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Changes in the Vexatious Litigant Statute

By Laurel Champion

May 22, 2013

Effective January 1, 2013, the Vexatious Litigant Statute, codified as California Code of Civil Procedure § 391.1, *et seq.* has been modified. Existing law provided that when a defendant filed a motion for the court to order that the plaintiff furnishes security on the basis that the plaintiff is a vexatious litigant as defined in the statute (and is listed by the court), has been expanded to further allow the defendant in the same motion to alternatively request for an order to dismiss the case. In its review, the Court must order the litigation dismissed if the court determines that the litigation has no merit, and has been filed to harass or cause delay.

This section only applies to a pre-determined vexatious litigant, i.e., it is not the standard on a motion to declare plaintiff a vexatious litigant, thus the plaintiff would already be subject to the court's pre-filing order which requires authorization for the litigant to even file the lawsuit while representing himself or herself in *propria persona*, and secondly it also applies to those who were represented by an attorney when the lawsuit was filed but later becomes in *propria persona* after the attorney withdrew.

The statutes are directed at the repeated filing of unmeritorious motions and other papers and engaging in frivolous tactics, failing to comply with orders, and the inability of the justice system to deter pro pers by assessments and sanctions. These misuses of the legal system have been recently on the rise. It is important for defense attorneys to be aware of this statute, and its ability to address the problems created by just such a persistent and obsessive litigant.

Back in 1990 the legislature enacted C.C.P. § 391.7 which provided the courts with an additional means to counter misuse of the system by vexatious litigants. Section 391.7 authorizes a court to enter pre-filing

order that prohibits a vexatious litigant from filing any new litigation in pro per without having first obtained permission from the presiding judge. The litigant is barred from filing the action or proceeding its excess is considered improbable. When the litigant is subject to a pre-filing order, even if the court finds high enough probability of success to allow the litigant to proceed, it may compel the litigant to furnish security as a condition to maintain any action.

Under California Code of Civil Procedure § 391(b), a vexatious litigant is defined as a person who does any of the following:

- In the immediately proceeding seven year period has commenced, prosecuted, or maintained in *propria persona* at least five litigations other than in a small claims court that have been (1) finally determined adversely to the person, or (2) unjustifiably permitted to remain impending at least two years without having been brought to trial or hearing.
- After a litigation has been finally determined against the person, repeatedly re-litigates, attempts to re-litigate in *propria persona*, either (1) the validity of the determination against the same defendant or defendants as to whom the litigation was finally determined, or (2) the cause of action, claim, controversy, or any of the issues affect or law, determined or concluded by the final determination against the same defendant or defendants as to whom the litigation was finally determined.
- In any litigation while actin in *propria persona* 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.

The court may, on the motion of any party, enter a pre-filing order which prohibits a vexatious litigant from filing any new litigation in the courts of this state in *propria persona* without first obtaining leave of the presiding justice or presiding judge of the court whether litigation is proposed to be filed. (C.C.P. § 391.7(a).)

In any litigation pending in any court of this state, at any time until final judgment is entered, a defendant may move the court, upon notice and hearing, for an order requiring the plaintiff to furnish security. The motion must be based upon the ground, and supported by a showing, that the plaintiff is a vexatious litigant and that there is not a reasonable probability that he will prevail in the litigation against the moving defendant. (C.C.P. § 391.1.)

A vexatious litigant once judicially declared, is added to a state wide vexatious litigant list that is maintained by the California Judicial Council pursuant to C.C.P. § 391.7, and available online.



Laurie and I had two very challenging real estate rights issues that we were advised were going to be difficult to prevail on. The RHRC team engaged with us and helped us understand our rights and prevailing position. RHRC were thoughtful advocates for us from the beginning to conclusion of our cases. We feel fortunate to know we will always be able to call on the firm in the future and that they are our legal counsel.

Albert "Rocky" and Laurie Pimental, President of Global Markets and Customers, Seagate Technology

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