No. 20-20209

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

JOANNA BURKE; JOHN BURKE

Plaintiffs-Appellants,

v.

MARK DANIEL HOPKINS; SHELLEY HOPKINS; HOPKINS LAW, P.L.L.C.

Defendants-Appellees.

On Appeal from the United States District Court
For the Southern District of Texas, Houston Division;
USDC No. 4:18-CV-4543

APPELLANTS MOTION FOR RECONSIDERATION OF SINGLE JUDGE'S ORDER RE 'OTHER AUTHORITIES'

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Pro Se Appellants

Appellants, Joanna Burke and John Burke ("Burkes"), now file a Motion for reconsideration [FED. R. APP. P. 27.1][1] of Single Judges' Order dated Thursday 16th July, 2020.[2] In support thereof:

As a preamble to this motion, the Burkes appeal is very similar to the summary provided in *Hyman v. Regenstein*, 222 F.2d 545, 546 (5th Cir. 1955);

> "Upon reconsideration of the matter, we are not convinced of the correctness of the trial court's action in granting the summary judgment at the time and in the circumstances shown by the record. **What causes us concern is appellant's contention that he has not yet been permitted to prove his case**; that he was cut off by the district court from introducing all of his evidence; and that, without affording him a hearing for the presentation of such evidence, the court granted a summary judgment against him."

Attorney-Defendants [BDF] Hopkins complain in their motion to strike;

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[1] FED. R. APP. P. WITH 5TH CIR. R. & IOPs, 27-7/8

THE CLERK ASSEMBLES A COMPLETE SET OF THE MOTION PAPERS, AND ANY OTHER NECESSARY MATERIAL AND SUBMITS THEM WITH A ROUTING FORM TO THE INITIATING JUDGE.

IN SINGLE JUDGE MATTERS THE JUDGE ACTS ON THE MOTION AND RETURNS IT TO THE CLERK WITH AN APPROPRIATE ORDER. FOR MOTIONS REQUIRING PANEL ACTION, A SINGLE SET OF PAPERS IS PREPARED, BUT THE INITIATING JUDGE TRANSMITS THE FILE TO THE NEXT JUDGE WITH A RECOMMENDATION. THE SECOND JUDGE SENDS IT ON TO THE THIRD JUDGE, WHO RETURNS THE FILE AND AN APPROPRIATE ORDER TO THE CLERK.

[2] IT IS ORDERED that Appellees' motion to strike portions of the Appellants' brief that refer to material outside of the record is GRANTED. IT IS FURTHER ORDERED that the Appellees' motion to file Appellants' brief under seal is DENIED AS MOOT.

> "Appellants' Brief contains a multitude of embedded links to documents not part of the appellate record and those links (and related documents) are improper as part of the Burke's brief." - Referencing, (i) History.com reference/link (ii) The Burkes copy of Hopkins April 2020 Billing Statements (surprise.pdf) and (iii) the BODA correspondence re official complaint against Mark D. Hopkins.

The Burkes now reply to these false statements, starting with 'a multitude of embedded links…' which Hopkins lists 3. That is hardly a multitude. A multitude is the Burkes list of Other Authorities (with embedded links to documents…) in *Burke v Ocwen* (19-20267) and as discussed herein.

The Burkes reviewed the citations and 'other authorities' in FRAP. Nowhere does it state any restrictions on what citations can be used. Indeed, the Fifth Circuit references the Bluebook and the Burkes now 'cite' The Practitioners Guide to the U.S. Court of Appeals for the Fifth Circuit[3] p.47,

> "Form of Citation. The court strongly recommends that the parties cite statutes, cases and other materials according to a uniform system, such as that set out in *the Bluebook: A Uniform System of Citation.*"

[3] See HTTP://WWW.CA5.USCOURTS.GOV/DOCS/DEFAULT-SOURCE/FORMS-AND-DOCUMENTS---CLERKS-OFFICE/DOCUMENTS/PRACTITIONERSGUIDE.PDF

Upon research, the Burkes now 'cite' the University of Texas.[4] In their legal web page, it lists 'order of secondary authorities', which appears to fall into 'other authorities' category in appellate courts, like the 5th Circuit. It lists the type of material as;

Order of secondary authorities

- uniform codes, model acts, restatements (reverse chronological by type in that order)
- books, pamphlets, or shorter works in an author's collection (alphabetical by author)
- works in journals (alphabetical by author)
- book reviews not written by students (alphabetical by reviewer)
- student-written journal materials (alphabetical by author)
- annotations (reverse chronological)
- magazine and newspaper articles (alphabetical by author name)
- working papers (alphabetical by author)[5]
- unpublished materials (alphabetical by author)[6]

[4] See Tarlton Law Library, Jamail Center for Legal Research, Bluebook Legal Citation. HTTPS://TARLTON.LAW.UTEXAS.EDU/BLUEBOOK-LEGAL-CITATION/ORDER-OF-AUTHORITY

[5] See definition of 'working papers' and relevant to the case here; HTTPS://WWW.MYACCOUNTINGCOURSE.COM/ACCOUNTING-DICTIONARY/WORKING-PAPERS

[6] For example, see; The Seattle Times, July 23, 2020; quoting in part; "Five news outlets, including The Seattle Times, will have to comply with a subpoena and give the Seattle Police Department **unpublished** video and photos from a May 30 racial justice protest that turned violent, a judge ruled Thursday. King County Superior Court Judge Nelson Lee sided with the Police Department in a morning hearing, ruling that its subpoena was enforceable. He found that the photos and video **were critical for an investigation** into the alleged arson of SPD vehicles and theft of police guns.

- electronic and web sources (alphabetical by author)[7]

History.com Citation(s);

This court, via a single judge, has allowed the history.com links to be stricken. It was included due to the storyline[8], including John Burkes' own experiences as a

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Lee said the news organizations were not protected by a Washington state shield law that under many circumstances prevents authorities from obtaining reporters' **unpublished materials**."

HTTPS://WWW.SEATTLETIMES.COM/SEATTLE-NEWS/JUDGE-RULES-SEATTLE-MEDIA-COMPANIES-MUST-HAND-OVER-PROTEST-IMAGES-TO-POLICE/

In this case Hopkins motion to strike, footnote 2 demands "… along with a request for all public postings to be removed", which is akin to Hopkins stating the documents are unpublished (non-public) materials and which of course, is erroneous.

[7] See MLA (Modern Language Association) Works Cited: Electronic Sources (Web Publications)
HTTPS://OWL.PURDUE.EDU/OWL/RESEARCH_AND_CITATION/MLA_STYLE/MLA_FORMATTING_AND_STYLE_GUIDE/MLA_WORKS_CITED_ELECTRONIC_SOURCES.HTML

Important Note on the Use of URLs in MLA

Include a URL or web address to help readers locate your sources. Because web addresses are not static (i.e., they change often) and because documents sometimes appear in multiple places on the web (e.g., on multiple *databases*), MLA encourages the use of citing containers such as Youtube, JSTOR, Spotify, or Netflix in order to easily access and verify sources. However, MLA only requires the www. address, so eliminate all https:// when citing URLs.

Many scholarly journal articles found in *databases* include a DOI (digital object identifier). If a DOI is available, cite the DOI number instead of the URL.

Online newspapers and magazines sometimes include a "permalink," which is a shortened, stable version of a URL. Look for a "share" or "cite this" button to see if a source includes a permalink. If you can find a permalink, use that instead of a URL.

[8] The Burkes also object to the single judge striking portions of the complaint rather than the entire complaint (and allowing for a complete resubmission) as it leaves the initial brief disjointed and breaks up the storyline. However, this order should be completely overturned on reconsideration, which would moot this footnote comment.

paratrooper and comment regarding 'roman candle' orders. Firstly, this is contrary to other federal cases in Texas, as authored by federal judges;

> *See e.g.* History.com, https://historycom/topics/world-war-ii/the-holocaust, (Aug. 29, 2019) ("Holocaust" refers to "the mass murder of some 6 million European Jews ... by the German Nazi regime during the Second World War"). Michael A. Livingston, *Never Again ... What? Law*, *History*, *and the Uses of the Holocaust*, 14 Rutgers J. L. & Religion 267 (2012) ("The Holocaust--the murder of six million European Jews in countries under German control between 1941 and 1945--is widely regarded as one of the major events of the twentieth century.")
>
> *Leichty v. Bethel Coll.*, No. 19-1064-JWB, at *21 n. 7 (D. Kan. Oct. 28, 2019).
>
> "*See* South Dakota - U.S. States - HISTORY.com, http://www.history.com/topics/us-states/south-dakota; History of the Louisiana Purchase from Barrister's Gallery, http://www.barristersgallery.com/historylp.html; see also Louisiana Purchase/HistoryNet, http://www.historynet.com/louisiana-purchase."
>
> *United States v. Sadekni*, 3:16-CR-30164-MAM, at *4 n. 2 (D.S.D. Mar. 1, 2017).

Furthermore, there were many similar embedded links in the Burkes' Initial Brief in *Burke v Ocwen* (19-20267) and this was not objected to by opposing counsel nor stricken by the court. Indeed, there is even a citation to HopkinsLawTexas.com

which was not objected to by Hopkins.[9] There is a lack of consistency that defies the due process clause and the rule of law. Solicitously, this should be corrected by the 3-panel on reconsideration.

Gilstrap Cites Poet In Refusal To Postpone Apple Patent Trial

A very recent example of 'any type of *other authority* and citation' being allowed is confirmed by Eastern District of Texas Judge Rodney Gilstrap, who shot down Apple's request to postpone an in-person jury trial in a patent lawsuit over 4G LTE technology, *quoting poet Robert Frost* in his reasoning why the trial should begin in two weeks despite the pandemic.

See *Optis Wireless Technology LLC et al*. v. *Apple Inc*., case number 2:19-cv-00066, in the U.S. District Court for the Eastern District of Texas (July, 2020); "However, as Robert Frost admonished in A Servant to Servants, "the best way out is always through."6 – with footnote citation; 6 Robert Frost, A Servant to Servants, North of Boston ln.56 (1914)."

Hopkins Arguments were Meritless and the Single Judge Erred

Hopkins rambles on in their motion to strike;

> "This privileged information, along with the rest of the documents linked to Appellants' Brief are not material - or even arguably relevant

[9] See Case: 19-20267 Document: 00515032985 Page: 14/15/16/17 (6. Other Authorities) Date Filed: 07/14/2019. (Hopkins website per page 15).

> - to Appellants claims. In fact, the billing records accidently emailed to Mrs. Burke *involve Appellee Hopkins' legal work for unrelated mortgage companies in connection with the defense of those companies in unrelated foreclosure litigation.* It appears that the Burkes included the billing records of the Hopkins' law firm in an attempt to bolster the Burke's false claims of "wrongdoing" by the Hopkins / Appellees."

These arguments are nonsensical. The April invoices are from Hopkins to 'client' BDF. For example, there are invoices where Hopkins is invoicing BDF as the 'client'[10] in relation to defending *Deutsche Bank National Trust Co*., which makes this yet another misleading statement by Hopkins which is untruthful. Namely, Hopkins 'client' is BDF Law Group, not Deutsche Bank. It is sufficient to warrant reversal in this case as the Burkes will require access to the billing invoices from Hopkins to confirm that their appellate cases are/were also being billed by Hopkins Law, PLLC to 'client' BDF. Furthermore, it will be necessary to confirm who Hopkins are billing the fees to in *Ocwen v Burke* and who they billed fees to in *Deutsche I* and *Deutsche II* appeals.

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[10] **H610-1919 Guerrieri**

BDFTE No. 7016504; Deutsche Bank v. Dalla K. Guerrieri and Tracy Barden; Cause No. 2019535857 in the 99th Judicial District of Lubbock County; **Client** Contact: Lauren Christoffel. (BDF Law Group).

H610-1933 Wiley

BDFTE No. 20100033501421; Deutsche Bank National Trust Company v. John Wayne Wiley and Linda Wiley Walker; Cause No. DC-19-20206 in the 193rd Judicial District, Dallas County; **Client** Contact: Lauren Christoffel. (BDF Law Group).

In short format, the lies from Hopkins are still flowing like a dam opening its flood gates. The whole case revolves around Hopkins and BDF. The cited information and billing records are most certainly not privileged and based on this new information.[11]

DC Ethics Opinion

The Burkes first turn to the D.C. Ethics citation found in their initial brief, which in part, concludes convincingly:-

"…the receiving lawyer [or pro se] engages in no ethical violation by **retaining** and **using** those documents."

In other words, any privilege was 'waived' by Hopkins when Shelley Hopkins sent the email to Joanna Burke, whether the 'client' is BDF or as claimed by Hopkins a bank or non-bank. Either way, it could not be any more crystal clear that the Burkes are well within their rights to list this document in 'other authorities'.

Hopkins motion to strike states, in part;

[11] See *King & Spalding, LLP v. U.S. Deparment of Health & Human Servs*., Civil No. 1:16-cv-01616 (APM) (D.D.C. Apr. 7, 2020) and; *Taylor Lohmeyer Law Firm P.L.L.C. v. United States*, No. 19-50506 (5th Cir. Apr. 24, 2020) and; C. Mueller, L. Kirkpatrick, & L. Richter, Evidence §5.19 (6th ed. Wolters Kluwer 2018) HTTPS://SSRN.COM/ABSTRACT=3276999 [The general rule is that the attorney-client privilege does not shield the identity of the client – and paper generally].

"The Burkes links to the billing records (now improperly possessed and stored by the Burkes *in an online database*)….

Again, citing to other authorities, referencing the authorities per the Uni. Of Texas above, it clearly allows "electronic and web sources" and including *online databases*, as admitted by Hopkins above. The Burkes have the billing statement in an *online database* and have linked to an electronic/web source, in compliance with 'other authorities', the Bluebook and the Fifth Circuit rules and guidelines.

Secondly, for illustrative purposes, let's review Hopkins "expert witness(es);

Mark Hopkins, Self-Designated Expert Witness to discuss Billing/Attorney Fees

See ROA.836, in part and ROA.837;

> "Mr. Hopkins is [pro-se] counsel for Defendants and is an expert on attorney immunity and its application in the foreclosure context. Mr. Hopkins will further testify as to the reasonableness and necessity of attorney's fees incurred by his clients [his own firm] in defending against Plaintiffs' lawsuit. He will also testify as to the reasonableness and necessity of attorney's fees incurred by Defendants in pursuing relief. Mr. Hopkins' opinions are that all fees incurred by his clients are reasonable in amount of necessary legal services. As suit is ongoing, Mr. Hopkins' opinions will necessarily be finalized at a later date."

Firstly, a *pro-se* lawyer is not entitled to legal fees.[12] Secondly, the inclusion of *pro se* attorney as an expert witness is also highly disagreeable.[13] That stated, focusing on billing fees confirms that *pro-se* Attorney-Defendant Mark Hopkins of Hopkins Law, PLLC, was prepared to disclose his firms' fees in the hopes of illegally gouging the Burkes in this lawsuit.

"Mr. Hopkins will consider the following factors:

> a. the time and labor involved, the novelty and difficulty of the questions involved, and the skill required to perform the legal services properly;
> b. the likelihood that the acceptable of the particular employment will preclude other employment by the lawyer;
> c. the fee customarily charged in the locality for similar legal services;
> d. the amount involved and results obtained;
> e. the limitations imposed by the client or the circumstances;

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[12] "Were we to hold that a **pro se attorney** is eligible for fees, we would be the only court of appeals to do so after *Kay*. "We are always chary to create a circuit split," *United States v. Graves* , 908 F.3D 137, 142 (5th Cir. 2018) (quotation omitted), including when applying the rule of orderliness. See *Stokes* , 887 F.3D AT 201, 205. We refuse to create one here."

Gahagan v. U.S. Citizenship & Immigration Servs., 911 F.3d 298, 304 (5th Cir. 2018)

[13] See; *Aghili v. Banks*, 63 S.W.3d 812 (Tex. App. 2002); Concluding trial court abused its discretion by allowing lawyer for defendant to testify about relevant facts by affidavit in response to summary judgment motion because "a lawyer who represents clients as an advocate before a court should be incompetent to provide evidence in the matter unless one of the exceptions to Rule [of Disciplinary Procedure] 3.08 applies" HTTP://WWW.TXCOURTS.GOV/ALL_ARCHIVED_DOCUMENTS/14THCOA/CASE/OPINIONS/082301/981148F.PDF

> f. the nature and length of the professional relationship with the client;
>
> g. the experience, reputation, and ability of the lawyer or lawyers performing the services; and
>
> h. whether the fee is fixed or contingent on results obtained or uncertainty of collection before the legal services have been rendered.
>
> Mr. Hopkins is an attorney at law duly licensed to practice in the courts of the State of Texas and admitted into the United States District Court for the Southern District of Texas, United States District Court for the Northern District of Texas, United States District Court for the Western District of Texas, United States District Court for the Eastern District of Texas, the Fifth Circuit, the Federal Circuit, and the United States Supreme Court. Mr. Hopkins is actively engaged in the practice of law and has represented numerous clients involved in financial lending/banking litigation in the State of Texas, which litigation has included lawsuits similar to the one involved in this case. Mr. Hopkins' opinions are based on his review of the pleadings, motions, discovery, attorney fee statements and attorney fee contracts in relation to the present suit, taking into consideration the fees customarily charged by practicing attorneys in Texas for the same or similar serviced, the time and labor involved, the nature of the case at bar and the complexity of the issues involved, the expertise, reputation and ability of counsel, extent of responsibility assumes, the benefits to be derived by Plaintiffs and Defendants, and the costs of expenses incurred in relation to this suit."

The Burkes now have the Billing Statements for April, 2020 and can see the rates Hopkins charges for 'similar' foreclosure cases. Whether or not this detail would have been the actual disclosures provided by Hopkins is very doubtful, based on

Hopkins devious and deceptive mannerisms throughout the Burkes case(s), and if discovery had not been erroneously suspended. That aside, there is now no doubt, the following is true and vindicates the Burkes arguments which were swept aside continually by the lower court;

(a) Hopkins receives the majority, if not all of his work from "client" BDF and this sham alter ego is to deceive the IRS of taxes and confuse the homeowners litigating in courts against foreclosure, where BDF Hopkins are involved. See *Donald G. Cave, A Professional Law Corporation v. Commissioner*, Case No. 11-60390, (5th Cir., 2012).
(b) The 'expert witnesses' from the lower court case supplied by Hopkins are; Mark Hopkins and two BDF directors. Nobody from a bank, nonbank or [BDF] "client" were listed.
(c) Relying on the Burkes entire case arguments and now in conjunction with (b) above, BDF and Hopkins are involved in a conspiracy/unjust enrichment system or scheme designed for the illegal takings of homeowners residence(s). The Burkes statements and arguments are once again confirmed as true.
(d) Mark Hopkins and Shelley Hopkins do perform non-attorney works for BDF, confirming another argument by the Burkes in the lower court which proves beyond a reasonable doubt they are not protected by attorney immunity.
(e) Shelley Hopkins admits and authenticates Hopkins April 2020 billing statement to BDF Law Group, thus validating the Burkes claims.
(f) Shelley Luan Hopkins nee Douglass is a key (and devious) litigant, despite Mark Hopkins and Shelley Hopkins continual attempts to shield her from being noticeable in this action. She is an equal majority co-conspirator.
(g) The billing statement confirms the Burkes suspicions re Hopkins Law, PLLC, which fails to hold a surety bond in Texas. Most likely, Hopkins erroneously thought BDF insurance and other related licenses and surety bonds would be sufficient protection. But even as a sham entity, the Secretary of State requires each corporation to hold a surety bond and license. Review of the April 2020

Billing Statement to the 'General' account shows Mark Hopkins is billing for reviewing BDF's liability to their professional indemnity insurance, which he identified 18 potential foreclosure cases *e.g.* cases which could present a claim against BDF's insurance. This begs the question, are these 18 cases that Hopkins is billing to BDF? That question remains unanswered but is sufficient to warrant reversal of the lower courts' decision in a search for the truth.

(h) Had the lower court not erroneously stopped discovery, the detailed RFA's the Burkes supplied to Mark Hopkins and depositions would ultimately prove (a)-(g) above. The lower court erroneously ended the case prematurely, thus denying the Burkes right to 'search for the truth', which is Hopkins unlawfully appealed the first case in 2015 and has continued to violate Texas laws. Hopkins Law should not be pursuing any debt collection cases while they do not have their own surety bond as required by the Secretary of State. As the Burkes quoted in *Burke v. Ocwen* before this court, *In re Ray,* No. 19-10875 (5th Cir. Mar. 3, 2020), it's a mirror case as far as duping the courts and this appeals court. Hopkins has criminally extended litigation for 5+ years when unauthorized and unlicensed to do so.

As a matter of precaution, the Burkes also discuss Hopkins fixation with Rules of Evidence and the Record[14], although it is abundantly clear from the above, the Burkes are well within their legal rights to cite the documents and web links which they included in their initial brief.

[14] See Hopkins motion to strike, point 6.; "Fed. R. App. P. 10(a) defines the appellate record as consisting of the original papers and exhibits filed in the district court, the transcript of proceedings, if any, and a certified copy of the docket entries prepared by the district clerk. The information in the links embedded in Appellants' Brief is clearly not in the appellate record and was included in Appellants' Brief with the sole purpose of harassing Appellees for their legal representation of their clients."

Fed. R. App. P. 10(a) Exceptions

Hopkins demanded and obtained a favorable single judge order, striking items in the appendix, not the record.[15] While the Burkes vehemently disagree with the classification that these items were '[not] part of the record', they can show this court that allowed exception(s) applies[16] in this instant case. These exceptions are;

Rule 201

> "Under FRE 201, federal courts *of appeals* can take judicial notice of highly indisputable facts or other court proceedings that directly relate to the issues on appeal. The general rule of appellate review based on a closed record "is subject to the right of an appellate court in a proper case to take judicial notice of new developments not considered by the lower court." Parties may in consequence seek to supplement the

[15] Mr. Kutz misapprehends the distinction between the record and an appendix. See Fed. R. App. P. 10(a) ("The following items constitute the record on appeal: . . . the original papers and exhibits filed in the district court . . . [and] the transcript of proceedings, if any . . . ."). As we have explained, "all of the transcripts (if they have been ordered) and documents and exhibits filed in the district court remain in the record **regardless of what the parties put in the appendix**." *Milligan-Hitt v. Bd. of Trs. of Sheridan Cty. Sch. Dist*. No. 2, 523 F.3d 1219, 1231 (10th Cir. 2008) (footnote omitted).

United States v. Kutz, No. 16-6266, at *7 (10th Cir. June 28, 2017)

[16] Appellate courts do not ordinarily consider evidence not contained in the record developed at trial. *In re AOV Indus., Inc.*, 797 F.2d 1004, 1012 (D.C. Cir.1986) (citing *Singleton v. Wulff*, 428 U.S. 106, 96 S.Ct. 2868, 49 L.Ed.2d 826 (1976)). "It is within the discretion of the court of appeals, however, to make limited exceptions to this rule when `injustice might otherwise result.'" Id. (quoting *Singleton*, 428 U.S. at 121, 96 S.Ct. 2868). See also *CSX Transp., Inc. v. Garden City*, 235 F.3d 1325, 1330 (11th Cir.2000) ("[Courts of appeals] have the inherent equitable power to allow supplementation of the appellate record if it is in the interests of justice.").

Colbert v. Potter, 471 F.3d 158, 165-66 (D.C. Cir. 2006)

> appellate record with new materials that meet the FRE 201 requirements.
>
> The Rule provides that, at any stage of the proceedings, a federal court of appeals may take judicial notice of "adjudicative facts" that are not subject to reasonable dispute because they are "generally known within the territorial jurisdiction of the trial court" or "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Thus, a "high degree of indisputability is the essential prerequisite" to courts' taking judicial notice."[17]

Here, in relation to Hopkins objection to the attorney billing statements, there is no indisputability as Hopkins admits and authenticates the April 2020 Billing statements in submissions to this court (the motion to strike). As such, this appellate court should allow supplementation of the record, if required.

Inherent Equitable Authority

First, the Burkes have constantly stated in their complaint the relationship between Hopkins and BDF, which the invoices and statements of account (April 2020) now confirms.

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[17] George C. Harris and Xiang Li, Supplementing the Record in the Federal Courts of Appeals: What If the Evidence You Need Is Not in the Record?, 14 J. APP. PRAC. & PROCESS 317 (2013). HTTPS://LAWREPOSITORY.UALR.EDU/APPELLATEPRACTICEPROCESS/VOL14/ISS2/7

> "Under their inherent equitable authority, however, at least two federal courts of appeals have relied on the truth-seeking function of the judiciary to permit supplementation of *evidence disputed by both parties*. In *Colbert*, the D.C. Circuit permitted supplementation because the proffered front side of a receipt, not entered into the district court record with its reverse side, went "to the heart of the contested issue" and pretending that it did not exist would have been "inconsistent with [the] court's own equitable obligations."'"

The Burkes now have indisputable proof which goes to the heart of one of the main contested issues and pretending that it does not exist would be inconsistent with the Fifth Circuits own equitable obligations.

Secondly, the Burkes have consistently requested Hopkins show authority in all cases, two of which are now currently before this court. The Burkes now have new facts obtained for the first time on appeal that are consistent with their complaint(s). The Burkes have the billing statements showing (i) the relationship between Hopkins and BDF (ii) the non-attorney works being performed during this relationship and (iii) The majority, if not all of the work Hopkins bills is to BDF Law Group, and which (iv) provides sufficient evidence to reverse the lower court decision and continue discovery to confirm Hopkins is a shell-sham company to create the appearance of an at-arms-length business, but it really is an alter ego of BDF. Shelley Hopkins worked for BDF on the Burkes case against Deutsche Bank and now Hopkins Law, PLLC is also on the case, where she is now married to Mark

Hopkins. (v) At no time has there been an external witness or document provided from their 'clients', including a bench trial, *e.g.* Ocwen [Altisource] or Deutsche Bank National Trust Co. After 9+ years litigation between BDF Hopkins and the Burkes, to ignore this fact would be a violation of the Burkes constitutional rights to a fair and impartial hearing, when neither Hopkins nor BDF's claim to be the "clients", yet have acted for over nine years as though they are.[18]

> "This court has held that when reviewing Rule 12(b)(6) motions, we will consider new factual allegations raised for the first time on appeal provided they are consistent with the complaint. See *Hrubec v. National R.R. Passenger Corp.,*981 F.2d 962, 963-64 (7th Cir. 1992) (holding that a plaintiff may attempt to survive a Rule 12(b)(6) motion by adding essential new facts in a brief on appeal); *Dawson v. General Motors Corp*., 977 F.2d 369, 372 (7th Cir. 1992) (holding that a plaintiff may present unsubstantiated factual allegations on appeal, "provided [they are] consistent with the complaint, to show that the complaint should not have been dismissed."). "This rule is necessary to give plaintiffs the benefit of the broad standard for surviving a Rule 12(b)(6) motion. . . ." *Dawson*, 977 F.2d at 372. Villasenor's allegation that Chrysler uses a formula different from the one it discloses is consistent with the

[18] For example; "Relying on Acuna, the district court stated that "it is not too much to ask a plaintiff to provide some kind of evidence to support their claim that Vioxx caused them personal injury." *In re Vioxx Prods. Liab. Litig.*, 557 F.Supp.2d at 744." *In re Vioxx Products Liability Litigation*, 388 F. App'x 391, 397 (5th Cir. 2010). In this case, Hopkins has never shown authority nor has there been any mention or procurement of a bank or non-bank witness in 9+ years. Hopkins object to any evidence the Burkes provide and falsely rely upon attorney immunity and outdated and invalidated contracts (*e.g.* PSA) to repel requests for any information from their invisible clients.

> allegation in the complaint that Chrysler violated the disclosure statute. Therefore, Villasenor has not waived his arguments on this claim."
>
> *Highsmith v. Chrysler Credit Corp.*, 18 F.3d 434, 439-40 (7th Cir. 1994)

The Burkes have always been consistent in their complaint(s).

The BODA 'Reconsideration Letter'

> "In *Mangini v. United States*, the Ninth Circuit permitted supplementation because the non-proffering party's failure to provide all the relevant facts when a district court judge's impartiality was called into question deprived the district court judge "of the opportunity to exercise informed discretion" in determining whether he should have disqualified himself from adjudicating the case."
>
> George C. Harris and Xiang Li, Supplementing the Record in the Federal Courts of Appeals: What If the Evidence You Need Is Not in the Record?, 14 J. APP. PRAC. & PROCESS 317 (2013), p. 326.

Here, the Burkes have noticed this court in the two appeals before it of the unethical practices of Mark Hopkins and the lower court judge(s). This included filing of a State Bar complaint against the lawyer and judicial complaint(s). The Burkes have included the reconsideration letter to keep the court up-to-date and it is extremely valid and important. Why? Because initially BODA rejected the Burkes complaint, but the most recent communication has reversed that 'final decision'. This is a material and very recent change. For this reason, his courts inherent

authority and equitable obligations are controlling and as such should be applied in this instance, as discussed and for the reasons stated throughout this motion.

Conclusion: The Burkes request the 3-panel reconsideration motion is meritorious. It should be granted upon reconsideration, along with any and all other relief this court deems necessary and for equitable justice to be served.

Respectfully submitted,

DATED: July 27th, 2020

JOANNA BURKE

By *s/ Joanna Burke*
JOANNA BURKE

JOHN BURKE

By *s/ John Burke*
JOHN BURKE

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Pro Se for Plaintiffs-Appellants

CERTIFICATE OF CONFERENCE

We hereby certify that on July 27th, 2020, we did not confer with Appellees Mark D. Hopkins and Shelley L. Hopkins of Hopkins Law, PLLC as it was filed overnight (out of business hours). We assume the joint MOTION is OPPOSED.

CERTIFICATE OF SERVICE

We hereby certify that, on July 27th, 2020, a true and correct copy of the foregoing Motion for Reconsideration by the 3-Panel was served via the Court's EM/ECF system on the following counsel of record for Appellees:

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CERTIFICATE OF COMPLIANCE

The undersigned counsel certify that this motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because this motion contains **4,848** words according to Microsoft Word's word count, excluding the parts of the motion exempted by Fed. R. App. P. 32(f).

s/ Joanna Burke
JOANNA BURKE

s/ John Burke
JOHN BURKE