
IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Case No. 19-20267

JOANNA BURKE; JOHN BURKE,

Plaintiffs-Appellants,

v.

OCWEN LOAN SERVICING, L.L.C.,

Defendant-Appellees.

Consolidated with

No. 20-20209

JOANNA BURKE; JOHN BURKE,

Plaintiffs-Appellants,

v.

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

Defendant-Appellees.

On Appeal from the United States District Court
For the Southern District of Texas, Houston Division;
USDC No. 4:18-CV-4543/4544

APPELLANTS' MOTION FOR SANCTIONS

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Pro Se Appellants

Appellants, Joanna Burke and John Burke (“Burkes”) file their Motion for Sanctions pursuant to Rule 38 of the Federal Rules of Appellate Procedure and in support thereof would show the Court as follows:

The Burkes have filed several motions in recent weeks and complied with the Federal Rules. In particular, 5th Cir. R27.4, which states in part; "All motions must state that the movant has contacted or attempted to contact all other parties and must indicate whether an opposition will be filed."

Despite the fact the Burkes have taken the time to email opposing counsel - as this is the *only* method (per their own admission) which they are willing to correspond, Hopkins and/or staff have failed to respond. Mark Hopkins, Shelley Hopkins and Kate Barry of Hopkins Law PLLC have been included in every email request for conference, yet they have repeatedly failed to acknowledge the Burkes emails.

The Burkes seek ‘non-monetary’ sanctions as pro se litigants. They civilly ask this court to refer both Mr. and Mrs. Hopkins to the State Bar of Texas for their continued and repetitive [mis]conduct and suspend these attorneys from appearing before this court for a period of one year.

Attorneys are officers of the court and held to a higher standard. See; *Coane v. Ferrara Pan Candy Co.*, 898 F.2d 1030, 1033 (5th Cir. 1990) (“Pointing

to several instances in which the court noted that he was a lawyer, Coane complains that the trial judge held him to a higher standard of conduct than the ordinary litigant. We find entirely appropriate the court's expectations of a heightened standard of conduct by a litigant who is also an attorney . We applaud that decision.”).

Commencing the audit after the Burkes petition on Apr 13, 2021, the Burkes calculate they have submitted eight motions (on Apr 23, May 12, May 14, May 28, Jun 8, Jun 28, Jul 3, Jul 8, 2021). That's 8 filings with zero replies from Hopkins.

This is unacceptable practice for two licensed attorneys. Indeed, the Burkes previously requested this court apply its inherent power to discipline an attorney as detailed in Case 20-20209, Doc. 00515526917, 08/13/2020, ‘Appellants Motion for Reconsideration of Single Judge's Order Dated 4th August, 2020’, reciting in part;

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

Hopkins lied.

This is exactly the same as *In re Grodner*, 587 F. App'x 166, 2-3 (5th Cir. 2014);

“BY THE COURT: . . . Did you confer with Ms. Collier, Mr. Sanders or anyone else at the Attorney General's Office before you included in your motion that the State had no objection?

BY MS. GRODNER: No, your Honor. It was simply on the judge's order. . .”

“BY THE COURT: Do you understand that there's a huge difference between according to the judge's order, we can do this, and saying that the state has no objection? **You essentially lied to me.**”

However, this court rejected the Burkes motion for reconsideration and now Hopkins have interpreted this as an absolute shield of immunity. In short, they can and will continue to violate Federal Rules and the State Bar’s Professional Code of Conduct without any fear of repercussion or sanction for their misconduct.

A test of this appearance of ‘absolute immunity’ is presented herein. The question remains; Will this Court follow their own opinions and rules as described and sanction Hopkins? And furthermore, as sitting judges are also mandated to do, refer them to the State Bar of Texas? See; *Comm'n for Lawyer Discipline v. Cantu*, 587 S.W.3d 779, 784 (Tex. 2019) (“Texas Code of Judicial Conduct Canon 3(D)(2) states: “A judge who receives information clearly establishing that a lawyer has committed a violation of the Texas Disciplinary Rules of Professional Conduct should take appropriate action. A judge having knowledge that a lawyer had

committed a violation of the Texas Disciplinary Rules of Professional Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the Office of the General Counsel of the State Bar of Texas or take other appropriate action.

TEX. CODE JUD. CONDUCT Canon 3(D)(2). The obligation to report attorney misconduct applied doubly to Judge Isgur, who is not only a judge but a licensed Texas attorney. Under Texas Disciplinary Rule of Professional Conduct 8.03(a), "a lawyer having knowledge that another lawyer has committed a violation of applicable rules of professional conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate disciplinary authority." TEX. DISCIPLINARY RULES OF PROF'L CONDUCT R. 8.03(a). Judge Isgur correctly testified that he sent his Opinion to the State Bar because, as an attorney, "[he] was mandated to do it by the State Bar of Texas.""")"

Above is the exact relief the Burkes are requesting in this Motion for Sanctions, along with this courts' inherent power to suspend these attorneys from practicing before this court for a period of one year.

Respectfully submitted,

DATED: 8 July, 2021

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 July 7, 2021 we emailed Appellees Mark D. Hopkins and Shelley L. Hopkins of Hopkins Law, PLLC along with staff member Kate Barry of Hopkins Law PLLC at 0727 hrs on July 7, 2021 asking if they were opposed to our Motion to Clarify. At the time of filing that Motion, Hopkins had not replied. This law firm also represents Ocwen Loan Servicing, LLC in this consolidated appeal.

The Burkes now file a separate Motion for Sanctions with this court due to the numerous failures of Hopkins to reply to our conference requests. We did not confer as Hopkins has failed to reply to numerous conferencing requests in recent months. We assume the MOTION is OPPOSED.

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 **907** 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