

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 DATED 4TH AUGUST, 2020**

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Pro Se Appellants

Appellants, Joanna Burke and John Burke (“Burkes”), now file a Motion for reconsideration [FED. R. APP. P. 27.2]¹ of Single Judges’ Order dated Tuesday 4th August, 2020. In support thereof:

SUMMARY OF RELEVANT FILINGS

The First Motion to Strike (July 14, 2020): The first motion to strike by Hopkins was accepted by this court. However, the motion was deficient as it failed to ‘style’ John Burke as a plaintiff, yet it was quickly accepted and sealed.

The Second Motion to Strike (July 31, 2020): On Friday morning, July 31, the court accepted the filing of the Burkes amended initial brief. Later in that afternoon, Hopkins filed a second motion to strike, styled correctly. The Certificate of Conference is false as per the Burkes “Reply to Second Motion to Strike”, including unsworn affidavits.

The Burkes Requested Relief: FED. R. APP. P. 46(c) Discipline, in part, states; “A court of appeals may discipline an attorney who practices before it for conduct unbecoming a member of the bar OR for failure to comply with ANY court rule.” The Burkes have detailed in their approved amended initial brief the constant violations of the rules by Hopkins and conduct unbecoming a member of the bar. In this motion, the Burkes now show Hopkins failure to comply with rule, in particular

¹ FED. R. APP. P. WITH 5TH CIR. R. & IOPs, p. 27-4/5.

the false declaration re Certificate of Conference as detailed herein. The Burkes formally request (i) the motion be stricken and (ii) relying upon FED. R. APP. P. 46, this courts' inherent powers, they respectfully request the court take further disciplinary action against Hopkins, as defined in the stated rules. (citation excluded).

Judge Clement denied the motion and all relief requested by the Burkes in her improper order.² Judge Clement further ordered the Burkes amended brief be stricken and sealed.

The Clerks' amended Briefing notice dated 5th August, 2020 conflicts with the Order: In summary, the clerks notice does not follow Judge Clements order.

“Docket Text: BRIEFING RESUMED. Appellants' brief must be refiled omitting references to material outside of the record on appeal. A/Pet's Brief Due on 08/19/2020 for Appellants Joanna Burke and John Burke. [20-20209] (CAG)”.³

RECONSIDERATION FACTS AND ARGUMENTS

² Order dated 4th August, 2020, Doc. No. 00515515336, Case; 20-20209.

³ The judges' order while the Burkes reconsideration motion is pending before the 3-panel is superior to the clerks notice, so the Burkes instructions are to refile their initial brief - as the whole amended brief has been stricken - by 19th August, 2020.

Perjury: Not for the first time, Hopkins has admitted to perjury.⁴ In the lower court, defendant Mark Daniel Hopkins admitted to his abhorrent lies in front of the Burkes, court staff and reporter as well as Magistrate Judge Peter Bray claiming the Burkes wanted – not once – but twice – “certain judges to be shot”.⁵ For the record, the lower court did not address this repugnant attorney misconduct - which forms part of (a) the judicial complaint(s) pending or filed against the said judges Bray and Hittner by the Burkes with the Chief Judge of this court and (b) is a material element of the Burkes appeal and now stricken brief in this case and (c) materially affects the related *Burke v Ocwen* case pending before this court (19-20267).

As explained in the Burkes denied motion in this appellate court, Hopkins signed⁶ a Certificate of Conference which was wilfully untruthful as he claimed to

⁴ "The essential elements of the crime of perjury as defined in 18 U.S.C. § 1621 are (1) an oath authorized by a law of the United States, (2) taken before a competent tribunal, officer or person, and (3) a false statement wilfully made as to facts material to the hearing." *United States v. Debrow*, 346 U.S. 374, 376. - *United States v. Hvass*, 355 U.S. 570, 574 (1958)

⁵ Rule AT-4. STANDARDS OF PROFESSIONAL CONDUCT

“Every member of the bar of this Court . . . shall familiarize oneself and comply with the standards of professional conduct required by members of the State Bar of Texas and contained in the Texas Disciplinary Rules of Professional Conduct, V.T.C.A. Government Code, Title 2, Subtitle G-Appendix. . . . No attorney permitted to practice before this Court shall engage in any conduct which degrades or impugns the integrity of the Court or in any manner interferes with the administration of justice therein.” - *In re Medrano*, 956 F.2d 101, 102-03 (5th Cir. 1992).

⁶ FED. R. APP. P. 25(B)(iii) Signing. A filing made through a person’s electronic-filing account and authorized by that person, together with that person’s name on a signature block, constitutes the person’s signature.

have reached out to the Burkes regarding his firm's prepared motion and received no response. This is a lie.

Hopkins did not reach out to the Burkes. Furthermore and ratifying the Burkes arguments, Hopkins offered no counter-defense nor answer to the Burkes motion. Hopkins remained silent as they had no legal defense. They were clearly guilty as charged.

Instead, Hopkins would rely upon this courts unlawful shield of protection, which Hopkins would duly receive by unconstitutional single Senior Judge Clement, in violation of the rules and laws. As such, Judge Clements' bias and refusal to apply procedural due process⁷ and apply the laws and the rules to the Burkes convincing claims should be corrected by the 3-panel.

Stricken Amended Brief and Subsequent Events: The court accepted the Burkes amended brief and scheduled the appellees response timeline in accordance with the Fifth Circuit rules and the clerks' entries. The Burkes fully complied with the prior order, 'striking' the *portions* of the original initial brief as directed.⁸

⁷ See *In re Auclair*, 961 F.2d 65, 68 (5th Cir. 1992).

⁸ The order does not say 'remove' the content in question, it said, strike. See; Docket Text: COURT ORDER GRANTING Appellees' motion **to strike portions** of the Appellants' brief that refer to materials outside of the record [9354874-2]. IT IS FURTHER ORDERED that the Appellees' motion to file Appellants' brief under seal is DENIED AS MOOT [9354874-3]. Striking Appellant Brief filed by Appellants Ms. Joanna Burke and Mr. John Burke [9354311-2] [20-20209] (CAG)

Later in the day, Hopkins filed a motion to strike the Burkes [accepted] amended brief and the Burkes countered with the facts as argued in prior filings and restated above. The Burkes requested this non-compliant, perjurious motion should in turn be stricken as it is legally void per the controlling rules and in law. Judge Clement's unobstructed personal bias and malicious intent⁹ is obvious. She decided to deny the Burkes counter motion to strike Hopkins motion without reference to any rules or laws because the arguments provided by the Burkes were meritorious. Judge Clement is bias, punishing the Burkes for a compliant, amended brief (accepted by this court) and now relies upon a false and void motion to issue the unlawful order. It is prejudicial and pervasive bias.¹⁰

Judicial Complaint re Judge Clement: The Burkes requested via motion, renamed by the clerks' office as titled in their email notice; "Re-send: 20-20209

See also FED. R. APP. P. and 5TH CIR. R. 27.2.9 To strike a nonconforming brief or record excerpts as provided in 5TH CIR. R. 32.5 and to strike other papers not conforming to the FED. R. APP. P. and 5TH CIR. R).

Microsoft Word has a 'strikethrough' option and the Burkes applied the same to amend the necessary portions of the brief, which, as stated, was accepted by this court and duly filed with no deficiencies noted.

⁹ "an allegation . . . that the judge ruled against the complainant...because the judge doesn't like the complainant personally, is not merits-related." - See; The Judicial Conduct and Disability Act Study Committee issued a Report to the Chief Justice of the US Supreme Court, Implementation of the Judicial Conduct and Disability Act of 1980 ("The Breyer Report").

¹⁰ The Fifth Circuit has said, for example, that "where such pervasive bias or prejudice is shown by otherwise judicial conduct as would constitute bias against a party, the bias or prejudice need not be extrajudicial in nature." - *Davis v. Board of School Comm'rs*, 517 F.2d 1044, 1051 (5th Cir. 1975) (en banc), cert. denied, 425 U.S. 944 (1976); *United States v. Baker*, 441 F. Supp. 612,617 (M.D. Tenn. 1977).

Joanna Burke, et al v. Mark Hopkins, et al "Motion Filed on Behalf of Party for extraordinary relief" information pertaining to civil rights attorney Harrington's judicial complaint against the single judge, namely unconstitutional Senior Judge Edith Brown Clement. This court delayed the filing erroneously. They cited an alleged deficiency in the Burkes certificate of conference filing - but eventually recorded the following amended sufficient docket entry as this court and/or clerks claims were unfounded in law and as per the general rules of federal courts¹¹ and this courts own appellate rules and IOP's;

"Docket Text: SUFFICIENT OPPOSED MOTION filed by Appellants Mr. John Burke and Ms. Joanna Burke for a copy of the original complaint filed by Mr. Jim Harrington against Judge Clement and resulting opinion/decision/memorandum and the reason Judge Willett replaced Judge Clement on the panel in *Thomas v. Bryant*, 938 F.3d 134, 155 n.95 (5th Cir. 2019). [9368628-2]. [20-20209]".

¹¹ "**The Uniform Requirements** mandate either a brief, or certificate of conference or service, for every motion. Local Rule 5.1(a) requires the filing party to confer with all other parties to ascertain whether the motion will be opposed. Local Rule 5.1(c) requires that contested motions include (i) a certificate that the Rule 5.1(a) conference was held and the reasons why agreement could not be reached, **or (ii) a certificate explaining why the conference could not be held.** Local Rule 5.1(d) requires a proposed order and brief to accompany each opposed motion. Local Rule 5.1(e) provides ten days for the opposing party to respond." - *In re Auclair*, 961 F.2d 65, 68 (5th Cir. 1992).

The Burkes seek reconsideration by the 3-panel¹² as the judge is judging the release of information pertaining to her own complaint, which is error. While motions to disqualify a judge may be decided by that same judge, the rules pertaining to a judicial complaint do not allow that judge to rule.¹³ It is the domain of the Chief Judge and the separate rules regarding Judicial Complaints.¹⁴ Judge Clements' decision to rule on the Burkes motion for *extraordinary relief* was a deliberate act of defiance. Judge Clement has once again shown she cannot be impartial¹⁵ in this case nor follow the rules or laws. The majority of this 3-panel should correct this error if Judge Clement continues to sit in this case, despite her obligation to self-recuse.¹⁶

¹² "A multimember court must not have its guarantee of neutrality undermined, for the appearance of bias demeans the reputation and integrity not just of one jurist, but of the larger institution of which he or she is a part." *Williams v. Pennsylvania*, 136 S. Ct. 1899 (2016)

¹³ The Judicial Conduct and Disability Act (1980) authorizes any person to file a complaint alleging that a federal judge has engaged in conduct "prejudicial to the effective and expeditious administration of the business of the courts."

¹⁴ See <http://www.ca5.uscourts.gov/rules-procedures/rules/judicial-misconduct-and-disability-rules>

¹⁵ The federal law governing judicial disqualification is embodied in sections 144 and 455 of the Judicial Code.

¹⁶ See *Liteky v. United States*, 510 U.S. 540 (1994); Stating that § 455(b) "duplicated the grounds for recusal set forth in § 144 ('bias or prejudice'), but made them applicable to all justices, judges, and magistrates (and not just district judges), and placed the obligation to identify the existence of those grounds upon the judge himself, rather than requiring recusal only in response to a party affidavit".

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: August 13th, 2020

JOANNA BURKE

By s/ Joanna Burke
JOANNA BURKE

JOHN BURKE

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Pro Se for Plaintiffs-Appellants

CERTIFICATE OF CONFERENCE

We hereby certify that on August 13th, 2020, we emailed Appellees Mark D. Hopkins and Shelley L. Hopkins of Hopkins Law, PLLC along with staff member Kate Barry of Hopkins Law PLLC just after 0800 hrs on 13th August, 2020 asking for a response by 1600 hrs. Hopkins did not reply. We assume the MOTION is OPPOSED.

CERTIFICATE OF SERVICE

We hereby certify that, on August 13th, 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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Shelley L. Hopkins
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s/ Joanna Burke

JOANNA BURKE

s/ John Burke

JOHN BURKE

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 **1,970** 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