

COMPLAINT

When the Supreme Court of Texas and the Texas Court of Criminal Appeals adopted the Lawyers' Creed in 1989, it was an expression of hope that the mood of antagonism prevailing during that decade could be replaced by civil litigation that lived up to its name. Underscoring a general decline in civility in litigation, a 1996 study reported that public respect had eroded dramatically for the legal profession, prompting Justice Nathan Hecht to state that the problem of incivility was so large that "any deep seated change will take at least half a generation."¹ Justice Hecht may have been too optimistic.

"Given nearly a decade of free living by the Burkes, there is no injustice in allowing that foreclosure to proceed."

The final sentence in the Burkes' case, by the 3-panel at this Court of Appeals added no value to the Burkes' case opinion and has no place in the court of law. It is also in error. The court is stating that when it forecloses, homeowners walk away for the amount of the alleged debt, yet the amount awarded historically includes the

¹ John Marks, "The American Unavil Wars: How Crude, Rude and Obnoxious Behavior Has Replaced Good Manners and Why That Hurts Our Politics and Culture", U. S. News & World Report, 22 April 1996, 66-72

principal sum plus all interest and other fees. That completely contradicts “free living”.²

It shows Bias as well as breaches of Judges Ethical Canons.³

In *Potashnick v. Port City Construction Co.*, 609 F. 2d 1101, (5th Circuit, 1980) this Court opined "a judge faced with a potential ground for disqualification ought to consider how his participation in a given case looks to the average person on the street." (id. p. 1111).

Opinion: This is 2019, a Time Where Data is Accurate and Relevant

On review of the Rules relative to Judicial Complaints, there is a very narrow window for a Complainant to gain relief from an appellate court, like the Fifth Circuit. The Law has made up Codes of Conduct that are merely words, they hold no substance and ignored by those who are supposed to adhere to the Creeds and Codes. Judges and Courts are not held accountable for their actions, unless, for

² In 2006, Michael Maldonado borrowed \$292,000 under a Home Equity Note to finance the purchase of a home in Houston, Texas... The final judgment reflects that the outstanding balance on the loan is \$533,960.80. That sum consists of the outstanding principal, accrued and unpaid interest, escrow advances, and late charges and fees. See *Maldonado v. CitiMortgage*, No. 16-20541 (Jan. 23, 2017, unpublished).

³ See Texas Code of Judicial Conduct –Burkes understand that alone does not warrant reversal, but it is relevant when you have a Panel that blatantly ignores the Code of Conduct. http://www.txcourts.gov/media/514728/TXCodeOfJudicialConduct_20020822.pdf

example, they slept with a parties lawyer⁴ or other verifiable sexual misconduct.⁵ As a “remote” case where tribunal and verdict is done electronically, there is little chance a homeowner is going to know if a Judge is taking a bribe or sleeping with opposing counsel.

It would be a more modern and transparent approach, if Courts were to review the public data and ask themselves:

“Can we honestly conclude we were legally, ethically and morally truthful in our distribution of a fair and impartial hearing for all parties?”

For example, Judge Higginbothams’ “**no free houses**” oral statements in *Reinagel v Deutsche Bank*, which Graves sat on and agreed with the Opinion, rendering foreclosure in favor of the Bank.

Or the Priscilla Owen question in *Diaz v Deutsche Bank*, where she stated she’d seen at least 50 complaints by homeowners who had mortgage payments returned without explanation, yet Deutsche Bank prevailed in this case she reviewed.

Below, the Burkes’ have provided, once again, the data previously supplied, showing this panels damning evidence of bias.

⁴ See Judge John Payton Jr, Dallas ; <https://www.dmagazine.com/publications/d-magazine/2017/april/100-million-affair-dallas-county-courtroom-judge-john-peyton-jr-tina-peyton-divorce/>

⁵ See Judge Samuel B. Kent - https://en.wikipedia.org/wiki/Samuel_B._Kent

The Panel; Davis, Graves and Haynes

During the Burkes' two visits to the Fifth Circuit, they noted some oddities, and in particular, bias against homeowners. The Burkes conducted an audit of 12 months mortgage foreclosure cases heard in the Fifth between Nov. 2017 and Oct. 2018. In summary, there were 42 mortgage/foreclosure cases during this time. 11 of them (26%) involved Deutsche Bank.

Per the Burkes' 12-month audit, (Nov. 2017 – Oct. 2018) this same 3-member panel sat on the following foreclosure related cases; (i) *Deutsche Bank National Trust Co -v- Burke* (18-20026), (ii) *Blank -v- Deutsche Bank National Trust Co*, (#18-10054), and (iii) *Cervantes -v- Ocwen Loan Servicing, LLC*, (#16-41569)(frivolous), all in favor of the Banks/Servicers. That's almost a third of the Deutsche/Ocwen Cases heard by the same 3 member panel.

See attached Exhibits; A, B and C relating to the specific arguments against Davis, Graves and Haynes.

Summary

“A multimember court must not have its guarantee of neutrality undermined, for the appearance of bias demeans the reputation and integrity not just of one jurist, but of the larger institution of which he or she is a part.” (Williams v Pennsylvania)

The anger and bitterness that was opined in this Courts' final opinion shows this panel was very upset with the lower court Judge. No other outcome was ever going to be considered in the Burkes' case.⁶

The post-opinion bias continues, the actions by this Panel have not gone unnoticed by the Burkes. They cited this published case in criminal proceedings, *USA -v- Pittman*, (18-10203) Opinion dated 11th December, 2018 - a petty statement of unity against this original complaint, resubmitted herein as requested.

The complaint threshold herein has been met as the Burkes' have presented evidence that prejudice or impartiality emanates from data and on the record, conversations from the courts own records and actions that show bias to the Burkes in this case.

Prayer

Overall, the Panel was Bias. The ruling should not be allowed to stand. Respectfully, this complaint can be corrected by recalling the mandate, reversing the erroneous appellate court decision and finding in favor of the Burkes', as the lower court did, not once, but twice, in accordance with the correct laws of the land and for justice to be served.

⁶ See *Norton v. State*, 755 SW2d 522 (Tex. App. – Houston [1st Dist.] 1988, p.d.r. refused, 771 SW2d 560) “ . . . and if the jury gives her probation, I'll give her jail time.”

EXHIBIT A

Judge W. Eugene Davis

Per financial disclosures, Davis holds and/or has previously owned shares in Deutsche Bank. A panel Judge in the appeal, where Deutsche Bank is a party.

A conflict of interest.⁷

⁷ A judge who is a stockholder in a corporation is disqualified from hearing a case in which that corporation is a party –Pahl v. Whitt, 304 SW2d 250 (Tex. App. – El Paso 1957, no writ history)

EXHIBIT B

Judge Catharina Haynes

Haynes was on our panel in both the 2016 and 2018 appeal. The FED. R. APP. P. WITH 5TH CIR. R. & IOPs - IOP relative to Judge Assignments details the scheduling and "separation of assignment of judges and calendaring of cases". Clearly, this was not applied. See *Williams v Pennsylvania*, Supreme Court (2015).

Not only was Haynes on the original case, she became the controlling Judge in this appeal. That's like asking a Judge that's ruled in a case to rule on the subsequent appeal. How likely is Haynes to reverse her own Opinion from the earlier appeal?

No ethics, advocacy, civility nor access to justice was provided by Haynes, the main panel author for this appeal. The fact is undeniable. This case was discarded with hardly a flicker of an eye across the briefs and motions presented.

The response times, the administrative errors, namely the inexplicable denial of a motion by the Burkes' which had been classified as "insufficient", yet opposing Counsel had also filed an insufficient motion, but this was allowed by Haynes, the refusal of due process, also confirm it was standard practice to immediately deny the Burkes' motions and briefs.⁸

⁸ See Burke's MOTION FOR EXTENSION OF TIME TO RETAIN LEGAL COUNSEL TO ANSWER PLAINTIFFS MOTION TO AMEND JUDGMENT (Submitted Oct. 21, 2018, 5th)

For the above reasons, we hold the opinion that **Haynes is Bias**.⁹

⁹ “Bias,” the Court warns in *Williams v Pennsylvania*, “is easy to attribute to others and difficult to discern in oneself.” Thus, there must be an “objective standard” that requires certain judges to recuse regardless of whether they think they are capable of deciding a particular case impartially. The Constitution’s due process guarantees, the Court concludes, establish that “there is an impermissible risk of actual bias when a judge earlier had significant, personal involvement as a prosecutor in a critical decision regarding the defendant’s case.”

- https://www.supremecourt.gov/opinions/15pdf/15-5040_6537.pdf

EXHIBIT C

Judge James Earl Graves, Jr

A family man with 3 sons, all licensed lawyers. One of his sons, Jeffrey, started his working career as a mortgage loan originator for the biggest bank in the State of Mississippi, namely BankPlus.

In our audit, over the 12 month period (2017-2018), Graves sat on 7 mortgage foreclosure related panel cases, which included either/and/or Deutsche Bank/Ocwen, both the Bank and Mortgage Servicer named in the Burkes' case.

Questionably, he did not sit on any foreclosure cases which did not include either Deutsche Bank or Ocwen Loan Servicing during this period.

In 4 of those 7 cases (57%), Warnings or similar were issued to homeowners defending their foreclosures. These included statements like:-

*“Mason IS WARNED, as a **non-prisoner**, that future frivolous filings will invite the imposition of sanctions, which may include monetary sanctions or restrictions on his ability to file pleadings in this court or any court subject to this court's jurisdiction. APPEAL DISMISSED AS FRIVOLOUS; SANCTION WARNING ISSUED.”*

The Hon. Judge Graves was also on the Panels' well cited case regarding *Reinagel et al v. Deutsche Bank National Trust Company*, case number 5:11-cv-00989 (*pub.*) and the Burkes' have previously invited the Panel to listen to the Oral recording of that hearing where Judge Higginbotham laughs after saying there will be "*no free houses*".

Graves is complicit and Bias. (See *Williams v Pennsylvania*)