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 INITIAL BRIEF [AMENDED]

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Pro Se Appellants

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Local Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

Plaintiffs-Appellants

Joanna Burke; John Burke

Pro Se Appellants

John Burke
Joanna Burke

Defendants-Appellees

Mark Daniel Hopkins; Shelley Hopkins; Hopkins Law, P.LL.C.

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/s/ Joanna Burke
Joanna Burke
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/s/ John Burke
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Pro Se Plaintiff

STATEMENT REGARDING ORAL ARGUMENT

This is an appeal from a trial court order dismissing the Burkes' case 'for want of prosecution' [ROA.1158]. Plaintiffs-Appellants submit that oral argument is not necessary to restore the civil action to its correct place - on the docket at the State court - and ensure it proceeds without further interruption or delay to a jury trial. *Middlesex County Ethics Comm. v. Bar Assn.,* 457 U.S. 423 (1982);

"A proper respect for state functions, a recognition of the fact that the entire country is made up of a Union of separate state governments, and a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways."

The reason; As Justice Clarence opined in *Gramble v US* 587 US (2019), the Texas Constitution and United States Constitution both[1] command superiority. As the lower court clearly erred in its decision(s) which is usurped by both state and federal Constitution(s), no oral argument is necessary to

[1] For example, see: THE HERITAGE GUIDE TO THE DUE PROCESS CLAUSE; "From the 1940s onward, however, the view that the Fourteenth Amendment's Due Process Clause literally "incorporates" the text of various provisions of the Bill of Rights rapidly gained steam; by the 1960s, what we know today as the "incorporation doctrine" was complete. Under current law, most provisions of the Bill of Rights are deemed applicable to the states in precisely the same manner that they are applicable to the federal government.

correct these superior written word(s). This assumes the Court of Appeals judicial panel will adhere tothe Constitution and refrains from substituting the law for their own pleasure.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Rules

I. INTRODUCTION

A. A Bounty Hunter Comes to Court

Shortly after *Deutsche Bank* and their lawyers, BDF, were defeated at the

bench trial to the *pro se* Burkes in March 2015, the Hopkins & Williams, PLLC law firm arrived in order to bully the judge into opening evidence previously unavailable for four years. When that approach failed, Hopkins filed an appeal with the 5th Circuit on behalf of *Deutsche Bank* National Trust Co.[2]

At that time, the Burkes vehemently contested the legitimacy of Hopkins & Williams, PLLC. Over the objection of the Burkes they were allowed to proceed. This was error. Time has proven the Burkes to be true and correct on their findings.

What has transpired in the intervening period is that Hopkins & Williams, PLLC, after finally updating to Hopkins Law, PLLC and belatedly replacing the trial attorney for BDF some 15 months later with Shelley Hopkins, had fraudulently asserted the role of lead counsel in the lower court case and then fraudulently appealed it (for the same reason).

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[2] *Deutsche Bank Nat'l Tr. Co. v. Burke*, 655 F. App'x 251 (5th Cir. 2016); Judge Higginson was not only part of the 3-panel who reversed in favor of Hopkins and '*Deutsche Bank*', he was the author in an error laden unpublished opinion which called *Deutsche Bank* the 'mortgage servicer' (15-20201, June 9th, 2016). This had to be reissued after Hon. Stephen Wm. Smith questioned the opinion. The second amended opinion was released on July 19th, 2016. He's now been identified as a member of this 3-Panel. That's very noticeable and very questionable, especially when Judge Higginson was again also the author and part of the majority in the *All American Check Cashing* case (with Judge Higginbotham).

Judge Jerry Smith dissented, **"This case is absolutely about power. The majority declares open season on the en banc court."** *Consumer Fin. Prot. Bureau v. All Am. Check Cashing, Inc*., No. 18-60302, at *19 (5th Cir. Mar. 3, 2020). The majority (Higginson and Higginbotham) were reversed en banc by the full Fifth Circuit. The *All American* case is tentatively scheduled for oral argument in September 21, 2020 and ordered the parties file supplemental briefs. It's relevant to both the Burkes appeal now before the 5th Circuit as well as his past involvement in the Burkes case(s). Judge Higginson should not be a panel member in this case.

Hopkins still repeats these fraudulent acts to this day, 5 years on, claiming "I'm a lawyer, I get absolute attorney immunity and I am not a debt collector or third party debt collector". That's a false claim.

It should be remembered, when the judge entered his opinion, it was in favor of the Burkes. (i) Hopkins elected to take the case. (ii) Hopkins could have rejected the case. (iii) Hopkins volunteered. (iv) Hopkins elected to appeal the case. (v) Hopkins is liable for all past, present and future acts as the case is now "assigned" to their firm. (vi) Mark Hopkins personally made a decision to use Hopkins & Williams PLLC, rather than Hopkins Law, PLLC (vii) Hopkins chose to maliciously conceal evidence[3], which is not protected by attorney immunity (the mortgage file) and he made that admission brazenly on the record (when the Burkes were not in court but were represented by counsel). (viii) Hopkins decided to implement a system, scheme or plan to fabricate and introduce 'newly discovered evidence' after trial (ix) All these decisions were made for financial avarice and to increase Hopkins reputation. Hopkins would ensure he would win the case by any means necessary for a financial windfall and to enhance their resumes and rolodex.

[3] Texas Disciplinary Rule 3.03(a) provides that a lawyer shall not knowingly "fail to disclose a fact to a tribunal when disclosure is necessary to avoid assisting a . . . fraudulent act." Texas Disciplinary Rule 4.01(b) similarly provides that, in the course of representing a client, a lawyer shall not knowingly "fail to disclose a material fact to a third person when disclosure is necessary to avoid . . . knowingly assisting a fraudulent act perpetrated by a client."

B. Why is there a Bounty Hunter in Court?

That's a very good question, one that the Burkes initially thought would be obtained by reaching out to Texas Government. That's proved extremely difficult, to date. The Burkes first went to TXSOS and found out this/these Hopkins entities didn't have the required license to operate in Texas and which requires a valid surety bond. The former trial lawyers who lost, BDF, did. Something does not add up.

Based on this information, the Burkes entered into lengthy email communication with TXSML and via fast-track onboarding training learned about licensing and surety bonds and what TXSML can cover as far as the Texas Finance Code (and important information like the CFPB oversees this state agency). The chapter of the code relevant to the Burkes, they stated, was not part of their scope. It required that the Burkes send the Texas Office of the Attorney General a written request to answer the questions raised and at the outside they would reply within 55 days. The Burkes duly complied. After the time period went by to receive an answer, there was pure silence. Follow ups were snubbed and nobody responsible at TXAG has ever replied.

C. The Truth Seekers became Keepers

The Burkes thought, well, they'll recover this information from Hopkins in either of the two civil actions raised against *Ocwen* and *Hopkins*. Hopkins has

attached themselves to both cases, *pro se* attorneys in Hopkins and as counsel of record in the *Ocwen* case.

The Burkes were confident, the facts are so indisputable that the truth seekers, the judge(s), will demand a fair and impartial proceeding. After all, it's only confirming their credentials. How big of an ask is that? Well, when it comes to Texas foreclosure mills, actually it's a highly protected access area when you're a *pro se* homeowner in Texas litigating from the opposite side. The truth seekers have ultimately abused their powers and denied the Burkes access to justice.

For example, Judge Bray referenced the Burkes dispute with the court about Hopkins Law, PLLC legitimacy (5 years ago) and stated that the Burkes arguments were rejected. According to Judge Bray, based on all the information presented, now five years later, there is no requirement to ask Hopkins to show authority for the lawyers on the case. That's plain error. The Burkes have presented more than sufficient evidence to obtain a simple verification of Hopkins authority to act for *Deutsche Bank* and *Ocwen*.

D. Hopkins Conduct Is Not Only Way Below the Bar, It is Odious

As this brief will cover in detail, Hopkins lies in practically every filing they have submitted in this case. Most certainly, Mark Hopkins conduct has been extremely reprehensible before these senior citizens as witnessed by members of

the lower court. But S.D. Tex. clearly hasn't internally circulated *Dondi Properties Corp. v. Commerce Sav. and Loan Ass'n*, 121 F.R.D. 284, 287-88 (N.D. Tex. 1988) in recent years, or some judges are not reading the memos.

E. The Roman Candle Orders[4] are Still Dropping

The Burkes had an initial deadline (7/13/2020) to file the initial brief despite the Burkes pending matters related to Judge Hittner. The Burkes filed a motion to stay which was denied by the clerk and the Burkes filed a reconsideration on Friday (7/10/2020) which was also denied on 7/13/2020. Still, perusing the stay will give this court the background information as to the reasons why the Burkes formally object to this deadline. On 7/14/2020, Hopkins filed a motion to strike and seal which was granted by single Judge Clement and refiling of the Brief revised to 7/30/2020. The Burkes filed a reconsideration of the single judges' order and that decision has been denied by the 3-Panel of Judges Clement[5], Elrod[6] and

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[4] Airborne term when your Paratrooper colleagues' parachute fails to open during a jump.

[5] A Senior Judge. A Senior Judge is Unconstitutional. In part; It is a violation of a citizen's rights to have their claims decided by a judge, who has accepted "senior" status and who lacks both the Article III "tenure" protections and the statutory authorization of jurisdiction by Congress. The congressional scheme for "senior judges" is by design violative of the Article III protections that are necessary to preserve a judge's independence from undue pressures guaranteed to active judges under federal law. Judge that voluntarily requested and accepted "senior" status and upon that transition lost the protections of Article III. Without these protections s/he no longer has jurisdiction to hear and decide matters in federal court.

[6] The Burkes discussed Judge Elrod's book and subsequent opinion, where she did not follow her own recommendations in the *Burke v. Ocwen*, 19-20267 (2020), Document: 00515032985, Page:

Higginson on 7/29/2020 at 14.03 hrs and in contravention of the rule of law, the due process clause and the United States Constitution.[7] The Burkes filed their amended initial brief, in compliance with the order. This court accepted the brief but Hopkins wasn't satisfied and later on that day, submitted a perjury driven motion to strike. This was unsurprisingly granted by single judge Clement over the objections of the Burkes. Once again, this amended brief was also sealed, in conflict with this circuits opinion in *Bradley ex rel. AJW v. Ackal*, No. 18-31052 (5th Cir. Mar. 23, 2020). On the same day a letter was submitted to Chief Judge Owen requesting the available information regarding Judge Clement's judicial complaint as filed by Mr Harrington in 2019, but no reply or acknowledgment has been received from this court. The Burkes now file their timely and compliant amended complaint but wish to record their objections as recorded herein and in prior motions.

56/57 incl. footnotes, Date Filed: 07/14/2019 regarding remanding cases back to the State Court(s).

[7] See Justice Brennan's concurring opinion, in part; "The description of an opinion as being "for the court" connotes more than merely that the opinion has been joined by a majority of the participating judges. It reflects the fact that these judges have exchanged ideas and arguments in deciding the case. It reflects the collective process of deliberation which shapes the court's perceptions of which issues must be addressed and, more importantly, how they must be addressed. And, while the influence of any single participant in this process can never be measured with precision, experience teaches us that each member's involvement plays a part in shaping the court's ultimate disposition. The participation of a judge who has a substantial interest in the outcome of a case of which he knows at the time he participates *necessarily* imports a bias into the deliberative process. **This deprives litigants of the assurance of impartiality that is the fundamental requirement of due process.**" -*Aetna Life Insurance Co. v. Lavoie*, 475 U.S. 813, 831 (1986)

The most egregious act to date by [unconstitutional] Senior Judge Hittner was the cancellation of the scheduled pretrial conference and entry of judgment for Hopkins[8] and after Gov. Abbotts' executive order.[9]

F. More Parties than Expected

As a result of the events in the Burkes Texas cases and the Florida intervention, now on appeal, what is clear is that when the Burkes first came to court, their respect and regard for the judiciary was without question. Unfortunately, due to intervening events it has now become a case where specific judges and specific lawyers have gone rogue. This case is a prime example. Two judges and at minimum, two law firms, BDF Hopkins have a known system, scheme or plan to ensure *pro se* homeowners don't get to discovery (or Trial according to Hon. Stephen Wm Smith[10]) when they ask questions and list expert witnesses that would bring the creditors right foreclosure mills into disrepute.

The Burkes have read the *Anderson v. Valdez*, 913 F.3d 472 (5th Cir. 2019) case before 3-Panel Judges Higginbotham, Willett and Graves, reversing the lower

[8] See *Hyman v. Regenstein*, 222 F.2d 545, 546 (5th Cir. 1955).

[9] In discussing the independence of the Judiciary in his famous Lectures on Law, James Wilson, an Associate Justice of the Supreme Court, said this: "When the decisions of courts of justice are made, they must, it is true, be executed; but the power of executing them is ministerial, not judicial." 1 JAMES WILSON, Of Government (1790), reprinted in COLLECTED WORKS OF JAMES WILSON 689, 703 (Kermit L. Hall & Mark David Hall eds., 2007).

[10] ROA.1048, Footnote 7.

court Judge Randy Crane in favor of the former alleged double-dipping (expenses) Chief Judge at the Thirteenth COA. It's authored by Judge Higginbotham. The Burkes started at the first appeal *Anderson v. Valdez*, 845 F.3d 580 (5th Cir. 2016) before Judges Weiner, Higginson and Jones (dissenting) where the majority sided with the brave employee and former Asst. District Attorney who was prepared to report judicial misconduct. The Anderson decision has more of a feeling of intimidation and geared to suppress those in offices where they witness or are advised of potential troubling matters regarding judges and lawyers they work with.

The same can be said in the case here.

The lower court judges assigned to the case are not truth seekers, they are truth keepers to effectively end a case and circumvent the rule of law. As such, the Burkes were compelled to report those responsible (and for liberty to be preserved).

II. STATEMENT OF JURISDICTION

This is an appeal of a final judgment from a district court exercising jurisdiction pursuant to 28 U.S.C. § 1332. This Court has appellate jurisdiction pursuant to 28 U.S.C. § 1291.

III. ISSUES PRESENTED

The Burkes have meticulously detailed the docket of the lower court case, highlighting the errors from the moment the Burkes state court case parachuted

into the federal court from an illegal snap-removal by Hopkins. They have listed and addressed all the issues during the lower court proceedings. Repetition is not necessary here.

However, the Burkes do wish to highlight major and quantifiable issues of grave constitutional concern which injure and impact the Burkes' rights to an impartial and fair hearing and threatens their lives, property and liberty. These are perplexing events from both the lower court and prior to filing this brief in this appellate court.

The Lower Court: (i) Why the lower court judges (Hittner and Bray) did not report Mark Daniel Hopkins for his reprehensible court conduct[11] is inexcusable and it also showed Hopkins character and win-no-matter-what crime or abuse[12] against elderly citizens is committed; (ii) Judge Hittners'

[11] "Now, what is the offence with which the petitioner stands charged? It is not a mere crime against the law; it is much more than that. It is the prostration of all law and government; a defiance of the laws; a resort to the methods of vengeance of those who recognize no law, no society, no government. Of all classes and professions, the lawyer is most sacredly bound to uphold the laws. He is their sworn servant; and for him, of all men in the world, to repudiate and override the laws, to trample them under foot, and to ignore the very bands of society, argues recreancy to his position and office, and sets a pernicious example to the insubordinate and dangerous elements of the body politic. It manifests a want of fidelity to the system of lawful government which he has sworn to uphold and preserve." - *Ex Parte Wall*, 107 U.S. 265, 273-74 (1882).

[12] "The proceeding is not for the purpose of punishment, but for the purpose of preserving the courts of justice from the official ministration of persons unfit to practise in them. Undoubtedly, the power is one that ought always to be exercised with great caution; and ought never to be exercised except in clear cases of misconduct, which affect the standing and character of the party as an attorney. But when such a case is shown to exist, the courts ought not to hesitate, from sympathy for the individual, to protect themselves from scandal and contempt, and the public from prejudice, by removing grossly improper persons from participation in the administration of the laws. The power to do this is a rightful one; and, when exercised in proper cases, is no violation

personal bias led to cancellation of the pretrial conference, in violation of both due process[13] and an emergency executive order by the State of Texas. (iii) Bray ignored the majority of the Burkes pleadings and key arguments that Hopkins is not protected by attorney immunity for several reasons, including Mark Hopkins voluntary statement confirming he withheld the mortgage file from the Burkes [ROA.1045], which is not protected by attorney immunity. Neither is Shelley Hopkins[14] due to her on-again-off-again work history and resume. The Burkes provided sufficient pleadings for discovery and trial to proceed and repel Hopkins motion(s) to dismiss – by these conniving *pro se* attorney defendants.

The Fifth Circuit: (i) First, this appeal should have been stayed pending *Burke v. Ocwen* for several reasons as previously highlighted in motions erroneously denied before this court. (ii) The complaint before the Chief Judge at the Fifth Circuit re [unconstitutional] Senior Judge David Hittner is currently pending after a technical hitch required resubmission of the original complaint

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of any constitutional provision." - *Ex Parte Wall*, 107 U.S. 265, 288 (1882).

[13] A fundamental requirement of due process is "the opportunity to be heard." *Grannis v. Ordean*, 234 U.S. 385, 394. It is an opportunity which must be granted at a meaningful time and in a meaningful manner. The trial court could have fully accorded this right to the petitioner only by granting his motion to set aside the decree and consider the case anew. Only that would have wiped the slate clean. Only that would have restored the petitioner to the position he would have occupied had due process of law been accorded to him in the first place. - *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965).

[14] See Case: 19-20267, Document: 00515032985,Page: 33, incl. **Footnote 15**, (emphasis added) Date Filed: 07/14/2019.

and any decision is likely to impact the Burkes' brief(s) and motion(s). The Burkes seek impeachment[15] of Judge Hittner as well as listing their other grievances in the 5-page complaint. (iii) Why the lower court judges (Hittner and Bray) did not report Mark Daniel Hopkins for his reprehensible court conduct, is inexcusable.[16] (iv) This courts' order(s) to file into the *Burke v Hopkins* case is premature and the most recent denial of reconsideration by the 3-panel is a violation of due process and the Burkes constitutional and civil rights, especially when the Burkes residence and enjoyment of their property is at risk.[17]

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[15] "These duties, we submit, although defined by statute as to the time and place of performance, are an integral part of the constitutional office of judge. For refusal to hold court as required by law, a judge may be impeached." - *Booth v. US* (1934).

[16] Indeed, this type of communication is not made for the "purpose of facilitating the rendering of legal services[,]" *Spencer*, 700 F.3d at 320, but rather, is usually done to harass, intimidate, coerce, warn, or frighten the intended victim of the threat or a person who hears the threat. Therefore, we agree with the Ninth Circuit's observation that a "[defendant's] threats to commit violent acts against [alleged victims are] clearly not communications in order to obtain legal advice." *United States v. Alexander*, 287 F.3d 811, 816 (9th Cir. 2002). – *United States v. Ivers*, No. 19-1563 (8th Cir. July 23, 2020). Hopkins intent is clear, he wanted the Burkes jailed by his self-admitted courtroom lies.

[17] "Such difficulties indicate that the dichotomy between personal liberties and property rights is a false one. Property does not have rights. People have rights. The right to enjoy property without unlawful deprivation, no less than the right to speak or the right to travel, is in truth a "personal" right, whether the "property" in question be a welfare check, a home, or a savings account. In fact, a fundamental interdependence exists between the personal right to liberty and the personal right in property. Neither could have meaning without the other. That rights in property are basic civil rights has long been recognized. J. Locke, Of Civil Government 82-85 (1924); J. Adams, A Defence of the Constitutions of Government of the United States of America, in F. Coker, Democracy, Liberty, and Property 121-132 (1942); 1 W. Blackstone, Commentaries *138-140. Congress recognized these rights in 1871 when it enacted the predecessor of §§ 1983 and 1343(3). We do no more than reaffirm the judgment of Congress today." - *Lynch v. Household Finance Corp*., 405 U.S. 538, 552 (1972).

IV. SUMMARY OF THE ARGUMENT

This appeal should be focused on the case the Burkes commenced against a rogue, unbonded, unlicensed debt collecting law firm and the attorneys therein. Dishonorably and shockingly, it has now become a desperate search for judges who can provide a fair and impartial hearing before the United States federal judiciary and follow their Oaths and Canons.[18]

That said, the Burkes still remain hopeful that there are independent minds in these panel focused appellate proceedings, as found at the Fifth Circuit, who are honest judges and who are prepared to challenge 'colleagues' on the merits of each case and apply the correct law(s). Unfortunately, it is already evident that the majority in this panel does not appear to have that foundation nor ethical compass. With that said, the statement of the case follows.

V. STANDARD OF REVIEW

The standard of review;

> "This court reviews a Federal Rule of Civil Procedure 41(b) dismissal for failure to prosecute or to comply with any court order for abuse of

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[18] See for example; Judge Mark Mahon's unconstitutional orders; cited in part; "Demonstrations or dissemination of materials that degrade or call into question the integrity of the Court or any of its judges (e.g., claiming the Courts, Court personnel or judges are "corrupt," biased, dishonest, partial, or prejudiced), thereby tending to influence individuals appearing before the Courts, including jurors, witnesses, and litigants, shall be prohibited on the Duval County Courthouse grounds…. The order further stated that anyone exercising such a First Amendment right could be "found in criminal contempt of Court." – Techdirt, July 2015 and Wikipedia. The Burkes have experienced similarly outrageous constitutional violations in orders from the lower court and this circuit as discussed herein and related motions and case briefs (*Burke v. Ocwen*).

> discretion. *McCullough v. Lynaugh*, 835 F.2d 1126, 1127 (5th Cir. 1988). ” *Torres v. Krueger*, 596 F. App'x 319, 4 (5th Cir. 2015).
>
> “This circuit has consistently held that Rule 41(b) dismissals with prejudice will be affirmed only upon a showing of "`a clear record of delay or contumacious conduct by the plaintiff,” *Rogers v. Kroger Co*., 669 F.2d 317, 320 (5th Cir. 1982). – [ROA.1186].

It should be noted Judge Hittner failed to review the magistrate judges M&R ‘*de novo*’;

> “Furthermore, the statute requires the district court to make a "de novo determination" of the enumerated dispositive matters which are referred to the magistrate under § 636(b). A civil trial on the merits is certainly a dispositive matter. Accordingly, we infer that any power to refer dispositive matters under § 636(b)(3) carries with it a requirement of "de novo determination" by the district judge of the portions of the magistrate's findings to which a party objects.” - *Calderon v. Waco Lighthouse for the Blind*, 630 F.2d 352, 355 (5th Cir. 1980). - ROA.1185.

VI. STATEMENT OF THE CASE

A. Summary of the Docket

The Burkes now detail the issues from the docket during the short and bizarre period the Burkes case was in court.

B. Appeal of Snap Removal / Remand Denied

The Burkes emailed Hopkins just after 9am on Friday requesting their service waiver or details. They ignored the email. Snap removal may now include stalking

according to this court[19], but intentional failure to communicate is unethical. The remand was based on deception and hiding (this time themselves).

On review of the Burkes motion to remand [ROA.172–203] and related documentation presented to the lower court e.g. [ROA.399-400], it is now clear that Hopkins has found another deceptive system to remove all his cases to federal court. Namely, use a secondary address to *filter* the mail and identify which post can be ignored while a 'snap removal' is being expedited.

C. The Conference was a ruse

Both sides appeared on February 6, 2019 and were advised the only activity would be to Schedule. The stacked motions would not be discussed and not even a future hearing was set on the pending motions. A minute entry was recorded [ROA.3]. The Conference lasted 3 minutes for two cases (*Burke v. Ocwen, Civil Action H-18-4544 (S.D. Tex., 2019)* and *Burke v. Hopkins, Civil Action H-18-4543 (S.D. Tex., 2019)*).

The Federal Judicial Center produced a Benchbook which is a guide for United States District Court Judges.[20] What's interesting here is the value of the

[19] See *Texas Brine Co., L.L.C. v. Am. Arbitration Ass'n*, — F.3d —-, 2020 WL 1682777 (5th Cir. 2020).

[20] Benchbook for U.S. District Court Judges (Sixth Ed., March 2013); Section 6.01: Civil case management

scheduling conference – which holds great weight according to the FJC – but not so in the Burke's experiences in S.D. Texas District Court. The Burkes attended their hearing, where they were present for 2 cases, namely *Burke v Ocwen* and *Burke v Hopkins*, which took the court a grand total of 3 minutes and where the clerk advised that Magistrate Judge Peter Bray was just scheduling the docket dates and setting the trial date – nothing else.

This, after the Burkes traveled from Kingwood and opposing counsel from Austin, Texas. The Burkes were fully prepared to present, if necessary, and they had folders of information and exhibits ready for this conference and copies for opposing counsel and the court. However, the clerk refused to take them as unnecessary based on what he'd intimated.

In the Burkes case, they had sought to reschedule to the conference as the two cases were merged into one hearing [ROA.457- and citing in footnote Relatedness issue]. The Burkes believed that they would need to be prepared for both cases and that was just too much for one sitting, considering the health/age of the Burkes and the complexity in law for both cases. [ROA.458-468]. That said, the Burkes devoted the time they had to trying their best to prepare for the case(s), including preparing the bound folders for the court and opposing counsel, in readiness for any discussions at the request of the court.

The Burkes were also aware if you fail to show up at the scheduled conference

hearing, then your case is most likely going to be dismissed. Generally, it's very difficult to get it back on the docket and appeal is the only remedy available to have the case reinstated.[21] It's a ruse and a known scheme by this court to quickly end the civil case. However, the Burkes did attend the case, for the total of 1.30 minutes allocated to each.

Returning to the benchbook, which the Burkes found during research for this third amended brief. It itemizes the recommended procedure. None of the procedures were even remotely followed in this case. Whilst a judge or judge(s) have liberal discretion, the benchbook is designed to ensure litigants have a fair hearing.[22] It is clear the Burkes were denied that opportunity.

Judges Hittner and Bray hindered the case management rather than help it by (a) motion stacking; (b) merging the rule 16 conference for both cases together (and where the court had allocated the same judges to both the *Burke v Hopkins* case and the *Burke v Ocwen* case); (c) The clerk refusing the Burkes prepared copy filings/exhibits at that conference, which should have been submitted as evidence, or heard that day, or at least a conference schedule arranged to discuss the same as per the benchbook. The Benchbook clearly states;

> I. THE JUDGE'S ROLE
>
> "Active judicial case management is an essential part of the civil

[21] See *Bann v. Ingram Micro, Inc*., 108 F.3d 625 (5th Cir. 1997).
[22] See *United States v. Presendieu*, 880 F.3d 1228, 1242 n.5 (11th Cir. 2018).

> pretrial process; Active case management does involve additional judge time at the start of the case, but it pays valuable dividends; …**Active case management promotes justice** by focusing the parties and the court on what is truly in dispute and by reducing undue cost and delay. There are three stages of pretrial case management: (1) activities before the Rule 16 conference and/or order; (2) holding a Rule 16 case-management conference and issuing a case-management order; and (3) ongoing case management (p. 189) ”
>
> III. RULE 16 CASE-MANAGEMENT CONFERENCES AND ORDERS
>
> “Before issuing a scheduling order, most judges find it advisable to hold a case-management conference with the lawyers—and sometimes the parties—to learn more about the case. The exchange with the lawyers, preferably face-to-face but by telephonic conference if circumstances require, is usually much more valuable for the court and the lawyers than just reviewing the parties’ report. The exchange provides the court with the information it needs to develop a scheduling order or case-management order that is tailored to the needs of the case. The Rule 26(f) report, even when well done, is typically no substitute for a live dialogue in which a judge asks questions, probes behind the parties’ representations, and fills in gaps.”

It is clear from the record that the Burkes were having issues with Hopkins communicating with the Rule 26(f) report. Recognizing this fact, the Burkes had reached out with detailed reporting explaining their situation and side of the case. The judge(s) did not follow the Benchbook guidelines at all. There was never a hearing or telephonic conference between the court and the parties. There was no

"active case management promotes justice by focusing the parties and the court on what is truly in dispute and by reducing undue cost and delay" in the Burkes case(s).

D. Motion to Substitute Service and Motion for Extension of Time to Effect Service

Recognizing the fact *Hopkins Law PLLC* denied receiving service from the State court and aware the 90-day limit to effect service was fast approaching, the Burkes' diligently filed the above motions [ROA.480-512]. The lower court added a court only, private entry. Court only) ***Motion(s) terminated: 22 (p.480) MOTION to Substitute Service MOTION for Extension of Time To Effect Service. (ealexander, 4) (Entered: 03/28/2019). Questionably it shows March 19 as the docket date [ROA.4].

E. If You're Extremely Ill and Elderly, Forget About any Compassion from a Judge Who's Wife is a Doctor

On 14th March, 2019, the Burkes' filed a Motion for Extension of Time [ROA.516] as Joanna Burke was extremely ill and the Burkes' legal diary timeline was overloaded. A short recess of 60 days would help Joanna Burke recover. Judge Hittner would deny the motion for extension of time [ROA.529] and a week later, on 27th March, Joanna Burke was rushed to hospital via Ambulance and the Doctor said she most likely would have died without urgent care and treatment. (See

Affidavit, [ROA.713]).

The standards set by this court are discussed in *Filgueira.*[23] The difference being that the Burkes did not "miss the deadline", John Burke rushed to file on deadline day while his wife lay very sick in hospital. However, the amended complaint was error laden and needed reworking and hence the very reasonable request was submitted along with the filing. The Burkes believed the medically validated danger of death by extreme illness would be sufficient, when supported by the Burkes affidavits[24], for the lower court to grant the extension of time [ROA.729], and submitted to the Courts discretion as to the period of the extension [ROA.730]. The motion was denied. It was another critical example of an abuse of discretion[25] by senior judge David Hittner.

F. Hopkins 'Supplemental Response, without leave, was only to attack the Burkes again

> "In this case, Plaintiffs claims, brought against their adversary's counsel, are all *baseless*. Plaintiffs have not filed a response to Attorney Defendants Motion to Dismiss [Doc. 6] and have apparently requested stay of this case *in bad faith*." [ROA.231-392].

[23] A party is required "to show that the deadlines cannot reasonably be met despite the diligence of the party needing the extension."Fahim,551 F.3d at 348 (quoting 6A Charles Alan Wright et al., Federal Practice and Procedure § 1522.1 (2d ed.1990)). If a party shows good cause for missing the deadline, then the "more liberal standard of Rule 15(a) will apply to the district court's denial of leave to amend." Id. (internal citations omitted). - *Filgueira v. U.S. Bank Nat'l Ass'n*, 734 F.3d 420, 422 (5th Cir. 2013)

[24] Joanna Burke ROA.713 and John Burke ROA.791.

[25] See *Corwin v. Marney, Orton Investments*, 843 F.2d 194, 199 (5th Cir. 1988).

G. Hopkins improper conduct continues and also refuses to accept trial before a Magistrate Judge

At the time of filing their case management plan, Hopkins summarized the case;

> "Plaintiffs allege that Defendants, the attorneys for their mortgagee (*Deutsche Bank*) and mortgage servicer (*Ocwen*) are liable to them for violation of (1) legal malpractice, (2) civil conspiracy, (3) fraud, (4) negligent misrepresentation, (5) violation of Tex. Civ. Prac. & Rem. Code §12.002, (6) violation of Texas Finance Code and (7) violation of the Fair Debt Collection Practices Act."

Hopkins responds to the following question;

> "Magistrate judges may now hear **jury** and non-jury trials. Indicate the parties' joint position on a trial before a magistrate judge."
>
> RESPONSE: Defendants do not consent to trial before a magistrate judge.

As a result of Hopkins premeditated actions, the Burkes had to file their own case management plan due to Hopkins engaging in conduct unbecoming a member of the Bar and is unable to conduct litigation properly. [ROA.393-512].

H. Hopkins Motion to Dismiss in Light of Recent Cases

See. [ROA.691-712] For example, as the Burkes cite below, *In re Ray*, No. 4:19-MC-015-A (N.D. Tex. July 15, 2019) details a similar case which confirms that attorney immunity can be pierced. It certainly does not cover Hopkins in this case,

based on the record.

> "[P]laintiff and his counsel [Ryan Ray] engaged in misconduct in this case that "completely sabotaged the federal trial machinery, precluding the 'fair contest' which the Federal Rules of Civil Procedure are intended to assure." [*Rozier v. Ford Motor Co*., 573 F.2d 1332, 1346 (5th Cir. 1978).] And, as in Rozier, "[i]nstead of serving as a vehicle for ascertainment of the truth, the trial in this case accomplished little more than the adjudication of a hypothetical fact situation imposed by [plaintiff's] selective disclosure of information,"; and:
>
> The court finds by clear and convincing evidence that plaintiff and his counsel pursued an unconscionable plan or scheme which was designed to improperly influence this court in its decision, and then the Fifth Circuit in its decision.The court has found from clear and convincing evidence that the judgment of the Fifth Circuit was obtained through fraud, misrepresentation, or other misconduct on the part of plaintiff and his counsel. Their inappropriate conduct led to the trial record that caused the Fifth Circuit to make the ruling it did in favor of plaintiff. The court finds from clear and convincing evidence that the conduct of plaintiff and his counsel prevented defendant from fully and fairly presenting its defense at trial, which, in turn, prevented the Fifth Circuit from having a full, complete, and honest record upon which to base its decision.
>
> All of the findings expressed in the September 1, 2017 memorandum opinion and order, the March 20, 2019 order, and the May 20, 2019 memorandum opinion and order were based on clear and convincing evidence. Those clear and convincing evidence findings are adopted here, and they provide clear-cut evidence that Ray repeatedly engaged in conduct unbecoming a member of the Bar and unethical behavior, and is unable to conduct litigation properly. All findings made in this order are based on clear and convincing evidence.
>
> Ray sat silently by when, at oral argument in the Fifth Circuit during

> the initial appeal, one of the panel members asked the attorney for Results if there was any evidence in rebuttal to plaintiff's claim that his trip to the emergency room the morning of July 15, 2013, was to receive medical attention for a back injury he sustained over the weekend, to which the attorney for Results was forced to respond "there is no other real evidence one way or the other." Doc. 19 at 5 n.2. Only an attorney completely devoid of an ethical or moral sense of right and wrong would have sat quietly by as Results's attorney was required to make that sort of answer, bearing in mind that Ray had in his possession documents, which he had withheld from Results, showing that the real reason Hernandez went to the hospital that morning was for a condition that was unrelated to his military service the preceding weekend."
>
> NO. 4:19-MC-015-A, 07-15-2019
> In re Possible Discipline of Ryan Eugene Ray JOHN McBRYDE
> United States District Judge MEMORANDUM OPINION and
> ORDER

As you will note from the brief extract above, Hopkins actions have been very similar *e.g.* with him remaining silent when the Burkes were facing Judge Bray who accused the Burkes of not answering the Motion to Dismiss, which was incorrect. Mark Hopkins was certainly not silent when he wanted to speak at this wretched hearing.

The main difference is the evidence withheld by Mark Hopkins was the Burkes mortgage loan file. This is not hearsay or speculation, it was said in front of the bench and memorialized in a court transcript. A mortgage file is not privileged[26] and

[26] See *Hearn v. Rhay*, 68 F.R.D. 574, 581-82 (E.D. Wash. 1975).

attorney immunity does not apply.

Secondly, Shelley Hopkins [nee Douglass] worked at BDF as head of the foreclosure litigation department for the duration of the Burkes case until she married Mark Hopkins. Exhibit #AttorneyImmunity [ROA745] details the issues with Shelley Hopkins as an on-again-off-again lawyer for BDF and Hopkins during their honeymoon period. The Burkes provided a detailed argument which was completely discounted by the lower court. Shelley Hopkins does not benefit from attorney immunity and the court was in error when it invoked an evidentiary standard of pleading when the information the Burkes presented is clear and adequate to repel the motion to dismiss.

I. Burkes' Claim for Unjust Enrichment are Valid

Hopkins attempts to wordsmith. See [ROA.704]. This is rebuffed in the Burkes response. [ROA.763].

J. When You Tell the Truth, You Never Forget;

> "Though the Burkes complain repeatedly about a loan application and its alleged falsification along with the wet ink note, the record of the Foreclosure Litigation [4:11-CV-01568] clearly indicates that the Hopkins Defendants did not appear in the case until after the close of trial and evidence. Attorney Defendants are unclear how the Burkes fixation on the alleged fraudulent loan application and alleged fraudulent wet ink note are related in any manner to judgment for

> judicial foreclosure. As stated previously, any issues with the foreclosure judgment issued in the Prior Litigation are procedurally improper to bring forth in this action." [ROA.708, footnote 8].

The above statement is completely inaccurate. Firstly, the attempts by Hopkins to open the record to place the newly discovered wet ink note was after BDF's bench loss. This was a quite miraculous discovery. After all, 4 years and a trial had passed with no evidence, no witnesses (*e.g.* no Bank representative), and a couple of rejected affidavits which the court found were not believable (the Burkes call it perjury).

This Hopkins system would subsequently be applied to the PNC case [ROA.863- 948] where Mark Hopkins was listed counsel along with Robert Forster and Brian Engel (the expert witnesses for Hopkins. Mark Hopkins added himself as an expert witness too - [ROA.836-839]).

The bankers are non-existent in the Burkes alleged *Deutsche Bank* loan…but the lower court is more than willing to accept their falsehoods rather than performing perfunctory requests to confirm Hopkins does represent these parties and in what capacity. It raises a red flag.

Secondly, the 'withholding evidence'[27] by Mark Hopkins was later. This disclosure was announced by Hopkins during the conference hearing after *Deutsche*

[27] See *In re Sealed Appellant*, 194 F.3d 666 (5th Cir. 1999).

I returned from this court, and representing the Burkes were Connie Pfeiffer, Ali Hassan and from the bench, Hon. Smith. In the court transcript Mark Hopkins admits to withholding the mortgage file to specifically keep it away from the Burkes.[28] [ROA.1104]. The mortgage file is not privileged, he waived privilege and the lawyer acted unethically and in bad faith towards the Burkes.

K. The attacks continue, and the Fifth Circuit's quote gets republished, again

> "Unhappy with the outcome of their decade long dispute with their mortgage company, the Burkes filed this subsequent lawsuit to air their *ad hominem attacks* against legal counsel for the mortgage company (and its mortgage servicer). *Texas law provides attorneys with qualified immunity from the attacks of vexatious litigants, like the Burkes*, who struggle to accept responsibility for their own conduct.". ROA.802.
>
> Footnote 2; "Given nearly a decade of free living by the Burkes, there is no injustice in allowing that foreclosure to proceed." - *Deutsche Bank National Trust Co., v. Burke,* 902 F.3d 548 (5th Cir. 2018).

L. Opposing the Burkes Motion to Amend, apparently the theme was, well, the usual

> "For the Burkes to argue that more time is now needed for them to investigate their claims, after over ten years of litigation, is

[28] "Our system of civil litigation cannot function if parties, in violation of court orders, suppress information called for upon discovery. "Mutual knowledge of all the relevant facts gathered by both parties is essential to proper litigation. To that end, either party may compel the other to disgorge whatever facts he has in his possession"". *Hickman v. Taylor*, 329 U.S. 495, 507, 67 S.Ct. 385, 392, 91 L.Ed. 451 (1947).- *Rozier v. Ford Motor Co*., 573 F.2d 1332, 1345 (5th Cir. 1978).

disingenuous."

"*Bad faith* or *dilatory motive*. One factor a court should examine in evaluating whether to grant a motion for leave to amend is whether the request is brought in *bad faith* or as a *dilatory motive* on the part of the movant. The Burkes' repeated efforts at "re-litigating" their case against their mortgage company (and anyone tangentially connected to the mortgage company) is *vexatious*. The Burkes' attempts to cause delay through their dilatory tactics has already been recognized by the Fifth Circuit. See, *Deutsche Bank National Trust Co. v. Burke, 902 F.3d 548* (5th Cir. 2018)("*Given nearly a decade of free living by the Burkes, there is no injustice in allowing that foreclosure to proceed*.)."

"At a minimum, the Burkes continued their *vexatious* ways in at least five lawsuits (as identified above) in the past year alone."

"The Burkes have had their day(s) in court and are well aware of the legal deficiencies in their pleadings." – [ROA.807-808].

M. Motion to Strike Burkes Experts

The case rapidly heated up when the Burkes announced their experts, namely Honorable Stephen Wm. Smith, Connie Pfeiffer, Fatima Hassan Ali, Benjamin J. Siegel, Ben M. Harrington, Steve W. Berman, Joanna Burke, John Burke, Edward L. Kuo, Khilan Pindoria, and Swapan Dubey. The list includes respected lawyers, a former judge and medical treatment experts who would help reinforce the Burkes case before a jury. Hopkins rushed to quash but the arguments presented by Hopkins were so inadequate, it didn't allow Hittner to issue a turnaround order. It was added to the increasing stack of pending filings. [ROA.812].

N. Hopkins Expert list includes Mark Hopkins, Robert Forster and Brian Engel

Despite many courts - including this circuit - preventing *pro se* attorneys and their work colleagues from being experts, Hopkins tried to rebuff the Burkes motion to strike. These are 3 of the "expert" lawyers in *PNC Mortg. v. Howard, No. 05-17-01484-CV* (Tex. App. June 24, 2019) which mirrored the fraudulent actions in the Burkes case. What's clear is a strategy for these rogue lawyers is to find a system, scheme or plan and run with it for as long as possible for financial avarice. [ROA.836-853].

In *Nix v. Whiteside*, 475 U.S. 157 (1986), a criminal case where perjury is most likely; "Whatever the scope of a constitutional right to testify, it is elementary that such a right does not extend to testifying falsely." *Nix*, 475 U.S. at 173. Hopkins and his 2 BDF 'experts' introduced 'newly discovered' documents in the *PNC* case and Hopkins sought to produce 'newly discovered' documents (the wet ink note) in the *Deutsche I* case and these were rejected as not believable by the courts. Hopkins is a serial liar and his statements and those acting for either his firm or "client(s)" cannot be relied upon as trustworthy.

"It is universally agreed that at a minimum the attorney's first duty when confronted with a proposal for perjurious testimony is to attempt to dissuade the client from the unlawful course of conduct."

"Although counsel must take all reasonable lawful means to attain the objectives of the client, counsel is precluded from taking steps or in any way assisting the [expert witness(es)] client in presenting false evidence or otherwise violating the law."

Hopkins has never presented any witnesses from *Deutsche Bank*. Hopkins has never presented witnesses from *Ocwen Loan Servicing*. Hopkins has never presented witnesses from *Indymac Mortgage Services*. Hopkins are representing themselves in this case (*pro se*) and Mark Hopkins was named as an expert, along with two BDF executives. That's another huge red flag.

Hopkins stated in his report he would discuss attorney fees. If that is the case, then they would need to submit evidence and timesheet/billing records[29]. This would prove the Burkes arguments that Hopkins is a shell-sham entity of admonished[30] BDF Law Group, operating a very similar legal setup as Ocwen/Altisource.[31]

Hopkins committed perjury many times [and has done so again early into this

[29] BigLaw firm withdraws request for legal fees after judge says it can't shield its billing rates, ABA Journal, 14 April, 2020; https://www.abajournal.com/news/article/biglaw-firm-withdraws-request-for-legal-fees-after-judge-says-it-cant-shield-its-billing-rates.

[30] The latest sanction against BDF is as recent as January 2020; *Schmitgen v. Servis One, Inc.,* 2:18-CV-00074, S.D. Tex., Jan. 2020 Corpus Christi Division ; BDF attorney "Gibson violated Rule 11 with the removal of the case and did not live up to her obligations as an officer of the Court. See Fed. R. Civ. P. 11(b)(1)." – Judge Hilda Tagle.

[31] Motley Fool Altisource Earnings Call Transcript, June 30, 2020. BDF Hopkins work together in a similar, albeit smaller, manner. https://www.fool.com/earnings/call-transcripts/2020/08/06/altisource-portfolio-solutions-sa-asps-q2-2020-ear.aspx

appeal] along with other willful acts of misconduct, including concealing the mortgage file and creating false arguments that the lower court did not question.[32]

Yet both the magistrate judge and the district judge in the lower court dismissed the case without a single piece of evidence from opposing counsel that would back up self-admitted perjurious attorney-defendants claims. Undoubtedly, that is a due process violation. This case was dismissed on theoretical claims by a serial liar, Hopkins. The Burkes provided more than sufficient evidence to pass the legal standards to allow the judge to deny the motion to dismiss and proceed with discovery and trial. The judges violated the Burkes due process and right to a fair and impartial hearing. Undeniably, federal district courts and appellate courts have inherent powers, which they have used often based on the Burkes case research, yet these same courts now continually refuse to apply inherent powers in this case when it is necessary for justice to be served, in conflict with the law.

O. Burkes Motion to Supplement PNC v. Howard case and the approved filing

[ROA.854-860] Hopkins system of fraud against the Burkes is also implemented in this high value, highly profiled foreclosure case in Texas. [ROA.863-948].

[32] See VII, L; The Cumulative Error Doctrine for specific details.

P. A Search for the Truth was Quickly Extinguished

[ROA.949-1006] The Burkes filed the Request for Admissions for Mark Hopkins which asked the questions the Burkes believed would clear up the many simple but unanswered questions. This escalated the courts' interest. Within twenty-four hours of the RFA being uploaded to the docket, Judge Hittner sent it back to MJ Bray who immediately stayed discovery and ordered as "status" conference. The disastrous events thereafter are documented below.

The bottom line is that there was no way Hopkins would be answering the RFA, denying the Burkes due process and right to a fair and impartial jury trial. The question raised by the Burkes would help seek out the truth and from the reaction, too much truth. Until this date, Hopkins motions and filings did not produce a single piece of evidence. This includes Hopkins authority to act for *Deutsche Bank* and *Ocwen*, his alleged clients. As Judge John McBryde stated in a very similar case *In re Ray*, No. 4:19-MC-015-A (N.D. Tex. July 15, 2019);

> "Their conduct prevented Results "from fully and fairly presenting its defense at trial, which, in turn, prevented the Fifth Circuit from having a full, complete, and honest record upon which to base its decision. Because of the dishonest conduct of Ray and his client, "[i]nstead of serving as a vehicle for ascertainment of the truth, the trial in this case accomplished little more than the adjudication of a **hypothetical fact situation** imposed by [Hernandez's and Ray's] selective disclosure of information."
>
> In re NO. 4:19-MC-015-A 07-15 2019

Possible Discipline of Ryan Eugene Ray JOHN McBRYDE United States District Judge MEMORANDUM OPINION and ORDER

In this case, however, Judges Bray and Hittner are equal catalysts. They have abused their discretion, shown pervasive bias and erroneously denied the Burkes any information for their meritorious claims against Hopkins.

Q. Burkes Motion to Stay

[ROA.1077] – Steve Vladek confirms Dodd Frank Act could be stricken, rejecting Hopkins arguments that the Burkes were incorrect and it had nothing to do with the FDCPA/TDCA. The Burkes are yet to read a motion that is believable or factually correct from this law firm.

R. Hopkins Reply to Motion to Dismiss

[ROA.691] Hopkins Replied? According to the court, the Burkes didn't submit any response to Hopkins Motion to Dismiss, which was error.

S. Burkes Reply to Hopkins

[ROA.733] Why did Mark Hopkins say nothing to the Judge about the fact the Burkes had answered? And then Hopkins replied again, in usual format. [ROA.801].

T. Motion to Clarify Brays Unruly Court Conference

Bullet points of note:

- Judge not prepared for the case despite assuring otherwise. [ROA.1189-1192]
- Changed status conference [ROA.1008] into motion hearing without notice. [ROA.1192]

- Delay and doctoring of transcript(s). [ROA.1193]
- No reimbursement of fees. [ROA.1193]
- Why did the judge refuse to turn on his microphone when he was aware Joanna Burke is hard of hearing? [ROA.1233-1234]

- Why Hopkins did not correct the MJ when the question of answering his motion to dismiss was raised? [ROA.1253]

- No civility regarding Joanna's medical schedule and other court filing deadlines. [ROA.1193]
- Hopkins lied at the conference when he stated the Fifth Circuit case re *Ocwen* 'was fully briefed'. [ROA.1248]
- Hopkins lied at the conference when he stated twice, the Burkes wanted 'certain judges to be shot'. [ROA.1260]
- Judge Bray showed his pervasive bias when he prejudged John Burke from the bench with a scathing attack, asking "are you a criminal?"

> [ROA.1118] before asking Hopkins for evidence or proof of these serious allegations. He also made prejudicial inferences to Joanna Burke about her use of the word 'evil'. [ROA.1261]

- Gorsuch quote; "we the people" not "we the judges". [ROA.1012]

U. Constitutional Challenges

[ROA.1018-1043] These were submitted as the Texas AG refused to reply to the Burkes formal question on advice/referral from TX SML. Note; AG Ken Paxton calls the CFPB a 'rogue' agency. [ROA.1022]. What does Hopkins think about that terminology?

V. Challenge to AG Texas

> "In fact, because under Texas law a notice of default and opportunity to cure must precede a foreclosure sale, *see* Tex. Prop. Code Ann. § 51.002(d) (West Supp. 2010), foreclosure actions inevitably involve a debt collection aspect. Therefore, it appears that the TDCPA applies to foreclosure actions." *Biggers v. BAC Home Loans Servicing, LP*,767 F. Supp. 2d 725, 732 (N.D. Tex. 2011).

Fed. R. Civ. P. 5.1; The court MUST certify to the appropriate AG that the statute has been raised. 28 U.S. Code § 2403. Below confirms the court sat on the Challenges and then denied as moot several months later. Unlike this court, who adhered to the strict timeline to issue letters to each AG.

65 (p.1098)	MEMORANDUM AND RECOMMENDATIONS re 28 (p.691) MOTION to Dismiss 27 (p.531) Amended Complaint/Counterclaim/Crossclaim etc. and denying as moot 38 (p.829) MOTION to Strike 36 (p.812) MOTION *Expert Designations*, 54 (p.1012) MOTION for Clarification, 61 (p.1076) MOTION to Stay, 55 (p.1018) MOTION PLAINTIFF'S MOTION AND INCORPORATED MEMORANDUM TO INVITE THE VIEWS OF THE ATTORNEY GENERAL of the United States, 40 (p.840) MOTION to Strike, 56 (p.1026) PLAINTIFF'S MOTION AND INCORPORATED MEMORANDUM TO INVITE THE VIEWS OF THE ATTORNEY GENERAL for the State of Texas MOTION (Signed by Magistrate Judge Peter Bray) Parties notified.(jmarchand, 4) (Entered: 02/24/2020)

W. The mandated 15-page response to MJ Brays' Erroneous Order

[ROA.1044] Footnote 2 suggests not acting on the Burkes Constitutional Challenges [ROA.1018-1043] would be unconstitutional. Generally, the Burkes argue the conference should be void for the detailed reasons provided. The Burkes also reference the *Selia Law* case, which at that time, was before the US Supreme Court. [19-7].

X. Fact Checking Hopkins (Lie Detector Test)

For confirmation of the constant deception by Hopkins, the Burkes reply herein fact checks Hopkins. [ROA.1089]

Y. Memorandum & Recommendations Report from MJ Bray

[ROA.1098] On the 24th of February, 2020, the M&R was released. In short summary, the case was dismissed by MJ Bray: Accordingly, the court recommends that Defendants' motion to dismiss (D.E. 28) be GRANTED and that this case be dismissed with prejudice. All other pending motions (D.E. 38, 40, 54, 55, 56, 61) are DENIED as MOOT.

> Categorized by Bray under Attorney Immunity: "The Burkes have not provided any facts alleging that Defendants engaged in the type of conduct that may fall outside of the attorney-immunity doctrine. Because all of Defendants' conduct was within the scope of representation and was "not foreign to the duties of an attorney," attorney immunity applies to all of the Burkes' common law claims. *See Cantey Hanger, LLP,* 467 S.W.3d at 485. Thus, the court recommends that the Burkes' claims of fraud, civil conspiracy, and unjust enrichment be dismissed."
>
> Categorized by Bray under FDCPA[33] and TDCA Claims: The court therefore recommends that the Burkes' statutory claims be dismissed.

Z. The Final Alarm Went Off, But the Radio was Playing Johnny Cash; 'Bad News'

The Burkes filed their Motion to Alter or Amend the Judgment [ROA.1178] on May 1st, 2020. The music lyrics the Burkes' woke up to from the radio started out;

[33] See *Iris Calogero v. Shows, Cali & Walsh, L.L.P*, 19-30558 (5th Cir, 18th Aug., 2020)

"Well bad news travels like wildfire, good news travels slow…" They'd heard that song before. [ROA.1230].

VII. ARGUMENT

Allen v. Dovenmuehle Mortg., Inc., Civil Action No. 3:13-CV-4710-L, at *19 (N.D. Tex. July 21, 2014) See [ROA.1040].

> "The TDCPA requires "[t]hird-party debt collectors" to obtain a $10,000 "surety bond" from an authorized surety company and file a copy with the secretary of state prior to engaging in debt collection. Tex. Fin. Code Ann. § 392.001 (West 2006).
>
> In *Miller v. BAC Home Loans Servicing, L.P.*, 726 F.3d 717, 722-23 (5th Cir. 2013), the court noted that, while the TDCPA defines third-party debt collectors by expressly referencing the FDCPA definition of debt collectors found in 15 U.S.C. § 1692a(6), "the TDCA's definition of debt collector is broader than the FDCPA's definition." Id. The court in Miller therefore concluded that mortgage servicers and debt assignees are debt collectors under the TDCPA irrespective of whether a plaintiffs' mortgage is already in default at the time of assignment. Id. at 723. Thus, regardless of whether Plaintiffs' mortgage was in default when it was assigned to Defendants, the court determines that Defendants, as the mortgage servicer and debt assignee of Plaintiffs' Note and Deed of Trust, are debt collectors under the TDCPA."
>
> "The court also determines that Plaintiffs' TDCPA claim, based on Defendants' failure to obtain a bond, fails for a reason not addressed by Defendants. The court therefore moves sua sponte to dismiss this claim. Plaintiffs allege that they suffered damages as a result of Defendants' inaccurate reporting of the amount due under their Note; however, Plaintiffs do not allege that they suffered any actual damages as a result of Defendants' failure to file a bond."

> [ROA.1113-1114] "The Burkes also argue that Defendants failed to file a copy of a surety bond with the Texas Secretary of State as required by Tex. Fin. Code Ann. § 392.101. This statute only applies to "third-party debt collectors" or credit bureaus engaged in debt collection. The Burkes have not provided facts to show that Defendants are "third-party debt collectors" engaged in debt collection. *In any event, the Burkes have failed to show how Defendants' failure to have a surety bond on file caused them any injury.*"

The Burkes statement of the case, runs in parallel with the pending *Ocwen* case before this court (19-20267). As such, the Burkes would respectfully ask the court reference this section of the Initial (*Ocwen*) Brief and which provides valuable details pertaining to this case (particularly in the opening sections). It is a substantial reason why the Burkes requested a stay.

The two lower court judges (one pending) are facing judicial misconduct charges before this court and abhorrent lawyer, Mark Daniel Hopkins, has been reported directly to the Bar. That matter is ongoing.

Truly, it's not a position the Burkes take any satisfaction from. That stated, the facts uncovered in Texas and more recently in Florida have left the Burkes in complete astonishment. *Consumer Fin. Prot. Bureau v. Ocwen Fin. Corp.*, No. 9:17-CV-80495- MARRA-MATTHEWMAN (S.D. Fl.) and *Burke v. Consumer Financial Protection Bureau v. Ocwen Financial Corp., et al*, 19-13015 (11th Cir., 2020).

"OCWEN IS A DEBT COLLECTOR"
UNITED STATES DISTRICT JUDGE MIDDLEBROOKS

Booze v. Ocwen Loan Servicing, LLC, Case 9:20-cv-80135-DMM, Doc. 12 (M.D. Fla, March 2, 2020)

Perjury, withholding evidence and a 'win at all costs' attitude because *I'm a lawyer* has severely impacted the lives of millions of homeowners and citizens. That's just not fair and it's destroying millions of families.

The Burkes also wish to state they view the entire brief as the 'statement of the case'. By analysis of the docket, the Burkes have provided the court easy bookmarks to the trigger points, from the appellants view.

Below the Burkes address the summary issues, and the 'abuse of discretion' standard for cases such as these.

A. Dismissal with Prejudice

> "Dismissal with prejudice, however, is an extreme sanction that deprives a litigant of the opportunity to pursue his claim. Although on an appeal from the imposition of such a sanction this court will confine its review to a determination of whether the district court abused its discretion, we have consistently held that dismissal with prejudice is warranted only where "a clear record of delay or contumacious conduct by the plaintiff" exists, *Durham v. Florida East Coast Railway Co*., 385 F.2d 366, 368 (5th Cir. 1967), and "a lesser sanction would not better serve the interests of justice," *Brown v. Thompson*, 430 F.2d 1214, 1216 (5th Cir. 1970). See *Silas v. Sears, Roebuck Co*., 586 F.2d [382] at 385 [5th Cir. 1978]; *Boazman v. Economics Laboratory, Inc*., 537 F.2d 210, 212 (5th Cir. 1976); *Ramsay v. Bailey*, 531 F.2d 706 (5th Cir.

> 1976), cert. denied, 429 U.S. 1107, 97 S.Ct. 1139, 51 L.Ed.2d 559 (1977); *Connolly v. Papachristid Shipping Ltd*., 504 F.2d 917, 920 (5th Cir. 1974); *Flaksa v. Little River Marine Construction Co*., 389 F.2d [885] at 888 [5th Cir. 1968]. 610 F.2d at 247 (emphasis added). - *McGowan v. Faulkner Concrete Pipe Co*., 659 F.2d 554, 556 (5th Cir. 1981).

There was absolutely no justification for the lower court to DWOP *Ocwen* **without** prejudice and *Hopkins* **with** prejudice. There was no delay on behalf of the Burkes, nor contumacious conduct. That would be a case of mistaken identity. No, that conduct would match opposing counsel. The decision was an abuse of discretion.

B. Dismissal under Rule 41(b)

> "Rule 41(b) of the Federal Rules of Civil Procedure permits a defendant to move for dismissal when the plaintiff fails to prosecute or to comply with a court order. This court in *Gonzalez v. Firestone Tire Rubber Co*., 610 F.2d 241 (5th Cir. 1980) indicated the harshness of this sanction. - *McGowan v. Faulkner Concrete Pipe Co*., 659 F.2d 554, 556 (5th Cir. 1981)."

In these proceedings, it was dismissed for failure to prosecute without regard for the law or the pleading standards.[34] The lower court expected evidentiary (higher

[34] "Judge Hutcheson best summed up our circuit's approach to the Federal Rules when he wrote that "[t]he Federal Rules of Civil Procedure indicate a general policy to disregard technicalities and form and to determine rights of litigants on the merits and to that end the rules are liberally construed." *Hambrice v. F. W. Woolworth Co*.,290 F.2d 557, 559 (5th Cir. 1961), citing *Fakouri v. Cadais*, 147 F.2d 667, 669 (5th Cir.), cert. denied, 326 U.S. 742, 66 S.Ct. 54, 90 L.Ed. 443 (1945)." - *Rogers v. Kroger Co*., 669 F.2d 317, 323 n.8 (5th Cir. 1982).

pleading standards) which is higher than the law demands to defeat a motion to dismiss. Instead they DWOP'd with prejudice.

The Burkes are aware of the undertone message, especially with Hopkins constantly quoting from this court's last sentence in the *Deutsche II*, [18-20026] opinion and continually attacking the Burkes with statements like "they've had their last day(s) in court..." It would appear, falsely accusing the elder Burkes of "wanting certain judges to be shot" is how you win a case these days.

C. Denial of Remand

The Burkes' have articulated the reasons the lower court erred in dismissing the case for want of prosecution in earlier portions of this brief. Denial of remand was error. The main objection is the Burkes were extremely diligent in tracking and following up the alleged failed delivery. At just after 9am on the said Friday the Burkes emailed Hopkins requesting a correct address or a waiver and they refused to reply. This was to allow them to finalize the paperwork that day/and/or over the weekend to file it in S.D. Texas on the Monday. During this window, Hopkins worked on the removal, so they cannot claim they did not receive the Burkes email or did not have time to respond. Where does it say in the rules that lawyer(s) can behave like that? The Burkes could not find such an allowance for 'willful evasion'.

D. The RFA's Should have Continued

The RFA prepared [ROA.949] initially for Mark Hopkins would have answered many of the basic questions in order to ascertain Hopkins role in the 'organizational tree'. As soon as the Burkes RFA's hit the desk in S.D. Texas, the court went into overdrive to ensure that receipt of information would not be forthcoming.

The core of due process requirements is notice and a hearing before an impartial tribunal. Due process should provide an opportunity for confrontation and cross-examination, and for discovery; that a decision be made based on the record. The Burkes were denied due process including the RFA's which would have provided valuable information to the plaintiffs and the court in search for the truth.

E. The Memorandum & Recommendation Report

The Burkes' have articulated the reasons the lower court erred in dismissing the case for want of prosecution in their responses; [ROA.1116] and [ROA.1178] and [ROA.1184].

The magistrate judge made conclusory statements which he relied upon to dismiss the Burkes case. However, that is not the pleading standard. The judge should have denied Hopkins motion to dismiss and continued with 'liberal discovery

rules'.

> "The aim of these liberal discovery rules is to "make a trial less a game of blind man's bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent". *United States v. Proctor Gamble Co*.,356 U.S. 677, 683, 78 S.Ct. 983, 986, 2 L.Ed.2d 1077 (1958). - *Rozier v. Ford Motor Co*., 573 F.2d 1332, 1346 (5th Cir. 1978).

F. The Orders and Judgment(s) by Judge David Hittner

The Burkes' have articulated the reasons the lower court erred in dismissing the case for want of prosecution in their responses; [ROA.1178] and [ROA.1184]. The judges' orders; adopting the M&R [ROA.1157] and final judgment [ROA.1158].

G. The 'Blind Draw' System in S.D. Texas

When the Burkes filed in State court, the two cases were assigned to individual judges. Why did both the Burkes cases end up back in Judge Hittner's court and both before MJ Smith when there is supposed to be a 'blind draw'[35] system?

H. The Constitutional Challenges Were Not Sent by the Court

The Burkes' have articulated the reasons the lower court erred in not sending

[35] "[J]udges do not choose their cases, and litigants do not choose their judges. We all operate on a blind draw system. Sometimes, both litigants and judges are disappointed by the luck of the draw. But the possibility of such disappointment is a risk judges and litigants alike must assume. . . ." *McCuin v. Texas Power Light Co*., 714 F.2d 1255, 1265 (5th Cir. 1983).

the constitutional challenges earlier in this brief. [ROA.1018-1043].

I.Shelley Hopkins Interest in the Burkes case started in 2011. She doesn't benefit from 'Attorney Immunity'

The Burkes' have articulated the reasons why Shelley Hopkins does not receive attorney immunity. See Exhibit #AttorneyImmunity. [ROA.745-756].

J. Why did Magistrate Bray not Report Hopkins for his conduct? Why did he Not Void the Conference?

See post status conference order [ROA.1009] and motion to clarify [ROA.1012]. Not only did the magistrate judge fail to act, so did the district judge.

> "…federal courts are entitled to exercise inherent powers, those considered "necessary to the exercise of all others." *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 764, 100 S.Ct. 2455, 2463, 65 L.Ed.2d 488 (1980), citing *United States v. Hudson, 7 Cranch* 32, 34, 3 L.Ed. 259 (1812). We believe the imposition of Rule 11 sanctions, consistent with Congress' intent to streamline the administration of federal justice, constitutes such an inherent power." - *Willy v. Coastal Corp*., 915 F.2d 965, 966-67 (5th Cir. 1990).
>
> And;
>
> "In imposing the sanctions…The court therefore relied on its inherent power in imposing sanctions, stressing that "[t]he wielding of that inherent power is particularly appropriate when the offending parties have practiced a fraud upon the court."" - *Chambers v. Nasco, Inc*., 501 U.S. 32, 41-42 (1991).
>
> And most similar to the Burkes case at the lower court;

In re Mole, 822 F.3d 798 (5th Cir. 2016);

> "Judge Berrigan issued her findings and recommendations to the en banc court. Judge Berrigan found that Mole "diligently represented his client at all times in a manner that is a credit to the profession," and that any misconduct by Mole was, "at most, 'negligent' and time-barred" under the disciplinary rules of the Louisiana Supreme Court. Judge Berrigan recommended that the charges against Mole be dismissed."

The en banc court disagreed…

The engagement letters and agreements about the Mole drafted letter of agreement between Lifemark and Gardner presented the terms of Gardner's compensation, which were critical in deciding this case. The agreement included an initial retainer fee of $100,000 and—most significantly—an additional $100,000 severance fee in the event that Judge Porteous withdraws or if the case settles prior to trial.

As with Mole, in this case, the agreements and engagement letters are essential for the Burkes case and denial by the lower court was an 'abuse of discretion'.

K. The Benchbook

This court has discussed the Benchbook in a criminal case context;

> "The Benchbook for U.S. District Court Judges, published by the Federal Judicial Center, provides a guide for questions the judge can ask to convey the disadvantages the defendant will likely suffer if he proceeds *pro se* which is reproduced in the margin." *U.S. v. Jones*, 421 F.3d 359, 363 (5th Cir. 2005).

In the Jones case, this court concluded;

> "We reiterate this court's position that "no sacrosanct litany" of warnings is required. *Davis*, 269 F.3d at 519. However, when a defendant expresses a desire to represent himself, the district court must do more to protect the defendant's Sixth Amendment right to counsel than repeat its recommendation that a defendant proceed with his available qualified appointed counsel." - *U.S. v. Jones*, 421 F.3d 359, 364-65 (5th Cir. 2005).

In a civil context, the Benchbook makes it obvious the procedures that should be followed for *justice to be served*. The lower court violated every possible benchmark as listed in section 6.01.

The Burkes homestead is sacrosanct in Texas law.[36] The right to a fair and impartial trial is also an absolute right. The lower court did not provide the Burkes with a fair and impartial trial as required per the federal/local rules and in law.

L. The Cumulative Error Doctrine

The Burkes have noted the 'harmless error' doctrine and wish to extinguish any reliance on that argument before it is presented. First; The Burkes reasons amply merit reversal of the lower court's final judgment without relying upon the cumulative error doctrine. Second; Analysis of cumulative error under the harmless error standard is accomplished in two parts. The individual point of error is

[36] *Matter of McDaniel*, 70 F.3d 841 (5th Cir. 1995) "Stating that "[i]n Texas, homestead rights are sacrosanct".

evaluated to determine if it constitutes reversible error. If it does, then the case is reversed on that point. If none of the individual points of error are sufficient in and of themselves to cause the rendition of an improper verdict, then the points of error in combination are evaluated to determine whether their combined effect was reasonably calculated to cause and probably did cause the rendition of an improper verdict. Third; As such, it is prudent to address harmless error as many cases decided in this circuit rely upon it to dismiss cases as harmless error.[37]

Returning to the lower court, the events which would constitute reversible error are;

Hopkins: (i) **Incurable Harm**; Hopkins self-admitted lies to the court in front of court witnesses, the magistrate judge and the Burkes claiming the Burkes wanted 'certain judges to be shot'[38]; (ii) **Repeated Perjury**; Mark Hopkins is a serial liar

[37] See *U.S. v. Munoz*, 150 F.3d 401, 418 (5th Cir. 1998).

[38] *Southern Pac. Co. v. Hubbard*, 156 Tex. 525, 297 S.W.2d 120 (1956); The Texas Supreme Court decided that assault on the character of the railroad's officials and suggestions that the railroad intimidated or threatened to dismiss witnesses constituted cumulative error.

In the Burkes case, Hopkins wanted magistrate judge Bray on his side after he had castigated Hon. Stephen Wm Smith in his filings into *Deutsche II* before this court. This ultimately led to Hon. Smith leaving the court shortly thereafter. In order to do so, Hopkins made abhorrent false allegations. He would later admit to his lies.

However, the damage and injury to the Burkes reputation had been done and the proceedings conclusively tainted. This is proven by the fact that MJ Bray immediately criticized John Burke, asking him if 'he was a criminal' without any evidence, relying purely on Hopkins lies. Bray would continue this line of prejudgment by misinterpreting Joanna Burke's use of the working 'he's evil' [ROA.1261].

and nothing he says can be trusted; (a) Hopkins perjured himself in filings into this appeal *e.g.* perjurious certificate of conference; (b) Admitted to his lies at the 'status conference' claiming the Burkes wanted 'certain judges to be shot'; (c) See Sections VI, H-K & Q above; (d) See further untruthful statements by Hopkins - [ROA.1089-1096]; (e) **Sept 10, 2019**; MR. HOPKINS: "Judge Hittner signed the Motion to Dismiss in the *Ocwen* filing. That case is now fully briefed at the Fifth Circuit. And we're waiting on their opinion." [ROA.1248] Yet another lie confirmed by the docket for case 19-20267; 505136566, **Sep 27, 2019** APPELLANT'S REPLY BRIEF FILED Reply Brief deadline satisfied. (iv) **Disparity of Wealth**; Hopkins inferred the Burkes were 'hiding assets and income' which is another false statement designed to make the Burkes out to be untruthful. It was another calculated lie by Hopkins. (v) **Concealing Evidence**; Hopkins admitted to withholding important evidence (the mortgage/closing file) from the Burkes which would prove lender income fraud. (vi) **System of Fraud**; The Burke case and the PNC case highlight the system, scheme or plan implemented by Hopkins (and his experts) to introduce 'newly found evidence'. In both these cases, this new evidence that magically appeared was rejected by the honest judges. [ROA.1129-1130]. (vii) **Unlawful Snap Removal**; Ignoring the Burkes Friday morning email and using the weekend to prepare removal to S.D. Tex. Court on the following Monday. See Section VI, B. above. (viii) **No Surety Bond**: Hopkins is a debt collector without the required

surety bond and has been in violation of the laws by pursuing the Burkes illegally in court for the last 5 years. [ROA.1131-1133].

MJ Bray & Judge Hittner: (i) **Bias**; There is a judicial complaint (with request for impeachment) of unconstitutional senior judge David Hittner and a pending judicial complaint against magistrate judge Peter Bray. (ii) **Hittner cancelled the pretrial conference**: In violation of due process and an executive order. See *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976); "Parties whose rights are to be affected are entitled to be heard." *Baldwin v. Hale*, 68 U.S. (1 Wall.) 223, 233 (1863). The purpose of this requirement is not only to ensure abstract fair play to the individual. Its purpose, more particularly, is to protect his use and possession of property from arbitrary encroachment . . . *Fuentes v. Shevin*, 407 U.S. 67, 80–81 (1972). See *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123, 170–71 (1951) (Justice Frankfurter concurring). Thus, the notice of hearing and the opportunity to be heard "must be granted at a meaningful time and in a meaningful manner. *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965). (ii) **No Notice of Change from Status Conference to Motion Hearing**; [ROA.1259-1260] where MJ Bray repeats; "I'm going to figure out this current Motion to Dismiss and if I feel like the case needs to continue, I will call you in here for another Status Conference and we'll enter a schedule." and [ROA.1012] wherein the Burkes asked for clarification and the conference be voided (iii) **The Magistrate Judge was Untruthful**; Bray stated

he was familiar and prepared for the status conference. That was untrue; THE COURT: "So the first thing I wanted to know is -- so I've familiarized myself with your complaint. I have familiarized myself with the prior case that was in here in front of Judge Smith..." [ROA.1235] He would then contradict that statement by confronting the Burkes and alleged they had not filed a reply to Hopkins motion to dismiss [ROA.1254]. The evidence clearly shows the Burkes had replied [ROA.733]. (iv) **Non-compliance with the Benchbook**; There was no attempt to comply with the Benchbook. There is no excuse as Hittner is an avid author of similar books *e.g.* "Summary Judgments in Texas: State and Federal Practice" by Senior U.S. District Judge David Hittner and Haynes and Boone Partner Lynne Liberato. https://www.stcl.edu/news/judge-david-hittner-lynne-liberato-publish-updated-summary-judgment-guide-in-south-texas-law-review/ See Section VII, K above; (v) **Elder Abuse/Discrimination**; Both judges refused extensions of time for serious medical matters concerning Joanna Burke See VI, E and [ROA.1254]; (vi) **A Theoretical dismissal is Not Justice.** Unlike the Burkes, not a shred of evidence was presented by Hopkins to support his claims. The M&R omitted all the Burkes key arguments in order to wordsmith the opinion in favor of Hopkins. (vii) **Conclusory Opinions**; In the M&R [ROA.1098], MJ Bray answered in hypothetical terms, supporting opposing counsel in his answers. The MJ had stated at the last hearing that he would arrange another status conference if more clarification was

required. The Burkes maintain the view that had the follow-up conference taken place and as requested by the Burkes, it would have allowed the Burkes to present the facts from their complaint[39] and correct his hypothetically incorrect responses which resulted in his erroneous decision to dismiss the civil action. A decision based on theoretical claims and conclusory opinions is reversible error.

VIII. CONCLUSION

The lower court case was sabotaged and the Burkes were not afforded a fair or impartial hearing. As far as Magistrate Judge Bray and opposing counsel, their actions on the fateful September 10, 2019 conference have left scars and mental anguish.

It is inexcusable that Judge Bray would attack the Burkes rather than question Hopkins outrageous and false statements. It is far beyond elder abuse. As seniors and law-abiding citizens who have lived all over the world, they have never, ever been treated with such derision. This would later be confirmed by the war crime acts of Judge Hittner after the proclamation of a pandemic in Texas.

A theoretical argument based on no evidence, no witnesses and relying upon falsehoods from serial liar Hopkins is where the lower court found yielded their unreliable and conclusory judgement (ignoring and not addressing the majority of

[39] See *Sparks v. Duval County Ranch Co., Inc*., 604 F.2d 976, 978-79 (5th Cir. 1979)

the Burkes factual arguments) and dismissal with prejudice.

Without proper case management by the court, who prevented discovery for no valid reasons, refused access to engagement letters, prevented Hopkins from having to answer to the RFA and suchlike, the restrictions in this case are not dissimilar to *Greene v. McElroy*, 360 U.S. 474, 479-80 (1959).

For the foregoing reasons, and the fact the Constitution is the superior law, the Burkes request that the lower court judgment be reversed and remanded to the State Court so that due process and the right to a fair jury trial may be taken.

Respectfully submitted,

DATED: August 19th, 2020

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CERTIFICATE OF SERVICE

I hereby certify that, on August 19, 2020, a true and correct copy of the foregoing Brief of Appellees 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 certifies that this brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in proportionally spaced typeface using Microsoft Word in Times New Roman 14-point font, with the exception of footnotes, which are in proportionally spaced typeface using Microsoft Word 2010 in Times New Roman 12-point font.

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s/ John Burke
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