

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST WENDY
ALISON NORA, ATTORNEY AT LAW.

CASE CODE 30912

OFFICE OF LAWYER REGULATION,
Complainant;

CASE NO. 2013AP653-D

WENDY ALISON NORA,
Respondent.

AMENDED COMPLAINT

FILED
DEC 23 2013
CLERK OF SUPREME COURT
OF WISCONSIN

NOW COMES the Wisconsin Supreme Court - Office of Lawyer Regulation (OLR), by Assistant Litigation Counsel Sheryl St. Ores, and alleges as follows:

1. OLR was established by the Wisconsin Supreme Court and operates pursuant to Supreme Court rules. This Amended Complaint is filed pursuant to SCR 22.11.

2. Respondent, Attorney Wendy Alison Nora (Nora), is a Wisconsin attorney (State Bar No. 1017043) admitted to practice law in 1975 whose office address is currently listed with the State Bar of Wisconsin as Access Legal Services, 210 Second Street NE, Minneapolis, MN 55413-2218. Nora also provided the following via an August 7, 2013 email to the referee, "For mail delivery and personal

service in this matter, the following temporary residence address should be used: Wendy Alison Nora, 4 Bahr Circle, Madison, Wisconsin 53719."

3. Nora's disciplinary history is as follows:

On February 17, 1993, Nora's Wisconsin law license was suspended for 30 days as reciprocal discipline to that imposed by the Minnesota Supreme Court for misrepresentations, for failing to adequately investigate, for bringing frivolous claim against a bank, inappropriate transfer of assets, and bringing litigation as a delay tactic while asserting a theory that was not justified by existing law. *Disciplinary Proceedings Against Nora*, 173 Wis. 2d 660, 495 N.W.2d 99 (1993).

Regarding Judge Colas

4. On March 3, 2009, Residential Funding Company, LLC, (RFC) filed a foreclosure action (foreclosure action) in Dane County Circuit Court naming Nora as the defendant, the subject property being Nora's condominium/residence. *Residential Funding Company LLC vs. Wendy Alison Nora et al*, Dane County Circuit Court Case Number 2009CV001096.

5. The Honorable Juan B. Colas (Judge Colas) presided over the foreclosure action.

6. On February 22, 2010, Nora filed a motion for reasonable ADA accommodations. The District Court Administrator is responsible for an ADA accommodation request.

7. On March 26, 2010, Nora submitted a written request to Judge Colas asking for appointment of a guardian ad litem (GAL) on her behalf in the foreclosure action. On March 29, 2010, Judge Colas denied Nora's request.

8. On April 19, 2010, Nora filed a motion asking Judge Colas to recuse himself in the state foreclosure action. On June 9, 2010, the motion was denied. On June 25, 2010, Nora filed a motion for reconsideration renewing her request that Judge Colas recuse himself. On July 15, 2010, the motion was denied.

9. On November 15, 2010, Nora filed a federal lawsuit (federal lawsuit) against Judge Colas alleging disability discrimination and seeking compensatory and punitive damages. *Nora v. Colas, et al.*, No. 10-CV-709 (E.D. Wis. filed November 15, 2010).

10. On November 22, 2010, Nora filed a motion to disqualify Judge Colas. On November 24, 2010, the motion was denied.

11. On December 10, 2010, Nora filed a Motion for Reconsideration to Disqualify Judge Colas. On December 13, 2010, the motion was denied.

12. On January 11, 2011, RFC moved Judge Colas for confirmation of the sheriff's sale of the subject property.

13. On February 1, 2011, Nora sought and received an extension in federal court to respond to Judge Colas' motion to dismiss Nora's action against him.

14. On February 14, 2011, Nora moved to vacate the summary judgment order in the foreclosure action.

15. On March 1, 2011, Judge Colas, at the confirmation of sale hearing, denied Nora's February 14, 2011 motion to vacate the order granting summary judgment in the foreclosure action and issued an order confirming sale.

16. On March 7, 2011, Nora requested relief from judgment and renewed her motion to vacate the foreclosure judgment in the foreclosure action. On March 18, 2011, the motion was denied.

17. On March 21, 2011, Nora obtained an extension in the federal court for her response to Judge Colas' motion to dismiss Nora's action against him.

18. On March 24, 2011, Judge Colas denied Nora's March 7, 2011 renewed motion to vacate the foreclosure judgment.

19. On March 26, 2011, Nora voluntarily dismissed her federal action against Judge Colas without filing opposition to his motion to dismiss.

COUNT ONE

20. By bringing a lawsuit against the judge who was hearing a foreclosure action in which she was the defendant on the basis that the judge ruled against her petition for an accommodation, in an attempt to force the judge to recuse himself from the foreclosure action, and thereafter dropping such lawsuit immediately after the judge had ruled in the foreclosure action, **Nora violated SCR 20:3.1(a)¹.**

Regarding False Statement to Tribunal

21. On August 23, 2009, Nora executed a Foreclosure Repayment Agreement in which Nora had changed a material term of the agreement by writing in a reservation of her claims against the lender.

22. On August 25, 2009, Attorney David Potteiger (Potteiger), as RFC's representative, informed Nora in

¹ **SCR 20:3.1(a)** provides: "In representing a client, a lawyer shall not: (1) knowingly advance a claim or defense that is unwarranted under existing law, except that the lawyer may advance such claim or defense if it can be supported by good faith argument for an extension, modification or reversal of existing law; (2) knowingly advance a factual position unless there is a basis for doing so that is not frivolous; or (3) file a suit, assert a position, conduct a defense, delay a trial or take other action on behalf of the client when the lawyer knows or when it is obvious that such an action would serve merely to harass or maliciously injure another."

writing that the reservation of her counterclaims found in Nora's Foreclosure Repayment Agreement counteroffer was rejected; no settlement offer existed.

23. On August 26, 2009, Nora wrote to the court in the foreclosure action informing the court an agreement was imminent or had been reached such that the foreclosure action should be stayed.

24. On August 26, 2009, Potteiger reasserted in writing to Nora the same rejection of the counteroffer as set forth in his August 25, 2009 letter, confirming no settlement offer existed.

25. The Foreclosure Repayment Agreement was never signed by RFC nor enforced as a settlement in the foreclosure action nor was it signed by RFC.

COUNT TWO

26. By representing to the court in a foreclosure action that a settlement in the form of a Foreclosure Repayment Agreement was imminent or had been reached such that the foreclosure action should be stayed, when there was no basis for such a statement, **Nora violated SCR 20:3.3(a)(1)².**

² SCR 20:3.3(a)(1) provides: "A lawyer shall not knowingly make 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."

**Regarding Nora's November 29, 2010 Federal Lawsuit
Case No. 10-CV-748 (W.D.WI)**

27. GMAC Mortgage Group, LLC and its related entity, RFC, hired Gray & Associates to pursue foreclosure proceedings against a residential property owned by Attorney Wendy Alison Nora. *Residential Funding Company LLC vs. Wendy Alison Nora, et al.*, Dane County Case No. 09-CV-1096.

28. William N. Foshag (Foshag) is an attorney with Gray & Associates, L.L.P.

29. RFC was later represented by Potteiger of the law firm of Bass & Moglowsky, S.C.

30. On March 4, 2010, the court entered a judgment of foreclosure followed by a sheriff's sale held in early 2011.

31. Nora brought appeals and other related litigation in several forums, some of which are pending.

32. On November 29, 2010, Nora threatened in writing to sue Potteiger, attorney of record in the foreclosure action, for tortious interference with contract after Potteiger counseled his client to reject Nora's settlement offer in the foreclosure action.

33. When Potteiger refused to cancel a scheduled sheriff's sale of the subject condominium in the foreclosure action, Nora commenced a federal lawsuit on November 29, 2010 in U.S. District Court for the Western District of Wisconsin (District Court action) against GMAC Mortgage Corp. and various related entities, Potteiger and his law firm, Foshag and his law firm, and numerous other entities and individuals totaling 24 defendants related to the foreclosure action. *Nora vs. Residential Funding Company, LLC, et al.*, No. 10-cv-748-wmc (7th Circuit Court of Appeals, November 26, 2013, unpublished).

34. In the District Court action, Nora alleged violations of the Racketeer Influenced and Corrupt Organizations Act (18 U.S.C. §§ 1961-1968) and the Fair Debt Collections Practices Act (15 U.S.C. § 1662, et seq.), and she sought title to her home free and clear of all interest and damages against the defendants in excess of \$10,000,000,000.

35. On September 30, 2012, U.S. District Court Judge William Conley dismissed Nora's complaint on the

basis that the *Rooker-Feldman*³ doctrine deprived the federal trial court from reviewing a state court decision.

36. In its September 30, 2012 decision, Judge Conely noted the policy behind the doctrine is that "no matter how erroneous or unconstitutional the state court judgment may be, only the Supreme Court of the United States has jurisdiction to review it. *Brown v. Bowman*, 668 F.3d 437, 442 (7th Cir. 2012)."

37. The U.S. District Court found (a) that Nora's federal complaint was an attempt to re-litigate the foreclosure case, which she had lost at the state level when the judgment of foreclosure was entered against her, a final judgment under Wisconsin law, and, (b) the time to appeal the foreclosure judgment had run by the time Nora filed the federal action on November 30, 2010.

38. The U.S. District Court dismissed the complaint because the *Rooker-Feldman* doctrine barred the court from addressing the issues decided by the state court and, therefore, the federal court lacked subject matter jurisdiction.

39. In his Opinion and Order dismissing Nora's complaint, Judge Conley noted:

³*D.C. Court of Appeals v. Feldman*, 460 U.S. 462 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923).

Here, Nora's amended complaint focuses on the foreclosure proceeding generally, and specifically upon alleged misrepresentations made by the defendants during the course of the proceedings in furtherance of the alleged conspiracy...

Nora also seeks an order awarding her "title to her home free and clear of the fraudulent claim of the GMAC Racketeering Enterprise."... The Seventh Circuit has previously described such a request as "tantamount to a request to vacate the court's judgment of foreclosure," in affirming the district court's dismissal of a federal claim asserted by a foreclosed mortgagor against her creditors. See *Taylor v. Fed. Nat'l Mortgage Ass'n*, 374 F.3d 529, 533 (7th Cir. 2004) ("The district court correctly determined that requesting the recovery of her home is tantamount to a request to vacate the court's judgment of foreclosure.").

The fact that Nora brings RICO and FDCPA claims - as opposed to a declaratory judgment action seeking an order vacating the state court's judgment - is of no import. The Seventh Circuit has repeatedly rejected plaintiffs' attempts to recast claims to circumvent the Rooker-Feldman doctrine. See, e.g., *Louis-Kenney-Reed: El v. Makowiecki*, No. 11-1799, 2011 WL 5149469, at *1 (7th Cir. Nov. 1, 2011) (rejecting plaintiff's reference to § 1983 as an attempt to circumvent the Rooker-Feldman doctrine); *Wallis v. Fifth Third Bank*, No. 11-1181, 2011 WL 4396973, at *2 (7th Cir. Sept. 21, 2011) ("Wallis cannot circumvent the Rooker-Feldman doctrine by recasting a request for the district court to review state court rulings as a complaint about civil rights, due process, conspiracy or RICO violations.")..

Since Nora is unquestionably attempting to challenge the 2010 state foreclosure judgment against her by pursuing these federal claims, her complaint is barred by the Rooker-Feldman doctrine. In the end, this result is hardly

surprising. Indeed, cases in which courts - including this court and the Seventh Circuit - have dismissed actions challenging a state court foreclosure judgment are legion.. Lacking subject matter jurisdiction, the court need not - and indeed cannot - reach other likely grounds for dismissal.

40. On November 26, 2013 the Seventh Circuit Court of Appeals affirmed the District Court's dismissal. *Nora vs. Residential Funding, LLC, et al. Id.*

COUNT THREE

41. By bringing a lawsuit with no meritorious basis, seeking \$10,000,000,000 in compensatory and punitive damages against Potteiger and his law firm who were representing the plaintiffs in a real estate foreclosure action against Nora, as well as against Foshag, his law firm, and numerous other parties involved in the foreclosure matter, **Nora violated SCR 20:3.1(a).**

**Regarding Nora's March 18, 2013 New York Bankruptcy Court
Filing Case No. 13-01208
(U.S. Bankr. Court S.D.N.Y.)**

42. On May 14, 2012, Residential Capital, LLC, which is owned by GMAC Mortgage Group, LLC and to which RFC is a related entity, filed for Chapter 11 Bankruptcy protection in the U.S. Bankruptcy Court for the Southern District of New York. *In re: Residential Capital, LLC, et*

al, Debtors. Case No. 12-12020 (MG) (Bankr. S.D. N.Y. July 10, 2012).

43. On March 18, 2013, Nora filed a First Amended Complaint and Jury Trial Demand against Foshag, his two partners and his law firm, Potteiger, and most of the same group of defendants as the District Court action in the U.S. Bankruptcy Court for the Southern District of New York, an adversarial case associated with Case No. 12-12020. *Wendy Alison Nora, Plaintiff v. Residential Funding Company, LLC. et al.*, Adversary No. 13-01208 (Bankr. S.D.N.Y. July 10, 2012). Nora's complaint is nearly identical to that dismissed by Judge Conley in the District Court action.

44. Though the matter had been adjudicated in Wisconsin state courts, and a federal court had dismissed her claims in the District Court action on the basis that it had no subject matter jurisdiction to re-visit the issues adjudicated in the Wisconsin courts, Nora brought a bankruptcy court action in a new venue and jurisdiction on identical grounds against Foshag, Potteiger, and numerous other defendants.

45. Nora knows the *Rooker-Feldman* doctrine prohibits parties from attempting to re-litigate state

court issues, including foreclosure judgments, in the U.S. Bankruptcy Court.

46. In the Chapter 13 Bankruptcy case of *In re Roger P. Rinaldi and Desa L. Rinaldi*, U.S Bankruptcy Court (E.D. Wis.), Case No. 11-35689-svk (Rinaldi), Nora represented the debtors and brought an adversarial complaint on their behalf against certain mortgage lenders and their attorneys, again including Foshag and his firm, Adversary No. 12-2412.

47. In the Rinaldi case, the defendants to the adversarial action brought a motion to dismiss, which was granted by the Bankruptcy Court on February 22, 2013, just over three weeks before Nora filed the Bankruptcy Court action against Foshag, Pottieger, and the other defendants.

48. In her Findings of Fact and Conclusions of Law and Memorandum Decision on Defendant's Motion to Dismiss Complaint and Amended Complaint in the Rinaldi case, U.S. Bankruptcy Judge Susan V. Kelley noted that though the case was dismissed on other grounds, the *Rooker-Feldman* doctrine applies in bankruptcy proceedings.

49. Foshag and his firm and Pottieger and his firm represent 4 of the 24 defendants Nora named in the

District Court action and 4 of the 31 defendants Nora named in the Bankruptcy Court action.

COUNT FOUR

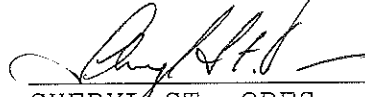
51. By filing an adversarial complaint in the U.S. Bankruptcy Court for the Southern District of New York against Attorney William Foshag, his two partners, his law firm of Gray & Associates, L.L.P., as well as Potteiger and his law firm, and 25 other defendants, seeking in excess of \$10,000,000,000 in damages and challenging the foreclosure on her property, which foreclosure had already been adjudicated in Wisconsin Circuit Court, and which foreclosure she had already challenged by filing a nearly identical complaint in the U.S. District Court for the Western District of Wisconsin, a complaint that was dismissed on the basis of the *Rooker-Feldman* doctrine, which also applies to bankruptcy courts, Nora violated SCR 20:3.1(a).

WHEREFORE, the Office of Lawyer Regulation asks that Attorney Wendy Alison Nora be found in violation of the Supreme Court rules as alleged in Counts One through Four of this *Amended Complaint*, that the Court suspend Attorney Wendy Alison Nora's Wisconsin law license for a period of

one year, and for such other and further relief as may be just and equitable, including an award of costs.

Dated this 23rd day of December, 2013.

OFFICE OF LAWYER REGULATION



SHERYL ST. ORES
Assistant Litigation Counsel
State Bar No. 1017028

110 East Main Street, Room 315
Madison, Wisconsin 53703-3383
608-261-0695