

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 THE CLERKS ORDER DATED 8TH OCTOBER, 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 **the Clerks’** Order dated 8th October, 2020 denying² the Motion for an Extension of Time to File Reply Brief. In support thereof:

RECONSIDERATION FACTS AND ARGUMENTS

The Clerk has denied the Burkes’ first request for an extension of time in this case. The decision is unfair, based on the history of **the Clerks’** decisions on motions relative to time. For example, the motion for time submitted by Hopkins was mirrored by Burkes request for time to file the reply brief - namely the time requested (14 days)³ is the same, the reasoning is the same and yet the clerk reached two completely different orders, allowing the pro se lawyers the requested time and denying the elder pro se citizens any time at all.

BURKE V. OCWEN CASE No. 19-20267

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

² CLERK ORDER denying Motion to extend time to file reply brief filed by Appellant Mr. John Burke [9416112-2] [20-20209] (CAG) [Entered: 10/08/2020 04:24 PM]

³ See sister circuit, the 10th; [HTTPS://WWW.CA10.USCOURTS.GOV/CLERK/FILING-YOUR-APPEAL/PRO-SE/EXTENSIONS-DEADLINES](https://www.ca10.uscourts.gov/clerk/filing-your-appeal/pro-se/extensions-deadlines)

Filing Your Appeal - Pro Se: “Extensions, Deadline and Responsibilities The court is even stricter about extensions on reply briefs, and will generally only allow a single **14-day extension** from the initial due date.”

This is not the first time **the Clerk** has acted in this manner. In the pending appeal no. 19-20267, *Burke v. Ocwen*, the clerk gave Hopkins a 14 day extension, reasoning including “**return of two college children to out of state schools during the week of the briefing deadline**” - yet only allowed the Burkes 10 days on their motion, when the Burkes had specific court deadlines which they had to meet as well as the reply brief *e.g.* The Burkes were not on any vacation school trips like Hopkins, but hard at work on court cases.

Note: Once again, the Burkes in this case did NOT ask for an extension to file their initial brief, and met the court briefing deadline.⁴

July 26, 2019: As with the instant case, Hopkins asked for a 14 day extension of time to file the Appellees Brief.⁵ On the very same day, Hopkins request was granted by the clerk.⁶

⁴ BRIEFING NOTICE ISSUED A/Pet's Brief Due on 07/15/2019 for Appellants Joanna Burke and John Burke. [19-20267] (PAC) [Entered: 06/05/2019 01:31 PM]

⁵ OPPOSED MOTION filed by Appellee Ocwen Loan Servicing, L.L.C. to extend time to file brief of appellee until 08/28/2019 [9106661-2]. Date of service: 07/26/2019 via email - Appellants Burke, Burke; Attorney for Appellees: Hopkins, Hopkins; US mail - Appellants Burke, Burke [19-20267] (Shelley Luan Hopkins) [Entered: 07/26/2019 09:35 AM]

⁶ CLERK ORDER granting appellee's opposed motion to extend time to file appellee's brief filed by Appellee Ocwen Loan Servicing, L.L.C. [9106661-2] Appellee's Brief due on 08/28/2019 for Appellee Ocwen Loan Servicing, L.L.C. [19-20267] (DMS) [Entered: 07/26/2019 10:34 AM]

August 29, 2019: The Burkes submitted a motion for 14 day extension to file their reply brief.⁷ On the same day, the clerk restricted the Burkes extension by granting a 10 day extension.⁸

WHAT DOES THIS SAY ABOUT THE FIFTH CIRCUIT CLERK?

It unabashedly says, if you are Hopkins (*e.g.* lawyer[s]) you will get any and all requests for time by **the Clerk**, even when you are on vacation and not working. However, if you are a citizen, representing yourselves and very busy working on cases as listed in the motion, the time requested will not be equal to that of lawyer(s). The Burkes did not experience **Clerk bias** at the Court of Appeals for the Eleventh Circuit, case no. 19-13015, where extensions of time were willingly granted to the Burkes by **the Clerk**.

WHY THE PANEL SHOULD GRANT THE BURKES TIME

The Burkes experienced similar motion bias at the lower court when it came to Joanna Burke being severely ill as discussed in the Burkes motions and briefs.

⁷ OPPOSED MOTION filed by Appellant Mr. John Burke to extend time to file reply brief until 10/02/2019 [9132646-2]. Date of service: 08/29/2019 via US mail - Appellant Burke; email - Appellant Burke; Attorney for Appellees: Hopkins, Hopkins [19-20267] (John Burke) [Entered: 08/29/2019 08:12 AM]

⁸ CLERK ORDER granting in part appllants' opposed Motion to extend time to file reply brief filed by Appellant Mr. John Burke [9132646-2] Reply Brief deadline updated to 09/25/2019 for Appellants Joanna Burke and John Burke [19-20267] (DMS) [Entered: 08/29/2019 12:37 PM]

The 3-panel will be reviewing the judge(s) decisions in those matters in this appeal.

The US Supreme Court has stated;

“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*, 579 U.S. (2016).

[Currently Chief] US District Lee H. Rosenthal, in *Jemison v. CitiMortgage, Inc.*, 4:13-cv-02475 (2013), Doc. 15, SDTX. has stated;

“While Mr. Jemison may have limited knowledge of the law, this is true of nearly every person who files a pro se lawsuit. For this reason, pro se pleadings are held to less stringent standards than formal pleadings drafted by a lawyer and courts are liberal in reviewing pro se pleadings **and motions, giving pro se individuals ample opportunity to amend if necessary, and granting generous extensions of time to comply with court orders.**”

Upon reconsideration, denial of the Burkes extension by the 3-panel would make a mockery of the above statements by the judiciary and further distance the public trust towards the court[s]. See ABA article⁹ below;

“In a session that started with Nazi Germany and fast forwarded to present times, the panelists emphasized that an independent judiciary forms the backbone of societal trust. When judges engage in a myopic prejudicial analysis of a legal issue, the law can become a weapon to inflict legal wrongs rather than acting as the trusted shield of justice forming the backbone of a free society.”

“We need to be shielding ourselves and watching our actions as they apply to society,” said Judge Blackburne-Rigsby.

“I always thought,” she added, “and mistakenly so, that the judges in Nazi Germany were Nazi judges, and they weren’t. They were democratically elected judges who lost their way for lots of reasons – primarily for fear of what may happen to them if they didn’t decide a particular case in a certain way.”

⁹ See American Bar Association, February 18, 2020;
[HTTPS://WWW.AMERICANBAR.ORG/GROUPS/JUDICIAL/PUBLICATIONS/APPELLATE_ISSUES/2020/WINTER/AN-INDEPENDENT-JUDICIARY-THE-SHIELD-OF-A-FREE-SOCIETY/](https://www.americanbar.org/groups/judicial/publications/apellate_issues/2020/winter/an-independent-judiciary-the-shield-of-a-free-society/)

RELIEF REQUESTED AND CONCLUSION

The Burkes request for 3-panel reconsideration of the denied motion is meritorious. It should be granted upon reconsideration, for due process, a fair and impartial opportunity to be fully briefed [and which is only a 14 day request], to allow justice to be served in this appeal, along with any and all other relief this court deems necessary.

Respectfully submitted,

DATED: October 15th, 2020

JOANNA BURKE

By s/ Joanna Burke
JOANNA BURKE

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Pro Se for Plaintiffs-Appellants

CERTIFICATE OF CONFERENCE

We hereby certify that on October 15th, 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 before 0600 hrs on 14th October, 2020. Hopkins did not reply that day. On October 15th, 2020, we sent a reminder email at 0616 hrs. At 0905 hrs Hopkins responded; the MOTION is OPPOSED.

CERTIFICATE OF SERVICE

We hereby certify that, on October 15th, 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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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 **1,143** 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