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2 September, 2020

Ref: Goodwin Procter LLP: Sanctions Motion

Chief Judge Rebecca K. Pallmeyer
United States District Court, Northern District of Illinois
Eastern Division
Everett McKinley Dirksen United States Courthouse
219 South Dearborn Street
Chicago, IL 60604

cc.* Goodwin Procter, LLP
Milberg Phillips Grossman LLP
Evangelista Worley LLC
Wexler Wallace
Senate Banking Committee
Virginia State Bar
D.C. Bar
Florida Bar
Court of Appeals for the Eleventh Circuit (19-13015)
Court of Appeals for the Fifth Circuit (19-20267 & 20-20209)

*The Texas Supreme Court has authorized electronic and social media as acceptable methods of substituted service. E.g. (@SupremeCourt_TX on Twitter) amends Texas Rules of Civil Procedure to allow for service via social media: <http://txcourts.gov/media/1449613/209103.pdf> As such, we will be issuing copies of this letter to parties and Senators listed above via social media, email and fax while the regular mail is in transit and to expedite notice to those parties.

Dear Judge Pallmeyer

County Of Cook v. Bank of America Corporation (1:14-cv-02280), District Court, N.D. Illinois, Eastern Division.

We refer to the Order Signed by the Honorable Sunil R. Harjani on 8/25/2020: “Plaintiff’s motion for sanctions against Goodwin Procter LLP 493 is denied. (See Order for Details, Doc. 518).

We respectfully wish to present evidence why this Order should be reconsidered and/or vacated while it is under reconsideration;

- (a) The newly appointed Magistrate Judge’s order completely ignored the ethics violations (including rule 1.7), which is referred to as the “hot potato doctrine”. This controls the sanctions requested. Instead, the magistrate went off on a tangent, which is erroneous and a manifest injustice to all parties seeking disqualification or sanctions in this case as well as others who are involved in similar ethical complaints against these rogue lawyers and firm nationwide (that would include ourselves).

An extract from our Bar complaint against Goodwin Procter attorney Matthew Sheldon, in part, explains;

“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 themselves and after signing agreements to represent them.

The courts found that this meant the witness statements were moot [at this time]. While the Burkes dispute that opinion in law, the purpose of this complaint is the Rules of Professional Conduct. The Burkes now highlight the fact that ethically, the lawyer(s) actions are certainly not ‘moot’. Actually, in the Georgia action, Judge May has kept the ‘sanctions’ against Goodwin Procter, LLP, firmly on the table (Doc. 86, April 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).

See also; RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS.

(b) The conference hearing by U.S. District Judge Bucklo, attended by Matt Sheldon of Goodwin is clear when she makes statements on the record supporting the ethical violations;

“I really don’t understand how you can represent them” and “I do find it disturbing” and – “And if there is a contradiction there, then it seems to me you do have a conflict.”.

The magistrate tries to deflect these statements as insignificant. That is error. It is axiomatic that the violation of Rule 1.7 cannot be corrected by Goodwin retracting from its position to avoid sanctions or other discipline.

Under the hot potato doctrine 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 doctrine reflects that the duty of loyalty to an existing client is so important, so sacred, so inviolate that not even withdrawing from the relationship can an attorney evade it.

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...”

Whilst Judge Elaine Bucklo ultimately decided the sanctions motion was moot, which is questionable in itself because you cannot ‘moot’ this type of violation of ethics per the hot potato doctrine, this sentiment was not echoed in the related case Cook case in Georgia. Judge Leigh Martin May decided the sanctions were open to being reconsidered at a later time, if necessary. See; *Cobb County v. Bank of America Corporation* (1:15-CV-04081) District Court, N.D. Georgia.

Judge Bucklo’s order in this regard is worth detailing;

“Disqualification of counsel is denied as moot, based on Goodwin Procter's withdrawal from representation of witnesses and the protections put in place by the assigned magistrate judge.”

Judge Bucklo’s statement here is vague and while ‘*the protections put in place*’ are not specified, we wish to alert this honorable court that despite any and all protections that may be in place in “this” case, it has not stopped Goodwin Procter LLP acting as a rogue, win at all costs, biglaw firm that believes itself and the attorneys who represent them are “above the law (and this would include any and all professional ethical violations)”. This should be a mistaken belief. See; *El Camino Resources, Ltd. v. Huntington National Bank*, 623 F. Supp. 2d 863 (W.D. Mich. 2007).

- (c) We have been litigating in a case where we were denied intervention in S.D. Fl. Court by Judge Ken Marra. *Consumer Financial Protection Bureau v. OCWEN Financial Corporation, Inc.* (9:17-cv-80495) District Court, S.D. Florida.

On appeal to the Court of Appeals for the Eleventh Circuit (#19-13015), we became aware of irrefutable evidence that both Judge Marra and Ocwen's lawyers, comprising of several Goodwin Procter lawyers, including the 4 Goodwin lawyers the Burkes have complained of, namely Matt Sheldon, Tom Hefferon, Sabrina Rose Smith or Rose-Smith and Catalina Azuero. They are listed as counsel in the Cook County case discussed herein, and these lawyers conspired to withhold evidence in order to illegally deny the Burkes intervention all the while committed repeated perjury in filings both at the lower and appellate courts.

As stated, the case is on appeal and the Burkes have filed a judicial complaint against Senior U.S. District Judge Kenneth A. Marra and 4 bar complaints against Goodwin lawyers, namely Matthew Sheldon (Virginia Bar, no case number), Thomas Hefferon (Virginia Bar, no case number), Sabrina Rose-Smith or Rose Smith (D.C. Bar, Undocketed No. 2020-U481) and Catalina Azuero (Florida Bar, #21-112).

- (d) Goodwin Procter have a system of lying and being unethical in recent court cases as identified and they also have a recorded history of ethical violations as well. Here's 2 historic examples and a newly discovered unauthorized practice of law violation;

- (i) Plaintiff George Haseotes filed suit derivatively on behalf of Cumberland Farms after he learned that Boston's Goodwin Procter had racked up a seven-figure tab by assigning 34 lawyers — billing at rates of up to \$825 an hour — to work on a potential sale of the company. — an 'ethical' violation - Mass. rule of Prof. responsibility 1.5 prohibits a lawyer from charging excessive or illegal fees. See;

<https://newenglandinhouse.com/2013/01/16/cumberland-farms-shareholder-slaps-firm-with-legal-mal-suit/>

- (ii) An arbitrator has found the law firm Goodwin Procter overcharged a real estate client by more than \$540,000 in a rare showdown over the billing procedures used by many of Boston’s largest and most prominent legal practices. The arbitrator, Jeffrey Martin, ruled Goodwin submitted “vague” invoices to Northland Investment Corp., failed to provide a promised discount, and used too many of its attorneys to bill for the same legal tasks. As a result, Martin ordered Goodwin to cut its \$1.1 million invoice by 55 percent. See; https://archive.boston.com/business/articles/2010/12/10/540000_o_vercharge_sheds_light_on_law_firm_bills/

- (iii) Alexis Susan Coll of Goodwin Procter, LLP appears to have practiced law while unauthorized to do so. Her State Bar of California membership is in her maiden name of Coll, but her business name has been Coll-Very for nearly 3 decades. (That’s just wrong). There’s also a couple of recent suspensions and breaks in membership that indicate she could have been involved in the unauthorized practice of law during that time.

Billing records would confirm the violations but certainly it would appear to be the case, looking at the *In re Twitter Inc. Sec. Litig.*, No. 16-cv-05314-JST (N.D. Cal. July 16, 2018) as an example, she was counsel of record during the time in 2019 when her State Bar license was inactive and filings into the case were being made. No change of status regarding her removal from this case is recorded during the period.

Note: We have not filed any complaint against Ms. Coll regarding our discovery, however, it will be interesting to see if this court or any of the copied parties, who are mostly lawyers, as part of their ethical duties outlined in (e) below, will report this violation. See;

“When an attorney discovers a possible ethical violation concerning a matter before a court, he is not only authorized but is

in fact obligated to bring the problem to that court's attention. See *Estates Theatres, Inc. v. Columbia Pictures Industries, Inc.*, 345 F. Supp. 93, 98 (S.D.N.Y. 1972). ” *In re Gopman*, 531 F.2d 262, 265 (5th Cir. 1976)

- (e) A former Goodwin Procter Lawyer, Associate Professor Luke M. Scheuer previously held adjunct positions at Boston College Law School, the University of Massachusetts School of Law, and Boston University School of Law where he taught advanced legal skills courses on contract and corporate drafting.

Before teaching, he held a judicial clerkship in the U.S. District Court for the District of Massachusetts and also worked as a corporate associate at Goodwin Procter LLP in Boston.

The following 2010 article confirms our belief that the lawyers at Goodwin Procter LLP involved in the Burkes case in *CFPB v. Ocwen* in Fl. should have reported attorney fraud, if they were not the author of the motions filed in that case. They did not do so. This is clear error. See “Duty to Report Attorney Misconduct” (2010); Available at: https://works.bepress.com/luke_scheuer/2/

Relief Requested:

- (i) Vacation of the Order and/or Reconsideration of the sanctions motion based on the erroneous order by the magistrate judge who ignored the hot potato doctrine completely in his 4-pronged summary argument denying the sanctions motion.

See: “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).

- (ii) Furthermore, and based on related cases as identified herein, it is irrefutable that Goodwin Procter LLP has implemented a known system of fraud in law suits in federal courts nationwide. This should be investigated at the highest level and reported to the respective Bars and Agencies. See; LR83.50. Rules of Professional Conduct, in part; a lawyer not admitted to practice in Illinois is bound by the Rules of Professional Conduct for the state in which the lawyer’s principal office is located.

Summary:

In recap, in light of the above, we believe that disqualification of Goodwin Procter’s lawyers should be mandatory (See; *In re Discipline of Ray*, 2019 WL 3082523, at *9. “Given the district court’s detailed analysis that is supported by the record and this court’s holding in *Hernandez*, 907 F.3d 365-66, we conclude that the district court did not abuse its discretion in ordering Ray’s disbarment. See *Mole*, 822 F.3d at 801. Ray’s secondary argument that the district court erred in failing to consider a lesser sanction is also meritless.”).

Not only have they acted unethically in this case, they have also repeated these unethical acts in our case, *CFPB v. Ocwen* in S.D. Fl. See; Rule 3.03(a)(1) (prohibiting lawyers from “knowingly making false statements of material fact or law to a tribunal”), Rule 3.03(a)(5) (prohibiting lawyers from knowingly offering false evidence), Rule 8.04(a)(3) (prohibiting lawyers from “engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation”). – Case #18-0879, Supreme Court of Texas, 25th October, 2019, *Commission for Lawyer Discipline v. Mark A. Cantu*.

The cases in question are live and ongoing. What is alarming is the fact these unethical lawyers at Goodwin are still counsel of record and still very active on the docket(s). It is unacceptable based on the information presented herein. They should be disqualified. In our circuit, the Fifth Circuit has stated District courts are "obliged to take measures against unethical conduct occurring in connection with any proceeding before it." - *In re Am. Airlines*, 972 F.2d 605, 61 I (5th Cir. 1992) (quoting *Woods v. Covington County Bank*, 537 F.2d 804,810 (5th Cir. 1992)).

We also respectfully request any Orders be noticed to ourselves as we are involved in related live controversies and cases, including judicial and ethical complaints as discussed above.

Public confidence in the integrity and impartiality of the judiciary is promoted when judges take appropriate action based on reliable information of likely misconduct. Appropriate action depends on the circumstances, but the overarching goal of such action should be to prevent harm to those affected by the misconduct and to prevent recurrence. See Code of Conduct for United States Judges, Canon 3B(6) & cmt.

We kindly ask that you take appropriate action here.

Respectfully,

I, Joanna Burke, declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

September 2, 2020, Kingwood, Texas.

Joanna Burke
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Email; kajongwe@gmail.com

I, John Burke, declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

September 2, 2020, Kingwood, Texas.

John Burke

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Hyperlinks to documents relevant to this letter;

[DC Bar Complaint \(Rose Smith or Rose-Smith\)](#)

<https://1drv.ms/b/s!AvIdtQ5ExRHkub5AgcuEuVrFLgQaoQ>

[Virginia Bar Complaint \(Hefferon\)](#)

<https://1drv.ms/b/s!AvIdtQ5ExRHkub4-0pNAoIS-5D1okg>

[Virginia Bar Complaint \(Sheldon\)](#)

https://1drv.ms/b/s!AvIdtQ5ExRHkub4_s5pDxzqqdreCZg

[Florida Bar Complaint \(Azucero\)](#)

<https://1drv.ms/b/s!AvIdtQ5ExRHkub5B56iwbb7oh5msdQ>

[11th Cir. Judicial Complaint \(Marra\)](#)

<https://1drv.ms/b/s!AvIdtQ5ExRHkub5CbEpXaaSPDv2Kjw>