

Joanna Burke and John Burke

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Ref: #RESTORETX-ETHICS

June 18, 2019

State Bar of Texas

Office of the Chief Disciplinary Counsel
Attn: Eric Hsu
Assistant Disciplinary Counsel
PO Box 12487
Austin, TX 78711
Fax: (512) 427-4167

Copy;

Special Prosecutor

Attn: John Wesley Raley
1800 Augusta Drive, Suite 300
Houston TX 77057
Email; jralley@raleypowick.com

Sunset Advisory Commission

Email: sunset@sunset.texas.gov

Grievance Oversight Committee

Email; info@txgoc.com

Texas House of Representatives

Fax: (512) 463-5896

Texas Office of the Attorney General

Texas Office of the Solicitor General

Attn: Kyle D. Hawkins
Fax: (512) 427-4169

Administrative Office of the United States Courts
One Columbus Circle, NE
Washington, D.C. 20544
By: USPS Priority Mail

Dear Mr Hsu

LEGAL ETHICS COMPLAINT AGAINST MARK HOPKINS & SHELLEY HOPKINS of HOPKINS LAW, PLLC, AUSTIN, TEXAS - Ref: #201903101 et al.

We refer to your letter dismissing our complaint. We are currently considering the options which you provide in your letter, e.g. direct appeal or BODA appeal. This letter is not seeking either option right now, what we would request, is time-sensitive answers to the following questions.

As detailed in our extensive complaint, we studied the laws before we submitted the complaint and we cannot agree with your unfathomable decision. Without going into every detail, we wish to focus on one particular grievance in our complaint: the malicious concealment of evidence as admitted on the record by Mark Daniel Hopkins.

In quick summary and to aid Mr Raley and those who we have copied herein who are unfamiliar with the general background to this case, the Burkes obtained judgment against Deutsche Bank in a foreclosure civil action in 2015 (after a bench trial where Deutsche Bank presented zero evidence and no witnesses).

Hopkins was then appointed to appeal the case as ‘first chair’ for Barrett Daffin Frappin Turner & Engel, LLP (“BDF”). First, Hopkins tried unsuccessfully to have the judgment reversed in favor of the bank. Then Hopkins, dissatisfied with the Judge, appealed to the Fifth Circuit.

However, when he took the case, he did so in full knowledge that the Burkes did not declare an income of \$125k per annum and which the bank forged onto the mortgage application. Nonetheless, he withheld the banks mortgage file proving this fact *e.g.* that the Burkes’ income on file in no way amounted to the \$125k shown on the application, which consisted of a small annual UK pension, thus confirming the bank

fraud and forgery. Hopkins admitted on the record to withholding this file and evidence intentionally.

Hopkins argues (in court motions in ongoing litigation) that this is not relevant as “the bench trial was over and evidence closed before he started the appeal”. But that is misguided. Hopkins took over the case after the bench trial to appeal it but not before trying to open the case to “add evidence” (a newly created ‘wet ink note’ that was absent for 4.5 years prior to the bench trial, Hopkins now had in his personal possession).

As your office and code of ethics opines, an attorney that is aware of fraud prior to appointment has a duty not to take the case and also tell the client that they should not appeal. In other words, not to knowingly become a party to fraud and to dissuade the client from proceeding. In this case, the record clearly shows the lender forged the mortgage application to add *just enough* income necessary to meet underwriting requirements for the loan.

As the record shows, there was no such ethical refusal by Hopkins. As outlined in the complaint, his wife, (Shelley Luan Hopkins, nee Douglass) worked at BDF as head of litigation in the foreclosure department since the start of the legal proceedings in April 2011 and was in control of the Burkes’ case throughout her time at BDF before marrying Hopkins and moving to his ‘firm’, a related entity of BDF created as a shell company.

Hopkins earns all his referrals and income directly from BDF and BDF have offices beside his own in Juniper Place, Austin, Texas. (We enclose Doc. 40, the last filing by the Burkes in the case *Burke v Hopkins et al*, Case 4:18-cv-04543 in SDTX District Court, Houston, requesting Hopkins and 2 named BDF directors be removed from the proposed list of ‘expert witnesses’ based on the ethical violations and legal arguments presented therein).

Furthermore, Deutsche Bank is a ‘straw man’ [and invisible] in this civil action as we’ve discussed in the complaint.

In summary, Shelley Hopkins is a co-conspirator as she was as an attorney during the Deutsche Bank case while at BDF and again at Hopkins Law, PLLC.

We now address why Mr Raley is included in this letter. We read with interest the article at law.com¹ which included a copy of the 39 page Grievance Letter by your

¹ See; <https://www.law.com/texaslawyer/2019/06/07/houston-ex-prosecutor-faces-grievance-for->

offices against former Assistant District Attorney Mr Rizzo, dated 4th June, 2019. We show below an extract from that grievance regarding the Courts’ statement discussing the concealment of evidence in Browns’ case;

Agreed Findings of Fact and Conclusions of Law, signed by Judge Ellis of 351st District Court on May 28, 2013, stated that the State’s withholding of the Dockery landline records from production to the defense was not intentional. The Findings of Fact stated the following:

31. The State’s *inadvertent* failure to disclose Dockery’s phone records to the defense at the time of trial was not a matter of bad faith.

* * *

34. Although the State’s failure to disclose the Dockery phone records to trial counsel was *inadvertent* and *not in bad faith*, the applicant’s claim meets the requirements of *Brady*.

(Emphasis added).

Similarly, the Agreed Conclusions of Law stated the following:

1. Based on the State’s *inadvertent* failure to provide trial counsel with the Dockery phone records, the applicant satisfies the tenets of *Brady*...

(Emphasis added). Regardless of the “inadvertent” qualifiers, the Agreed Findings concluded that the State had withheld exculpatory material evidence in violation of Brown’s constitutional rights.

As you can see, the Court incorrectly decided the evidence presented was not a matter of fraud or bad faith. Your Offices’ decision to dismiss is also in error. It indicates that our complaint did not meet the necessary standards of any disciplinary rule, which is legally and factually not true.

Unlike Mr Brown, we were not incarcerated nor did we face death row (and we cannot expect to understand the totality of that exceptional sufferance, which must have been quite horrific) but it has sure felt like an order of confinement. This whole ordeal has materially affected our lives in a negative way.

We are senior citizens in our eighties, and as documented in court records, our health has been materially affected by this lengthy litigation and a foreclosure judgment was recorded in November 2018 against our homestead (after 2 appeals by Hopkins). This despite the lender fraud and lawyer misconduct.

Reverting back to the Raley/Rizzo case, we do, however, believe our civil case and circumstances are very similar to the Rizzo grievance, namely the withholding of evidence.

Governor Rick Perry, in publicly addressing the Alfred Dewayne Brown case, had the following thoughts:

You could say this story has a happy ending, because Alfred was released. But his life was almost ruined because of an overzealous prosecutor who concealed exonerating evidence. And Ericka's (Ericka Dockery's) children were put in harm's way because of a grand jury that acted as the arm of the prosecution, rather than as an independent check on government power...Anyone wielding the power of the state faces the temptation to abuse it. And when it comes to prosecutors, there are clearly bad apples in the system who care more about indicting someone – anyone – than they care about convicting the right person.

Remarks to American Legislative Exchange Council, July 27, 2016.

In summary, we are asking for a specific and timely answer as to how your office can file a grievance against Rizzo for withholding evidence, yet reject our similar complaint of withholding evidence, as admitted by Hopkins on the record, and which has resulted in a fraud-induced order of foreclosure against the Burkes'?

This information is requested prior to deciding on which way to proceed in this matter and consideration of our legal rights per State of Texas laws and Constitution.

We look forward to a timely response. If you have any comments, questions or concerns related to the above, or our complaint, please contact us at the information shown below. Due to our age, we prefer communications via email or fax, as we find phone conversations difficult due to hearing impairment (and it is also faster than regular postal mail considering your noted time restraints in this matter).

Respectfully

/s/ J & J Burke

Joanna Burke & John Burke

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[8.04] Misconduct (b) As used in subsection (a)(2) of this Rule, serious crime means barratry; any felony involving moral turpitude; any misdemeanor involving theft, embezzlement, or fraudulent or reckless misappropriation of money or other property; or any attempt, conspiracy, or solicitation of another to commit any of the foregoing crimes.

– **Texas Disciplinary Rules of Professional Conduct**

Civil Action No. 4:18-cv-4543

John Burke and Joanna Burke
46 Kingwood Greens Dr
Kingwood, Texas 77339
Tel: 281 812 9591

United States Courts
Southern District of Texas
FILED

JUN 10 2019

David J. Bradley, Clerk of Court

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION

Civil Action No. 4:18-cv-04543

Joanna Burke and John Burke
Plaintiffs,

vs.

Hopkins Law, PLLC, Mark Daniel
Hopkins and Shelley Luan Hopkins,

Defendants.

} PLAINTIFFS MOTION TO STRIKE
DEFENDANT'S EXPERT WITNESSES

MOTION TO STRIKE DEFENDANT'S EXPERT WITNESSES

TO THE HONORABLE JUDGE OF SAID COURT: Plaintiffs Joanna & John Burke ("Plaintiffs") file this Motion to Strike Defendant's Designation of Expert Witnesses, and respectfully show as follows:

The Plaintiffs refer to Case assigned to the Hon. Judge David Hittner, *James v. Calkins*, 4:16-cv-01910, Document 33, Filed in TXSD on 08/26/16. The law and citations therein are relevant to the case here. The lawyer in that case requests

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removal from the case, and based on the motion, it was granted by Judge Hittner 3 days later in Document 35. For example on p.4 of Document 33;

The Warrilow Court¹ went on to state:

“The practice of attorneys furnishing from their own lips and on their own oaths the controlling testimony for their client is one not to be condoned by judicial silence; nothing short of actual corruption can more surely discredit the profession.”

And...

“4. Because Schwager is a witness to what promises to be a hotly contested issue of fact, she obligated to withdraw, and does so now before anyone raises it as a complete sign of respect for this Judge, and the United States District Court.”

In this case, Defendants seek to designate Mark Hopkins of Hopkins Law, PLLC which is frowned upon as shown by example in the *James* case. Namely being an attorney acting as ‘pro se’ counsel and as an expert witness.

¹ *Warrilow v. Norrell*, 791 S.W.2d 515 (Tex. App. 1990)

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The attempts by Hopkins to absolve this issue by focusing on attorney fees should also be rejected. It is well known that “where there is” an engagement letter, the foreclosure mills work for a fixed fee.

The Burkes have previously asked for Hopkins firms’ engagement letter be presented into evidence. This **in-house** “expert witness” designation by Hopkins is another strong and valid reason why this honorable court should order into evidence the engagement letters and any valid and legal evidence that Deutsche Bank has any interest in the alleged [mortgage] debt.²

Next, crawling out of the woodwork despite 7.5 years of prior litigation where they were invisible, Defendants also seek to add 2 directors from Barrett Daffin Frappier Turner & Engel, LLP, (“BDF”) namely Robert Forster and Brian Engel. Forster is located out of the Belt Line offices of BDF in Addison, TX and Engel works from Suite 201 of the same offices as that of Hopkins, which is Suite 101 at 3809 Juniper Pl., Austin, TX.

They are not expert witnesses to the case at hand. In the underlying suit they could not furnish a single witness nor believable legal document prior to the bench trial, a period in excess of 4 years. They are business associates and debt collecting

² See Doc 32, p.17 of 58; “Texas Rule of Evidence 503 codifies the attorney-client privilege. This privilege protects confidential communications between an attorney and client relating to the attorney’s rendition of legal services. See TEX. R. EVID. 503(b); Huie v. DeShazo, 922 S.W.2d 920, 922 (Tex. 1996). To **“assume” the current and new firm [Hopkins] holds carte blanche authority without evidence is in error...** [especially when no ‘client’ is ever included or visible in any court actions e.g. Deutsche Bank remains silent].

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lawyers who create a myriad of shell firms for the purposes of deception and fraud upon the court and the homeowners they wish to remove by illicit acts from their legal homestead.


It merely confirms what the Burkes' have maintained all along in this case (and the *Burke v Ocwen* case now on appeal). It is evident that Hopkins cannot risk involving anyone 'outside' the foreclosure mill. If they were ethical, as in *James*, there would be independent attorney(s) representing Hopkins and independent expert witnesses. The fact they refuse to seek independent counsel, in breach of the law ethics as stated in *James*, is irrefutable confirmation of the Burkes' statements herein.

CONCLUSION & PRAYER

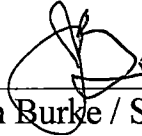
Plaintiffs Joanna & John Burke respectfully request that the Court grant Plaintiffs' Motion, strike the expert designations and prohibit any expert designated by Defendants from offering any testimony in this case in the capacity of an expert. Plaintiffs further request all such other and further relief, at law or in equity, to which they are justly entitled.

Civil Action No. 4:18-cv-4543

RESPECTFULLY submitted this 7th day of June, 2019.



Joanna Burke / State of Texas
Pro Se



John Burke / State of Texas
Pro Se

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Civil Action No. 4:18-cv-4543

CERTIFICATE OF SERVICE

We, Joanna Burke and John Burke hereby certify that on June 7, 2019, we posted the attached document via USPS Priority Mail to the US District Court;

Clerk of Court
United States District Court
515 Rusk St
Courtroom 703, 7th Floor
Houston TX 77002

And also served copies to the following parties, by USPS Priority Mail:

Mr. Mark Hopkins,
Mrs. Shelley Hopkins
& Hopkins Law PLLC
Hopkins Law PLLC
3809 Juniper Trce, Suite 101
Austin, TX 78738

Joanna Burke and John Burke

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June 7, 2019

Clerk of Court

United States District Court

515 Rusk St

Courtroom 703, 7th Floor

Houston TX 77002

United States Courts
Southern District of Texas
FILED

JUN 10 2019

David J. Bradley, Clerk of Court

Federal Court Case (Removed to, by Hopkins, Dec. 3rd, 2018):

Snr. Judge David Wittner

US District Court

Southern District of Texas

515 Rusk Avenue

Room 8509

Houston, Texas 77002

(Ref. Burke v Hopkins Law PLLC, Case # 4:18-cv-04543)

Dear Sirs

Burke v Hopkins Law PLLC, Case # 4:18-cv-4543

Filing Cover Sheet

Please find enclosed;

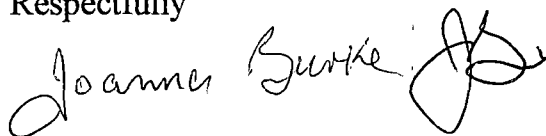
- (i) Motion to Strike Defendants Expert Witnesses.

Notice

If you have any questions or comments about the enclosed filings, please do not hesitate to reach out via email to kajongwe@gmail.com, or fax to +1 (866) 705-0576 to expedite any questions or concerns. We prefer written communication for the purposes of tracking the case(s).

Thank you very much in advance for your time and consideration.

Respectfully

Handwritten signature of Joanna Burke and John Burke in cursive script.

Joanna Burke and John Burke

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“The practice of attorneys furnishing from their own lips and on their own oaths the controlling testimony for their client is one not to be condoned by judicial silence; nothing short of actual corruption can more surely discredit the profession.”

~ Marrilow v. Norrell, 791 S.W.2d 515 (Tex. App. 1990).