's statements to the U.S. District Court for the Southern District of Florida and the Eleventh Circuit. The court exercised its discretion in declining your participation in the case. We will not interfere with the court's decision in this matter by investigating the facts you allege. To the extent that Ms. Rose-Smith argued that your statements lacked merit, this was a legal argument, not a factual allegation that may be considered a misrepresentation.

Therefore, although we appreciate your concerns, we decline to open a formal investigation of this matter and this file is now closed.

Sincerely,

Angela Walker
Staff Attorney

AW:BN:asw