# I.C.A.R. 59. Vexatious Litigation

Idaho Court Administrative Rule 59. Vexatious Litigation.

(a) The Court finds that the actions of persons who habitually, persistently, and without reasonable grounds engage in conduct that:

(1) serves merely to harass or maliciously injure another party in a civil action;

(2) is not warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal or existing law; or

(3) is imposed solely for delay,hinder the effective administration of justice, impose an unacceptable burden on judicial personnel and resources, and impede the normal and essential functioning of the judicial process. Therefore, to allow courts to address this impediment to the proper functioning of the courts while protecting the constitutional right of all individuals to access to the courts, the Court adopts the procedures set forth in this rule.

(b) Litigation, as used in this rule, means any civil action or proceeding, and includes any appeal from an administrative agency, any appeal from the small claims department of the magistrate division, any appeal from the magistrate division to the district court, and any appeal to the Supreme Court.

(c) An administrative judge may enter a prefiling order prohibiting a vexatious litigant from filing any new litigation in the courts of this state pro se without first obtaining leave of a judge of the court where the litigation is proposed to be filed. A district judge or magistrate judge may, on the judgeís own motion or the motion of any party, refer the consideration of whether to enter such an order to the administrative judge. The administrative judge may also consider whether to enter such a prefiling order on his or her own motion or the motion of a party if the litigant with respect to whom the prefiling order is to be considered is a party to an action before the administrative judge.

(d) An administrative judge may find a person to be a vexatious litigant based on a finding that a person has done any of the following:

(1) In the immediately preceding seven-year period the person has commenced, prosecuted or maintained pro se at least three litigations, other than in the small claims department of the magistrate division, that have been finally determined adversely to that person.

(2) After a litigation has been finally determined against the person, the person has repeatedly relitigated or attempted to relitigate, pro se, either

(A) the validity of the determination against the same defendant or defendants as to whom the litigation was finally determined or

(B) the cause of action, claim, controversy, or any of the issues of fact or law, determined or concluded by the final determination against the same defendant or defendants as to whom the litigation was finally determined.

(3) In any litigation while acting pro se, repeatedly files unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary delay.

(4) Has previously been declared to be a vexatious litigant by any state or federal court of record in any action or proceeding.

(e) If the administrative district judge finds that there is a basis to conclude that a person is a vexatious litigant and that a prefiling order should be issued, the administrative district judge shall issue a proposed prefiling order along with the proposed findings supporting the issuance of the prefiling order. The person who would be designated as a vexatious litigant in the proposed order shall then have fourteen (14) days to file a written response to the proposed order and findings. If a response is filed, the administrative district judge may, in his or her discretion, grant a hearing on the proposed order. If no response is filed within fourteen (14) days, or if the administrative district judge concludes following a response and any subsequent hearing that there is a basis for issuing the order, the administrative district judge may issue the prefiling order.

(f) A prefiling order entered by an administrative district judge designating a person as a vexatious litigant may be appealed to the Supreme Court by such person as a matter of right.

(g) The Supreme Court may, on the Courtís own motion or the motion of any party to an appeal, enter a prefiling order prohibiting a vexatious litigant from filing any new litigation in the courts of this state pro se without first obtaining leave of a judge of the court where the litigation is proposed to be filed. If the Supreme Court finds that there is a basis to conclude that a person is a vexatious litigant and that a prefiling order should be issued, the Court shall issue a proposed prefiling order along with the proposed findings supporting the issuance of the prefiling order. The person who would be designated as a vexatious litigant in the proposed order shall then have fourteen (14) days to file a written response to the proposed order and findings. If no response is filed within fourteen (14) days, or if the Supreme Court concludes following a response and any subsequent hearing that there is a basis for issuing the order, the prefiling order may be issued.

(h) Disobedience of a prefiling order entered pursuant to this rule may be punished as a contempt of court.

(i) A presiding judge shall permit the filing of new litigation by a vexatious litigant subject to a prefiling order only if it appears that the litigation has merit and has not been filed for the purpose of harassment or delay.

(j) If a vexatious litigant subject to a prefiling order files any litigation without first obtaining the required leave of a judge to file the litigation, the court may dismiss the action. In addition, any party named in the litigation may file a notice stating that the plaintiff is a vexatious litigant subject to a prefiling order. The filing of such notice shall stay the litigation. The litigation shall be dismissed by the court unless the plaintiff, within fourteen (14) days of the filing of the notice, obtains an order from the presiding judge permitting the litigation to proceed. If the presiding judge issues an order permitting the litigation to proceed, the time for the defendants to answer or respond to the litigation will begin to run when the defendants are served with the order of the presiding judge.

(k) The clerk of the court shall provide a copy of any prefiling order issued pursuant to this rule to the Administrative Director of the Courts, who shall maintain a list of vexatious litigants subject to prefiling orders.

(Adopted April 14, 2011, effective July 1, 2011.)

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