Joanna Burke and John Burke
46 Kingwood Greens Dr.,
Kingwood, TX, 77339
Tel: (281) 812-9591
Fax: (866) 705-5076
Email; kajongwe@gmail.com

September 17, 2021

Clerk of Court
United States District Court
515 Rusk St
Houston TX 77002

Dear Sirs

Burke v. Ocwen Loan Servicing, LLC, Hopkins Law, PLLC, Mark D. Hopkins & Shelley L. Hopkins, Case No. 4:21-CV-2591

Filing Cover Sheet

Please find enclosed;

1. First Amended Complaint.
2. Exhibits.

A copy of this filing has been submitted by email and USPS Priority Mail. If you have any questions or comments about the enclosed filings, please do not hesitate to reach out via email to kajongwe@gmail.com, or fax to +1 (866) 705-0576 to expedite any questions or concerns.

We prefer written communication for the purposes of tracking the complaint.

Thank you very much in advance for your time and consideration.

Stay safe.

Sincerely,

Joanna Burke and John Burke

46 Kingwood Greens Dr.,
Kingwood, TX, 77339
Tel: (281) 812-9591
Fax: (866) 705-5076
Email; kajongwe@gmail.com

Encls.

John Burke and Joanna Burke
46 Kingwood Greens Dr
Kingwood, Texas 77339
Tel: 281 812 9591

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION

Civil Action No. 4:21-CV-2591

Joanna Burke and John Burke	)	FIRST AMENDED COMPLAINT
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
PHH Mortgage Corporation, Successor by Merger to Ocwen Loan Servicing, LLC, Mark Daniel Hopkins, Shelley Hopkins and Hopkins Law, PLLC.	)	
	)	
Defendants.		

COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT: Plaintiffs Joanna & John Burke ("Plaintiffs") file this first amended complaint, an equitable action with one purpose; to vacate void judgment[s] on the basis of fraud.

> See; *Spence v. Nelson*, 603 F. App'x 250, 6 (5th Cir. 2015) ("Federal Rule of Civil Procedure 15(a)(1) provides that a plaintiff may amend his complaint once as a matter of course within 21 days after serving it or 21 days after service of the defendant's answer or motion to dismiss.").

PARTIES

Plaintiffs, John Burke and Joanna Burke are residents in Harris County, Texas, and as such reside in the Southern District of Texas.

Defendant(s): PHH/Ocwen

Defendant **PHH Mortgage Corporation** is a foreign corporation that may be served by delivering citation to its registered agent, Corporation

Service Company d/b/a CSC-Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701-3218.

It was anticipated that Defendants Counsel would once again act in bad faith. As background, the plaintiffs emailed Hopkins Law, PLLC, along with a copy of the lawsuit on Monday, 9 August, 2021 at 8.34 a.m. asking if they would waive service.

> "Please find attached complaint filed today for your perusal. We assume you will waive service for the named parties (including Ocwen, as retained counsel) as you have been served by email. If we are mistaken, we look forward to your reply by return.".

Kate Barry, Legal Assistant for Hopkins Law, PLLC responded by email at 9.03 a.m. stating they would not waive service for any of the Defendants.

> "Service will not be waived.".

Plaintiffs acknowledge, Counsel for the Defendants, PHH/Ocwen have denied the following service address; "by making service upon its registered

agent, Corporation Service Company dba CSC - Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, TX 78701-3218." This is a bad faith response.

Now, compare the above to another recent lawsuit against PHH Mortgage Corporation https://2dobermans.com/woof/4o and wherein the complaint specifies the same registered agent address for service.

While it is admitted by the Plaintiffs that PHH Mortgage Corporation is the correct legal entity to serve the complaint (and the case style in this Complaint has been amended to; PHH Mortgage Corporation ("PHH"), Successor by Merger to Ocwen Loan Servicing, LLC ("Ocwen")), Plaintiffs are quite sure any service related deliveries addressed to Ocwen are 'forwarded' to PHH as both addresses are the same and, furthermore, it would be accepted due to the volume of legal cases in courts where Ocwen is named as a party.

That stated, the fact remains, Defendants counsel is well known to this court, as are the Plaintiffs, since at least 2015 and since 2018 in relation to the current parties named in this lawsuit.

Take, for example, a recent and related case, *PHH Mortgage Corporation, Successor by Merger to Ocwen Loan Servicing, LLC v. Old Republic National Title Insurance Company* (7:21-cv-00133), District Court, W.D. Texas. In that recent lawsuit, the counsel for PHH/Ocwen use a "care of" (c/o) address, namely counsel's own name and law firm. In other words, they are providing notice that the law firm is sending and receiving (accepting) all communications for PHH/Ocwen.

See; https://2dobermans.com/woof/4n, Doc. 2, Certificate of Interested Parties;

1. PHH Mortgage Corporation
Plaintiff
c/o Mark D. Cronenwett
Mackie Wolf Zientz & Mann, P. C.
14160 North Dallas Parkway, Suite 900
Dallas, Texas 75254
mcronenwett@mwzmlaw.com
(214) 635-2650
(214) 635-2686 (Fax)

A waiver in this case was received, confirming the care of address was accepted by the parties and the court. What stands out is this waiver has a good faith disclaimer to avoid unnecessary expenses. See; https://2dobermans.com/woof/4u .

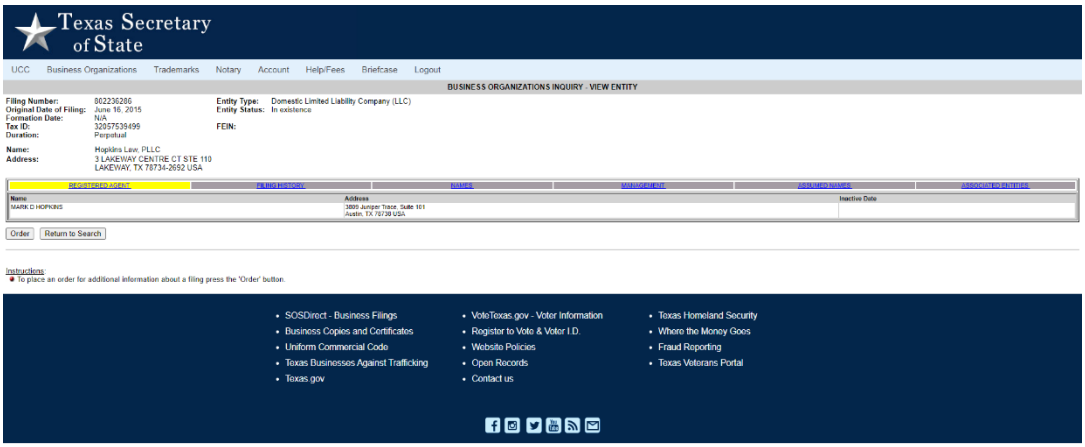
In this instance, service is waived as the defendant(s) answered the original complaint; See; *Deprins v. Clark*, 566 F. App'x 608, 4-5 (9th Cir. 2014) (" a party waives service of process when it files an answer to the complaint,") and despite their denial, it can be discounted due to a bad faith response.

Defendant: Hopkins Law, PLLC

Defendant **Hopkins Law, PLLC** is a Texas professional limited liability company having its principal place of business in Austin, Texas and may be served with process by serving its registered agent, **Mark D Hopkins**, Registered Agent Address is; **3809 Juniper Trace, Suite 101, Austin, TX 78738 USA, or wherever the Registered Agent can be found.** Mark D Hopkins is a member and director and has his domicile in Austin, Texas. The company's tax filing status is listed as In Existence and its File Number is 32057539499.

Notwithstanding the fact Hopkins has been counsel for **Ocwen** and **Hopkins Law, PLLC** for some six years in lawsuits involving the named parties, in Hopkins' calculated response, they specifically deny registered agent ("Mark D Hopkins") and the registered agent address ("3809 Juniper Trace, Suite 101, Austin, TX 78738 USA). All this, despite **Juniper Trace**

recorded as the registered address at the official **Texas Secretary of State** website when the Plaintiffs performed a search on 8 August, 2021, in advance of filing the original complaint on 9 August, 2021.



Screenshot of Texas SOS, 8 August, 2021 with packing slip for session: 080821BT5017- showing Juniper Trace address under the Registered Agent Address Tab. (Full Size Image: https://2dobermans.com/woof/4p)

I. ANSWER TO COMPLAINT

1. Attorney Defendants admit that Plaintiffs are residents of Harris County, Texas, which is located in the venue of the United States District Court for the Southern District of Texas as alleged in Paragraph 1 of the Complaint (first paragraph under the "Parties" header), Page 2.

2. Attorney Defendants deny the service and entity information as alleged by Plaintiffs in Paragraph 2 of the Complaint, Page 2.

3. Attorney Defendants admit that Hopkins Law, PLLC is a law firm and a Texas PLLC as alleged in Paragraph 3 of the Complaint, but deny the service allegations contained in the same paragraph, Pages 2-3.

4. Attorney Defendants admit that Mark Daniel Hopkins is an individual and attorney, whose business address is stated in Paragraph 4 of the Complaint, Page 3.

See page 1 of defendants Hopkins answer, Doc. 7, Sep. 1, 2021.

This is curious, since the Plaintiffs first objected to Hopkins failure to identify as Hopkins Law, PLLC in 2015 – See; *Deutsche Bank Nat'l Trust Co. v. Burke,* 92 F. Supp. 3d 601 (S.D. Tex. 2015),

> Doc. 111 OBJECTIONS to 108 Notice of Attorney Substitution, filed by Joanna Burke, John Burke. (bcampos, 1) (Entered: 07/14/2016)

when Mark D. Hopkins registered as counsel of record,

> Doc. 79, NOTICE of Appearance by Mark D. Hopkins on behalf of Deutsche Bank National Trust Company, as Trustee of the Residential Asset Securitization Trust 2007-A8, Mortgage Pass-Through Certificates, Series 2007-H under the Pooling and Servicing Agreement date, filed. (Hopkins, Mark) (Entered: 03/31/2015); https://2dobermans.com/woof/x

and after Deutsche Bank were defeated at a bench trial before Hon. Stephen Wm. Smith. At that time Hopkins listed his firm as Hopkins & Williams, PLLC and the Burkes objected.

Mark D. Hopkins
HOPKINS & WILLIAMS, PLLC
12117 Bee Cave Rd., Suite 260
Austin, Texas 78738
Phone: (512) 600-4320
Fax: (512) 600-4326
mark@hopkinswilliams.com

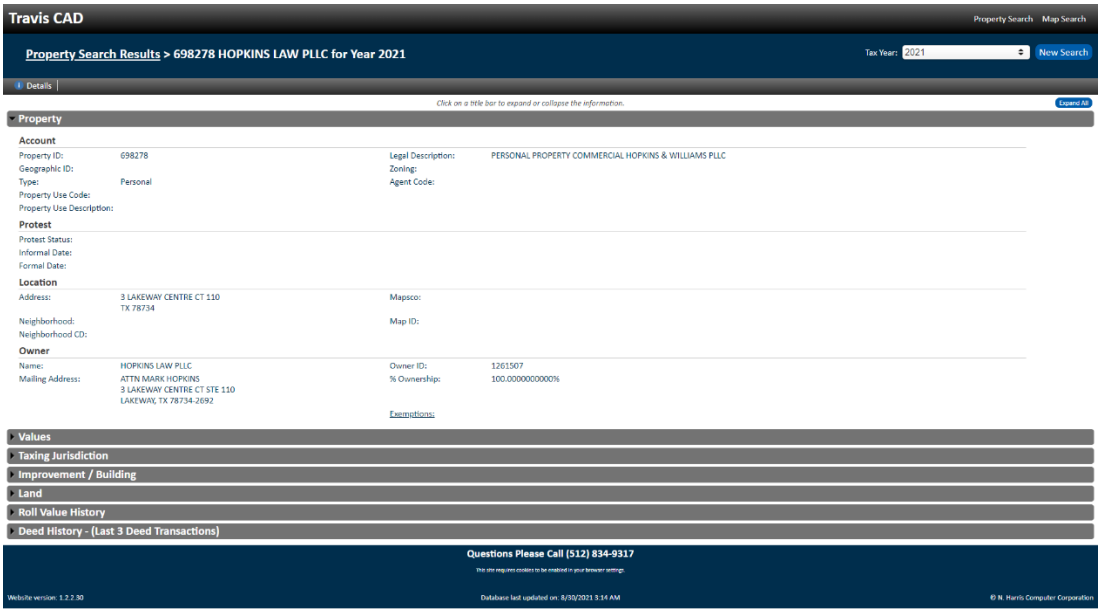
Extract from Doc. 79, Notice of Appearance.

The Plaintiffs claimed the partnership had dissolved between partners Hopkins and Williams and was the main reason for the incorporation of

Mark Hopkins new firm, Hopkins Law, PLLC. It appeared to Plaintiffs at least, this firm was formed as a result of Mark Hopkins marrying Shelley Hopkins, formerly of BDF Law Group. After this was motioned to the court, Mark Hopkins would update his information on S.D. Tex. website and docket to reflect Hopkins Law, PLLC.

Despite this, you will note that **Hopkins & Williams PLLC** is listed on Travis CAD as;

> "**Legal Description**" for the **Property ID**: PERSONAL PROPERTY COMMERCIAL, **HOPKINS & WILLIAMS PLLC**, with *Owner* detail shown as; Name: HOPKINS LAW PLLC, Owner ID: 1261507, Mailing Address: ATTN MARK HOPKINS, 3 LAKEWAY CENTRE CT STE 110, LAKEWAY, TX 78734-2692, Ownership: 100.0000000000%. See screenshot below from url link ; https://2dobermans.com/woof/4m



Travis CAD

Property Search Map Search

Property Search Results > 698278 HOPKINS LAW PLLC for Year 2021

Tax Year: 2021 New Search

Details

Click on a title bar to expand or collapse the information.

Expand All

Property

Account

Property ID:	698278	Legal Description:	PERSONAL PROPERTY COMMERCIAL HOPKINS & WILLIAMS PLLC
Geographic ID:		Zoning:	
Type:	Personal	Agent Code:	
Property Use Code:			
Property Use Description:			

Protest

Protest Status:	
Informal Date:	
Formal Date:	

Location

Address:	3 LAKEWAY CENTRE CT 110 TX 78734	Mapsco:	
Neighborhood:		Map ID:	
Neighborhood CD:			

Owner

Name:	HOPKINS LAW PLLC	Owner ID:	1261507
Mailing Address:	ATTN MARK HOPKINS 3 LAKEWAY CENTRE CT STE 110 LAKEWAY, TX 78734-2692	% Ownership:	100.0000000000%
		Exemptions:	

Values

Taxing Jurisdiction

Improvement / Building

Land

Roll Value History

Deed History - (Last 3 Deed Transactions)

Questions Please Call (512) 834-9317

This site requires cookies to be enabled in your browser settings

Website version: 1.2.2.30 Database last updated on: 8/30/2021 5:14 AM © N. Harris Computer Corporation

It is without doubt, the official registered agent and address for **process of service** for Hopkins Law, PLLC is based on the **Secretary of State website** and that both the registered agent (Mark D. Hopkins) and the Juniper Trace address are currently subject to dispute.

However, service is waived in this instance as;

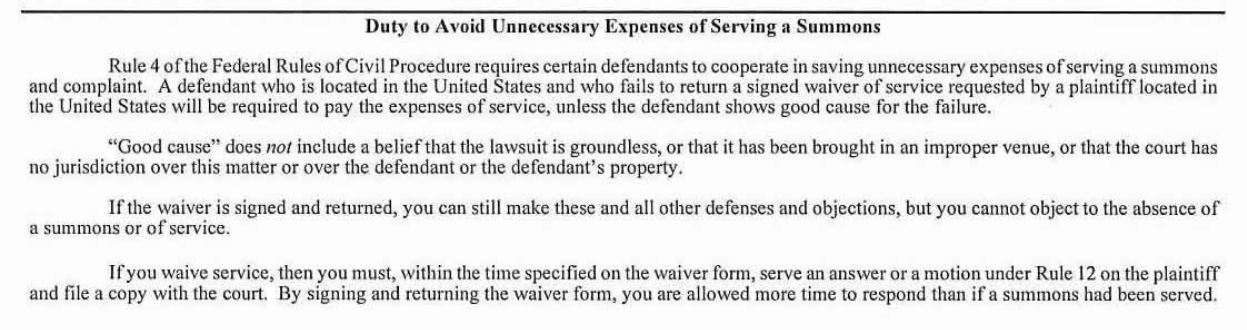
(i) Despite no legal obligation until served, the Defendants answered the original complaint; See; *Deprins v. Clark*, 566 F.

App'x 608, 4-5 (9th Cir. 2014) (“ a party waives service of process when it files an answer to the complaint,”) ;

(ii) The parties have been litigating for over six years in this court;

(iii) The denial raised in the response is made in bad faith.

(iv) Hopkins makes no attempt to identify the correct address for Hopkins Law, PLLC. As an officer of the court and as reminded by the court itself in the waiver form, waiver of process of service should not be avoided to incur unnecessary time and expense to the known and admitted Plaintiffs. In fact, is it well documented in past cases in this court involving the same parties, the Defendants were always falsely accusing the Burkes of delay and unnecessary expense. Let the record herein show the actual truth.



Duty to Avoid Unnecessary Expenses of Serving a Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses of serving a summons and complaint. A defendant who is located in the United States and who fails to return a signed waiver of service requested by a plaintiff located in the United States will be required to pay the expenses of service, unless the defendant shows good cause for the failure.

"Good cause" does *not* include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

Waiver of the service of summons form footer disclosure re unnecessary expense per Rule 4, FRCP; see original at https://2dobermans.com/woof/4u

(v) It is also unethical and in violation of the local rules of this court, Appendix D. (See; https://2dobermans.com/woof/4r).

Defendant: Mark D. Hopkins

Defendant **Mark Daniel Hopkins** is an individual having his domicile in Austin, Texas and may be served at his business address, 3 Lakeway Centre Ct., Suite 110, Austin, Texas 78734-2692, or his place of residence, 3 THE HILLS DR, THE HILLS, TX 78738-1537 or wherever he may be found.

However, here service is waived as the defendant(s) answered the original complaint; See; *Deprins v. Clark*, 566 F. App'x 608, 4-5 (9th Cir. 2014) (" a party waives service of process when it files an answer to the complaint,") and did not deny service as submitted.

Defendant: Shelley L. Hopkins

Defendant **Shelley Luan Hopkins** is an individual having her domicile in Austin, Texas and may be served at her business address, 3 Lakeway Centre Ct., Suite 110, Austin, Texas 78734-2692, or her place of residence, 3 THE HILLS DR, THE HILLS, TX 78738-1537 or wherever she may be found.

However, here service is waived as the defendant(s) answered the original complaint; See; *Deprins v. Clark*, 566 F. App'x 608, 4-5 (9th Cir. 2014) (" a party waives service of process when it files an answer to the complaint,") and did not deny service as submitted.

JURISDICTION & VENUE

The Court has original jurisdiction over this action pursuant to 28 U.S.C. §1331 because it involves questions of federal law and secondly because it is the correct court which may resolve this complaint when fraud is involved.

> See *Gleason v. Jandrucko*, 860 F.2d 556, 558 (2nd Cir. 1988); "Relief from a final judgment may also be obtained at any time by way of an independent action to set aside a judgment for `fraud upon the court .'" ;
>
> *Chewning v. Ford Motor Co.*, 35 F. Supp. 2d 487, 491 (D.S.C. 1998) "Furthermore, the proper forum in which to assert that a party has perpetrated a "fraud on the court " is the court which allegedly was a victim of that fraud.";
>
> *Rozier v. Ford Motor Co.*, 573 F.2d 1332, 1337-38 (5th Cir. 1978). "A fraud-on-the-court claim is "not subject to any time limitation.""";
>
> See *U.S. v. One Toshiba Color Television*, 213 F.3d 147 (3d Cir. 2000): Concluding that there is no time limit with respect to a challenge of a void judgment "because of its status as a nullity";

In re James, 940 F.2d 46 (3d Cir. 1991): Stating that a "void judgment is one which, from its inception was a complete nullity and without legal effect;

United States v. Zima, 766 F.2d 1153 (7th Cir. 1985): Noting that a void judgment exists where a court renders a decision over matters beyond the scope of its authority.

PREAMBLE

This preamble provides readers with a condensed summary of the complaint and key issues. On August 4, 2021, the Court of Appeals for the Fifth Circuit unlawfully disposed of the Plaintiffs now consolidated appeals, namely; *Burke v. Ocwen*, Civil Action H-18-4544 (S.D. Tex.) and *Burke v. Hopkins*, Civil Action H-18-4543 (S.D. Tex.). The Plaintiffs complain the judgment(s) and mandate issued **(Exhibit A)** in relation to the Appeal and the two District Court cases are fraudulent and void.

Critical to that conclusion is the actions of the Clerk's at the Fifth Circuit. The dispute arose after the Fifth Circuit Clerk's office refused a

Proposed Sufficient Petition for Rehearing En Banc timely submitted by the Plaintiffs;

> PETITION for rehearing en banc [9549894-2], backdated docket entry April 13, 2021 (the date of the original filing by the Burkes).

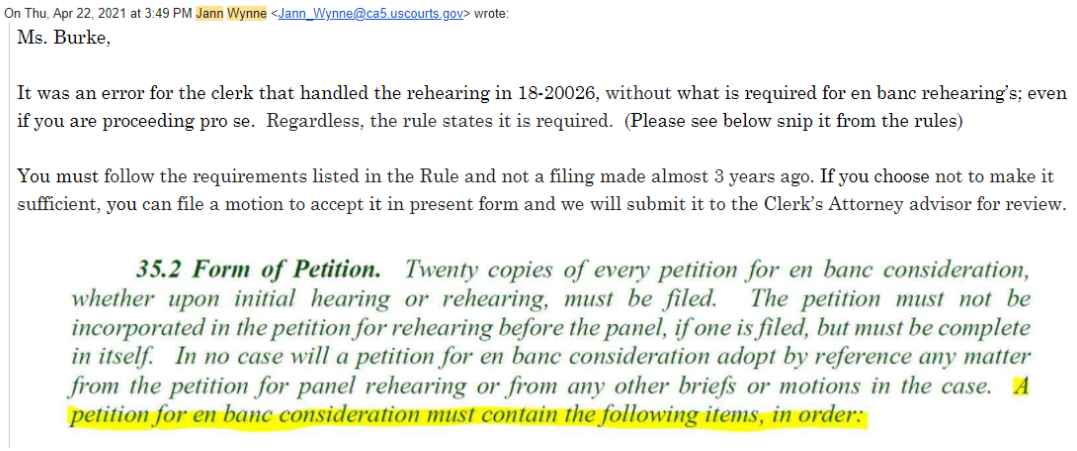
Three Clerks (co-conspirators) would be embroiled in the unconscionable scheme which would subsequently play out.

Co-Conspirator Clerk 1

Fifth Circuit Clerk, **Jann Wynne ("Wynne")**, who refused to accept the Plaintiffs now Proposed Sufficient Petition and instead, added a new deficiency - the missing 'Statement of Facts'. The Plaintiffs objected. This would turn out to be the second time the Plaintiffs were reminded in 2021 of Fed. R. Civ. P. 7 by the Clerks at the Fifth Circuit. After a few emails, on April 22, 2021 at 3:49 pm, Wynne refused to discuss the dispute regarding the 'Statement of Facts" any further with Plaintiff Joanna Burke and responded

as per the email screenshot below, in relevant part, stating a motion would be required 'to accept it in present form…"

> See *Garcia v. City of Orange*, 928 F.2d 1136, 1136 (9th Cir. 1991); "The record shows that on April 12, 1988, a legal assistant for Garcia's counsel telephoned the Cities' counsel to advise them that no opposition would be filed to the motions to dismiss, but that plaintiff would seek leave to amend. The legal assistant also telephoned the clerk of the district court on the same date. The clerk informed the legal assistant that the notification had to be in writing.".
>
> The Burkes responded via Motion.
>
> OPPOSED MOTION filed by Appellant Ms. Joanna Burke in 19-20267, 20-20209 file petition in present form [9557920-2]. (Apr. 23, 2021).



On Thu, Apr 22, 2021 at 3:49 PM Jann Wynne <Jann_Wynne@ca5.uscourts.gov> wrote:

Ms. Burke,

It was an error for the clerk that handled the rehearing in 18-20026, without what is required for en banc rehearing's; even if you are proceeding pro se. Regardless, the rule states it is required. (Please see below snip it from the rules)

You must follow the requirements listed in the Rule and not a filing made almost 3 years ago. If you choose not to make it sufficient, you can file a motion to accept it in present form and we will submit it to the Clerk's Attorney advisor for review.

35.2 Form of Petition. *Twenty copies of every petition for en banc consideration, whether upon initial hearing or rehearing, must be filed. The petition must not be incorporated in the petition for rehearing before the panel, if one is filed, but must be complete in itself. In no case will a petition for en banc consideration adopt by reference any matter from the petition for panel rehearing or from any other briefs or motions in the case. A petition for en banc consideration must contain the following items, in order:*

Co-Conspirator Clerk 2

Fifth Circuit Clerk, **Rebecca Leto ("Leto")**, who entered later in the proceedings with her letter **(Exhibit C)** stating that the Plaintiffs Petition was accepted as Proposed Sufficient, had been 'uploaded' as a result, and all that was required was the March 30, 2021, original Opinion of the Court **(Exhibit B)** in the consolidated appeal;

Co-Conspirator Clerk 3

Fifth Circuit Clerk, **Christina Gardner ("Gardner")**. The main co-conspirator is Christina Gardner, with knowledge and in bad faith, entered her own fraudulent Motion (A copy of which is on the docket for the Court of Appeals for the Fifth Circuit (19-20267); attached as **Exhibit D** and viewable online at https://2dobermans.com/woof/3q) upon which the Fifth Circuit entered its judgment, one procured by the co-conspirators, the Clerks and 3-Panel of assigned Judges, who implemented this unconscionable scheme while acting as officers for the court.

> See; *Cadle Co. v. Moore (In re Moore)*, 739 F.3d 724, 733 n.15 (5th Cir. 2014) ("In short, the decisive factor in Fierro for our analysis of fraud on the court was the imputation of knowledge (and resultant bad faith), not simply whether a nondisclosure was at issue.").

Christina A. Gardner, Fifth Circuit Case Management Clerk

Christina Gardner is an experienced clerk. Certainly, the Plaintiffs recognize her from their prior appeals and past correspondence from the Fifth Circuit, starting from around the year 2015. For nefarious reasons she can only explain herself, Gardner would file an "Opposed Motion for Reconsideration", in a docket text entry **(Exhibit D)**, under her own volition. In other words, without a valid submitted motion from the Appellants in the case, the Burkes, and as prescribed in law, per Fed. R. Civ. P. 7.

This is even more bizarre, because during the course of the appeal(s), the Burkes were in fact confronted with Fed. R. Civ. P. 7 by Gardner herself in an email addressed to Mrs. Joanna Burke, date-stamped January 8, 2021 at 8:05 AM; "A motion seeking leave to be exempt from submitting papers is required. We cannot process an email request. Please submit a motion in CM/ECF."

From: Christina Gardner <Christina_Gardner@ca5.uscourts.gov>
Date: Fri, Jan 8, 2021 at 8:05 AM
Subject: RE: 20-20209 Burke v. Hopkins "Paper Copies Requested"
To: kajongwe@gmail.com <kajongwe@gmail.com>

Dear Ms. Burke,

A motion seeking leave to be exempt from submitting paper copies is required. We cannot process an email request. Please submit a motion in CM/ECF.

Very Respectfully,

Christina A. Gardner
Case Management Clerk
U.S. Fifth Circuit Court of Appeals
600 S. Maestri Place, Suite 115
New Orleans, LA 70130
504-310-7684

The rule is clear, only litigants can file Motions, nobody else.

By way of comparison (as the Plaintiffs have addressed the appellate courts rules separately), even upon review of the S.D. Texas Court's Local Rules, the instructions could not be clearer, including LR7, LR10 and LR11. A clerk impersonating a litigant and fraudulently submitting a 'motion' is not listed as allowable in the Local Rules, as to do so would be absurd.

Gardner vetoed that rule and in doing so, abused her authority.

See; *Coleman v. Creal*, CIVIL ACTION No. 17-1493-P, at *7 (W.D. La. Jan. 26, 2021) (" Court clerks have "only qualified immunity for those routine duties not explicitly commanded by a court decree or by the judge's instructions. *Clay v. Allen*, 242 F.3d 679 (5th Cir. 2001), citing, *Williams v. Wood*, 612 F.2d 982, 985 (5th Cir. 1980).")

No judge or clerk has immunity to file a motion on behalf of parties to the lawsuit;

Watkins v. Hobbs, 5:11CV00217 JMM, at *1 n.1 (E.D. Ark. Feb. 16, 2012) ("Neither the Court nor the Clerk of the Court can file documents in a case on behalf of a party.").

That, however, does not end the conversation regarding the *purpose* of the Motion.

Restating, the Plaintiffs have explained Gardner filed a void Motion **(Exhibit D)**, but even assuming the Plaintiffs had filed the same Motion, it would ordinarily have been rejected (no action taken) by the Clerk's office.

This is because the Motion she backdated to July 8 (from July 9, 2021) **(Exhibit D)** would quizzically be a "repeat" Motion - one which had already been Reconsidered and previously denied by the 3-panel of judges, on June 21, 2021. The Fifth Circuit's own copy of FRAP and IOP (Internal Operating Procedures, see https://2dobermans.com/woof/3r) do not allow for repetitive Motions for Reconsideration by a 3-panel;

> Before OWEN, *Chief Judge*, and DAVIS and DENNIS, *Circuit Judges*.
> PER CURIAM:
>
> A member of this panel previously DENIED pro se appellants' motion for authorization to omit the Statement of Facts requirement in pro se appellants' Petition for Rehearing En Banc. The panel has considered appellants' motion for reconsideration.
>
> IT IS ORDERED that the motion is DENIED.

COURT ORDER denying Motion for reconsideration filed by Appellants Ms. Joanna Burke and Mr. John Burke [9585172-2] in 19-20267 [19-20267, 20-20209] (RLL) [Entered: 06/21/2021 03:33 PM]

So, either way, *Gardner's* Motion **(Exhibit D)** is corruptly void and the Plaintiffs painstakingly detailed this to the Court in subsequent legal Motion(s) as detailed herein.

However, on August 4, 2021, the Fifth Circuit 3-panel 'denied' *Gardner's* Motion **(Exhibit D)** and by so doing, tendered to the Plaintiffs and this District Court, to whom it expeditiously transmitted the judgment(s), that the appellate judges and court were completely satisfied that *Gardner's* void Motion was both legal and appropriate to end the Plaintiffs now consolidated appeal by issuing a final order, judgment(s) and accompanying mandate **(Exhibit A)**;

Before OWEN, *Chief Judge*, and DAVIS, and DENNIS, *Circuit Judges*.
PER CURIAM:

This panel previously DENIED Appellants' motion for reconsideration of the Court Order Denying Appellants' Motion for Leave to omit the Statement of Facts and file Appellants' petition for rehearing en banc in present form. The panel has considered Appellants' opposed motion for reconsideration.

IT IS ORDERED that the motion is DENIED.

That notion is erroneous in law. Clearly, the judgment(s) issued on the back of *Gardner's* controlling Motion **(Exhibit D)** are void and this Court must set aside the judgment(s).

That aside, it makes a mockery of the law;

> See; *Davis v. Passman*, 442 U.S. 228, 246 (1979) (" "Our system of jurisprudence rests on the assumption that all individuals, whatever their position in government, are subject to federal law:",

the judiciary and is indicative of the continuous acts of fraud and unconscionable schemes perpetrated by officers of the court, markedly channeled at these law-abiding elder citizens and Plaintiffs.

FACTS

Plaintiffs are facing a wrongful foreclosure in a legal dispute which has, as appellate Judge Jolly would say, become an "unrelenting battle".

> "This unrelenting battle between the Brownings and the Holloways, which began in 1979, is a familiar fray to this court. It has been marched up the hill to us several times before. We march it back down once again." *Browning v. Navarro*, 826 F.2d 335, 337 (5th Cir. 1987).

These facts, as detailed in this Complaint are supported by an affidavit by Plaintiff John Burke **(Exhibit I)** and an affidavit by Plaintiff Joanna Burke **(Exhibit J)**.

A Fraud Perpetrated by Officers of the Court

The significant and distressing difference, however, is that the Burkes battle is not just with the opposing parties, but with the judicial machinery itself and the personalities therein.

> See; *Wilson v. Johns-Manville Sales Corp.*, 873 F.2d 869, 872 (5th Cir. 1989); "The narrow concept should "embrace only the species of fraud which does or attempts to, defile the court itself , or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication."*Kerwit Medical Products*, 616 F.2d at 837 (quoting 7 Moore, Federal Practice ¶ 60.33 at 511 (1971 ed.))."

The Two Underlying Lawsuits Which Were Consolidated on Appeal

In order to prevent a miscarriage of justice and stop foreclosure, the Plaintiffs brought two independent lawsuits before the state court, who assigned the cases to two separate state judges.

These cases would be unlawfully removed to the federal District Court, Houston Division by the opposing parties counsel, who avoided service for the firm and disregarded email[s] from the Plaintiffs in order that the lawyer[s] at Hopkins Law, PLLC, could; (i) remove the cases to federal court, and; (ii) represent themselves pro se.

The subsequent District Court and Appellate Court judgment[s], as issued on August 4, 2021, are those which Plaintiffs seek to correct with this independent, equity lawsuit.

This Complaint Revolves Around a Question of Law[lessness]

One of the arguments in law upon which Plaintiffs' rely;

> "The judgment against [the Burkes] can be said to be procured by fraud only if fraud can be defined to include corrupt abuse of the judicial process." See *Browning v. Navarro*, 826 F.2d 335, 342-43 (5th Cir. 1987).

The judgment[s] and mandate issued and dated August 4, 2021 (A copy of which is on the docket for each of the lower court numbers 4:18-cv-4543 and 4544 at the Southern District; attached as **Exhibit A** and viewable online at https://2dobermans.com/woof/3l) in the consolidated appeal discussed herein by the Court of Appeals for the Fifth Circuit, along with the two copies of the said judgment submitted and entered in this District Court in the two related lawsuits, namely case numbers 4:18-cv-4543/4544 were procured by fraud.

The lawless judgment[s] and mandate issued on August 4 **(Exhibit A)** and now available on all court dockets are void and should be vacated forthwith as they carry no legal substance.

Qualifying as Both Intrinsic and Extrinsic in Nature, This Complaint is a Direct Attack

"*Hazel-Atlas* allows a judgment to be attacked on the basis of intrinsic fraud that results from corrupt conduct by officers of

> the court. In any event, it is clear to us from these cases that in this…proceeding, the genre of fraud alleged here, that is, the corrupt abuse of the judicial process, can serve as a basis to collaterally attack the …court judgment." See *Browning v. Navarro*, 826 F.2d 335, 344-45 (5th Cir. 1987).

It is prudent to mention the legal approach behind this pro se lawsuit. Extract from; The Value of The Distinction Between Direct and Collateral Attacks on Judgments, The Yale Law Journal, Vol. 66: 526 (https://2dobermans.com/woof/3k ;

Note, in Defendant's responses, they panic about the authenticity of this link, which is a mistake. *See* Docs. 6 and 7, No's. 29-32. The 'link' is recognized as a 'url shortener' and clicking on the shortened link leads to the official website for Yale. It is somewhat similar to the legal and academic shortener, perma.cc but does not benefit from the 'link rot' feature. Simply summarized, it's a url shortener and links to the original source.).

> "The criteria which courts have evolved for identifying direct and collateral attacks have led to unsound results. Under existing law, the ability of a party to question defects in a prior judgment depends upon the skill [of his lawyer] in following illogical procedural steps."
>
> "…if the complaining party initially brings an independent action to set aside the prior judgment and later brings a separate suit [to quiet title to the property], his action will fit within the definition of a direct attack and he will avoid the limitations which would be applicable to the other methods of proceeding. See; *Moyes v. Moyes*, 60 Idaho 601, 94 P.2d 7K (1939)(citing *at 610, 94 P.2d at 786).

This lawsuit is a direct attack to set aside the judgment[s] as described above related to the two independent lawsuits which the Plaintiffs brought before this District Court.

BURKE V. OCWEN LOAN SERVICING, LLC

Plaintiffs sued Ocwen in state court and the case would be removed to S.D. Federal Court, Houston Division over the objections of the Plaintiffs.

The case would be parachuted into Senior United States District Judge Hittner's chambers once more, despite the claimed 'blind draw' system employed by the court. Judge Hittner's new Magistrate Judge was former public defender Peter Bray.

In the Fifth Circuit's March 2021 void Opinion, *Burke v. Ocwen Loan Servicing, L.L.C.*, No. 19-20267 (5th Cir. Mar. 30, 2021), they summarized the case as; Plaintiffs charged Ocwen with claims for breach of contract, breach of the duty of good faith and fair dealing, fraud, negligence, negligent misrepresentation, unfair competition, and violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. ("FDCPA") (collectively, the "Collection Claims"). The Burkes also alleged that Ocwen violated the Real Estate Settlement Procedures Act, 12 U.S.C. § 2601 et seq. ("RESPA").

Ocwen moved to dismiss the Burkes' Collection Claims on res judicata grounds and to dismiss the RESPA claim for failure to state a claim.

Ruling on the motions before it, the district court granted Ocwen's motion to dismiss the Collection Claims, concluding that the predicates for application of res judicata were satisfied. Deutsche Bank, as the loan holder, and Ocwen, as the loan servicer, were in privity for purposes of res judicata, the court found. Further, the Collection Claims against Ocwen arose out of the same nucleus of operative facts as the earlier litigation against Deutsche Bank because both concern the loan and foreclosure on the Plaintiffs home.

The court also concluded that the Burkes did not adequately plead a claim under RESPA. Subsequently, the court invoked Federal Rule of Civil Procedure 41(b) and dismissed the cause without prejudice for want of prosecution. The court also denied the Burkes motion to remand.

The Plaintiffs dispute these facts altogether, as transcribed above from the Fifth Circuit's subsequent consolidated opinion of March 30, 2021

(Exhibit B). See; *Burke v. Ocwen Loan Servicing*, L.L.C., No. 19-20267 (5th Cir. Mar. 30, 2021).

BURKE V. MARK HOPKINS, SHELLEY HOPKINS & HOPKINS LAW, PLLC

Similar to the Ocwen case, Plaintiffs sued Hopkins in state court (different judges were assigned in the state court, unlike the federal court) and the case would be removed to S.D. Federal Court, Houston Division over the objections of the Plaintiffs. The case would be parachuted into Senior United States District Judge Hittner's ("Hittner") chambers once more, despite the claimed 'blind draw' system employed by the court. Hittner's new Magistrate Judge was former public defender Peter Bray ("Bray").

Again, reciting from the Fifth Circuit Opinion, *Burke v. Ocwen Loan Servicing, L.L.C.*, No. 19-20267 (5th Cir. Mar. 30, 2021); Contemporaneous with the filing of their suit against Ocwen, the Plaintiffs, proceeding pro se,

sued the Attorney Defendants in Texas state court. The Attorney Defendants removed the case to federal court, and the Plaintiffs filed a motion to remand, which the district court denied. The Plaintiffs claimed that the Attorney Defendants' conduct during the foreclosure litigation constituted fraud, civil conspiracy, unjust enrichment, and violated the Texas Debt Collection Act, Tex. Fin. Code § 392.001 et seq. ("TDCA"), and the FDCPA. The magistrate judge issued a report recommending that the district judge dismiss the Plaintiffs complaint for failure to state a claim. The district court adopted the magistrate's report and dismissed the case with prejudice.

The plaintiffs dispute these facts altogether, as transcribed above from the Fifth Circuit's subsequent consolidated opinion of March 30, 2021 **(Exhibit B)**.

FIFTH CIRCUIT APPEALS

The two cases would be appealed. Ocwen was first, with a notice of appeal recorded by the Fifth circuit on April 22, 2019 followed approximately a year later by the Plaintiffs appeal re Hopkins. The notice of appeal recorded by the Fifth Circuit on April 17, 2020.

In each appeal, separate and independent 3-panels were assigned. The Ocwen panel comprised of judges Higginbotham (motion judge), Southwick and Willett. The Hopkins 3-panel comprised of judges Clement (motion judge), Higginson and Elrod.

However, as part of the unconscionable scheme by the judicial machinery installed at the Fifth Circuit, these panels would be unlawfully disbanded and replaced by a hand-selected panel by Chief Judge Priscilla R. Owen ("Owen") of the Court of Appeals for the Fifth Circuit. The new panel comprised of judges Owen, Dennis (motion judge) and Davis.

Relevant to this case and the unconscionable scheme and fraud by the officers of the court, would be the judicial complaint **(Exhibit E)** against Senior United States District Judge David Hittner, Houston Division, S.D. Tex., filed with the current Chief Judge [Owen] by the Plaintiffs.

A judicial complaint was originally filed by email against Hittner on March 27, 2020. See; https://2dobermans.com/woof/3m . After a few months with no response to the emailed complaint, the Plaintiffs asked for a status update, only to be told it appeared the email was not received at the court due to a 'technical glitch'. The Burkes resubmitted and on June 11, acknowledged by Ms Shelley E. Saltzman, Legal Analyst for Circuit Mediation and Judicial Support Office. The judicial complaint would be referenced as; Judicial Misconduct Complaint No. 05-20-90128.

On 10 November, 2020, Owen dismissed the Plaintiffs judicial complaint **(Exhibit F)**. That would not have been a remarkable event,

however, but for the pugnacious nature of the dismissal, which is very relevant to this complaint. First, Owen's summary of the complaint in her order, dated Sunday, November 8, 2021 **(Exhibit F)**, dismissing the judicial complaint against Hittner **(Exhibit E)** was factually erroneous and materially so. At the time of this lawsuit, she has refused to correct the summary. Second, Owen threatened the Plaintiffs.

> This is the Burkes' third merits-related and conclusory judicial misconduct complaint. The Burkes are WARNED that should they, together or separately, file a further merits-related, conclusory, frivolous, or repetitive complaint, their right to file complaints may be suspended and, unless they are able to show cause why they should not be barred from filing future complaints, the suspension will continue indefinitely. *See* Rule 10(a), Rules for Judicial-Conduct and Judicial-Disability Proceedings.
>
> The complaint is DISMISSED.

Third, reading the snippet screenshot above, she did not believe the Burkes arguments calling the complaint "conclusory" and "frivolous" – and which is actually soaked in verifiable, factual events during the District

Court proceedings - so how could she possibly be impartial on the Burkes consolidated appeal panel, or appear to be so? The Plaintiffs maintain the position she is biased, could not be impartial, and should not have been part of the newly constructed 3-panel. And the Plaintiffs are not alone in that view - see attorney Tom Goldstein, a SCOTUS goliath, in his own words; Extract from **Exhibit G**;

"Plainly, a rule that expressly permitted judges to call dibs on class action cases, or ask the clerk's office for preferential assignment to antitrust cases, would be intolerable." To "perform its high function in the best way 'justice must satisfy the appearance of justice.'" *In re Murchison*, 349 U.S. 133, 136 (1955). An essential part of the public perception and reality of judicial impartiality arises from the fact that judges are assigned, rather than allowed to select, their cases. The public may reasonably suspect "judges [who] sometimes gain access to a panel" do so "in order to affect the outcome

of a case." J. Robert Brown, Jr. & Allison Herren Lee, Neutral Assignment of Judges at the Court of Appeals, 78 TEX. L. REV. 1037, 1066 (2000). Indeed, the public would be justified in assuming that a judge who selects a particular case based on its subject matter will often bring to the case an atypically strong set of preconceived views about the proper disposition of the case. See; *Motorola Mobility LLC v. AU Optronics Corporation*, 14-1122 (Pet. Denied) https://2dobermans.com/woof/2y."

As a result, the Plaintiffs would file a Motion to Disqualify Owen, See Docket Entry; Document: 00515925157, July 3, 2021, 19-20267, 5th Cir., **(Exhibit G)**, accepted on July 3, 2021, (and which explains the events described here in detail) and while the Petition for Rehearing En Banc dispute was still ongoing.

In short, Owen could not possibly be an impartial judge after her scathing opinion in the Hittner complaint, a complaint which revolved around the now consolidated appeal at the Fifth Circuit.

Furthermore, she disbanded the existing PANLOG panels, assigned herself to the new panel and as such, the 'appearance of impropriety' should have resulted in automatic recusal. Alas that did not happen.

Judicial immunity allows judges to judge themselves, and on July 7, 2021, she would swiftly deny the Motion in a one sentence response;

> COURT ORDER FILED that Appellants' opposed motion to disqualify Chief Judge Priscilla R. Owen is DENIED. The following transaction was entered on 07/07/2021 at 2:40:21 PM CDT and filed on 07/07/2021.

On August 4, 2021 a void judgment and mandate **(Exhibit A)** was released, cementing the original Opinion of the Court **(Exhibit B)** which was

issued on March 30 (and then held in abeyance while the Plaintiffs Petition was being processed).

The Plaintiffs reserved their rights when the court released its initial opinion, as it was completely error-laden and inaccurate. The Plaintiffs timely filed a Petition for Rehearing En Banc on April 13, 2021;

> PETITION for rehearing en banc [9549894-2], backdated docket entry April 13, 2021 (the date of the original filing by the Burkes).

This Petition would become a mini case of its own due to the Court Clerk's and Motion Judge's improper orders. The events, docket entries and timeline are summarized as follows;

(1) On **April 13**, 2021, the Burkes' filed a Petition for Rehearing En Banc.

(2) On **April 13**, 2021, the Court notified the Burkes that the Petition was insufficient and needed to be corrected.

(3) On **April 23**, 2021, the Burkes then filed a Motion for Other Relief requesting the Court accept the Petition as filed, without the Statement of Facts, or alternatively, requesting an extension of time to amend the Petition and waive the paper copies requirement.

(4) On **May 5**, 2021, the Court ordered that the Burkes' request to omit the Statement of Facts in the Petition was denied by Motion Judge Dennis, the extension of time to submit a sufficient Petition was granted (until May 15, 2021), and the Burkes' request to waive the paper copy requirement was denied as unnecessary.

(5) On **May 12**, 2021, the Burkes filed a motion to extend the time for rehearing until May 26, 2021.

(6) On **May 14**, 2021, the Court took no action on the Burkes filing, on the motion for reconsideration of single judge's order, claiming the

motion is premature, as the extension motion is still pending with the court.

(7) On **May 17**, 2021 the Court advised no action will be taken at this time on the Proposed Sufficient Rehearing En Banc received from Appellants Ms. Joanna Burke and Mr. John Burke in 19-20267 **because it is a duplicative filing**, as the rehearing should be emailed, not re-filed. Additionally, it still remains insufficient as it does not have a copy of the court's opinion.

(8) On **May 28**, 2021, the Court released an Order by Motion Judge Dennis denying Motion to extend the time to file a petition for rehearing.

(9) On **May 28**, 2021, the Burkes filed a Motion for Reconsideration by the 3-panel of the May 5, 2021 Court Order denying Motion for

authorization to omit the Statement of Facts requirement for their Petition for Rehearing En Banc.

(10) On **June 8**, 2021, the Burkes then filed a Renewed Motion for Reconsideration, after which the Court notified the parties that it would take no action on the Renewed Motion as there was already a Motion for Reconsideration pending.

(11) On **June 21**, 2021, the Court panel comprising of Chief Judge Owen and Judges Dennis and Davis denied the Burkes Motion for Reconsideration.

> Before OWEN, *Chief Judge*, and DAVIS and DENNIS, *Circuit Judges*.
> PER CURIAM:
>
> A member of this panel previously DENIED pro se appellants' motion for authorization to omit the Statement of Facts requirement in pro se appellants' Petition for Rehearing En Banc. The panel has considered appellants' motion for reconsideration.
>
> IT IS ORDERED that the motion is DENIED.

(12) On **June 28**, 2021, the Burkes filed a motion to stay. It is also included as **Exhibit H**) and contrary to the Courts disposal of this motion confirms the Burkes actual reason for the stay, in the following docket text;

> "MOTION to stay issuance of the mandate [9607360-2]. Date of service: 06/28/2021 [19-20267, 20-20209] REVIEWED AND/OR EDITED – The original text prior to review appeared as follows: OPPOSED MOTION filed by Appellant Mr. John Burke in 19-20267, 20-20209 to stay further proceedings in this court. **Reason: US Supreme Court and this Court's All American and Collins cases..** Date of service: 06/28/2021 via US mail – Appellant Burke; email – Appellant Burke; Attorney for Appellees: Hopkins, Hopkins [19-20267, 20-20209] (John Burke) [Entered: 06/28/2021 08:36 PM]".

(13) On **June 29**, 2021, Clerk Rebecca L. Leto sent a letter (See copy of Ms. Leto's letter online at https://2dobermans.com/woof/3p . It is also included as **Exhibit C**) and also made a court docket entry,

which has been 'backdated' by the Court to April 13, 2021, and includes the following docket text;

> "PETITION for rehearing en banc [9549894-2] Number of Copies:0. Since it could not be determined that the filing on 05/17/2021 was not emailed, Clerk's Office has filed the document as proposed sufficient rehearing. However, document remains insufficient for lack of copy of the Court's opinion. Sufficient Rehearing due on 07/09/2021 for Appellants Joanna Burke and John Burke. Date of Service: 05/14/2021 [19-20267, 20-20209]".

(14) On **July 3**, 2021, the Burkes filed a Motion to Disqualify Chief Judge Priscilla Owen (under the 'correct event' as it was originally filed and rejected on July 1, 2021) **(Exhibit G)**.

(15) On **July 7**, 2021, Judge Owen denies the Motion to Disqualify.

(16) On **July 8**, 2021, the Burkes filed a Motion to Clarify the Order issued 29 June, 2021, *'backdated'* to 13 April, 2021 with Proposed Sufficient Brief 'uploaded' as per Rebecca Leto's Letter of June 29;

> See *Arsement v. Spinnaker Exploration Co.*, 400 F.3d 238, 254-55 (5th Cir. 2005); ("[W]e direct the judge in this case, and others in this circuit, to entertain post-judgment motions. . . . [T]he district courts must carefully consider each such motion on its merits, without begrudging any party who wishes to avail himself of the opportunity to present such motions in accordance with the rules of procedure and with the standards of professional conduct. *Collins v. Morgan Stanley Dean Witter*, 224 F.3d 496, 502 (5th Cir. 2000).") and; *McClellon v. Lone Star Gas Co.*, 66 F.3d 98, 102 (5th Cir. 1995) ("We hold that in the absence of specific instructions from a "judicial officer," the clerk of court lacks authority to refuse or to strike a pleading presented for filing. ")

In this case, the clerk (Gardner) would file the Motion to Clarify. However, what astoundingly happened next - which is central to this

lawsuit and explained in detail in this complaint - would be the clerk recorded the Burkes Motion to Clarify as *'no action taken'* on the docket in order to impersonate the Burkes and file a redundant Opposed Motion for Reconsideration (redundant because a legitimate motion by the Burkes had already been ruled upon before and denied on June 21, 2021 by the 3-panel upon request).

Remember, only the Order of 30 March, 2021 was required to be emailed by the Burkes to the Fifth Circuit Clerk in order to make the Proposed Brief Sufficient (void of any deficiencies).

(17) On **July 9**, 2021 Clerk Christina Gardner called John Burke re Motion to Clarify (8 July).

> See; *Wedgewood Investment Fund, Ltd. v. Wedgewood Realty Group, Ltd.* (*In re Wedgewood Realty Group, Ltd.*), 878 F.2d 693, 696 n.1 (3d Cir. 1989) ("At oral argument, debtor's counsel informed this court that the bankruptcy

> judge, through his law clerk , telephoned counsel to grant debtor leave to file a response to WIF's letters. Debtor does not dispute WIF's contentions that it was not a participant in this phone call, and that it was not aware of the court's action until after the response had been filed.")

Here, Gardner called John Burke and never spoke to nor conferenced in Joanna Burke or advised opposing counsel of her intended actions, similar to Wedgewood.

> *See; 5th Cir. R. 27.4* (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." https://2dobermans.com/woof/4v

Later that day, Gardner entered an "Opposed Motion for Reconsideration" herself, **(Exhibit D)** which is incontestably void.

See Bass v. Hoagland, 172 F.2d 205 (5th Cir. 1949); "Concluding that default judgment was void on due process grounds where defendant filed an answer, but did not receive notice of the plaintiff's motion for default judgment."

Here, the Burkes were bypassed entirely by the Clerk, who proceeded to file a motion improperly in the Burkes name.

> *See; 5th Cir. R. 27.1* (in part) " Clerk May **Rule** on Certain Motions." https://2dobermans.com/woof/4v

The rule does not say "Clerk May **Submit** a Motion for any Party and say it is Opposed."

One would have expected the Clerk to advise the Burkes to submit a new Motion, signed and dated as required in law and as she herself had demanded in the past.

Note: Gardner's unlawful entry on 9 July is *'backdated'* to 8 July, the date of the Burkes Motion to Clarify. Filing this 'textual (docket entry only) **Motion** for the Burkes is bizarre;

> See, for example, *Oliveri v. Thompson*, 803 F.2d 1265, 1274 (2d Cir. 1986); "The key to rule 11 lies in the

> certification flowing from the signature to a pleading, motion, or other paper in a lawsuit.");
>
> *Williams v. Watson*, No. 13-cv-1340-MJR, at *8 (S.D. Ill. July 7, 2014) ("Plaintiffs are reminded that any motion or pleading submitted in this joint action on behalf of both Plaintiffs must be signed by both of them; a pro se litigant may not sign documents on behalf of another party. See FED. R. CIV. P. 11(a).");

The Burkes never signed this "new" and adopted [text entry] 'Motion for Reconsideration'. It is also **corruptly** unlawful;

> See *U.S. v. Wilson*, 118 F.3d 228, 234 (4th Cir. 1997); "We have held that the term "**corruptly**," ...forbids acts committed with the intent to secure an unlawful benefit either for oneself or for another.
>
> See *Bostian*, 59 F.3d at 479; *United States v. Mitchell*, 985 F.2d 1275, 1277-79 (4th Cir. 1993). The acts themselves need not be illegal."

(18) On **July 8**, 2021 the Burkes file a Motion for Extension of Time to file Rehearing on the basis of the Motion to Clarify.

> IT IS FURTHER ORDERED that Appellants' opposed motion for an extension of 14 days, or to and including July 23, 2021, to return a sufficient petition for rehearing en banc, is DENIED.

(19) On **July 8**, 2021, the Burkes file a Motion for Sanctions against Mark and Shelley Hopkins; "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. See; *U.S. v. Garza-Espinoza*, *C.R.* No. M-08-4986M, at *1 (S.D. Tex. Aug. 20, 2008)."

> IT IS FURTHER ORDERED that Appellants' opposed motion for sanctions is DENIED.

(20) On **July 18**, 2021, the Burkes file a Motion to Correct Opinion, wherein the Fifth Circuit had previously denied the Burkes Waiver

of the Statement of Facts - in light of Clerk Leto's Proposed Sufficient Brief Letter **(Exhibit C)** (accepting the Petition without the Statement of Facts).

(21) On **July 19**, 2021, Hopkins objects to Burkes Motion for Sanctions.

(22) On **July 19**, 2021, Hopkins objects to Fifth Circuit Clerk Christina Gardner's "Opposed Motion for Reconsideration" **(Exhibit D)**, an unlawful and void document with no legal validity.

(23) On **July 28**, 2021 the Burkes file a Motion to Strike Hopkins Response to Burkes Motion for Sanctions and Other Relief.

(24) On **July 28**, 2021 the Burkes file a Motion to Strike Hopkins response to "Opposed Motion for Reconsideration" **(Exhibit D)** (Christina Gardner's entry) as Void ab Initio.

(25) On **August 4**, 2021 the court would issue its bizarre, yet unequivocally unlawful and void Judgment with associated Mandate **(Exhibit A)**, by relying upon an illegal "Opposed Motion for Reconsideration"

> Before OWEN, *Chief Judge*, and DAVIS, and DENNIS, *Circuit Judges*.
> PER CURIAM:
>
> This panel previously DENIED Appellants' motion for reconsideration of the Court Order Denying Appellants' Motion for Leave to omit the Statement of Facts and file Appellants' petition for rehearing en banc in present form. The panel has considered Appellants' opposed motion for reconsideration.
>
> IT IS ORDERED that the motion is DENIED.

and without allowing the Plaintiffs to file their Petition for Rehearing En Banc by improperly striking the same.

> IT IS FURTHER ORDERED that Appellants' deficient petition for rehearing en banc is STRICKEN. The Clerk's Office is DIRECTED to STRIKE the petition for rehearing en banc and issue the mandate FORTHWITH.

Violation of Due Process

This is a clear and unambiguous violation of due process, which both the Fifth and the Fourteenth Amendments of the United States Constitution demands.

The Burkes hold a Legally Protectable Interest in their Property, Liberty and Freedom which has been unlawfully infringed upon

The above applies to their personal residence; "In Texas, homestead rights are sacrosanct." See; *Matter of McDaniel*, 70 F.3d 841 (5th Cir. 1995).

The Fraud Clearly Includes Corrupt Abuse of the Judicial Process

Judicially, the backdating and manipulation of motions and orders cannot prevail, it is an abuse and unconstitutional;

> See *Goode v. Winkler*, 252 F.3d 242, 245-46 (2d Cir. 2001) "Finally, it is worth noting that Fed. R. Civ. P. 79(a) mandates that "[a]ll papers filed with the clerk, all process issued and returns made thereon, all appearances, orders, verdicts, and judgments shall be entered chronologically

> in the civil docket on the folio assigned to the action." (emphasis added).
>
> "Chronological" is defined as "arranged in or according to the order of time." See Webster's Collegiate Dictionary 204 (10th ed. 1995). In this case, and apparently in all other similar cases, the district court "arranged" the notice of appeal and extension motion not in the "order of time," but rather, "back-dated" the extension motion. A district court's violation of binding Rules of Civil Procedure can also constitute an abuse of discretion.
>
> See, e.g., *Long Island Lighting Co. v. Barbash*, 779 F.2d 793, 795 (2d Cir. 1985) (finding that district court abused its discretion when it "unduly limited" discovery allowed by the Federal Rules of Civil Procedure)."

As a result, this lawsuit is critical, in order that the Court may set aside the void judgment and mandate **(Exhibit A)** as the law conclusively demands.

THE FOURTH AMENDMENT

Judge James Ho recently wrote for the panel in;

> *Glen v. Am. Airlines, Inc.*, 20-10903, at *1 (5th Cir. Aug. 2, 2021) (“"The Founders recognized that the protection of private property is indispensable to the promotion of individual freedom. As John Adams tersely put it, '[p]roperty must be secured, or liberty cannot exist.'" *Cedar Point Nursery v. Hassid*, 141 S.Ct. 2063, 2071 (2021) (quoting Discourses on Davila, in 6 Works of John Adams 280 (C. Adams ed. 1851)).”)

The Plaintiffs firmly believe the Fifth Circuit are the antithesis of this statement.

Seizure of Papers

The Fifth Circuit violated the Fourth Amendment when it seized the Plaintiffs personal legal papers, specifically the Motion to Clarify and without authority in law, determined the said Motion to be moot. *Soldal v. Cook County*, 506 U.S. 56, 62 (1992).

Seizure of Persons

Immediately thereafter, the Fifth Circuit Clerk Christina A. Gardner continued to violate the Fourth Amendment when she submitted a text only docket entry, labeling it as an "Opposed Motion for Reconsideration" **(Exhibit D)**, in effect seizing the Plaintiffs personas unlawfully to submit a Motion which the Plaintiffs never authorized nor could they authorize, see Fed. R. Civ. P. 7, and to which they immediately objected. *Soldal v. Cook County*, 506 U.S. 56, 62 (1992).

Seizure of Property

Relying upon this unlawful, text only docket entry labeled "Opposed Motion for Reconsideration" and over the objections submitted by formal motion, see Fed. R. Civ. P. 7;

> See; *Long ex rel. Purvis v. Satz*, 181 F.3d 1275, 1279 (11th Cir. 1999) "Filing a motion is the proper method [to request leave to amend a complaint]. Federal Rule of Civil Procedure 7(b)(1)

> provides that "[a]n application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought." (emphasis added).

Here, the Fifth Circuit issued a judgment and mandate **(Exhibit A)**, which, if left unchallenged, allows for the unlawful search and seizure of the Plaintiffs main residence at 46 Kingwood Greens Dr., Kingwood, Texas, 77339 and any personal property, papers and effects therein by local sheriff[s] and related agencies and private entities, trustees, and/or their agents.

> *Soldal v. Cook County*, 506 U.S. 56, 62 (1992) ("The [Fourth] Amendment protects the people from unreasonable searches and seizures of "their persons, houses, papers, and effects." ").

THE FOURTEENTH & FIFTH AMENDMENT

The Plaintiffs have been denied a 'fair process' and the 'heightened protection' that due process of law should afford citizens like the Burkes as

a direct result of the August 4, 2021, void judgment by the Fifth Circuit **(Exhibit A)**.

> See *Littlefield v. Forney Independent School Dist*, 268 F.3d 275, 287-88 (5th Cir. 2001); The Fourteenth Amendment prohibits States from depriving persons "of life, liberty, or property, without due process of law." See U.S. CONST. amend. XIV, § 1.
>
> As the Supreme Court recently reaffirmed:
>
> "We have long recognized that the Amendment's Due Process Clause, like its Fifth Amendment counterpart, `guarantees more than fair process .' The Clause also includes a substantive component that `provides heightened protection against government interference with certain fundamental rights and liberty interests.'" *Troxel v. Granville*,530 U.S. 57, 65, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000) (plurality opinion) (quoting *Washington v. Glucksberg*,521 U.S. 702, 719, 720, 117 S.Ct. 2258, 138 L.Ed.2d 772 (1997)).

OCWEN [PHH] AND HOPKINS 'AFFIRMATIVE DEFENSES'

In between the original complaint and this timely first amended complaint, opposing parties and counsel have responded with 'affirmative defenses' which are addressed below.

Contributory Negligence

The Defendants argument fails in law.

> "The cases say that a void judgment acquires no validity as the result of laches on the part of the adverse party. " *U.S. v. One Toshiba Color Television*, 213 F.3d 147, 158 (3d Cir. 2000).

Laches

The Defendants argument is insufficiently articulated;

> See; *McNeely v. Trans Union LLC*, CIVIL ACTION H-18-849, at *3-4 (S.D. Tex. Jan. 28, 2019). That said, "We need not reach the laches issue because the defense is not available where a judgment is void. " *Foehl v. U.S.*, 238 F.3d 474, 480 (3d Cir. 2001), citing; "The cases say that a void judgment acquires no validity as the result of laches on the part of the adverse party. " *U.S. v. One Toshiba Color Television*, 213 F.3d 147, 158 (3d Cir. 2000).

In short,

> "A void judgment cannot acquire validity because of laches on the part of the judgment debtor." *Briley v. Hidalgo*, 981 F.2d 246, 249 (5th Cir. 1993); *Jackson v. FIE Corp.*, 302 F.3d 515, 524 n.23 (5th Cir. 2002).

Res Judicata, Claim Preclusion and Issue Preclusion

In the instant case, any res judicata, claim preclusion and issue preclusion arguments fail because the void judgment was entered after the original final judgment, namely while the Plaintiffs were briefing the Petition for Rehearing En Banc and the Petition was stricken before any hearing could be held.

Thus, this new issue as presented was not raised and disposed of during the appeal. How could it be? The court sua sponte dismissed the Plaintiff's petition and hence, this is the first possible opportunity for the Plaintiffs to challenge the appellate court's unlawful acts. It is raised for the

first time and not subject to attack by res judicata, claim preclusion and issue preclusion.

Secondly, whilst res judicata may follow a **'voidable judgment'**, that is not the case here, this is a **void judgment**.

> See; " Moreover, res judicata is a doctrine that bars a second action based on **a valid final judgment** in the first action." *Mitchell Law Firm, L.P. v. Bessie Jeanne Worthy Revocable Tr.*, 20-10492, at *1 (5th Cir. Aug. 10, 2021).

Not only is the judgment void, but it is also not final as it did not correctly dispose of the pending motions, in particular the Plaintiffs Motion to Stay, as discussed further on.

Fail to State a Claim

Without more, it is unknown what the argument the Defendants make. The Defendants argument is insufficiently articulated; see; *McNeely v. Trans Union LLC*, CIVIL ACTION H-18-849, at *3-4 (S.D. Tex. Jan. 28, 2019),

but most certainly there is a claim, the judgment is void and the method by which the Plaintiffs raise this claim is clear and correct, in law.

> See; *Pena v. Bourland*, 72 F. Supp. 290, 294 (S.D. Tex. 1947) "A void judgment is a judgment where the record discloses want of jurisdiction [See; "All authorities recognize that when a judge [or judges] acts in a "clear absence of all jurisdiction" he is [they are] not protected." *Sparks v. Duval County Ranch Co., Inc.*, 604 F.2d 976, 980 (5th Cir. 1979)]; otherwise, a judgment is only voidable. A voidable judgment can be assailed only in a direct attack. An attack, to be direct, must be brought in the court where such judgment was rendered. See *Switzer et ux. v. Smith*, Tex. Com. App., 300 S.W. 31, 68 A.L.R. 377. Lack of jurisdiction on the part of the court rendering the judgment must be apparent upon inspection of the judgment, or of its record. 25 Tex. Jur. 700, and cases there cited. Jurisdiction is defined as "the power to hear and determine controversies, conferred upon legally organized courts by the constitution and statutes."

The Defendants would benefit from the void judgment and mandate. As witnessed by the Plaintiffs and this Court and by their responses,

Defendants are challenging the void judgment and seek to validate it. As such they are correctly brought before this court as parties and Defendants.

Unclean Hands

The Defendants argument is insufficiently articulated;

> See; *McNeely v. Trans Union LLC*, CIVIL ACTION H-18-849, at *3-4 (S.D. Tex. Jan. 28, 2019)**;** Specifically, Nationstar pled that "[p]laintiff's claims are barred, in whole or in part, by the applicable equitable doctrines of waiver, estoppel, laches, set-off, in pari delicto, and/or unclean hands." Id. This court has previously held that when a defendant does not plead what right the plaintiff has waived, the waiver defense is insufficiently articulated and may be struck. *Joe Hand Promotions, Inc.*, No. H-16-3696, 2017 WL 3130581, at *3. Additionally, Nationstar does not specify which equitable doctrine it intends to assert as a defense. These defenses are insufficiently articulated and risk unfair surprise against McNeely. The court concludes these defenses do not provide the plaintiff with fair notice."

It's Not Ocwen or Hopkins Fault

As stated above, the Defendants argument is insufficiently articulated; See; *McNeely v. Trans Union LLC*, CIVIL ACTION H-18-849, at *3-4 (S.D. Tex. Jan. 28, 2019) and as restated here, the Defendants would unfairly benefit from the [void] judgment and mandate. As witnessed by the Plaintiffs and this Court and by their responses, Defendants are challenging the void judgment and seek to validate it. As such they are correctly brought before this court as parties and Defendants.

COUNT I:

THE FIFTH CIRCUIT JUDGMENT AND MANDATE IS VOID

The Fifth Circuit released their original opinion and mandate on March 30, 2021 **(Exhibit B)**. The Burkes timely filed for a Motion for Rehearing En Banc which recalled the mandate. On August 4, 2021, the

court released a final order, judgment(s) and mandate **(Exhibit A)**, which are clearly void.

As detailed, the appellate court relied upon an "Opposed Motion for Reconsideration" as documented (text only) on the court docket by Fifth Circuit Clerk Christina A. Gardner **(Exhibit D)**. That is quite simply, prohibited, unauthorized and unlawful.

The Burkes have only found one other instance which is similar. In W.D. Tex., Judge Albright's chambers called foreclosure mill Mackie Wolf and asked them to submit a motion for attorney fees in a pro se proceeding.

This was hidden behind the paywall at PACER, so nobody would know unless they read attorney Mark Cronenwett's affidavit under the penalty of perjury, confirming the facts. Judge Albrights' acts are also unlawful.

> See; *Wilmington Savings Funds Society, FSB v. Owens*, (6:18-cv-00235), District Court, W.D. Texas, Doc. 13, Dec. 5, 2018, Motion for Attorney Fees; MOTION FOR ATTORNEY FEES

> AND DECLARATION OF FORECLOSURE MILL LAWYER MARK CRONENWETT FOR MACKIE WOLF, DALLAS, TEXAS (SEE #2); 2. On December 4, 2018, the Court clerk called the office of Plaintiff's counsel asking counsel to file a Motion for Attorneys' fees. Pursuant to this request, Plaintiff files this Motion for Attorneys' Fees.

Returning to the case at hand, this was raised with the court by the Plaintiffs in motion filings which are not itemized in the court's Aug. 4, 2021 order because they know it's void.

> See *Ex Parte Seidel*, 39 S.W.3d 221, 225 (Tex.Crim.App. 2001); " *Tipton v. Thaler*, 354 F. App'x 138, 142 (5th Cir. 2009)." "A void judgment is a nullity from the beginning and is attended by none of the consequences of a valid judgment. It is entitled to no respect whatsoever because it does not affect, impair, or create legal rights." ; *Freeman v. B. F. Goodrich Rubber,* 127 S.W.2d 476, 480 (Tex. Civ. App. 1939) ("A void judgment is, in legal effect, no judgment. By it no rights are divested. From it no rights can be obtained. Being worthless in itself, all proceedings founded upon it are equally worthless. It neither binds nor bars anyone. All acts performed under it and all claims flowing out of it are void.").

The Court Has Not Correctly Disposed of the Pending Motion(s)

Secondly, in the Courts Order, dated 4 August, 2021, they state;

> IT IS FURTHER ORDERED that Appellants' motion to stay the issuance of the mandate pending writ of certiorari in the U.S. Supreme Court is DENIED.

The Plaintiffs never filed a motion to stay for the reasons denied. The actual reasons for the stay, verbatim;

> "The Burkes request (a) The court stay the consolidated case until the above cases are resolved and (b) The Burkes are given the same legal courtesy as provided to the above counsel and allowed to supplement the case after the court resolves the CFPB and Collins appeals, but before they decide the Burkes Petition for Rehearing En Banc."

Thus, the court has not disposed of the 'expressly' stated motion(s).

> See *McNally v. Guevara*, 52 S.W.3d 195, 196 (Tex. 2001) ("Because the judgment does not appear final on its face, and because it did not dispose of the defendants' claim for attorney fees, it was not an appealable judgment.").

COUNT II:

THE DISTRICT COURT JUDGMENT IN HOPKINS IS VOID

In addition to Count I, Plaintiffs had already reserved their rights after the Fifth Circuits' discriminatory March 30 Order **(Exhibit B)**, wherein the court knowingly did not mention key arguments presented by the Burkes which were both timely and meritorious.

On appeal, this included the [still] unanswered facts (i) Senior Judge Hittner did not perform a **'de novo' review** of the magistrate judge's M&R (ii) cancelled a scheduled pre-trial hearing and entered final judgment without the opportunity to be heard, during the pandemic, **an *ultra vires* act**, and; (iii) Did not dismiss Hopkins Law, PLLC, who was [allegedly] not served, **without prejudice**. As such, the law firm has incorrectly remained a party to the case and the order unlawfully dismisses Hopkins Law, PLLC **with prejudice.** These facts make the lower court judgment in the Hopkins

case void ab initio. (Note; The Plaintiffs merely wish to restate the issues on appeal, this is not a new claim.).

> See *Moore v. Dempsey*, 261 U.S. 86; *Frank v. Mangum*, 237 US 309. – *Tumey v. Ohio*, 273 US 510, 511 (1927); "When a state deprives a person of liberty or property through a hearing held under statutes and circumstances which necessarily interfere with the course of justice, it deprives him of liberty and property without due process of law."

COUNT III:

THE DISTRICT COURT JUDGMENT IN OCWEN IS VOID

In addition to Count I, Plaintiffs in *Burke v. Ocwen*, Civil Action H-18-4544 (S.D. Tex.) had already reserved their rights after the Fifth Circuits' discriminatory March 30 Order **(Exhibit B)**, wherein the court knowingly did not mention key arguments presented by the Burkes which were both timely and meritorious. The result is the judgment is void. (Note; The Plaintiffs merely wish to restate the issues on appeal, this is not a new claim.)

COUNT IV:

JUDICIAL CORRUPTION REQUIRES THIS NEW CASE

The law could not be clearer.

> "Evidence of judicial corruption requires reversal regardless of the other facts of the particular case. The denial of the petitioner's right to an impartial judge or judges is a constitutional error which affects the integrity of the judicial process. A new trial is the only remedy. See *Bobo*, 814 S.W.2d at 358." *State v. Benson*, 973 S.W.2d 202, 207 (Tenn. 1998).

In the instant cases at the District Court (Note; The Plaintiffs merely wish to restate the issues on appeal which included a review of the District Court cases. That stated and for the avoidance of doubt, this is not a new claim. The sole purpose of this legal action is to void the judgment(s) dated 4 August, 2021) and on appeal, the Plaintiffs have been subjected to judicial corruption and fraud by officers of the court, an unconscionable scheme,

> See *Cadle Co. v. Moore (In re Moore)*, 739 F.3d 724, 733 n.15 (5th Cir. 2014) "for the proposition that fraud on the court is

established only with "an unconscionable plan or scheme ... designed to improperly influence the court in its discretion,""

resulting in mental anguish, pain, suffering and financial hardship to the elder and infirm Burkes.

It also puts their residential homestead in complete jeopardy and requires the Plaintiffs to file this new lawsuit.

REQUEST FOR EQUITABLE RELIEF & PRAYER

Plaintiffs, John Burke and Joanna Burke, prays for the following relief;

(1) The Court of Appeals for the Fifth Circuit Judgment as issued on 4 August, 2021, in the now consolidated case; *Burke v. Ocwen Loan Servicing, L.L.C.*, No. 19-20267 (5th Cir. Mar. 30, 2021) is set aside, is deemed null and void and not binding on the parties; and

(2) The Fifth Circuit Judgment as transmitted to the Clerk of the District Court at the Southern District of Texas, Houston Division, in the case

styled; *Burke v. Ocwen*, Civil Action H-18-4544 (S.D. Tex.) is vacated and set aside, deemed null and void and not binding on the parties, and;

(3) The Fifth Circuit Judgment as transmitted to the Clerk of the District Court at the Southern District of Texas, Houston Division, in the case styled; *Burke v. Hopkins*, Civil Action H-18-4543 (S.D. Tex.) is vacated and set aside, deemed null and void and not binding on the parties, and;

(4) This request for equitable relief is made subject to and without waiver of the Plaintiffs rights, and;

(5) The Plaintiffs are allowed, as necessary, to Amend their Complaint freely and without discrimination, and;

(6) The Plaintiffs are allowed to file by CM/ECF during these proceedings as pro se litigants who are competently trained in court e-filing and this request should also be granted due to the pandemic, as formally requested by the Plaintiffs **Emergency Motion** as submitted on August 23,

2021, over 3 weeks ago and which remains percolating on a **Non-Emergency** turnaround by the court, and;

(7) As per (6) the Court answer the Motion to Disqualify Judge Alfred H. Bennett in a timely manner, and;

(8) The Rule 16 Initial Pretrial Conference is for the purposes of discussing the case, including any pending motions and the Joint Discovery/Case Management Plan, rather than a 'proof of life' attendance and calendar event, as required by the rules and in law, and the court will invoke the 'blind draw' system and not hand-select the assigned Judge or return the complaint to Judges Hittner or Judges who have previously interacted with the Burkes on a legal basis before this court e.g. Judges Bennett and Hughes and;

(9) The court will allow remote hearings during the renewed and more deadly pandemic and not command in-person hearings when the elder

Plaintiffs are medically challenged and unvaccinated (See Order issued 6 Aug. 2021 by this Court regarding Vaccination Policy for the Court; https://2dobermans.com/woof/4s , and;

(10) The court will ask Defendants to show cause why they should not waive service considering the facts as recited herein, and/or request that Defendants supply the full name and address of the registered agent for each of the Defendants listed in this lawsuit so that process of service may be executed in a timely manner. Furthermore, this court's order for service of process in civil cases can be submitted by email, when the United States Attorney or the Social Security Administration is a party, confirms this request is more than reasonable. See; https://2dobermans.com/woof/4t .

(11) Plaintiffs further request all such other and further relief, at law or in equity, to which they are justly entitled.

RESPECTFULLY submitted this 17th day of September, 2021.

Joanna Burke / State of Texas
Pro Se

John Burke / State of Texas
Pro Se

46 Kingwood Greens Dr
Kingwood, Texas 77339
Phone Number: (281) 812-9591
Fax: (866) 705-0576
Email: kajongwe@gmail.com

CERTIFICATE OF SERVICE

We, Joanna Burke and John Burke hereby certify that on **September 17, 2021**, a true and correct copy of the foregoing Motion has been posted

and emailed to the court and opposing parties with the following disclaimer;

Our Emergency Motion for ECF/CM filing permissions as submitted on August 23, 2021 has not been granted or denied at the time of this filing.

We civilly Remind the Court of our prior communications in this respect and note the addresses for postal service as indicated below.

USPS Priority Mail to:

Clerk of Court
P. O. Box 61010
Houston, TX 77208

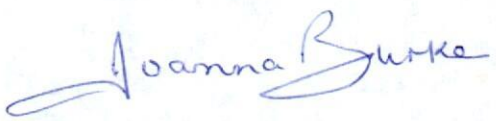
And:

USPS Priority Mail to the opposing parties listed:-

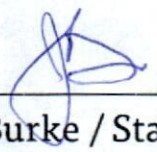
Mr. Mark Hopkins;
Mrs. Shelley Hopkins,
Attorneys/Defendants
Hopkins Law PLLC
3 Lakeway Centre Ct.,

Suite 110, Austin,
Texas 78734

With that stated, we reserve our rights to separately challenge this unconstitutional violation and usurpation of judicial power;



Joanna Burke / State of Texas
Pro Se



John Burke / State of Texas
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LIST OF EXHIBITS

Complaint; Burke v. Ocwen et al

(4:21-CV-2591, 2021, S.D. Tex.)

EXHIBIT A; Fifth Circuit Letter, Judgment & Mandate, 4 Aug., 2021

EXHIBIT B; Fifth Circuit Original Opinion, Burke v. Ocwen Loan Servicing, L.L.C., No. 19-20267 (5th Cir. Mar. 30, 2021).

EXHIBIT C; Leto's Fifth Circuit Letter Accepting Proposed Sufficient Petition without Statement of Facts.

EXHIBIT D; Christina A. Gardner's text only Void Motion entry backdated to 8 July, 2021 as recorded on official appeal docket, retrieved from PACER on 9 August, 2021.

EXHIBIT E; Judicial Complaint against Senior United States District Judge David Hittner, S.D. Tex., submitted to the Chief Judge, Fifth Cir.

EXHIBIT F; Chief Judge Priscilla Owen's Order Dismissing Judicial Complaint against Judge Hittner.

EXHIBIT G; Motion to Disqualify Chief Judge Priscilla R. Owen, Fifth Cir.

EXHIBIT H; Burke's Motion to Stay re All American and Collins cases.

EXHIBIT I; Affidavit in Support by John Burke.

EXHIBIT J; Affidavit in Support by Joanna Burke.

EXHIBIT A

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

August 04, 2021

Mr. Nathan Ochsner
Southern District of Texas, Houston
United States District Court
515 Rusk Street
Room 5300
Houston, TX 77002

No. 19-20267 Burke v. Ocwen Loan Servicing
USDC No. 4:18-CV-4544
USDC No. 4:18-CV-4543

Dear Mr. Ochsner,

Enclosed is a copy of the judgment issued as the mandate.

Sincerely,

LYLE W. CAYCE, Clerk

Rebecca L. Leto

By: _____
Rebecca L. Leto, Deputy Clerk

cc w/encl:
Ms. Joanna Burke
Mr. John Burke
Mr. Mark D. Hopkins
Ms. Shelley Luan Hopkins

United States Court of Appeals
for the Fifth Circuit

No. 19-20267

JOANNA BURKE; JOHN BURKE,

Plaintiffs—Appellants,

versus

OCWEN LOAN SERVICING, L.L.C.,

Defendant—Appellee,

CONSOLIDATED WITH

No. 20-20209

JOANNA BURKE; JOHN BURKE,

Plaintiffs—Appellants,

versus

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

Defendants—Appellees.

Appeal from the United States District Court
for the Southern District of Texas

USDC No. 4:18-CV-4544
USDC No. 4:18-CV-4543

Before OWEN, *Chief Judge*, and DAVIS, and DENNIS, *Circuit Judges*.

PER CURIAM:

This panel previously DENIED Appellants' motion for reconsideration of the Court Order Denying Appellants' Motion for Leave to omit the Statement of Facts and file Appellants' petition for rehearing en banc in present form. The panel has considered Appellants' opposed motion for reconsideration.

IT IS ORDERED that the motion is DENIED.

IT IS FURTHER ORDERED that Appellants' opposed motion for sanctions is DENIED.

IT IS FURTHER ORDERED that Appellants' opposed motion for an extension of 14 days, or to and including July 23, 2021, to return a sufficient petition for rehearing en banc, is DENIED.

IT IS FURTHER ORDERED that all other pending motions not expressly referenced herein are DENIED.

IT IS FURTHER ORDERED that Appellants' deficient petition for rehearing en banc is STRICKEN. The Clerk's Office is DIRECTED to STRIKE the petition for rehearing en banc and issue the mandate FORTHWITH.

IT IS FURTHER ORDERED that Appellants' motion to stay the issuance of the mandate pending writ of certiorari in the U.S. Supreme Court is DENIED.

EXHIBIT B

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED
March 30, 2021

Lyle W. Cayce
Clerk

No. 19-20267

JOANNA BURKE; JOHN BURKE,

Plaintiffs—Appellants,

versus

OCWEN LOAN SERVICING, L.L.C.,

Defendant—Appellee.

CONSOLIDATED WITH

No. 20-20209

JOANNA BURKE; JOHN BURKE,

Plaintiffs—Appellants,

versus

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

Defendants—Appellees.

No. 19-20267
c/w No. 20-20209

Appeals from the United States District Court
for the Southern District of Texas
USDC Nos. 4:18-CV-4543 & 4:18-CV-4544

Before OWEN, *Chief Judge*, and DAVIS and DENNIS, *Circuit Judges*.

PER CURIAM:*

These consolidated appeals stem from a mortgage foreclosure dispute.[1] Joanna Burke executed a home equity note ("the Note") that was secured by a Deed of Trust, *see Deutsche Bank Nat'l Trust Co. v. Burke*, 655 F. App'x 251, 252 (5th Cir. 2016) (*Burke I*). That instrument, which was also signed by her husband, John Burke, encumbered the Burkes's home in Kingwood, Texas. After the Burkes repeatedly failed to make their loan payments, this court held that the holder of the Note, Deutsche Bank National Trust Company ("Deutsche Bank"), could proceed with foreclosure, *see Deutsche Bank Nat'l Trust Co. v. Burke*, 902 F.3d 548, 552 (5th Cir. 2018) (per curiam) (*Burke II*). The Burkes now sue Deutsche Bank's mortgage servicer, Ocwen Loan Servicing LLC ("Ocwen"), and Mark Hopkins and Shelley Hopkins, the Bank's appellate counsel in *Burke I* and *II*, and their law firm, Hopkins Law, P.L.L.C., (collectively, "the Attorney Defendants"), alleging a variety of claims relating to the foreclosure and to the conduct of the Defendants following *Burke II*. The district court dismissed the claims against Ocwen on *res judicata* grounds and for want of prosecution. The court also dismissed the claims against the Attorney Defendants for failure to state a claim. We AFFIRM.

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

[1] We consolidate case numbers 19-20267 and 20-20209.

I.

We have reviewed the facts pertinent to the foreclosure suit in *Burke I* and *II*. To summarize, in May 2007, "Joanna Burke signed a Texas Home Equity Note . . . promising to pay $615,000 plus interest to secure a loan." *Id.* at 550. The Note was secured by a Deed of Trust, signed by both Joanna and John, placing a lien on their home. *Id.* In 2011, the Deed of Trust was assigned to Deutsche Bank. *Id.* At the time of the assignment, the Burkes had not made a mortgage payment in over a year. *Id.* Deutsche Bank's loan servicer at the time, OneWest Bank, accelerated the loan, but the couple continued not to make their payments. *Id.* Deutsche Bank thus sought to foreclose on the Burkes's home, and, in 2018, we held that the bank had the right to do so. *Id.* at 552.

Following our decision in *Burke II*, the Burkes sent correspondence to Ocwen "disputing the validity of the current debt you claim we owe." The Burkes requested "all pertinent information regarding our loan." Ocwen responded through counsel. It noted that the Burkes appeared to be "questioning the entire life of the loan" and that it was "impossible to discern every concern" the Burkes may have. Nevertheless, Ocwen furnished the Burkes with copies of the Note, the Deed of Trust, the assignment of the Deed of Trust to Deutsche Bank, and the loan payment history. Thereafter, in November 2018, the Burkes filed a *pro se* suit against Ocwen in Texas state court. They brought claims for breach of contract, breach of the duty of good faith and fair dealing, fraud, negligence, negligent misrepresentation, unfair competition, and violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* ("FDCPA") (collectively, the "Collection Claims"). The Burkes also alleged that Ocwen violated the Real Estate Settlement Procedures Act, 12 U.S.C. § 2601 *et seq.* ("RESPA"). Ocwen removed the case to federal court and then moved to dismiss the Burkes' Collection Claims on *res judicata* grounds and to dismiss the RESPA

claim for failure to state a claim. Notably, the Burkes did not respond to Ocwen's motion but moved to remand the case to state court.

Ruling on the motions before it, the district court granted Ocwen's motion to dismiss the Collection Claims, concluding that the predicates for application of *res judicata* were satisfied. Deutsche Bank, as the loan holder, and Ocwen, as the loan servicer, were in privity for purposes of *res judicata*, the court found. Further, the Collection Claims against Ocwen arose out of the same nucleus of operative facts as the earlier litigation against Deutsche Bank because both concern the loan and foreclosure on the Burkes's home. The court also concluded that the Burkes did not adequately plead a claim under RESPA but granted the Burkes twenty-one days to address their pleading deficiency. Failure to file an amended complaint within that time period, the district court cautioned, would result in dismissal. The court also denied the Burkes's motion to remand. After more than twenty-one days passed without the Burkes filing an amended pleading, the court invoked Federal Rule of Civil Procedure 41(b) and dismissed the cause without prejudice for want of prosecution. The Burkes filed a timely notice of appeal.

Contemporaneous with the filing of their suit against Ocwen, the Burkes, proceeding *pro se*, sued the Attorney Defendants in Texas state court. The Attorney Defendants removed the case to federal court, and the Burkes filed a motion to remand, which the district court denied.[2] After the Burkes filed an amended complaint, the Attorney Defendants moved to dismiss for failure to state a claim. The Burkes then requested leave to file a second amended complaint but did not attach an amended pleading or explain what new facts or theories they would plead if granted leave. The magistrate judge

[2] The same district court judge presided over both the actions against Ocwen and the Attorney Defendants.

denied the Burkes's motion. The magistrate conclude that, as best it could discern from scouring the Burkes's amended complaint, the Burkes claimed that the Attorney Defendants' conduct during the foreclosure litigation constituted fraud, civil conspiracy, unjust enrichment, and violated the Texas Debt Collection Act, TEX. FIN. CODE § 392.001 *et seq.* ("TDCA"), and the FDCPA. The magistrate judge issued a report recommending that the district judge dismiss the Burkes's complaint for failure to state a claim. The district court adopted the magistrate's report and dismissed the case with prejudice. The Burkes timely appealed.

II.

We first consider the Burkes's appeal of their action against Ocwen. The Burkes argue that district court erred in denying their motion to remand the case to state court. We review this ruling *de novo*. *Scarlott v. Nissan N. Amer., Inc.*, 771 F.3d 883, 887 (5th Cir. 2014). A motion to remand is properly denied when federal jurisdiction exists and removal to federal court was appropriate. *See id.* Removal of an action to federal court, in turn, is appropriate when, *inter alia*, federal-question jurisdiction lies. *See Caterpillar Inc. v. Williams*, 482 U.S. 386, 382 (1987). Jurisdiction on this basis "is governed by the 'well-pleaded complaint rule,' which provides that federal jurisdiction exists only when a federal question is presented on the face of the plaintiff's properly pleaded complaint." *Id.* Here, the Burkes's allege violations of federal law in the very first paragraph of their complaint: "Plaintiffs . . .[file] this . . .Complaint based on the fraudulent and injurious acts of Defendant in violation of [*sic*] Section 1463 of the Dodd-Frank Financial Reform Act, the Fair Debt Collection Practices Act, . . . 15 U.S.C[.] 1692, RESPA[,] 12 U.S.C. § 2605," and other state law claims. Thus, federal jurisdiction exists, and the district court correctly denied the Burkes's motion to remand. *See Scarlott*, 771 F.3d at 887.

Next, the Burkes contend for the first time on appeal that *res judicata* does not bar their Collection Claims against Ocwen. As mentioned, the Burkes failed entirely to file any response to Ocwen's motion to dismiss. Although we recognize that the Burkes proceeded *pro se* in the district court and we liberally construe the briefs of *pro se* litigants, the Burkes's complete lack of any opposition to Ocwen's motion to dismiss on the basis of *res judicata* in the district court forfeits their challenge on appeal to the court's granting of that motion. *See Michael Ching-Lung Wang v. Formosa Plastics Corp. Texas*, 268 F. App'x 306, 308 (5th Cir. 2008) (citing *FDIC v. Mijalis*, 15 F.3d 1314, 1326 (5th Cir. 1994) (holding that *pro se* litigant waived argument on appeal where he "utterly failed" to assert an argument in the district court)); *cf. Law Funder, L.L.C. v. Munoz*, 924 F.3d 753, 759 (5th Cir. 2019) ("[I]n failing to oppose" an adversary's motion, "Munoz has forfeited any argument that the district court's . . . order was improper."); *Vaughner v. Pulito*, 804 F.2d 873, 877 n.2 (5th Cir. 1986) ("If a party fails to assert a legal reason why summary judgment should not be granted, that ground is waived and cannot be considered or raised on appeal.").

Last, the Burkes challenge the district court's dismissal without prejudice of their case against Ocwen for want of prosecution. "We review a dismissal for want of prosecution or failure to obey a court order for abuse of discretion." *Larson v. Scott*, 157 F.3d 1030, 1032 (5th Cir. 1998). "A district court *sua sponte* may dismiss an action for failure to prosecute or comply with any court order." *Id.* at 1031 (citing FED. R. CIV. P. 41(b)). As noted, after determining that the Burkes' Collection Claims were barred by *res judicata*, the district court granted the Burkes leave to amend their complaint because their RESPA claim did not meet the pleading requirements of Federal Rule of Civil Procedure 8. The court's order was clear: "Failure to file an amended complaint within twenty-one days will result in dismissal of the Burkes' case without further notice." The Burkes

did not file an amended complaint within that timeframe, so the district court dismissed the action without prejudice. On these facts, we cannot say that the district court abused its discretion. *See State of La. v. Sparks*, 978 F.2d 226, 229, 233 (5th Cir. 1992) (holding that "[t]he district court did not err in dismissing with prejudice for lack of prosecution" where, *inter alia*, "the district court gave the parties warning prior to dismissal that if neither did anything, the case would be dismissed in two weeks" and neither party responded).[3]

III.

We turn next to the Burkes's appeal of their action against the Attorney Defendants. They first challenge the district court's denial of remand. As the district court explained, the Burkes's operative complaint alleges that the Attorney Defendants violated a federal statute, the FDCPA, and thus the court could exercise federal-question jurisdiction. Accordingly, the district court correctly denied remand. *See Scarlott*, 771 F.3d at 887.

The Burkes next challenge the district court's dismissal of claims based on the attorney immunity doctrine. The district court determined that

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[3] The Burkes make a passing reference to having been denied due process by not being permitted to engage in discovery. Because we conclude that the district court did not err in dismissing the action, the Burkes were not entitled to proceed to the discovery phase.

Further, in three single-sentence paragraphs devoid of legal argument or citation to authority, the Burkes make the conclusory assertion that the district court erred in not granting their motion (1) to strike Ocwen's supplemental response to their stay motion, (2) for reconsideration, and (3) to reinstate their case. The district court implicitly denied the first two motions by not expressly ruling on them and specifically denied the motion to reinstate. The Burkes's single-sentence arguments on appeal are plainly inadequate and are therefore forfeited. *See Jones v. City of Austin*, 442 F. App'x 917, 920 (5th Cir. 2011) ("While 'we liberally construe briefs of *pro se* litigants and apply less stringent standards to parties proceeding *pro se* than to parties represented by counsel, *pro se* parties must still brief the issues and reasonably comply with the standards of [Federal] Rule [of Appellate Procedure] 28.'" (quoting *Grant v. Cuellar*, 59 F.3d 523, 524 (5th Cir. 1995)).

the Burkes' claims were subject to dismissal under the attorney immunity doctrine because the allegations concerned the conduct of the Attorney Defendants in their capacity as lawyers representing Deutsche Bank in the underlying foreclosure proceeding.

"We review de novo a district court's denial of a motion to dismiss based on immunity[.]" *Kelly v. Nichamoff*, 868 F.3d 371, 374 (5th Cir. 2017) (*quoting Troice v. Proskauer Rose L.L.P.*, 816 F.3d 341, 348 (5th Cir. 2016). In considering a motion to dismiss under Federal Rule of Procedure 12(b)(6), we accept all factual allegations as true and construe the facts in the light most favorable to the plaintiff. *Id.*

"Under Texas law, attorney immunity is a 'comprehensive affirmative defense protecting attorneys from liability to non-clients, stemming from the broad declaration . . . that attorneys are authorized to practice their profession, to advise their clients and interpose any defense or supposed defense, without making themselves liable for damages.'" *Id.* (quoting *Cantey Hanger, LLP v. Byrd*, 467 S.W.3d 477, 481 (Tex. 2015) (alteration in original) (second set of internal quotation marks omitted)). Dismissal based on the attorney immunity defense is proper when "the scope of the attorney's representation—and thus entitlement to the immunity—[i]s apparent on the face of the complaint." *Id.*

The Burkes argue that Shelley Hopkins is not entitled to attorney immunity because she allegedly worked as a lawyer on "an on-again-off-again" basis. But the Burkes do not contend that any of Shelley Hopkins's challenged conduct occurred at a time other than when she was acting in her capacity as an attorney in the foreclosure case. Rather, all of the relevant claims relate to conduct that occurred during the course of the foreclosure case. For example, the Burkes's amended complaint contends that the Attorney Defendants committed fraud by failing to disclose evidence during

the foreclosure litigation of predatory lending by Deutsche Bank and committed civil conspiracy by working in concert to suppress evidence and make false statements to the district court. The Burkes's contention that Shelley Hopkins did not serve as counsel in the foreclosure case at all times is unavailing.

The Burkes also argue that Mark Hopkins is not protected by the doctrine because of a statement he made in a court proceeding concerning the Burkes's mortgage loan file. The Burkes appear to reference a conference before the district court in 2017 in the underlying foreclosure litigation wherein Mark Hopkins informed the court that he had reviewed the Burkes's mortgage "file, which wasn't put in evidence before the Court." Although the Burkes now state on appeal that Mark Hopkins withheld this evidence from them, they do not point to anywhere in their operative complaint where they actually alleged that Mark Hopkins wrongfully withheld the file. The Burkes fail to show that the district court erred in applying attorney immunity.[4]

Finally, the Burkes contest the district court's dismissal of their case with prejudice. We review the district court's decision only for abuse of discretion. *See Club Retro, LLC v. Hilton*, 568 F.3d 181, 215 n.34 (5th Cir. 2009). The court granted the Burkes leave to amend their complaint once and the Burkes then requested leave to file a second amended complaint. The

[4] The Burkes make the conclusory assertion that their claim for unjust enrichment is "valid" but do not set forth any further argument challenging the district court's determination that their claim is barred by the attorney-immunity doctrine. Thus, this issue is forfeited. *See Price v. Digital Equip. Corp.,* 846 F.2d 1026, 1028 (5th Cir. 1988) ("Although we liberally construe the briefs of *pro se* appellants, we also require that arguments must be briefed to be preserved."). The Burkes also block quote a portion of the magistrate judge's report related to its conclusion that they failed to state a claim under the FDCA or the TDCA. They do not, however, meaningfully challenge the district court's decision and have therefore forfeited any such argument. *See id.*

Burkes did not present any additional facts that they would add to a second amended complaint nor did they attach a proposed amended complaint to their motion for leave to amend. The court denied the Burkes's motion. In ruling on the motion to dismiss the Burkes's operative complaint under Rule 12(b)(6), the court determined that dismissal with prejudice was warranted because further amendment would be futile. Based on the history of the case, the district court observed, the Burkes are "unwilling or unable to amend in a manner that will avoid dismissal."

Construing the Burkes's *pro se* argument liberally as a challenge to both the denial of leave to amend their complaint a second time and to the dismissal with prejudice, we agree with the district court. After providing the Burkes the opportunity to amend their complaint once, we cannot say the court abused its discretion in denying their request for leave to amend their complaint a second time where their motion did not explain what new facts they would allege nor attach a proposed amended complaint. *See Goldstein v. MCI WorldCom*, 340 F.3d 238, 255 (5th Cir. 2003) (affirming denial of leave to amend where the plaintiff did not specify how a second amended complaint would differ and did not attach a proposed second amended complaint); *McKinney v. Irving Indep. Sch. Dist.*, 309 F.3d 308, 315 (5th Cir. 2002) (finding no abuse of discretion in the district court's denial of leave to amend where the plaintiffs failed to file an amended complaint as a matter of right or submit a proposed amended complaint in a request for leave of the court and the plaintiffs failed to alert the court as to the substance of any proposed amendment). For similar reasons, the court did not abuse its discretion in dismissing the case with prejudice after determining that the Burkes failed to state a claim and were not able or willing to amend their complaint so as to avoid dismissal. Indeed, on appeal, the Burkes remain unable to persuasively explain how they could amend their complaint in a manner that would state a plausible claim for relief.

IV.

For these reasons, the judgments of the district court are AFFIRMED.[5]

[5] All pending motions are denied as moot.

EXHIBIT C

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

June 29, 2021

Ms. Joanna Burke
46 Kingwood Greens Drive
Kingwood, TX 77339

Mr. John Burke
46 Kingwood Greens Drive
Kingwood, TX 77339

No. 19-20267 Burke v. Ocwen Loan Servicing
USDC No. 4:18-CV-4544

Dear Ms. Burke, Mr. Burke,

The following pertains to your rehearing electronically filed on April 13, 2021.

As we have been unable to determine if the proposed petition for rehearing en banc was sent by email or not, we have uploaded the May 17, 2021 document as "proposed sufficient petition for rehearing en banc" to the April 13, 2021 event.

However, the proposed rehearing remains insufficient as it still does not include a copy of the court's opinion, see 5TH CIR. R. 40.1 and 5TH CIR. R. 35.2.10.

We have updated the deadline for returning the sufficient rehearing en banc to July 9, 2021.

As previously instructed, once you have prepared your sufficient rehearing, you must email it to: **Jann_Wynne@ca5.uscourts.gov** for review. If the rehearing is in compliance, you will receive a notice of docket activity advising you that the sufficient rehearing has been filed. Please title the document "Sufficient Petition for Rehearing En Banc".

Sincerely,

LYLE W. CAYCE, Clerk

Rebecca L. Leto

By: _____
Rebecca L. Leto, Deputy Clerk
504-310-7703

cc: Mr. Mark D. Hopkins
Ms. Shelley Luan Hopkins

EXHIBIT D

EXHIBIT D

DOCKET 1 JULY- AUGUST 4, 2021

(including Christina A. Gardner's text only Void Motion entry backdated to 8 July, 2021(emphasis added))

General Docket
United States Court of Appeals for the Fifth Circuit

Court of Appeals Docket #: 19-20267
Nature of Suit: 3220 Foreclosure
Burke v. Ocwen Loan Servicing
Appeal From: Southern District of Texas, Houston
Fee Status: Fee Paid

Docketed: 04/22/2019
Termed: 03/30/2021

Case Type Information:
1) Private Civil Federal
2) Private
3)

07/01/2021	29 pg, 1.43 MB	DOCUMENT RECEIVED - NO ACTION TAKEN. No action will be taken at this time on the Appellants' Motion to Disqualify Chief Judge Owen received from Appellant Mr. John Burke in 19-20267, 20-20209 because wrong filing event used [19-20267, 20-20209] (SDH) [Entered: 07/02/2021 01:56 PM]
07/03/2021	28 pg, 1.35 MB	OPPOSED MOTION filed by Appellant Mr. John Burke in 19-20267, 20-20209 to disqualify Court of Appeals Judge Priscilla Owen from the case. [9611750-2]. Date of service: 07/03/2021 via US mail - Appellant Burke; email - Appellant Burke; Attorney for Appellees: Hopkins, Hopkins [19-20267, 20-20209] (John Burke) [Entered: 07/03/2021 06:44 AM]
07/07/2021	3 pg, 147.97 KB	COURT ORDER FILED that Appellants' opposed motion to disqualify Chief Judge Priscilla R. Owen is DENIED. [9611750-2] [19-20267, 20-20209] (DMS) [Entered: 07/07/2021 02:40 PM]
07/08/2021	7 pg, 200.42 KB	**OPPOSED MOTION for reconsideration of the 06/21/2021 court order denying motion for reconsideration of the 05/05/2021 order denying motion for authorization to omit the Statement of facts requirement for their Petition for Rehearing En Banc and file petition in present form. No action is taken on Appellants' request for clarification of clerk's office procedure as unnecessary - procedure was explained to Mr. Burke telephonically. Appellants may use the pro_se@ca5.uscourts.gov**

		email as an alternative, if necessary [9557920-3], [9557920-2] [9614189-2]. Response/Opposition due on 07/19/2021. Date of service: 07/08/2021 [19-20267, 20-20209] **REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: OPPOSED MOTION for clarification of the Order dated 06/21/2021 denying Motion for reconsideration filed by Appellants Ms. Joanna Burke and Mr. John Burke in 19-20267, 20-20209 [9585172-2]. Response/Opposition due on 07/19/2021. [19-20267, 20-20209]** **REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: OPPOSED MOTION filed by Appellant Mr. John Burke in 19-20267, 20-20209 for clarification of the Order dated 06/29/2021. Date of service: 07/08/2021 via US mail - Appellant Burke; email - Appellant Burke; Attorney for Appellees: Hopkins, Hopkins [19-20267, 20-20209] (John Burke) [Entered: 07/08/2021 10:02 AM]**
07/08/2021	9 pg, 259.83 KB	OPPOSED MOTION for sanctions against Mark Daniel Hopkins and Shelley Luan Hopkins. Response/Opposition due on 07/19/2021. [19-20267, 20-20209] REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: OPPOSED MOTION filed by Appellant Mr. John Burke in 19-20267, 20-20209 for sanctions against Mark Daniel Hopkins and Shelley Luan Hopkins. Date of service: 07/08/2021 via US mail - Appellant Burke; email - Appellant Burke; Attorney for Appellees: Hopkins, Hopkins [19-20267, 20-20209] (John Burke) [Entered: 07/08/2021 08:29 PM]
07/08/2021	6 pg, 229.63 KB	OPPOSED MOTION filed by Appellant Mr. John Burke in 19-20267, 20-20209 to extend the time to file a rehearing until 07/23/2021 [9615010-2]. Date of service: 07/08/2021 via US mail - Appellant Burke; email - Appellant Burke; Attorney for Appellees: Hopkins, Hopkins [19-20267, 20-20209] (John Burke) [Entered: 07/08/2021 08:37 PM]
07/18/2021	24 pg, 407.13 KB	OPPOSED MOTION filed by Appellant Mr. John Burke in 19-20267, 20-20209 to correct opinion. [9621392-2]. Date of service: 07/18/2021 via US mail - Appellant Burke; email - Appellant Burke; Attorney for Appellees: Hopkins, Hopkins [19-20267, 20-20209] (John Burke) [Entered: 07/18/2021 06:55 PM]
07/19/2021	7 pg, 233.92 KB	DOCUMENT RECEIVED - NO ACTION TAKEN. No action will be taken at this time on the motion for reconsideration received from Appellants Ms. Joanna Burke and Mr. John Burke in 19-20267 because there is no recourse for reconsideration of a denial of motion to recuse or disqualify a Judge. [19-20267, 20-20209] (CAG) [Entered: 07/19/2021 12:57 PM]

07/19/2021	15 pg, 509.18 KB	RESPONSE/OPPOSITION [9622148-1] to the Motion for sanctions in 19-20267, 20-20209 [9615009-2]. Date of Service: 07/19/2021. [19-20267, 20-20209] REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: RESPONSE/OPPOSITION filed by Ocwen Loan Servicing, L.L.C. in 19-20267, Hopkins Law, P.L.L.C., Mr. Mark D. Hopkins and Ms. Shelley Hopkins in 20-20209 [9622148-1] to the Motion filed by Appellant Mr. John Burke in 19-20267, 20-20209 [9615009-2] Date of Service: 07/19/2021 via email - Appellants Burke, Burke; Attorney for Appellees: Hopkins, Hopkins; US mail - Appellant Burke. [19-20267, 20-20209] (Mark D. Hopkins) [Entered: 07/19/2021 03:44 PM]
07/19/2021	9 pg, 202.23 KB	RESPONSE/OPPOSITION [9622209-1] to the Motion for reconsideration in 19-20267, 20-20209 [9614189-2] Date of Service: 07/19/2021. [19-20267, 20-20209] REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: RESPONSE/OPPOSITION filed by Ocwen Loan Servicing, L.L.C. in 19-20267, Hopkins Law, P.L.L.C., Mr. Mark D. Hopkins and Ms. Shelley Hopkins in 20-20209 [9622209-1] to the Motion for reconsideration filed by Appellant Mr. John Burke in 19-20267, 20-20209 [9614189-2] Date of Service: 07/19/2021 via email - Appellants Burke, Burke; Attorney for Appellees: Hopkins, Hopkins; US mail - Appellant Burke. [19-20267, 20-20209] (Mark D. Hopkins) [Entered: 07/19/2021 04:12 PM]
07/28/2021	25 pg, 771.32 KB	OPPOSED MOTION filed by Appellant Mr. John Burke in 19-20267, 20-20209 to strike Response/Opposition filed by Appellee Ocwen Loan Servicing, L.L.C. in 19-20267, Appellees Hopkins Law, P.L.L.C., Mr. Mark D. Hopkins and Ms. Shelley Hopkins in 20-20209 [9622148-2] [9629458-2], for sanctions against MARK HOPKINS, SHELLEY HOPKINS. Date of service: 07/28/2021 via US mail - Appellant Burke; email - Appellant Burke; Attorney for Appellees: Hopkins, Hopkins [19-20267, 20-20209] (John Burke) [Entered: 07/28/2021 12:40 PM]
07/28/2021	9 pg, 284.96 KB	OPPOSED MOTION filed by Appellant Mr. John Burke in 19-20267, 20-20209 to strike Response/Opposition filed by Appellee Ocwen Loan Servicing, L.L.C. in 19-20267, Appellees Hopkins Law, P.L.L.C., Mr. Mark D. Hopkins and Ms. Shelley Hopkins in 20-20209 [9622209-2] [9629992-2]. Date of service: 07/28/2021 via US mail - Appellant Burke; email - Appellant Burke; Attorney for Appellees: Hopkins, Hopkins [19-20267, 20-20209] (John Burke) [Entered: 07/28/2021 10:03 PM]

08/04/2021	3 pg, 124.66 KB	COURT ORDER striking Petition for rehearing en banc filed by Appellants Ms. Joanna Burke and Mr. John Burke, Appellant Mr. John Burke [9549894-2]; denying Motion to stay issuance of the mandate filed by Appellant Mr. John Burke [9607360-2]; denying Motion for reconsideration filed by Appellant Mr. John Burke [9614189-2]; denying Motion for sanctions filed by Appellant Mr. John Burke [9615009-2], denying Motion for sanctions filed by Appellant Mr. John Burke [9629458-3]; denying Motion to extend the time to file a petition for rehearing filed by Appellant Mr. John Burke [9615010-2]; denying Motion to correct opinion filed by Appellant Mr. John Burke [9621392-2]; denying Motion to strike document filed by Appellant Mr. John Burke [9629458-2], denying Motion to strike document filed by Appellant Mr. John Burke [9629992-2]. [19-20267, 20-20209] (RLL) [Entered: 08/04/2021 04:15 PM]
08/04/2021	3 pg, 152.63 KB	MANDATE ISSUED. [19-20267, 20-20209] (RLL) [Entered: 08/04/2021 04:23 PM]

EXHIBIT E

COMPLAINT

John and Joanna Burke ("Burkes") now file an official complaint[1] against Senior United States District Judge David Hittner, ("Hittner") S.D. Tex.,[2] for his violation of the Burkes' constitutional, civil and human rights in time of a [inter]national pandemic, including but not limited to, Bias, denial of Due Process, Willful Misconduct, Prejudicial Misconduct and which was/is motivated by Bad Faith ("bias").[3] In short form, Hittner has denied the Burkes the right to a fair and impartial hearing and jury trial. In preparation, the Burkes have acquired and read IMPLEMENTATION OF THE JUDICIAL CONDUCT AND DISABILITY ACT OF 1980, A REPORT TO THE CHIEF JUSTICE (2006) ("the Breyer Report") and rely upon its content, "Standards" and findings in this judicial complaint.[4]

Background: The Fifth Circuit and the Chief Judge (Owen) are very familiar with the Burkes and their situation so the summary will be concise, in conformity and without merit-based commentary.[5] Deutsche Bank ("Deutsche") filed for foreclosure in 2011 and the case was filed in S.D. Tex. Hittner was appointed the District Judge with former Magistrate Judge Stephen Wm. Smith ("Smith"). In 2015, a no-evidence, no-witness bench trial with Smith presiding resulted in a win for the Burkes, dismissal for *Deutsche*.[6] This court reversed and remanded in 2015.[7] After further investigation, Smith rejected this courts' decision and ruled for the Burkes for a second time in 2017. *Deutsche* appealed and this court reversed and

[1] The Judicial Conduct and Disability Act (1980) ("the Act") 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."
[2] See https://www.txs.uscourts.gov/page/united-states-district-judge-david-hittner
[3] See *Fletcher v. Commission on Judicial Performance*, 19 Cal.4th 865 (Cal. 1998)
[4] Disclaimer; the Burkes note this court and Chief Judge will review the docket in the Hopkins case to be in compliance with complaint procedures as per the Act.
[5] For example, dismissal under 28 U.S.C. § 352(b)(l)(A)(i), (ii) or (iii).
[6] *Deutsche Bank Nat'l Trust Co. v. Burke*, 92 F. Supp. 3d 601 (S.D. Tex. 2015).
[7] *Deutsche Bank Nat'l Tr. Co. v. Burke*, No. 15-20201 (5th Cir. June 9, 2016).

rendered.[8] Hittner entered judgment immediately, without notice nor hearing provided to the Burkes. The Burkes in the interim had filed 2 State court cases against Ocwen Loan Servicing LLC[9] ("Ocwen") and Hopkins Law, PLLC, Mark Daniel Hopkins and Shelley Luan Hopkins ("Hopkins"). Hopkins removed both cases to S.D. Tex. The courts' "blind-draw"[10] resulted both cases being assigned to Hittner. The replacement Magistrate Judge, a position which was vacated by Smith's departure (shortly after a scathing attack by Hopkins and this Circuit against him in the *Deutsche [II]* case), was assigned to former public defender, Peter Bray ("Bray").[11] All parties consented to hearings before Bray. The Burkes complaint is triggered by recent events in Hopkins case.

Timeline: There will be a separate complaint against Bray. The Burkes focus on the following timeline, relevant to the Burkes complaint against Hittner;

- The Burkes objected (Doc.66) to Brays' premature Memorandum and Recommendation ("M&R")[12]. It is date-stamped 9th March by S.D. Tex.
- The notice of this filing is 3 days later, on 12th March. PACER, however, is backdated to the 9th. Courtlistener.com shows March 12th,[13] in agreement with the Burkes email notice. There was 'no good reason' for this delay or back-dating, just as there was 'no good reason' for the lengthy delay in the Burkes receiving the doctored transcript/audio of the Sept., 10, 2019 conference (*See* Doc. 66).
- There is a worldwide plague, a Pandemic which has shut down most of the country and the world. There are 'stay at home' orders, especially for the

[8] *Deutsche Bank Nat'l Tr. Co. v. Burke*, 902 F.3d 548 (5th Cir. Sept. 5, 2018) (unpub.), *Deutsche Bank Nat'l Tr. Co. v. Burke*, No. 18-20026, (5th Cir. Sept. 10, 2018) (pub.).
[9] *Burke v. Ocwen Loan Servicing, LLC*, Civil Action H-18-4544 (S.D. Tex., Dec. 2018).
[10] "[J]udges do not choose their cases, and litigants do not choose their judges. We all operate on a blind draw system. . ." *McCuin v. Texas Power Light Co*., 714 F.2d 1255, 1265 (5th Cir. 1983).
[11] See https://www.txs.uscourts.gov/page/united-states-magistrate-judge-peter-bray
[12] *Burke v. Hopkins*, Civil Action H-18-4543 (S.D. Tex. Feb. 24, 2020).
[13] See Doc. 66, https://www.courtlistener.com/docket/8385194/burke-v-hopkins/

elderly, like the 80+ year old Burkes. People are dying in thousands and the future death statistics look especially grim. Gov. Greg Abbott declared Texas a Disaster State. The Proclamation is signed on March 13, 2020.[14]

- Illegal debt collectors in the State of Texas, Hopkins file their response motion to the Burkes Objections to Bray's M&R on March 16, 2020 (Doc. 67).
- At around 2pm on March 17, 2020, Hopkins emailed[15] the Burkes regarding postponing the scheduled conference[16] with Hittner on March 19, 2020 in Houston S.D. Tex. The Burkes confirm they are unopposed. A court generated notice was issued that evening 'canceling' the conference with Hittner.
- On March 18, Hittner signs an Order adopting Memorandum and Recommendations (Doc. 68) and dismissing the Burkes case against Hopkins, with prejudice. Judgment is also dated 18th but entered on 19th March (Doc. 69). His bias motives are clear and undisputed by his own acts in canceling the conference and issuing the judgment(s). It's a rush to "Hittner Justice" to prevent any 'delay' in the case due to the pandemic and to ensure the Burkes' do not 'benefit'[17] from any delay. Hittner has sordidly exploited and abused his authority as a Judge for malicious and vindictive reasons and while in a time of chaos, which he sees as an opportunity to camouflage and execute his contemptible acts.[18]

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[14] See https://gov.texas.gov/news/post/governor-abbott-declares-state-of-disaster-in-texas-due-to-covid-19

[15] Exhibit A.

[16] Pretrial conference noticed on Feb. 11, 2020. (Doc. 64) for a hearing on March 19, 2020, which coincidentally timed perfectly after M&R, time for Burkes objections and Hopkins response on 16 March, 2020. Thus, this conference 3 days later would then allow for Hittners' planned hearing and quick dismissal. Alas, Coronavirus interfered with Hittners' original and premeditated plan.

[17] For example, delay any future legal eviction from the residence based on order of foreclosure.

[18] When a state deprives a person of liberty or property through a hearing held under statutes and **circumstances which necessarily interfere with the course of justice**, it deprives him of liberty and property without due process of law. *Moore v. Dempsey*, 261 U.S. 86; *Frank v. Mangum*, 237 US 309. - *Tumey v. Ohio*, 273 US 510, 511 (1927).

Facts: Due to Hittner's bias[19], he (1) deprived the Burkes of their constitutional rights to a fair hearing (due process) which was scheduled for 3/19/2020 and which was 5 days after Gov. Abbott declared the State a disaster. It is clearly a violation of civil and human rights as to its premeditated timing, *e.g.* a pandemic.[20] (2) When the M&R was objected to by the Burkes in their filing, they alleged that either Bray and/or the court 'doctored' and/or edited[21] the significantly delayed Transcript and Audio which the Burkes requested (on an expedited filing basis). The Burkes supplied affidavits confirming Bray shouting at John Burke and asking if he was a 'criminal', which had been excluded from the transcript and audio. Joanna Burke is hard of hearing.[22] Unlike the first time Bray met the Burkes in a busy Scheduling conference with many attorneys present, in this 'private' conference (9/10/2019), Bray refused to 'mic up' and the Burkes complained Hopkins was answering in a soft spoken voice intentionally so she could not clearly hear his responses. (3) This outburst by Bray was as a result of the Burkes, a Court Reporter, and Clerk all witnessing Mark Hopkins at this Sept. conference twice posing premeditated lies to the court, claiming the Burkes' *wanted certain judges to be shot*. **He later admitted to his lies.[23]** The Burkes were waiting for Bray and/or Hittner to start formal perjury, contempt or other disciplinary action against Hopkins.[24] That never happened due to Hittners' *bias*[25] against the Burkes as stated herein. (4) The

[19] See the Breyer Report A-6 FAILURE TO INQUIRE ABOUT CLAIMS OF A JUDGE'S BIAS TOWARD A LITIGANT, p. 50 (Standard 3).
[20] See *Cain v. White*, 937 F.3d 446, 451 (5th Cir. 2019)
[21] See the Breyer Report; A-4 FAILURE TO INVESTIGATE ADEQUATELY A COMPLAINT THAT A JUDGE ORDERED A TRANSCRIPT ALTERED p.48-49 (Standard 5).
[22] Disclaimer; But when Judge Bray shouts and gesticulates at her husband asking "Are you a criminal", that was loud enough for her to hear clearly. Textual interpretation: She's hard of hearing rather than deaf.
[23] Doc 60, p3, footnote 2, Oct 7, 2019
[24] See Doc 66, and *In re Moity*,320 Fed. Appx. 244, 248 (5th Cir., 2009) and *Ocean-Oil Expert Witness, Inc. v. O'Dwyer*, 451 F. App'x 324, 8 (5th Cir. 2011).
[25] See the Breyer report, "that the judge ruled against the complainant...because the judge doesn't like the complainant personally, is not merits-related." p.54.

M&R was premature when the Burkes have a related case pending with this court, namely *Ocwen*, (#19-20067). This is similar to the 5th Circuit case in *All American*,[26] where Judges' Higginbotham and Higginson, pushed through a premature opinion. The en banc court set aside for a rehearing to be scheduled at some time in the future, due to Coronavirus.[27] Likewise, this M&R would never have been issued by competent judges, but for *bias* by Hittner[28] (and Bray). (5) Hittner has shown a consistent pattern of *bias* since the departure of Smith, *e.g*., he has canceled hearings to intentionally deprive the Burkes their right to a fair hearing (*e.g.* conference above), refused an extension of time to allow the Burkes to amend their complaint (Doc. 26) when Joanna Burke was gravely ill in hospital (per Doc. 24) and there was known errors and omissions in the first amended complaint[29]. John Burke drove from Kingwood to the court to hand-deliver the documents (Doc. 27) as Hittner had denied ECF filing (Doc. 21) and while Joanna Burke was in hospital on her own.

Immorality from Hittners' Bench: Hittners' spouse is a doctor. Yes, his actions are his own, but these acts can only be described as heinous when targeted towards sick, disabled and elderly citizens before the court and in defiance of a pandemic. Hittner violates the Judicial oath, ethics and canons.[30] His actions are so uncivilized and unlawful, they are impeachable.[31] He deserves to be stripped from wearing a black robe, as would happen if he was dishonored by the Airborne for wartime crimes. Hittners' dishonorable acts squarely meet the criteria.

Summary: The Burkes civilly request the Chief Judge, a known Christian and Church leader, appoint the *Special Committee* (*See* Act, Section 353(c)) to determine

[26] *Consumer Fin. Prot. Bureau v. All Am. Check Cashing, Inc*., No. 18-60302 (5th Cir. Mar. 3, 2020)
[27] See http://www.ca5.uscourts.gov/opinions/pub/18/18-60302-CV1.pdf
[28] *Cain v. White*, 937 F.3d 446, 452 (5th Cir. 2019).
[29] Due to a lack of time for reasons stated and a printer that was misbehaving on deadline day.
[30] See *Dorsey v. U.S. Dep't of Educ*., 528 B.R. 137, 142 n. 6 (E.D. La. 2015) and https://www.uscourts.gov/judges-judgeships/code-conduct-united-states-judges
[31] *See* Act, Section 354.

and ratify not only the very serious allegations in this complaint, which are true,[32] but to allow for referral to Congress for impeachment of Hittner (*See* Act, Section 354).

Prayer: In a time where the country is in a state of emergency, Hittner only sees as an opportunity for evil acts – directed towards the Burkes. The Burkes complaint against Hittner should be affirmed. Any and all further relief which can and should be granted is requested, *e.g.* per Act, Section 354.

Stay safe and God bless,

Submitted this day, Friday, March 27, 2020
by email to pro_se@ ca5.uscourts.gov
(per website and due to 'stay at home' order)

s/ Joanna Burke

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Kingwood, TX, 77339

s/ John Burke

John Burke
alsation123@gmail.com
46 Kingwood Greens Dr.,
Kingwood, TX, 77339

[32] The Act requires the chief judge of a circuit to consider each complaint and, where appropriate, to appoint a special committee of judges to investigate further and to recommend that the circuit judicial council assess discipline where warranted.

EXHIBIT A

From: **Kate Barry** <kate@hopkinslawtexas.com>
Date: Tue, Mar 17, 2020 at 1:56 PM
Subject: 4:18-v-4543; Burke et al v. Hopkins et al
To: kajongwe@gmail.com <kajongwe@gmail.com>, alsation123@gmail.com <alsation123@gmail.com>
Cc: Shelley Hopkins <Shelley@hopkinslawtexas.com>

Good afternoon,

Our office will be filing a motion to continue the conference set for this Thursday, March 19 at 2:00pm. Are you opposed?

Thank you,

Kate Barry
LEGAL ASSISTANT
HOPKINS LAW

3809 Juniper Trace, Ste. 101 | Austin, Texas 78738
512.600.4320 *main* | www.hopkinslawtexas.com

Joanna Burke and John Burke
46 Kingwood Greens Dr.,
Kingwood, TX, 77339
Tel: (281) 812-9591
Fax: (866) 705-5076
Email; kajongwe@gmail.com

March 27, 2020

Clerk of Court
United States Court of Appeals
Fifth Circuit
600 S. Maestri Place
New Orleans, LA 70130-3408

BY EMAIL ONLY; pro_se@ ca5.uscourts.gov

Dear Clerk of Court

JUDICIAL COMPLAINT AGAINST DAVID HITTNER, S.D. TEX.

Please find attached for the attention of the Chief Judge.

(i) Joint complaint by John and Joanna Burke
(ii) Exhibit A

Transparency disclaimer

Depending on the result of this complaint will determine if the Burkes need to act independently to ensure Hittner is removed from the Bench by filing their own separate complaint with the FBI's Public Integrity Section.

If you have any comments, questions or concerns related to the above or our filings, please contact us at the information shown below.

Respectfully

s/ Joanna & John Burke

Joanna Burke & John Burke
46 Kingwood Greens Dr.,
Kingwood, TX, 77339
Tel: (281) 812-9591
Fax: (866) 705-5076
Email; kajongwe@gmail.com

"A fair inference from his repeated violations of his ethical and moral obligations over a period of years is that he intentionally did what he did, knowing that it was wrong. The actual and potential injury of his misconduct included hundreds of thousands of dollars of financial loss to the opponent in his litigation and untold hours of time devoted by this court and the Fifth Circuit to evaluation of the records of the underlying action, ruling on motions, and otherwise resolving issues that were presented by reason of Ray's misconduct."

– In re Ray, No. 19-10875, at *8 (5th Cir. Mar. 3, 2020)

EXHIBIT F

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE
NEW ORLEANS, LA 70130

November 10, 2020

Joanna and John Burke
46 Kingwood Greens Dr
Kingwood, TX 77339

RE: Judicial Misconduct Complaint No. 05-20-90128

Dear Ms. and Mr. Burke:

Your complaint against Senior United States District Judge David Hittner has been dismissed.

Enclosed is a copy of the order. Procedures for filing a petition for review of the order are set out in Rule 18 of the enclosed Rules For Complaints of Judicial-Conduct and Judicial-Disability Proceedings.

We must receive any petition for review—captioned "Re: Judicial Misconduct Complaint No. 05-20-90128"—in the Clerk's office by no later than **December 22, 2020**. See Rule 18(b).[1]

Sincerely,
LYLE W. CAYCE
Clerk

By _____
Shelley E. Saltzman, Deputy Clerk

Encls.

[1] You may submit the petition via regular mail or, pursuant to General Order 4 COVID-19, via email to pro_se@ca5.uscourts.gov with the Subject: Re Judicial Misconduct Complaint No. 05-20-90128.

United States Court of Appeals
Fifth Circuit
FILED
November 10, 2020
Lyle W. Cayce
Clerk

Judicial Council for the Fifth Circuit

Complaint Number: 05-20-90128

IN RE:

The Complaint of Joanna Burke and John Burke Against
Senior United States District Judge David Hittner,
Southern District of Texas,
Under the Judicial Improvements Act of 2002.

ORDER

Pro se litigants Joanna Burke and John Burke ["the Burkes"] have filed a complaint alleging misconduct by Senior United States District Judge David Hittner in *Burke v. Hopkins*, STX No. 4:18-cv-04543.

The Burkes, who describe themselves as "80+ year[s] old," allege that Judge Hittner engaged in a "consistent pattern of bias" against them. For example, the judge:

— denied the Burkes' motion for electronic filing privileges on February 13, 2020 and, on March 14, 2020, "refused an extension of time to allow the Burkes to amend their complaint when Joanna Burke was gravely ill in hospital,"[1] decisions which resulted in Mr.

[1] A review of the motion shows the Burkes told the court Mrs. Burke had been "very ill . . . with severe abdominal pain and continual vomiting" for several days, was too unwell to travel to see a physician, and "continues to recover using home rest." *Burke v. Hopkins*, STX No. 4:18-cv-04543, Plaintiff's Motion for Extension of Time, filed March 14, 2019 (Doc. 24), at 3.

Burke's having to disregard the Texas Governor's "stay at home" orders to drive to the courthouse on March 29 during "a worldwide plague" to "hand-deliver the documents ... while [Mrs.] Burke was in hospital on her own";

— overruled the Burkes' objection that Magistrate Judge Bray's Memorandum and Recommendations was "premature";

— failed to "start formal perjury, contempt or other disciplinary action" based on the Burkes' objection that defendant Mark Hopkins, an attorney, "twice pos[ed] premeditated lies" about them during a September 10, 2019 status conference before United States Magistrate Judge Peter J. Bray;

— took no action on their objection that to cover-up his improper and prejudicial conduct during the conference, Magistrate Judge Bray "doctored" the transcript and audio-recording and "significantly delayed" providing the Burkes with copies of those records;[2] and,

— canceled a scheduled March 19, 2020 status conference on March 17, and "sordidly exploited and abused his authority as a Judge for malicious and vindictive reasons" by entering final judgment in favor of the defendants on March 18, thereby "intentionally depriv[ing] [us] of [our] right to a fair hearing."

The Burkes submit that Judge Hittner's "uncivilized and unlawful" conduct "can only be described as heinous when targeted towards sick, disabled and elderly citizens before the court and in defiance of a pandemic."

To the extent that these allegations relate directly to the merits of decisions or procedural rulings, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, any assertions of "willful misconduct" or bias appear entirely derivative of the merits-related charges, but to the

[2] The Burkes state that they intend to file a separate complaint against Magistrate Judge Bray.

extent the allegations are separate, they are wholly unsupported, and are therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii) as "lacking sufficient evidence to raise an inference that misconduct has occurred."

Judicial misconduct proceedings are not a substitute for the normal appellate review process, nor may they be used to obtain reversal of a decision or a new trial.

This is the Burkes' third merits-related and conclusory judicial misconduct complaint. The Burkes are WARNED that should they, together or separately, file a further merits-related, conclusory, frivolous, or repetitive complaint, their right to file complaints may be suspended and, unless they are able to show cause why they should not be barred from filing future complaints, the suspension will continue indefinitely. *See* Rule 10(a), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

The complaint is DISMISSED.

Priscilla R. Owen

Priscilla R. Owen
Chief United States Circuit Judge

November 8, 2020

EXHIBIT G

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.,

Defendants-Appellees.

consolidated with

No. 20-20209

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-4543/4544

APPELLANTS' MOTION TO DISQUALIFY
CHIEF JUDGE PRISCILLA OWEN

Joanna Burke
46 Kingwood Greens Dr
Kingwood, Texas
77339
Telephone: (281) 812-9591
Fax: (866) 805-0576

John Burke
46 Kingwood Greens Dr
Kingwood, Texas
77339
Telephone: (281) 812-9591
Fax: (866) 805-0576

Pro Se Appellants

Appellants, Joanna Burke and John Burke ("Burkes"), now file a motion to disqualify Chief Judge Priscilla R. Owen. See; Lewis v. Lumpkin, No. 19-10303, at *2 (5th Cir. Apr. 21, 2021) ("The Supreme Court has recognized that recusal may be constitutionally required even when a judge has no actual bias. Aetna Life Ins. Co. v. Lavoie, 475 U.S. 813, 825 (1986). "Recusal is required when, objectively speaking, 'the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable.'" Rippo v. Baker, 137 S. Ct. 905, 907 (2017) (quoting Withrow v. Larkin, 421 U.S. 35, 47 (1975)).

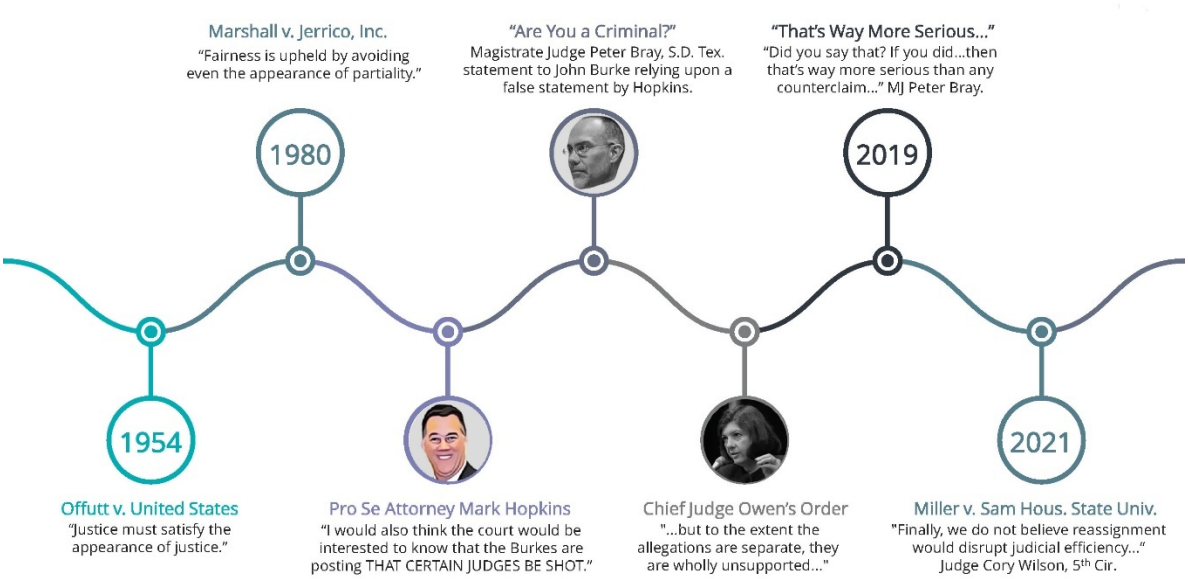

Diagram citing 5th Circuit 2021 case with citations removing Judge Lynn Hughes from lower court case, along with convincing evidence in the Burkes case - repelling Owen's unfounded statement. Full-sized image; https://2dobermans.com/woof/31

Presumptive bias occurs when a judge (1) "has a direct personal, substantial, and pecuniary interest in the outcome of the case," (2) "has been the

target of personal abuse or criticism" from the party before the judge, or (3) "has the dual role of investigating and adjudicating disputes and complaints." Buntion v. Quarterman, 524 F.3d 664, 672 (5th Cir. 2008). ").

STATEMENT OF FACTS & ARGUMENT

This court sua sponte decided to appoint a new 3-panel and consolidate the Burkes two appeals, namely Burke v Ocwen and Burke v Hopkins.[1] The panel included the Chief Judge, Priscilla Owen along with Judges' Dennis and Davis. The opinion was issued prematurely[2] on March 30 of this year (See Burke v. Ocwen Loan Servicing, L.L.C., No. 19-20267 (5th Cir. Mar. 30, 2021). This replaced the 3-panel of Judges Higginbotham[3], Southwick and Willett in the Ocwen appeal and

[1] *Burke v. Ocwen*, Civil Action H-18-4544 (S.D. Tex.) and *Burke v. Hopkins*, Civil Action H-18-4543 (S.D. Tex.)

[2] Jackson v. Cruz, No. 19-10158, at *2 (5th Cir. Mar. 24, 2021); re "premature[ly]".

[3] Shortly after receiving the Texas Center for Legal Ethics Pope Award, in oral argument in the foreclosure case Reinagel v. Deutsche Bank Nat'l Trust Co., 735 F.3d 220 (5th Cir. 2013), Judge Patrick Higginbotham is clearly heard saying; "Ain't no free lunch and there sure ain't no free house (laughing)…"

While he was the Motion judge in the Burkes Ocwen case, and when most of the judges at the Fifth Circuit had eloped to the Federalist Society National Convention in Washington D.C., November 14 through November 16 (see; https://2dobermans.com/woof/2m) - on Monday, Nov. 18, 2019, he would deny the Burkes motion for reconsideration of a clerk's order denying the Burkes to supplement the record within a few short hours of the Burkes electronic submission. See https://2dobermans.com/woof/2n The motion was very detailed and clearly a cursory dismissal was made without reaching the merits of the motion and exhibits. The Burkes would appeal this decision to the 3-panel who would

Judges Clement[4], Elrod and Higginson[5] in the Hopkins appeal.

The Burkes argue the reason it was issued prematurely is the fact that this court had stayed the appeals of CFPB v All American Check Cashing, No. 18-60302[6] and more recently in Collins v Mnuchin, No. 17-20364 (now Collins v Yellen), pending the US Supreme Court decisions.[7] The Burkes had filed a motion

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affirm, but the true facts are undeniable - this led to the case being held in abeyance for the next 15 plus months.

[4] Misconduct Complaint Alleges 5th Circuit Judge Issued Partisan Attacks on Colleagues https://2dobermans.com/woof/5 Judge Clement would deny the Burkes a copy of her judicial misconduct file directly as the Motion judge in the Burkes case, despite knowing this is an improper procedure, as all complaints and related requests are routed through the Chief Judge and the Judicial Conduct section.

[5] Judge Stephen A. Higginson was the author of the first opinion for the panel in Deutsche Bank v Burke, No. 15-20201 (2016). He would also refer to Deutsche Bank as the "mortgage servicer", requiring Hon. Stephen Wm. Smith to write to this court for reconsideration of the erroneous judgment as it made no sense. Higginson did not self-recuse when assigned to the Ocwen appeal, contrary to the rules.

[6] Judge Higginson issued the now vacated opinion in the All American case where Judge Higginbotham joined and Judge Smith dissented, alleging that the judges' reasoning was based on 'personal vendettas' and in contravention of the courts binding authority, etc. The release date of the appeal decision was also vilified by law professor Josh Blackman. "Circuit Judges should know their role. When a Supreme Court case is pending, hold your pens.", see Reason.com article; https://lawsintexas.com/pr/10j

[7] The Burkes made inquiry to the Fifth Circuit re All American's Oral Argument and this was the courts' reply; "Ms. Burke; Case 18-60302 was not heard on 9/21/20, therefore there is no recording to make available. The case was removed from the calendar on 9/8/20 and has been placed in abeyance pending a decision in 2 US Supreme Court cases, 19-422 & 19-563." (Via Email, Oct 5, 2020).

to stay their appeals as well (see detailed motions and Burkes arguments on the docket(s)) which were routinely denied, however, the timeline of the appeals and the periods of time where there has been little or no activity, strongly suggests that a stay was 'unofficially' provided in the Burkes cases.

The presumptive test for bias #3 cited above is particularly relevant to this appeal and recusal motion.

DEUTSHE BANK NATIONAL TRUST CO., v. BURKE (2011-2018)

Upon review of the history of the Burkes and this court, Judge Owen first became visible in the Burkes cases in 2019, when she signed (March 29, 2019) and issued (April 3, 2019) on behalf of the Appellate Review Panel of the Judicial Council, the denial of the Burke's appeal of the 3-Judge complaint against the panel in the underlying Deutsche Bank appeal (#18-20026), comprising of Judges Haynes, Graves and Davis, which would be erroneously dismissed by then Chief Judge Carl E. Stewart[8] (March 11, 2019).

JUDICIAL MISCONDUCT RULE CHANGE

For the record, the Burkes complaint against each judge in the 2019 judicial complaint included attaching Exhibits. Shortly after dismissal (March 2019) of

[8] Judge Carl Stewart claimed at Oral Argument in Colbert v. Wells Fargo Bank, No. 20-10394 (5th Cir. Mar. 10, 2021) that "he doesn't claim to be an expert in this Texas foreclosure procedure – at all…." (verbatim).

the Burkes complaint, this court immediately modified the rules to prohibit attaching exhibits to judicial complaints.[9]

BURKE V. OCWEN & BURKE V. HOPKINS (2018-PRESENT)

Fast forward to the current consolidated appeal and the Burkes would file a judicial complaint against Senior United States District Judge David Hittner, S.D. Texas, Houston Division. In the interim period, Judge Owen was installed as the new Chief Judge on October 1, 2019.

During this time, the Burkes were actively pursuing the two civil cases before this court and which were originally filed in state court, before two separate judges. These cases were unlawfully removed by opposing counsel to S.D. Texas, Houston Federal Court on Dec. 3, 2018. Both cases would be [re]assigned to Judge Hittner[10] and his new Magistrate Judge and former Public Defender, Peter Bray. This assignment would also be in defiance of the 'blind draw' system. See; "[J]udges do not choose their cases, and litigants do not choose their judges. We all operate on a blind draw system. . ." McCuin v. Texas Power Light Co., 714 F.2d 1255, 1265 (5th Cir. 1983).

[9] See Amendments 6(a) and (f); https://2dobermans.com/woof/34

[10] Judge Hittner was assigned the Deutsche Bank v. Burke case (2011-2018). The Magistrate Judge at that time, Hon. Stephen Wm. Smith, rejected the banks' wrongful foreclosure not once, but twice, ruling consecutively in favor of the Burkes.

First, the Ocwen case would be improperly dismissed by Judge Hittner on March 19, 2019. The Burkes timely appealed and the case was transmitted by June 10, 2019. It should be noted that this case was subsequently fully briefed by Oct 11, 2019 and yet it was not decided until March 30, 2021. As discussed and cited herein, the Burkes attempts to stay and supplement the case would be continually denied by this court. As such, there should have been no reason for this court to delay in deciding the appeal. However, delay this court did, leaving any observers - including the Burkes - to reach the reasonable conclusion that the abatement must have been due to the pending US Supreme Court cases.

Second, the Hopkins case would also be unlawfully dismissed by Judge Hittner, via an ultra vires act during the pandemic. It was exactly a year later he dismissed the Hopkins case without a de novo review of the Magistrates' M&R, on March 19, 2020. This abuse of power was the final straw for the Burkes, who would file a motion to disqualify Judge Hittner (April 2, 2020). This was prior to the Burkes filing a motion to alter the judgment on April 14, 2020. Hittner would deny the disqualification motion on April 6, 2020 and deny the reconsideration on May 4, 2020. The Burkes would both timely appeal (April 15, 2020) and register a formal complaint with this court against Judge Hittner (March 27, 2020). The appeal was transmitted by June 4, 2020.

MOTION TO INTERVENE IN CFPB V. OCWEN, S.D. FL. (2018-PRESENT)

While these cases and events were happening in Texas, the Burkes had filed a motion to intervene in the CFPB v. Ocwen case in S.D. Fl. District Court, Judge Kenneth Marra presiding. In particular, the Burkes were seeking to obtain evidence that would help their Texas cases, including documents from the Florida case and the Burkes original loan file from Ocwen. In short form, the Burkes request to intervene would be denied. However, during the Burkes appeal to the Eleventh Circuit, it was discovered that the Greens, who were also litigating in S.D. Texas Federal Courthouse, Bankruptcy Div'n, obtained documents from the Ocwen case in Florida denied to the Burkes by Judge Marra. Despite overwhelming documentary evidence supporting intervention and perjury by Judge Marra's in his own Order, the Eleventh Circuit would issue an opinion on Monday, Nov. 2, 2020 (https://2dobermans.com/woof/1g) affirming the Burkes dismissal of their motion to intervene.

THE TIMELINE IS TELLING (AS ANY INVESTIGATOR WOULD TELL YOU)

The timeline is important. That same week, in Texas, the Burkes met the deadline of Friday, Nov. 6, 2020 to file their reply brief (https://2dobermans.com/woof/36) in the Hopkins case.

Two days later, a Sunday no less, Chief Judge Owen signed the dismissal of the Burkes complaint against Hittner.

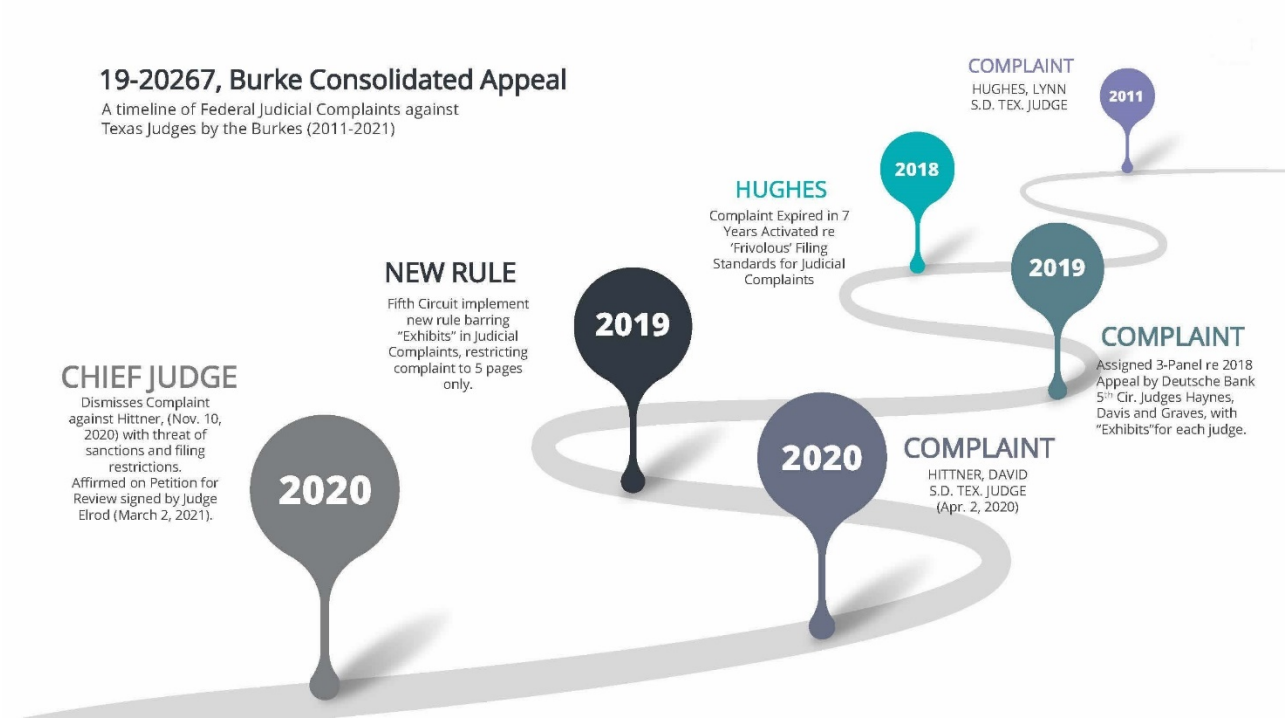

Diagram showing Burke Complaints (2011-2021). Full-sized image: https://2dobermans.com/woof/32

However, Owen would not only dismiss the complaint, she would also threaten the Burkes with 'frivolous' filing restrictions.[11] All this while the summary and timeline of events presented in her dismissal were entirely inaccurate, as was her understanding of the judicial complaint rules post "Breyer Report"[12] and Rippo v. Baker, 137 S. Ct. 905 (2017). In conclusion, her order is

[11] Compare to pro se litigant Crosson, who has filed eighteen (18) lawsuits (IFP) in Vermont federal district court in 2021 alone, without being labeled a 'vexatious', 'frivolous' or 'repetitive' filer by the court; https://2dobermans.com/woof/3b

[12] The Judicial Conduct and Disability Act Study Committee issued a Report to the Chief Justice of the US Supreme Court. The chair of this committee was Justice Stephen Breyer. The Burkes refer to this report as the "Breyer Report" herein.

gravely flawed.

On Feb. 1, 2021, the Burkes filed a petition for review (https://2dobermans.com/woof/35) against Judge Owen's order and despite the well-reasoned arguments therein, it would be denied on March 2, 2021 by Judge Jennifer Elrod[13] for the Judicial Council.

What followed next was the dismantling of the Burkes two appeal panels, consolidating both cases on appeal by the Chief Judge and (i) included herself on the new panel; (ii) along with a Judge who sat on the original Deutsche Bank case reversing the Burkes wrongful foreclosure and; (iii) including Judge Dennis, who wrote a 49-page[14] dissenting opinion as to why Judge Porteous should not be impeached for his crimes[15]. He was impeached and removed from office.[16]

---

[13] Listen to former Clerk for Both Judges Hittner and Elrod, Catherine Eschbach in this HBA video https://2dobermans.com/woof/2h starting at 27.17 minutes and then Listen to Oral Argument: 19-20140 | 02/04/2021: Fulton v. Untd Airlines where Judge Elrod excusing and then praising Hittner (The Burkes herein provide a combined audio with Eschbach leading into oral comments re Hittner); https://2dobermans.com/woof/2q

Elrod's signed order for the Judicial Council was issued within a month of this hyperbole (The Fulton opinion is still pending at the Fifth Circuit).

[14] See; https://2dobermans.com/woof/1r

[15] Impeached Judges https://2dobermans.com/woof/1l

[16] See; https://2dobermans.com/woof/2o

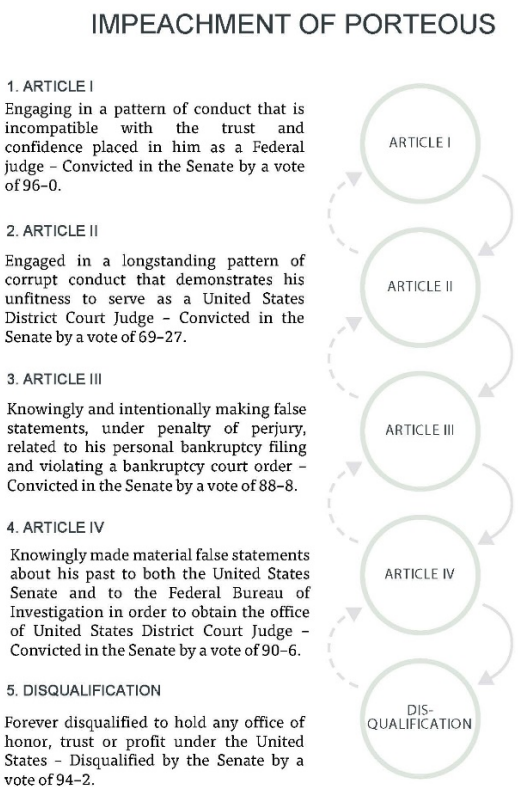

Diagram showing Congress Impeachment of Judge Thomas Porteous. Full-sized image: https://2dobermans.com/woof/37

THE OPINION ISSUED IN THE BURKES CONSOLIDATED APPEALS CAN ONLY BE DESCRIBED AS "AN ABOMINATION"

The Burkes have outlined, as best they could in a very restrictive 3,900 word-limit Petition for Rehearing En Banc, the awful opinion by this per curiam panel. The Burkes need not repeat the totality of errors herein, a review of the latest Petition will suffice. When Judge Higginson stated that panels will not give as much thought to appeals which do not receive oral argument which will result

in affirmation ("you lose")[17], it is more likely he meant that the [junior] clerks are entirely responsible and will write the draft opinion and it will be signed off without meaningful review or debate by the 3 assigned circuit judges (you did lose), depriving litigants of due process and a fair appeal. No other excuse could be given for the opinion issued in the Burkes consolidated appeals.

In support, the Burkes also rely upon Judge Oldham's statements as evidence.[18] Judge Oldham confirmed in video testimony[19] that he assigns a "Quarterback" clerk and only supervises as needed. He admits to being amazed at how much time he is afforded to attend the Federalist Society and related requests for appearances, outwith the allegedly busiest circuit court in the country. Indeed, he stated he would never have been able to have so much free time in his old job (General Counsel to Governor of Texas Greg Abbott).

CHANGING THE LOCAL RULES ON THE FLY AS PUNISHMENT AGAINST ELDER AND DISABLED PRO SE LITIGANTS

The Burkes timely filed their Petition for Rehearing En Banc but the clerk

[17] See Above the Law Article (2017); https://2dobermans.com/woof/2z

[18] Also confirmed by former Clerk for Both Judges Hittner and Elrod, Catherine Eschbach in this HBA video https://2dobermans.com/woof/2h starting at 35.17 minutes which confirms *"you may not like how **I** come down on the issue [appeal] and how **I** frame it"*.

[19] See Bolch Institute; Judgment Calls: A Conversation with Judge Andrew Oldham https://2dobermans.com/woof/30 (start at 45.30 mins for points raised)

rejected the filing as insufficient.

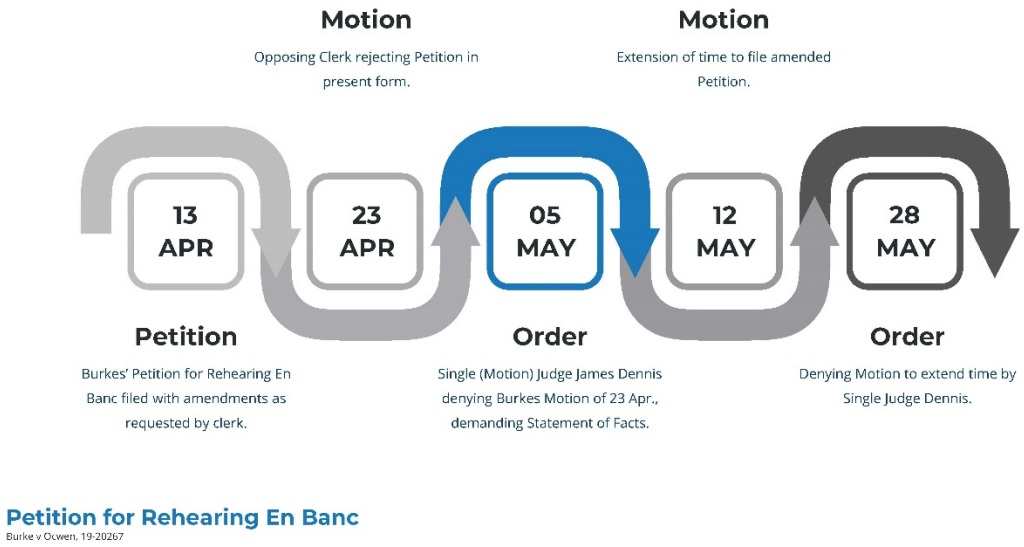

Diagram showing docket timeline with comments. Full-sized image: https://2dobermans.com/woof/2r

The saga of these events is detailed in motion filings and orders on the appeal docket. In short form, the following ensued; (i) the Burkes refiled their Petition, addressing all the deficiencies listed and resubmitted the compliant Petition to the court email(s); (ii) the clerk rejected the Petition again, adding a new deficiency not raised before; (iii) the Burkes attempted to resolve this via direct email communication but the clerk would not budge, stating that the Burkes could file an objection via motion to the *clerk's attorney advisor* for review.; (iv) the Burkes filed the motion[20] and it wasn't the clerk's attorney advisor who replied, it was a motion judge, in this case Judge Dennis. After a series

[20] See Motion, Apr. 23, 2021; https://2dobermans.com/woof/2v

of further responses and orders as shown in the diagrams presented herein, the final result was provided on Monday, June 21, two days before the US Supreme Court ruled in Yellen. The prejudiced 3-panel woke up to issue their order, affirming that it's perfectly within the rules for a deficiency to be added *after* the initial set of deficiencies were timely addressed by the Burkes, and a new compliant Petition for Rehearing En Banc was filed with the clerk via email, as instructed.

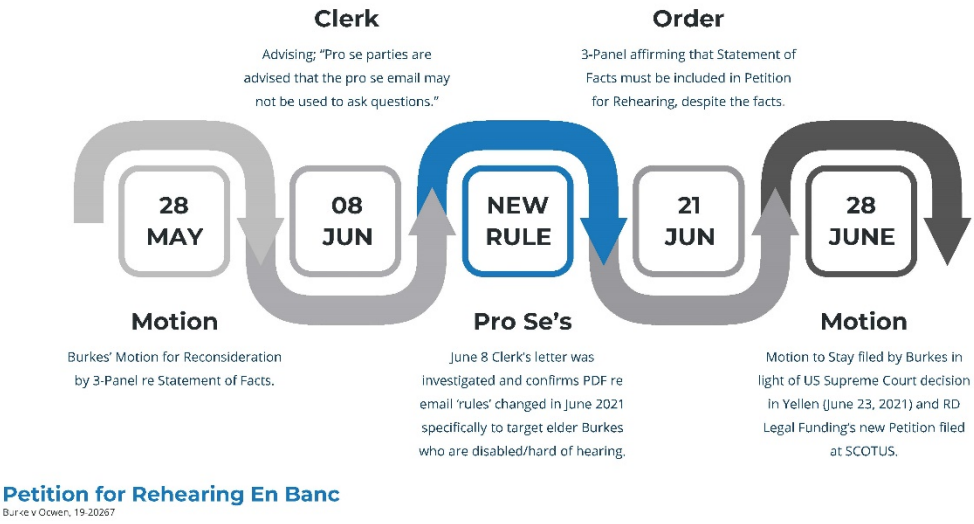

Diagram showing docket timeline with comments. Full-sized image: https://2dobermans.com/woof/2s

In concluding this matter, the one-sided 3-panel believes that despite the Burkes relying upon the accepted Fifth Circuit Petition for Rehearing En Banc in their 2018 appeal by prior counsel, Hagens Berman - which did not include a

'Statement of Facts' and; combined with Exhibit examples of other 'non-compliant' Petitions by lawyers and a well-admired Federal Judge; the "little folks"[21] are required to resubmit another Petition.

This is contrary to the provisional conclusions of the Federal Appellate Advisory Committee's proposed rule changes, as shown and hyperlinked in the stated footnote. The Advisory committee also raised alarm, astounded that this court still requires a Certificate of Service, despite the fact this has not been required since 2019[22];

"Mr. Byron.... added that the Fifth Circuit seems to be the prime offender."

The Burkes provide the full commentary in the relevant certificate section below.

During this timeline, the court would make a Rule[23] change in June 2021.

---

[21] "Judge Bybee stated that this could be very difficult for *little folks*; Mr. Byron responded that *a pro se letter could be treated as a petition*." See p. 14, Minutes of the Fall 2020 Meeting of the Advisory Committee on the Appellate Rules October 20, 2020. https://2dobermans.com/woof/2u

[22] See, for example; Appellees' Hopkins brief, dated October 2, 2020, p. 41 of 42, Certificate of Service, 'Via ECF'; https://2dobermans.com/woof/39

[23] See video proving the PDF was altered sometime around end of May - early June 2021. https://2dobermans.com/woof/33

The Burkes contend this was a premeditated change, in order to limit the Burkes open communication with the clerk's office via email. As per the diagram above, the clerk informed the Burkes in a cover letter dated 8 June, by referencing a document on the Fifth Circuit, namely an Adobe Portable Document Format (.pdf). When this document's metadata[24] was reviewed and earlier copies taken from the internet archive[25], it was clear to see the restrictive new rule, preventing email communication with the clerk's office, was a recent document change, e.g. on or around the time of the letter issued by the court to the Burkes.

In fact, this Rule change flies in the face of a recent (June 29, 2021) 'show cause' order (https://2dobermans.com/woof/3a) by a fellow federal [chief] judge in the District of Vermont;

*Ms. Crosson shall appear for the hearing in person. If she does not appear, the court will enter an order limiting her contact with court personnel to mail, **email**, and in person or electronic filing. - Geoffrey W. Crawford, Chief Judge.*

REASONS FOR RECUSAL

First, let's take a recent case from the highest court, the United States Supreme court. The Supreme Court denied cert in Ali v. Biden (May 17, 2021).

[24] See United States v. Turner, 839 F.3d 429, 434 (5th Cir. 2016).

[25] See Valentine v. Collier, No. 20-20525, at *16 n.29 (5th Cir. Mar. 26, 2021).

This case was filed by Abdul Ali, a Guantanamo Bay detainee. Justice Gorsuch and Justice Kavanaugh took no part in the consideration or decision of this petition.

Houston Law Professor and Federalist Society Member Josh Blackman, who is well known in this court[26], wrote an article on Reason.com[27] where he stated in part:-

> *"Justice Kavanaugh's recusal makes sense. He wrote the panel decision in 2013. But what about Justice Gorsuch? My theory: he recused based on his service in DOJ. From 2005-06, Gorsuch served as the Principal Deputy to the Associate Attorney General. He was assigned to work on the war on terror cases. He also helped draft the Detainee Treatment Act."*

In the instant case, in the hand-picked panel by Chief Judge Owen, Judge Davis was assigned, despite his assignment on the 2018 appeal by $7.2 Billion Dollar admonished[28] Deutsche Bank National Trust Company and as such a

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[26] See Federalist Society Events; The United States Constitution (2014); https://2dobermans.com/woof/2w The National Lawyers Convention (2019); https://2dobermans.com/woof/2x

[27] See; Justices Gorsuch and Kavanaugh Recuse from Guantanamo Bay Case, The Volokh Conspiracy: https://2dobermans.com/woof/2i

[28] See Department of Justice 'settlement' with Deutsche Bank who would ultimately renege on the deal. How one can do so, when it's the US Government, is another conversation - but that also raises the question - Why Deutsche Bank has never lost an appeal in this court in 13 years, despite the predatory lending settlement?; https://2dobermans.com/woof/2p ;

In part; "To make matters worse, the Bank's conduct encouraged shoddy mortgage underwriting and improvident lending that caused borrowers to lose their homes because they couldn't pay their loans. Today's settlement shows once again that the Department

named Judge in the prior complaint by the Burkes, which Owen dismissed for the Judicial Council on appeal.[29]

It is the Burkes understanding that the Fifth Circuit uses PANLOG[30] to 'randomly assign panel judges'. However, when these two panels were dismantled and the cases consolidated, it was a deliberate and manual process overseen by the Chief Judge[31] as administrator for the court.[32]

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will aggressively pursue misconduct that hurts the American public." That would include the predatory lending in the Burkes case. Where's the restitution?

[29] See; Isom v. Arkansas, 140 S. Ct. 342, 344 (2019).

[30] See BAFFC.ORG "Answer to Common Questions Concerning Fifth Circuit Procedures" https://2dobermans.com/woof/29

[31] FIFTH CIRCUIT RULE 34; 34.1 Docket Control. In the interest of docket control, the chief judge may from time to time *appoint a panel or panels* to review pending cases for appropriate assignment or disposition *under this rule or any other rule of this court*.

[32] See Entin, Jonathan L., "The Sign of The Four": Judicial Assignment and the Rule of Law" (1998). Faculty Publications. 377. https://2dobermans.com/woof/2j

"On July 30, 1963, Judge Benjamin Franklin Cameron threw the United States Court of Appeals for the Fifth Circuit into turmoil, charging Chief Judge Elbert P. Tuttle with manipulating the composition of panels in civil rights and desegregation cases so as to influence their outcome. Armstrong v. Board of Educ., 323 F.2d 333, 358-59 (5th Cir. 1963)."

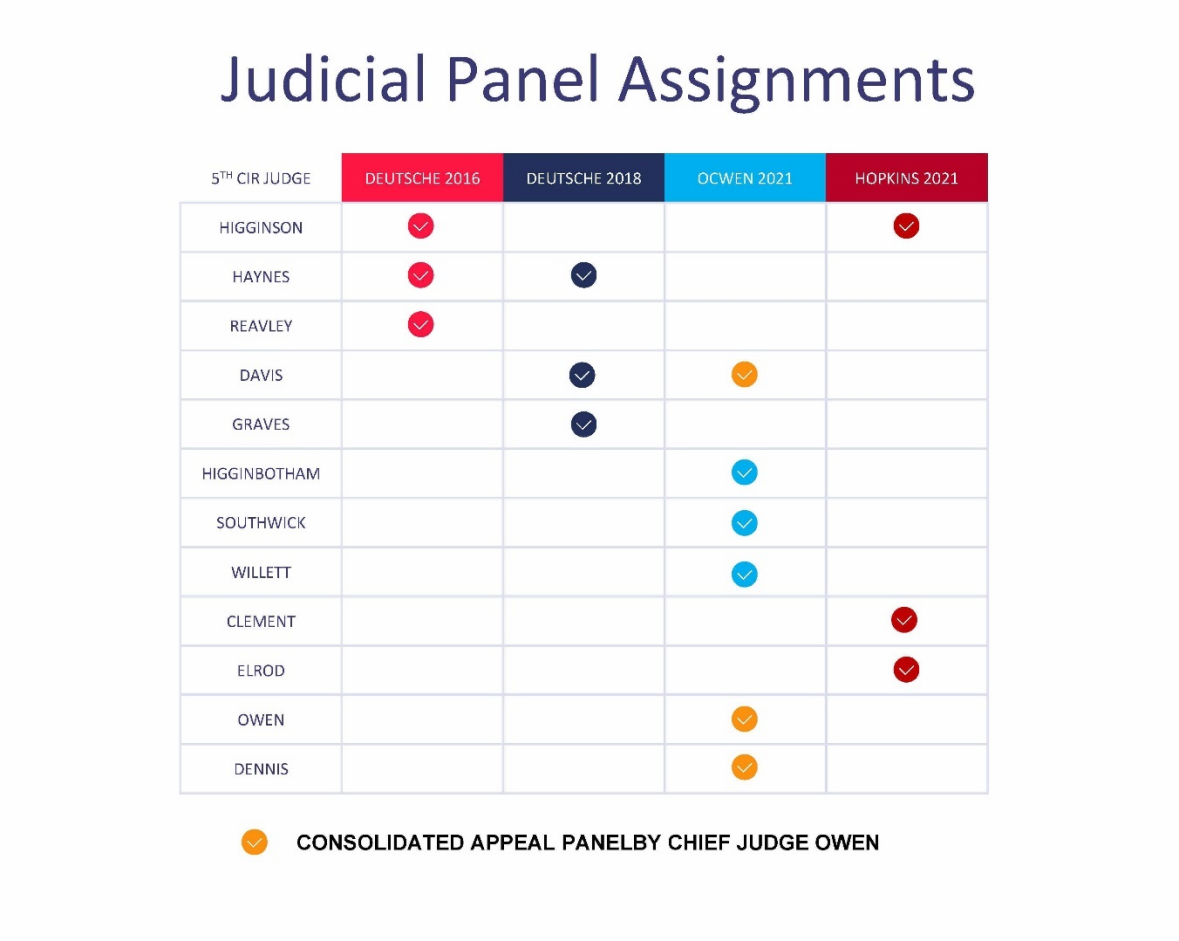

Diagram showing 3-panel assignments in Burkes appeals at Fifth Circuit. Full-sized image; https://2dobermans.com/woof/38

Referencing (a) the pointed threats of sanctions[33] toward the Burkes in the Chief Judges' slipshod opinion when dismissing the complaint against Judge Hittner; (b) combined with the authoring of the judicial complaint letter affirming dismissal in 2019 (on behalf of the Judicial Committee) and (c) noting the

[33] The Judicial Conduct and Disability Act (1980) ("the Act") 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."

dissolution of the two appeal panels in preference for a panel which would include herself[34] and two judges as discussed, it begs the following questions;

1. After reading the Burkes complaint in tandem with the Chief Judge's opinion and in light of the pro se litigants appeals before this court, would an outside observer reach the conclusion that the Chief Judge was involved in judicial complaint proceedings which were integral to the arguments on appeal and as such it falls squarely into #3 above ("has the dual role of investigating and adjudicating disputes and complaints.").

2. Would an observer conclude that the sanctions and threats[35] assigned to the elder, law-abiding citizens could be viewed as a premeditated act, designed to intimidate the pro se litigants, to refrain them from submitting another judicial complaint – or a disqualification motion like this very one, seeking removal of a predisposed (Chief) judge?[36]

3. Would an observer reach the conclusion that the Chief Judge is erroneously depending upon "merit-related" reasoning to dismiss the complaint, when, in fact, that is not the standard which should

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[34] The public may reasonably suspect "judges [who] sometimes gain access to a panel" do so "in order to affect the outcome of a case." J. Robert Brown, Jr. & Allison Herren Lee, Neutral Assignment of Judges at the Court of Appeals, 78 TEX. L. REV. 1037, 1066 (2000).

[35] "This is the Burkes' third merits-related and conclusory judicial misconduct complaint."

"The Burkes are WARNED that should they, together or separately, file a further merits-related, conclusory, frivolous, or repetitive complaint, their right to file complaints may be suspended and, unless they are able to show cause why they should not be barred from filing future complaints, the suspension will continue indefinitely."

[36] See *In re Complaint of Judicial Misconduct*, 605 F.3d 1060, 1063 (9th Cir. 2010) ("A misconduct claim isn't the property of any particular complainant.")

be relied upon based on the Breyer Report[37] and Rippo?

4. Would an observer reach the conclusion that the Chief Judge did not investigate the Burkes judicial complaint (https://2dobermans.com/woof/2l) properly when you take for example, the Burkes footnotes numbered 19; failure to inquire as to a judges bias *e.g.* lower court judge(s)) and 21; failure to investigate adequately that a judge ordered the transcript altered when her reply was generalized[38] and, without more, would fail the Breyer standard of review - as she did not properly investigate these specific complaints?

5. Would an observer reason that if Supreme Court Justice(s) are recusing because they sat on prior case(s) involving the party, then in the instant consolidated appeal, why would the Chief Judge appoint Judge W. Eugene Davis, and even if she did not appoint Judge Davis, one would expect there to be a discussion between the judges after reviewing (a) the Certificate of Interested Persons; (b) the Burkes case(s), and (c) including the judicial complaints where she had only recently written an order of dismissal and as a result, Judge Davis would be disqualified, either by his own choice or after discussion by the panel of judges?

6. Would an observer have expected the Chief Judge or the Judicial Council to (a) correct materially incorrect summary of the facts in

[37] For example; see the Breyer report, "that the judge ruled against the complainant…because the judge doesn't like the complainant personally, is not merits-related." p.54.

[38] See order, in two sentences disposing of the complaint generally, in contravention of the rules; "To the extent that these allegations relate directly to the merits of decisions or procedural rulings, they are subject to dismissal under 28 U.S.C. § 352(b)(l)(A)(ii)"; and "In other respects, any assertions of "willful misconduct" or bias appear entirely derivative of the merits-related charges, but to the extent the allegations are separate, they are wholly unsupported, and are therefore subject to dismissal under 28 U.S.C. § 352(b)(l)(A)(iii) as "lacking sufficient evidence to raise an inference that misconduct has occurred.""

the hostile Order, dismissing the Burkes judicial complaint, when it was brought to their attention and which is published on the Fifth Circuit website; (b) especially an Order which goes on to sanction and threaten the complainants based on incorrect legal standards (for example, three complaints in 11 years does not warrant sanctioning, as after 7 years the first complaint is automatically removed from any calculation and at least five complaints is required to reach the minimum sanctionable standard) and (c) where for example, previous erroneous Orders by assigned judges had been corrected in the Burkes cases e.g. Deutsche Bank opinion No. 15-20201?

7. Would an observer reach the conclusion that since the lower court cases (a) involved so many judicial misconduct allegations and (b) in tandem with the judicial complaint(s), is the abhorrent and admitted misconduct of attorney Mark Hopkins while acting in a pro se capacity at a hearing before the Magistrate Judge wherein he made false allegations that "The Burkes wanted certain judges to be shot", and (c) in light of the Magistrate Judge Peter Bray's own [in]actions and that of Judge David Hittner as discussed in the complaint and filings and their failure to report Hopkins to the State Bar, Prosecutor or sanction his misconduct but rather support his admitted lies, and (d) considering the new panel member Judge James L. Dennis has previously dissented in a judicial complaint where he objected to impeachment of a federal judge who would be subsequently impeached and removed from office - this clearly meets the presumptive test standard in Rippo above (citing Withrow) and the "Breyer Report" standard?

8. Would it be fair to conclude by disposing of the judicial complaint against United States District Judge David Hittner, and considering the Burkes allegations therein, Chief Judge Owen has already prejudged the now consolidated appeal before even taking 'a seat with her judicial colleagues' and that decision would be - and indeed is – adverse to the Burkes?

9. Would an observer reach the conclusion that the March 30, 2021 Opinion of the 3-Panel for the Court of Appeals for the Fifth Circuit, affirming the lower court in consolidated appeal Burke v Ocwen No. 19-20267 (and 20-20209) is void?

The Burkes proclaim the answer would be an affirmative **Yes** to all questions.

Attorney Thomas "Tom" Goldstein, who has argued over 100 cases before the highest court and is co-founder of SCOTUSblog.com, winner of The Peabody Award, echo's the Burkes argument(s) in a 2014 Petition;

> *Plainly, a rule that expressly permitted judges to call dibs on class action cases, or ask the clerk's office for preferential assignment to antitrust cases, would be intolerable.*
>
> *To "perform its high function in the best way 'justice must satisfy the appearance of justice.'" In re Murchison, 349 U.S. 133, 136 (1955).*
>
> *An essential part of the public perception and reality of judicial impartiality arises from the fact that judges are assigned, rather than allowed to select, their cases.*
>
> *The public may reasonably suspect "judges [who] sometimes gain access to a panel" do so "in order to affect the outcome of a case." J. Robert Brown, Jr. & Allison Herren Lee, Neutral Assignment of Judges at the Court of Appeals, 78 TEX. L. REV. 1037, 1066 (2000).*
>
> *Indeed, the public would be justified in assuming that a judge who selects a particular case based on its subject matter will often bring to the case an atypically strong set of preconceived views about the proper disposition of the case.*
>
> *See; Motorola Mobility LLC v. AU Optronics Corporation*, 14-1122 (Pet. Denied) *https://2dobermans.com/woof/2y*

The Burkes reinforce Goldstein's arguments, as presented herein.

As such, it requires this court's immediate correction.

RELIEF REQUESTED

The evidence is clear and convincing. It reaches all the rule standards and case law cited in this motion to disqualify the Chief Judge. The Burkes hereby request (i) disqualification of the Chief Judge of the Court of the Appeals for the Fifth Circuit, Priscilla R. Owen; (ii) dissolution of the 3-panel she assigned, and; (iii) vacate the void 3-panel order of March 30, 2021 dismissing the Burkes appeals after consolidation. The Chief Judge's acts are unconstitutional and as such it requires a rewind of these two appeals to the position they were before she unlawfully dismantled the two appellate panels. Finally, considering the above, the Burke's ask that this court seek reassignment of the Burkes appeal(s) to another circuit, with the exception of the Eleventh Circuit.[39]

CONCLUSION

Appellants Joanna & John Burke civilly request the relief requested herein.

Respectfully submitted,

[39] "We embrace the method utilized in United States v. Couch, in dealing with this sensitive situation. In Couch the Chief Judge of the Fifth Circuit assigned the case to a judge outside of the district in which it originated to adjudicate the claims of partiality." U.S. v. Jordan, 49 F.3d 152, 159 (5th Cir. 1995).

DATED: July 3, 2021

JOANNA BURKE

By *s/ Joanna Burke*
JOANNA BURKE

JOHN BURKE

By *s/ John Burke*
JOHN BURKE

46 Kingwood Greens Dr.,
Kingwood, TX, 77339
Telephone: (281) 812-9591
Facsimile: (866) 705-0576

Pro Se for Plaintiffs-Appellants

CERTIFICATE OF CONFERENCE

We hereby certify we emailed Mark Hopkin, Shelley Hopkins and Kate Barry of Hopkins Law, PLLC on Tue, Jun 29, 2021 at 10:24 AM. This law firm also represents Ocwen Loan Servicing, LLC in this consolidated appeal. At the time of filing, on July 3, 2021, no response has been received. We assume the MOTION is OPPOSED.

CERTIFICATE OF SERVICE (NOT REQUIRED)

See p. 20/21, Minutes of the Fall 2020 Meeting of the Advisory Committee on the Appellate Rules October 20, 2020. https://2dobermans.com/woof/2u

I. Review of Impact and Effectiveness of Recent Rule Changes

The Reporter stated that Rule 25(d) was amended in 2019 to no longer require proof of service for documents served via the court's electronic docketing system. At the last meeting, it was reported that some courts of appeals were still requiring proofof service despite this rule change.

The Reporter added that research indicates that some courts of appeals continue to have local rules that require proof of service, but that at least one of these courts does not in practice require such proof of service, and is working on revisions to its local rules.

Mr. Byron stated that DOJ continues to have problems and urged that we reach out again.

He added that the Fifth Circuit seems to be the prime offender.

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 **5,200** 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

EXHIBIT H

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.,

Defendants-Appellees.

consolidated with

No. 20-20209

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-4543/4544

APPELLANTS' MOTION TO STAY

Joanna Burke
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John Burke
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Pro Se Appellants

Appellants, Joanna Burke and John Burke ("Burkes"), now file a motion to stay based on the events of last week at the US Supreme Court.

BACKGROUND & ARGUMENT

This court sua sponte decided to appoint a new 3-panel and consolidate the Burkes two appeals, namely Burke v Ocwen and Burke v Hopkins.[1] The panel included the Chief Judge, Priscilla Owen along with Judges' Dennis and Davis. The opinion was issued prematurely on March 30 of this year (See Burke v. Ocwen Loan Servicing, L.L.C., No. 19-20267 (5th Cir. Mar. 30, 2021). This replaced the 3-panel of Judges Higginbotham, Southwick and Willett in the Ocwen appeal and Judges Clement, Elrod and Higginson in the Hopkins appeal.

The reason the Burkes argue it was issued prematurely is the fact that this court had stayed the appeals of CFPB v All American Check Cashing, No. 18-60302 and more recently in Collins v Mnuchin, No. 17-20364 (now Collins v Yellen), pending the US Supreme Court decisions. The Burkes had filed a motion to stay their appeals as well (see detailed motions and Burkes arguments on the docket(s)) which were routinely denied, however, the timeline of the appeals and the periods of time where there has been little or no activity, strongly suggests that a stay was 'unofficially' provided in the Burkes cases.

[1] *Burke v. Ocwen*, Civil Action H-18-4544 (S.D. Tex.) and *Burke v. Hopkins*, Civil Action H-18-4543 (S.D. Tex.)

Crucially, in both cases, the Supreme Court has failed to reach the questions pertinent to the granting of stays. The ratification question in the CFPB case was remanded and there is not only a new circuit split, RD Legal Funding has submitted a new Petition at the US Supreme Court (See; https://2dobermans.com/woof/2t), which effectively returns this court in the same position it was at the start of the stay.

In respect of the Collins case(s), the Burkes fully concur with Justice Gorsuch's dissent and specifically injury[2], which the Burkes restate has occurred in the cases they brought to this court and for which they have been denied, to date, any meaningful relief.

That stated, the "retroactive constitutional relief" argument remains in the Collins case(s). As a result, this court has issued two letters to counsel in the CFPB and Collins Fifth Circuit appeals on June 24, 2021 asking for an answer to the question, "what's next?".

Similarly, the Burkes echo that question. In Justice Alito's opinion for the Court, he states and the Burkes rely upon;

"As we have explained on many prior occasions, the separation of powers is designed to preserve the liberty of all the people."

[2] "In *this* world, real people are injured by actions taken without lawful authority. "The Framers did not rest our liberties on . . . minutiae" like some guessing game about what might have transpired in another timeline." *Collins v. Yellen*, No. 19-422, at *64 (June 23, 2021)

Collins v. Yellen, No. 19-422, at *26 (June 23, 2021)

"So whenever a separation-of-powers violation occurs, any aggrieved party with standing may file a constitutional challenge."

See, e.g., Seila Law, supra, at ___ (slip op., at 10)" Collins v. Yellen, No. 19-422, at *26 (June 23, 2021)

"Nearly half our hallmark removal cases have been brought by aggrieved private parties."

See Seila Law, 591 U. S., at ___-___ (slip op., at 6-7)

"Here, the right asserted is not one that is distinctive to shareholders of Fannie Mae and Freddie Mac; it is a right shared by everyone in this country. "

Collins v. Yellen, No. 19-422, at *27 (June 23, 2021)

RELIEF REQUESTED

The Burkes request (a) The court stay the consolidated case until the above cases are resolved and (b) The Burkes are given the same legal courtesy as provided to the above counsel and allowed to supplement the case after the court resolves the CFPB and Collins appeals, but before they decide the Burkes Petition for Rehearing En Banc.

CONCLUSION

Appellants Joanna & John Burke civilly request the relief requested herein.

Respectfully submitted,

DATED: June 28, 2021

JOANNA BURKE

By *s/ Joanna Burke*
JOANNA BURKE

JOHN BURKE

By *s/ John Burke*
JOHN BURKE

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Facsimile: (866) 705-0576

Pro Se for Plaintiffs-Appellants

CERTIFICATE OF CONFERENCE

We hereby certify at 0936 hrs today, 28 June, 2021, we emailed Mark Hopkins, Shelley Hopkins and Kate Barry of Hopkins Law, PLLC, asking if they were opposed or not to this motion. This law firm also represents Ocwen Loan Servicing, LLC in this consolidated appeal. At the time of this filing, we have received no response. We assume the MOTION is OPPOSED.

CERTIFICATE OF SERVICE

We hereby certify that, on June 28, 2021, a true and correct copy of the foregoing Motion to Stay was served via the Court's EM/ECF system on the following counsel of record for Appellees:

Mark D. Hopkins
Shelley L. Hopkins
HOPKINS LAW, PLLC
3 Lakeway Centre Ct, Ste 110
Austin, Texas 78734
Telephone: (512) 600-4320
Facsimile: (512) 600-4326

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 **664** 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

EXHIBIT I

John Burke and Joanna Burke
46 Kingwood Greens Dr
Kingwood, Texas 77339
Tel: 281 812 9591

THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION
BURKE v. OCWEN, et al
Civil Action No. 4:21-CV-2591

AFFIDAVIT (DECLARATION) OF JOHN BURKE
INDEX

LEGAL DISCLOSURE

In lieu of an affidavit sworn under oath, federal law allows an "unsworn declaration, certificate, verification, or statement, in writing, of [a] person which is subscribed by him, as true under penalty of perjury, and dated" to have the same force and effect as an affidavit or other sworn statement. See 28 U.S.C. § 1746; see also *Peters v. Lincoln Elec.Co.*, 285 F.3d 456, 475 (6th Cir. 2002) (while an affidavit is required to be sworn to by the affiant in front of an officer authorized to administer oaths, 28 U.S.C. § 1746 allows for "unsworn declarations under penalty of perjury" to support any matter that legally requires an affidavit to support it).

Furthermore, see; "(2) If executed within the United States . . . : "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date) (Signature)"." *Eltalawy ex rel. A.M. v. Lubbock Indep. Sch. Dist.*, No. 19-10832, at *6 n.6 (5th Cir. June 8, 2020)

AFFIDAVIT OF JOHN BURKE

- This is a declaration, under the penalty of perjury by John Burke.
- Much of this affidavit specifically addresses the telephone call from Fifth Circuit Clerk Christina Gardner on July 9, 2021. I answered the phone call.
- Some important events and facts are reaffirmed in my affidavit, which is submitted at the commencement of this legal action to void the unlawful judgment of the Fifth Circuit and nullify the mandate.
- On the morning of Friday 9 July, 2021, a clerk by the name of Christina Gardner, from the Court of Appeals for the Fifth Circuit called our residential phone number at our home, located at 46 Kingwood Greens Dr, Kingwood, TX, 77339.
- I answered the unannounced and unexpected phone call. As such, **I do** have the knowledge to affirm or deny the contents of that specific phone call, which was between my myself, John Burke, a co-appellant in the said action before the appellate court and Ms. Gardner.
- I have documented the summary of this call in a formal motion as identified on the Fifth Circuit docket, namely the motion to 'Correct Opinion; Response to Strike Clerks' Docket Entry Dated 9th July, 2021 and Other Relief' as submitted on 18th July, 2021.
- I can confirm my wife, Joanna Burke, was **not present** for the phone call and at no time did Ms. Gardner ask for her by name or request she be party to the call.

- I can confirm, opposing counsel was not party to the call by conferencing in a lawyer or paralegal from Hopkins Law, PLLC into the call.
- In summary, it was a call between Ms. Gardner and me only, John Burke.
- 'What happened next' is well recorded in the complaint attached herein which I attest and swear to as being true and forms part of this affidavit. That stated, for the purposes of this affidavit and in summary format, on that same day, the clerk criminally stole my persona and without authority in law, entered a ***backdated*** "Motion for Reconsideration", in violation of the chronological docketing rules, on her own free will, volition and in bad faith. This, in complete detriment of my Constitutional rights and in violation of the Due Process Clause.
- As stated earlier, both myself and my wife formally objected to this unlawful act when we filed a motion on 18 July, 2021 to 'Correct Opinion; Response to Strike Clerks' Docket Entry Dated 9th July, 2021 and Other Relief'. The content of that motion should be viewed as part of this affidavit.
- Ms. Gardner's unlawful actions would result in our Petition for Rehearing En Banc being stricken and judgment entered in favor of Appellees.
- Fifth Circuit Clerk, Christina A. Gardner has impersonated a person, a party to the appeal (appellant), me, John Burke, and entered a fraudulent Motion for Reconsideration. I never agreed to that motion, nor could I without submitting the motion with my signature attached and with my wife, Joanna Burke's

agreement and signature, as required in law. In short, it is a shocking and criminal act against an elder citizen(s) of the State of Texas.

- Furthermore, she had no legal right to make this premeditated text docket entry and then steal my persona to file a fraudulent Motion for Reconsideration; *'No action is taken on Appellants' request for clarification of clerk's office procedure as unnecessary – procedure was explained to Mr. Burke telephonically.'* (Docket Entry entered on July 9, 2021- Backdated to July 8, 2021).
- I deny she 'explained' any such 'office procedure' telephonically.
- I specifically remember replying to Ms. Gardner's request as to *the meaning* of our Motion to Clarify. I told her the Motion was clear in the document itself and the relief requested therein.
- I confirm as true Ms. Gardner's responses as documented in the above Motion to 'Correct Opinion; Response to Strike Clerks' Docket Entry Dated 9th July, 2021 and Other Relief' as submitted on 18th July, 2021.
- Other key issues supporting this unconscionable scheme and collusion between the Fifth Circuit clerks' included; Fifth Circuit Clerk Jann Wynne refusing to accept our compliant and amended Petition by adding a new deficiency, namely the 'Statement of Facts' and which started this whole saga.
- Fifth Circuit Clerk Rebecca Leto *backdated* the 'proposed sufficient' brief to 13 April, 2021, again in violation of the chronological rules.
- The 'proposed sufficient brief' as 'uploaded' by Ms. Leto, accepted our **original** Petition with only a copy of the original

Opinion of 30 March, 2021 to be sent to the clerk by email. As such, denying our many motions contesting the same and ultimately striking our Petition is an act of lawlessness by the Fifth Circuit.

- As stated, the result would be devastating. The 3-panel, including Chief Judge Priscilla Owen, who should not have been on the consolidated panel along with Judges Dennis and Davis would issue the void final order and mandate on August 4, 2021.
- Judge Owen had recently disposed of our complaint against Judge David Hittner (S.D. Tex.) and in doing so threatened me in her order and based on a completely erroneous summary of facts.
- It is undoubtedly my opinion, for Judge Owen to participate in the appeal(s) was clearly unethical and 'the appearance of bias' was constitutionally too great.
- Nevertheless, sit on the 3-panel Judge Owen did for the original opinion and again on the August 4, opinion. As Chief Judge, I maintain the position she willfully conspired with her hand-selected panel of judges and despite the Fifth Circuit Clerks illegal acts, would affirm Judge Hittner's invalid orders and the imposter motion filed by Ms. Gardner, as explained in the complaint and supporting documentation.
- As a final statement, which should be documented in this affidavit, pertains to the dismissal of pending motions in the Fifth Circuit's August 4, 2021 order. As detailed in our operative Complaint, I **did not** file a motion "seeking to stay the issuance of the mandate pending writ of certiorari in the US Supreme

Court". As such, the Fifth Circuit did not correctly dispose of the pending motions.

- I sincerely hope that the requested relief in our joint (amended) complaint will be granted by the district court and based on the true facts presented herein.

I, John Burke, declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. September 17, 2021, Kingwood, Texas.

John Burke / State of Texas
Pro Se
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Phone Number: (281) 812-9591
Fax: (866) 705-0576
Email: alsation123@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that, on September 17, 2021, a true and correct copy of the foregoing first amended complaint and affidavit (declaration) was

submitted to the documented emails on file for the court and opposing counsel and by USPS priority mail to the court and counsel of record for defendants:

Clerk of Court
P. O. Box 61010
Houston, TX 77208

And;

Mark D. Hopkins
Shelley L. Hopkins
HOPKINS LAW, PLLC
3 Lakeway Centre Ct, Ste 110
Austin, Texas 78734
Telephone: (512) 600-4320
Facsimile: (512) 600-4326

JOHN BURKE
Pro Se

EXHIBIT J

John Burke and Joanna Burke
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Tel: 281 812 9591

THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION
BURKE v. OCWEN, et al
Civil Action No. 4:21-CV-2591

AFFIDAVIT (DECLARATION) OF JOANNA BURKE
INDEX

LEGAL DISCLOSURE

In lieu of an affidavit sworn under oath, federal law allows an "unsworn declaration, certificate, verification, or statement, in writing, of [a] person which is subscribed by him, as true under penalty of perjury, and dated" to have the same force and effect as an affidavit or other sworn statement. See 28 U.S.C. § 1746; see also *Peters v. Lincoln Elec.Co.*, 285 F.3d 456, 475 (6th Cir. 2002) (while an affidavit is required to be sworn to by the affiant in front of an officer authorized to administer oaths, 28 U.S.C. § 1746 allows for "unsworn declarations under penalty of perjury" to support any matter that legally requires an affidavit to support it).

Furthermore, see; "(2) If executed within the United States . . . : "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date) (Signature)"." *Eltalawy ex rel. A.M. v. Lubbock Indep. Sch. Dist.*, No. 19-10832, at *6 n.6 (5th Cir. June 8, 2020)

AFFIDAVIT OF JOANNA BURKE

- This is a declaration, under the penalty of perjury by Joanna Burke.
- The majority of this affidavit specifically addresses the all-important phone call from Fifth Circuit Clerk Christina Gardner on July 9, 2021 and how it violated my legal and Constitutional rights as an independent woman and party to the lawsuits and appeal(s). All other events have been detailed in written motions and orders on the docket.
- Some important events and facts are reaffirmed in my affidavit, which is submitted at the commencement of this legal action to void the unlawful judgment of the Fifth Circuit and nullify the mandate.
- On the morning of Friday 9 July, 2021, a clerk by the name of Christina Gardner, from the Court of Appeals for the Fifth Circuit called our residential phone number at our home, located at 46 Kingwood Greens Dr, Kingwood, TX, 77339.
- I was not present for the unannounced and unexpected phone call. As such, I do not have the knowledge to affirm or deny the contents of that specific phone call, which was between my husband, John Burke, a co-appellant in the said action before the appellate court and Ms. Gardner.
- However, it is clear from the Fifth Circuit docket, and in particular the motion to 'Correct Opinion; Response to Strike Clerks' Docket Entry Dated 9th July, 2021 and Other Relief' as submitted on 18th July, 2021 along with what my husband states

in his own separate affidavit, is accurate and true as to 'what happened next' after the phone call with Ms. Gardner ended that very morning.

- 'What happened next' is well recorded in the complaint attached herein which I attest and swear to as being true and forms part of this affidavit. That stated, for the purposes of this affidavit and in summary format, on that same day, the clerk criminally stole my persona and without authority in law, entered a *backdated* "Motion for Reconsideration", in violation of the chronological docketing rules, on her own free will, volition and in bad faith. This, in complete detriment of my Constitutional rights and in violation of the Due Process Clause.
- Ms. Gardner's unlawful actions would result in our Petition for Rehearing En Banc being stricken and judgment entered in favor of Appellees.
- Fifth Circuit Clerk, Christina A. Gardner has impersonated a person, a party to the appeal (appellant), namely me, Joanna Bure, with whom she never spoke with on the telephone nor obtained any legal authority to execute any 'motion' on behalf of myself. In short, it is a shocking and criminal act against an elder citizen of the State of Texas.
- Furthermore, she had no legal right to make this premeditated text docket entry and then steal my persona to file a fraudulent Motion for Reconsideration; *'No action is taken on Appellants' request for clarification of clerk's office procedure as unnecessary – procedure was explained to Mr. Burke telephonically.'* (Docket Entry entered on July 9, 2021- Backdated to July 8, 2021). This,

regarding the Motion to Clarify based on this one-on-one call with my husband, John Burke and without talking to me or gaining my consent, which would have been unequivocally denied.

- Ms. Gardner could not submit a Motion for Reconsideration without a signature in a formal written Motion by myself and my husband, John Burke. Her acts were dishonest, unlawful and outrageous.
- Other key issues supporting this unconscionable scheme and collusion between the Fifth Circuit clerks' included; Fifth Circuit Clerk Jann Wynne refusing to accept our compliant and amended Petition by adding a new deficiency, namely the 'Statement of Facts' and which started this whole saga.
- Fifth Circuit Clerk Rebecca Leto *backdated* the 'proposed sufficient' brief to 13 April, 2021, again in violation of the chronological rules.
- The 'proposed sufficient brief' as 'uploaded' by Ms. Leto, accepted our **original** Petition with only a copy of the original Opinion of 30 March, 2021 to be sent to the clerk by email. As such, denying our many motions contesting the same and ultimately striking our Petition is an act of lawlessness by the Fifth Circuit.
- As stated, the result would be devastating. The 3-panel, including Chief Judge Priscilla Owen, who should not have been on the consolidated panel along with Judges Dennis and Davis would issue the void final order and mandate on August 4, 2021.

- Judge Owen had recently disposed of our complaint against Judge David Hittner (S.D. Tex.) and in doing so threatened me in her order and based on a completely erroneous summary of facts.
- It is certainly my opinion, for Judge Owen to participate in the appeal(s) was clearly wrong at every level and 'the appearance of bias' was constitutionally too great.
- Nevertheless, sit on the 3-panel Judge Owen did for the original opinion and again on the August 4, opinion. As Chief Judge, I maintain the position she maliciously conspired with her hand-selected panel of judges and despite the Fifth Circuit Clerks unlawful acts, would affirm Judge Hittner's invalid orders and the imposter motion filed by Ms. Gardner, as explained in the complaint and supporting documentation.
- A final statement, which should be documented in this affidavit, pertains to the dismissal of pending motions in the Fifth Circuit's August 4, 2021 order. As detailed in our operative Complaint, I **did not** file a motion "seeking to stay the issuance of the mandate pending writ of certiorari in the US Supreme Court". As such, the Fifth Circuit did not correctly dispose of the pending motions.
- I sincerely hope that the requested relief in our joint (amended) complaint will be granted by the district court and based on the true facts presented herein.

I, Joanna Burke, declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. September 17, 2021, Kingwood, Texas.

Joanna Burke / State of Texas
Pro Se
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CERTIFICATE OF SERVICE

I hereby certify that, on September 17, 2021, a true and correct copy of the foregoing first amended complaint and affidavit (declaration) was submitted to the documented emails on file for the court and opposing counsel and by USPS priority mail to the court and counsel of record for defendants:

Clerk of Court
P. O. Box 61010
Houston, TX 77208

And;

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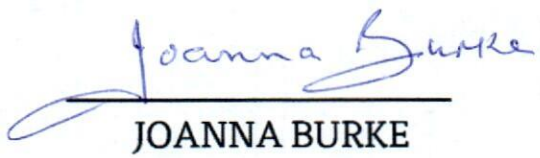

JOANNA BURKE
Pro Se