

IN THE COURT OF APPEALS
FOURTEENTH JUDICIAL DISTRICT OF TEXAS
14-23-00647-CV

Appeal from District Court 234, Harris County, Texas

Mark Burke)	SECOND MOTION TO
)	WAIVE CLERKS
Appellant)	RECORD FEE
)	
vs.)	
)	
KPH-Consolidation Inc., d/b/a)	
HCA Houston Healthcare)	
Kingwood, a domestic For-Profit)	
Corporation,)	
)	
)	
Appellees)	
)	

**APPELLANT MARK BURKE'S SECOND MOTION TO WAIVE
CLERKS RECORD FEE**

Introduction

Appellant Mark Burke ("Mark") expeditiously submits this Second

Motion to Waive Clerks Record Fee, seeking relief from the financial encumbrance imposed by the Harris County District Clerk's office. The urgency arises from recent developments at the Texas Supreme Court, coinciding with the denial of appellant's motion for reconsideration by this court.

In the case of *Calhoun v. Pasadena Independent School District* (496 S.W.2d 131, 132 Tex. Civ. App. 1973), the court emphasized the significance of constitutional points, asserting, "Major changes in established law should be made by our Supreme Court." This sentiment was further underscored in *Meska v. City of Dallas* (429 S.W.2d 223 Tex.Civ.App.--Dallas 1968, writ ref'd), which acknowledged the court's duty to adhere to established law but also recognized a responsibility to announce new law where necessary.

During the reconsideration period, the Texas Supreme Court issued Misc. Docket No. 23-9106 on Monday, Dec. 18, 2023, granting Preliminary Approval of Texas Rule of Appellate Procedure 34.5a. This crucial

amendment directly addressed the constitutional violation raised by the appellant, permitting appellants to expeditiously compile their clerk's record without incurring a fee. Notably, this responsive amendment is the direct outcome of the appellant's challenge to the existing rules governing clerk record fees for appeals from final judgments, with particular emphasis on permissive appeals.

While acknowledging that the new rule becomes effective at the start of the new year, it is imperative to consider that the appellant was the catalyst for this swift correction of the constitutional violation. It would be unjust to deny him equal access to the court due to this expeditious rectification.

Conclusion

In light of the foregoing, appellant respectfully implores the Court to exercise its discretion in waiving the fees associated with the preparation of the Clerk's Record. Consistent with the recent amendment (34.5a) to the

Texas Rule of Appellate Procedure, appellant seeks the same expedited process, enabling him to submit his own appendix and docket record in lieu of traditional procedures. This aligns with the spirit of the revised rule, fostering fair and equal access to justice for all.

As we approach the holiday season, appellant extends his sincere season's greetings to the Court and all involved parties. With gratitude for the Court's consideration, appellant anticipates a just and equitable resolution.

RESPECTFULLY submitted this 21st day of December, 2023.
I declare under penalty of perjury that the foregoing is true and correct.
This declaration under Chapter 132, Civil Practice and Remedies Code.

A handwritten signature in black ink, appearing to read "Mark Burke". The signature is written in a cursive style with a long, sweeping vertical stroke on the left side.

Mark Burke, Harris County
State of Texas / Pro Se

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Kingwood, Texas 77339

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Mark Burke's motion has been forwarded to all named Defendants by electronic filing notification and/or electronic mail and/or facsimile and/or certified mail, return receipt requested, this the 21st day of December, 2023.



Mark Burke, Harris County
State of Texas / Pro Se

CERTIFICATE OF CONFERENCE

Due to the urgent nature of this motion and to prevent further delay and inconvenience to the court(s) and parties, Mark Burke did not confer with opposing counsel, pursuant to Texas Rules of Appellate Procedure §

10.1(a)(5). That stated, based on past experience and knowledge, it is assumed the motion is opposed.

A handwritten signature in black ink, appearing to read "Mark Burke". The signature is written in a cursive style with a prominent vertical stroke on the left side.

Mark Burke, Harris County
State of Texas / Pro Se