

**NO. 14-19-00507-CV**

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**In the Court of Appeals  
for the Fourteenth Judicial District of Texas  
at Houston**

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**The Fell Clutch, LLC,  
Appellant**

**v.**

**Cherokee Black Entertainment, Inc. and Jimmie D. Wheeler,  
Appellees**

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**Appeal from the 189<sup>th</sup> Judicial District  
Harris County, Texas  
Hon. Scot Dollinger**

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**APPELLEES' OBJECTION TO APPELLANT'S SECOND  
MOTION FOR EXTENSION OF TIME  
TO FILE APPELLANT'S BRIEF**

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**TO THE HONORABLE FOURTEENTH COURT OF APPEALS:**

Appellees Cherokee Black Entertainment, Inc. and Jimmie D. Wheeler object to Appellant The Fell Clutch, LLC's second Motion For Extension of Time to File Appellant's Brief ("Motion") for its thorough violation of the rules and its bad faith.

**I. VIOLATIONS OF THE RULES**

The Motion fails to comply with TEX. R. APP. P. 10.5(b)(1)(A) because it does not disclose "the deadline for filing the item in question." That deadline was November 15, 2019, the day the Motion was filed. Neither does it disclose "the number of previous extensions granted regarding the item in question" as required by Rule 10.5(b)(1)(D).

Those failures void the possibility of the claimed extension under TEX. R. APP. P. 38.6(d). That rule only allows for an extension that is based on a "motion complying with Rule 10.5(b)" which the current Motion does not.

Rule 10.1(a)(5) requires motions to contain "a certificate stating that the filing party conferred, or made a reasonable attempt to confer, with all other parties about the merits on the motion and whether those parties oppose the motion."

The Certificate of Conference in the Motion includes "I hereby certify that I attempted to confer with counsel for Appellees today, November 15, 2019... As of the time of this filing, counsel for Appellee's (sic) has not responded."

That statement is misleading. The Fell Clutch’s counsel did not send an email to confer until 9:10 PM on Friday night, November 15, 2019, the day the first extension expired. It included the admission that “I just realized the “briefing deadline” is **today**.” Emphasis in the original. Appellees’ Exhibit 7.

An email at 9:10 PM on a Friday night, the day the Brief was due, as the first extension was expiring, was well after normal business hours. It was not a reasonable attempt to confer.

The Motion was then served just over an hour later at 10:29 PM. It should be denied for its multiple failures to comply with the Texas Rules of Appellate Procedure.

**II. THE NEED FOR AN EXTENSION IS MOOT BECAUSE COURT HAS NO JURISDICTION AND THE APPEAL IS FRIVOLOUS.**

The Clerk’s October 8, 2019, letter said the case would be dismissed because there was no appealable order in the record. The Fell Clutch’s response was filed at 10:03 PM Friday night on the deadline day, October 18, 2019. It did not specify an appealable order. It did not show why the case should not be dismissed.

The Appellees filed their Motion To Dismiss For Lack of Jurisdiction on November 8, 2019. It thoroughly detailed the problems with the appeal that deny this Court jurisdiction to review the order that was referenced in the defective notice of

appeal. The Supplement to that motion, detailing previous sanctions against Evan Stone, the Fell Clutch’s counsel, for failing to follow rules of procedure, ignoring court orders, and abusing subpoena power, was filed on at 12:36 the afternoon of November 15, 2019. All of the above documents are included by reference. They show that there is no jurisdiction to hear the appeal and that it is frivolous under TEX. R. APP. P. 45.

The Motion should be denied because it serves no valid purpose in the case.

**III. THE MOTION, CONSISTENT WITH THE APPELLANT’S OTHER FILINGS, PAYS LITTLE ATTENTION TO DETAIL AND REINFORCES THAT THE APPEAL IS FRIVOLOUS.**

Paragraph 1 in the Motion says “no appealable brief appeared to be on file,” misstating the Clerk’s October 8, 2019, letter that said “[t]he record before this court contains no appealable order.” Appellees’ Exhibit 1.

The cover page of the Motion again misidentifies this Court as “The Fourteenth Supreme Judicial District” and again leaves off any mention of it being in Texas. This was pointed out in Note 1 on Page 4 of the Motion To Dismiss but that notice was apparently either unread or ignored.

This lack of attention to detail enforces the argument that the appeal is frivolous within the meaning of TEX. R. APP. P. 45 and should be dealt with accordingly.

## **PRAYER FOR RELIEF**

For the reasons set forth above, Appellees request that the Court deny The Fell Clutch's second request for an extension of time to file its Brief, require it to respond to the apparent violation of TEX. R. APP. P. 45, and grant any further relief that they maybe entitled to at law and in equity.

Respectfully submitted,

/s/ Ira D. Joffe  
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## **CERTIFICATE OF SERVICE**

I certify that a copy of the above was served by the ECF system effective November 18, 2019.

/s/ Ira Joffe  
Ira Joffe



**Justices**

TRACY CHRISTOPHER  
KEN WISE  
KEVIN JEWELL  
FRANCES BOURLIOT  
JERRY ZIMMERER  
CHARLES A. SPAIN  
MEAGAN HASSAN  
MARGARET "MEG" POISSANT

**Chief Justice**

KEM THOMPSON FROST

**Clerk**

CHRISTOPHER A. PRINE  
PHONE 713-274-2800

# Fourteenth Court of Appeals

301 Fannin, Suite 245  
Houston, Texas 77002

Tuesday, October 8, 2019

Evan Stone  
624 W. University Dr., #386  
Denton, TX 76201-4206  
\* DELIVERED VIA E-MAIL \*

Ira D. Joffe  
6750 West Loop South, Suite 920  
Bellaire, TX 77401  
\* DELIVERED VIA E-MAIL \*

RE: Court of Appeals Number: 14-19-00577-CV  
Trial Court Case Number: 2017-81958

Style: Savir Productions LLC, et al.  
v.  
Cherokee Black Entertainment Inc., and Jimmie D. Wheeler

Counsel:

The record before this court contains no appealable order. The appeal will be dismissed unless any party files a response on or before October 18, 2019, showing meritorious grounds for continuing the appeal.

Sincerely,

/s/ Christopher A. Prine, Clerk

APPELLEE'S  
EXHIBIT 1



ira joffe &lt;ira.joffe@gmail.com&gt;

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**additional motion for extension of time to file brief**

1 message

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**evan** <evan@stonevaughanlaw.com>

Fri, Nov 15, 2019 at 9:10 PM

To: ira joffe &lt;ira.joffe@gmail.com&gt;

Ira,

I see that the Court of Appeals still hasn't ruled on my response to the clerk's note about there being no appealable order so I'm going to request another extension. I would have sent this sooner but my last trial was unexpectedly long (just got out today) and I just realized the "briefing deadline" is **today**. I assume for the main brief? Anyway, do you oppose my request for extension?

Regards,  
Evan F. Stone  
Stone & Vaughan, PLLC  
[624 W. University Dr. #386](#)  
[Denton, TX 76201](#)  
[Office: 469-248-5238](#)  
Fax: 310-756-1201

APPELLEE'S  
EXHIBIT 7