

Pro Se Litigants

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Case Study: *Pro Se Party v. Family Business Owners, et al.*

<u>Lawsuits</u>	<u>Defendants</u>	<u>Filings and Proceedings</u>
<i>Pro Se Party v. Family Business Owners, et al.</i> Eighth District Court of Utah July, 2008	9 private individuals and entities	Unjust enrichment and other claims against former business associates and landlords, Consolidated with the Eighth District Court case below
		Eventually dismissed for failure to prosecute
<i>Family Business Owner v. Pro Se Party</i> Eighth District Court of Utah September, 2008	Plaintiff was 1 private individual	Unlawful detainer action against Pro Se Party, Pro Se Party was initially represented by counsel but counsel withdrew
		Court held Pro Se Party a tenant-at-will thus eviction was proper but Pro Se Party could seek damages for value he added to the home
		Filings: “Motion that the Judge in This Case Personally Review the Law Concerning This Case and Personally Write a Memorandum as to What the Law Is, or Recuse Himself, or in the Alternative Grant a Change of Venue,” “Motion that this Court Declare Pursuant to Rule 60(b)(4) the Judgment Void as a Matter of Law, Because Pro Se Party was Denied Due Process.”
		Pro Se Party’s counterclaims were eventually dismissed for failure to prosecute
<i>Pro Se Party v. Family Business Owners, et al.</i> U.S. District Court April, 2009	9 private individuals and entities 3 attorneys who represented the Defendants in the first lawsuit Third District Court of Utah Eighth District Court of Utah	Plaintiff brought § 1983 civil rights and other claims
		Filings: “Case Law Plaintiff Would like Considered,”

		<p>“A Procedural Due Process Case Right on Point,” “Cases on Point That Show the Record Establishes Conspiracy.”</p>
		<p>Court dismissed without prejudice and found defendants were not state actors</p>
		<p>Plaintiff appealed to Tenth Circuit – affirmed</p>
		<p>Plaintiff sought review by U.S. Supreme Court – cert denied</p>
<p><i>Pro Se Party v. Family Business Owners, et al.</i> Third District Court of Utah June, 2011</p>	<p>9 private individuals and entities 3 attorneys Eighth District Court of Utah</p>	<p>Plaintiff sought to collaterally attack the 2008 eviction lawsuit, brought § 1983 civil rights and other claims, and sought sanctions against the opposing attorneys</p>
		<p>Filings: Motion to Set Aside the 2008 Eviction Judgment, Motions for New Trial (2), Motion to Reconsider the Dismissal of the 2009 Lawsuit, Motion to Recuse the Judge, Motion to Strike Defendants’ Memorandum in Opposition, “Motion for Sanctions Pursuant to Rule 11 Against James Ahlstrom and Terry Welch,” “Motion that This Court Sanction All Defendants Including the Attorney Defendants for Claiming the Federal Court Dismissed [Pro Se Party]’s Claims with Prejudice, when in Fact the Federal Court Dismissed without Prejudice,” “Exhibit J in Regards to Plaintiff’s Motion for Summary Judgment: Misrepresentations and Untruths in Defendants’ Opposition to Dismiss,” “Case Law Plaintiff Would Like Considered, in Regards to Defendants’ Motion to Dismiss to Help Expedite the Court’s Decision,” “Detailed Misrepresentations of the Law, and Untruths by Ahlstrom and McClellans’ Memorandum-Opposition to</p>

		Dismiss in Eighth District Court, which Denied [Plaintiff] Due Process and was Fraud Upon the Court,” etc.
		Court refused to collaterally attack 2008 Eviction Lawsuit, refused to sanction attorneys, awarded Defendants attorney fees
		Pro Se Party appealed and the Utah Court of Appeals affirmed
<i>Pro Se Party v. Family Business Owners, et al.</i> Third District Court of Utah November, 2014	1 private individual 1 attorney who previously opposed the Pro Se Party	Plaintiff sought to collaterally attack both the eviction lawsuit and the Third District Court’s decisions in the 2011 lawsuit
		Filings: “Motion that the Above Entitled Court Take Judicial Notice that Defendant has Not Admitted that the Federal Court Dismissed [Pro Se Party]’s Motions Without Prejudice, Which Does Away With His Res Judiciar Claims and His Judicial...”
		Court dismissed without prejudice
<i>Pro Se Party v. Herbert, et al.</i> U.S. District Court February, 2015	Governor Gary Herbert Attorney General Sean Reyes Third District Court of Utah Eighth District Court of Utah	§ 1983 claims for violation of due process
		Magistrate judge recommended dismissal of Plaintiff’s complaint
<i>Pro Se Party v. Family Business Owners, et al.</i> U.S. District Court April, 2016	A judge “in his individual capacity, and in his official capacity for his extra-judicial acts,” Third District Court of Utah, 2 attorneys who previously opposed him, 9 private individuals and entities	Reasserted the same claims he made in prior actions, 18 Causes of Action including: Judicial bias, Attorney-malpractice, Fraud upon the court, “Misrepresentations and deceit by defendant attorneys,” Collusion, Punitive damages, etc.
		Consolidated with the federal case below
<i>Pro Se Party v. Herbert, et al.</i> U.S. District Court January, 2017	Governor Gary Herbert Attorney General Sean Reyes a Utah judge Third District Court of Utah Eighth District Court of Utah	Verified Consolidated Complaint for Denial of Due Process, Unlawful Fourth Amendment Seizure of Pro Se

	Utah Court of Appeals 9 private individuals and entities 3 attorneys John and Jane Does 1-10	Party’s Home, Fraud Upon the Court, and Pendent State Claims (the consolidated complaint is 128 pages, alleges 28 causes of action, lists 507 factual allegations and seeks \$30 million in damages)
		Defendants have moved to dismiss

Vexatious Litigant

State Court

1. Utah Rule of Civil Procedure 83 – Vexatious Litigants
 - a. A person is a vexatious litigant if, acting pro se, he does any of the following:
 - i. Files at least 5 claims for relief within the past 7 years that have been finally determined against him and he does not have at least 2 claims that have been determined in his favor within that time;
 1. small claims actions do not count
 - ii. After a claim or issue of fact or law has been finally determined against him, he attempts on two or more additional occasions to re-litigate the claim, or the issue of fact or law, or the validity of the determination against the prevailing party;
 - iii. Does any one or any combination of the following at least three times:
 1. files unmeritorious pleadings or other papers,
 2. files pleadings or papers that contain redundant, immaterial, impertinent or scandalous matter,
 3. conducts unnecessary or disproportionate discovery, or
 4. engages in tactics that are frivolous or solely to harass or delay; or
 - iv. The person purports to represent or to use the procedures of an unrecognized court
 - b. Rule 83 details the orders that a court may enter when finding a person to be a vexatious litigant
 - i. such orders can restrict filings in both existing and future lawsuits
2. Pro Se Parties
 - a. While Utah courts generally afford some leniency to pro se litigants, Utah courts do not afford this same lenience to pro se litigants who are “hardly...stranger[s] to the legal system”–“[w]hen an individual avails herself of the judicial machinery as a matter of routine, special leniency on the basis of pro se status is manifestly inappropriate.” *Lundahl v. Quinn*, 2003 UT 11, ¶ 4, 67 P.3d 1000; *see also Thomas v. Sibbett*, 925 P.2d 1286, 1286-87 (Utah Ct. App. 1996) (restricting litigant from pro se lawsuits without the permission of the court where the court found that his “filings demonstrate[d] a pattern of abusive conduct”).

West's Utah Code Annotated
State Court Rules
Utah Rules of Civil Procedure (Refs & Annos)
Part XI. General Provisions

Utah Rules of Civil Procedure, Rule 83

RULE 83. VEXATIOUS LITIGANTS

Currentness

(a) Definitions.

(a)(1) The court may find a person to be a “vexatious litigant” if the person, including an attorney acting pro se, without legal representation, does any of the following:

(a)(1)(A) In the immediately preceding seven years, the person has filed at least five claims for relief, other than small claims actions, that have been finally determined against the person, and the person does not have within that time at least two claims, other than small claims actions, that have been finally determined in that person's favor.

(a)(1)(B) After a claim for relief or an issue of fact or law in the claim has been finally determined, the person two or more additional times re-litigates or attempts to re-litigate the claim, the issue of fact or law, or the validity of the determination against the same party in whose favor the claim or issue was determined.

(a)(1)(C) In any action, the person three or more times does any one or any combination of the following:

(a)(1)(C)(i) files unmeritorious pleadings or other papers,

(a)(1)(C)(ii) files pleadings or other papers that contain redundant, immaterial, impertinent or scandalous matter,

(a)(1)(C)(iii) conducts unnecessary discovery or discovery that is not proportional to what is at stake in the litigation, or

(a)(1)(C)(iv) engages in tactics that are frivolous or solely for the purpose of harassment or delay.

(a)(1)(D) The person purports to represent or to use the procedures of a court other than a court of the United States, a court created by the Constitution of the United States or by Congress under the authority of the Constitution of the United States, a tribal court recognized by the United States, a court created by a state or territory of the United States, or a court created by a foreign nation recognized by the United States.

(a)(2) “Claim” and “claim for relief” mean a petition, complaint, counterclaim, cross claim or third-party complaint.

(b) Vexatious litigant orders. The court may, on its own motion or on the motion of any party, enter an order requiring a vexatious litigant to:

(b)(1) furnish security to assure payment of the moving party's reasonable expenses, costs and, if authorized, attorney fees incurred in a pending action;

(b)(2) obtain legal counsel before proceeding in a pending action;

(b)(3) obtain legal counsel before filing any future claim for relief;

(b)(4) abide by a prefiling order requiring the vexatious litigant to obtain leave of the court before filing any paper, pleading, or motion in a pending action;

(b)(5) abide by a prefiling order requiring the vexatious litigant to obtain leave of the court before filing any future claim for relief; or

(b)(6) take any other action reasonably necessary to curb the vexatious litigant's abusive conduct.

(c) Necessary findings and security.

(c)(1) Before entering an order under subparagraph (b), the court must find by clear and convincing evidence that:

(c)(1)(A) the party subject to the order is a vexatious litigant; and

(c)(1)(B) there is no reasonable probability that the vexatious litigant will prevail on the claim.

(c)(2) A preliminary finding that there is no reasonable probability that the vexatious litigant will prevail is not a decision on the ultimate merits of the vexatious litigant's claim.

(c)(3) The court shall identify the amount of the security and the time within which it is to be furnished. If the security is not furnished as ordered, the court shall dismiss the vexatious litigant's claim with prejudice.

(d) Prefiling orders in a pending action.

(d)(1) If a vexatious litigant is subject to a prefiling order in a pending action requiring leave of the court to file any paper, pleading, or motion, the vexatious litigant shall submit any proposed paper, pleading, or motion to the judge assigned to the case and must:

(d)(1)(A) demonstrate that the paper, pleading, or motion is based on a good faith dispute of the facts;

(d)(1)(B) demonstrate that the paper, pleading, or motion is warranted under existing law or a good faith argument for the extension, modification, or reversal of existing law;

(d)(1)(C) include an oath, affirmation or declaration under criminal penalty that the proposed paper, pleading or motion is not filed for the purpose of harassment or delay and contains no redundant, immaterial, impertinent or scandalous matter;

(d)(2) A prefiling order in a pending action shall be effective until a final determination of the action on appeal, unless otherwise ordered by the court.

(d)(3) After a prefiling order has been effective in a pending action for one year, the person subject to the prefiling order may move to have the order vacated. The motion shall be decided by the judge to whom the pending action is assigned. In granting the motion, the judge may impose any other vexatious litigant orders permitted in paragraph (b).

(d)(4) All papers, pleadings, and motions filed by a vexatious litigant subject to a prefiling order under this paragraph (d) shall include a judicial order authorizing the filing and any required security. If the order or security is not included, the clerk or court shall reject the paper, pleading, or motion.

(e) Prefiling orders as to future claims.

(e)(1) A vexatious litigant subject to a prefiling order restricting the filing of future claims shall, before filing, obtain an order authorizing the vexatious litigant to file the claim. The presiding judge of the judicial district in which the claim is to be filed shall decide the application. In granting an application, the presiding judge may impose in the pending action any of the vexatious litigant orders permitted under paragraph (b).

(e)(2) To obtain an order under paragraph (e)(1), the vexatious litigant's application must:

(e)(2)(A) demonstrate that the claim is based on a good faith dispute of the facts;

(e)(2)(B) demonstrate that the claim is warranted under existing law or a good faith argument for the extension, modification, or reversal of existing law;

(e)(2)(C) include an oath, affirmation, or declaration under criminal penalty that the proposed claim is not filed for the purpose of harassment or delay and contains no redundant, immaterial, impertinent or scandalous matter;

(e)(2)(D) include a copy of the proposed petition, complaint, counterclaim, cross-claim, or third party complaint; and

(e)(2)(E) include the court name and case number of all claims that the applicant has filed against each party within the preceding seven years and the disposition of each claim.

(e)(3) A pre-filing order limiting the filing of future claims is effective indefinitely unless the court orders a shorter period.

(e)(4) After five years a person subject to a pre-filing order limiting the filing of future claims may file a motion to vacate the order. The motion shall be filed in the same judicial district from which the order entered and be decided by the presiding judge of that district.

(e)(5) A claim filed by a vexatious litigant subject to a pre-filing order under this paragraph (e) shall include an order authorizing the filing and any required security. If the order or security is not included, the clerk of court shall reject the filing.

(f) Notice of vexatious litigant orders.

(f)(1) The clerks of court shall notify the Administrative Office of the Courts that a pre-filing order has been entered or vacated.

(f)(2) The Administrative Office of the Courts shall disseminate to the clerks of court a list of vexatious litigants subject to a pre-filing order.

(g) Statute of limitations or time for filing tolled. Any applicable statute of limitations or time in which the person is required to take any action is tolled until 7 days after notice of the decision on the motion or application for authorization to file.

(h) Contempt sanctions. Disobedience by a vexatious litigant of a pre-filing order may be punished as contempt of court.

(i) Other authority. This rule does not affect the authority of the court under other statutes and rules or the inherent authority of the court.

Credits

[Adopted effective November 1, 2012.]

Rules Civ. Proc., Rule 83, UT R RCP Rule 83

Current with amendments received through September 15, 2016.

Federal Court

1. All Writs Act – 28 U.S.C. § 1651(a)
 - a. “The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.”
 - b. Courts have interpreted this act to vest federal courts with discretion to enjoin certain litigants from engaging in wasteful litigation.
 - c. Under the All Writs Act, district courts “have the inherent power to file restrictive pre-filing orders against vexatious litigants with abusive and lengthy histories of litigation.” *Weissman v. Quail Lodge Inc.*, 179 F.3d 1194, 1197 (9th Cir. 1999).
 - d. Tenth Circuit courts may restrict a vexatious litigant’s ability to file when:
 - i. the Court sets forth the litigant’s lengthy and abusive history;
 - ii. the Court provides guidelines as to what the litigant must do to obtain permission to file an action; and
 - iii. the litigant receives notice and an opportunity to oppose the Court’s order before it is instituted.
 - iv. *Ysais v. Richardson*, 603 F.3d 1175 (10th Cir. 2010); *Werner v. State of Utah*, 32 F.3d 1446 (10th Cir. 1994); *Cutner v. Hopkins*, 795 F.2d 900, 901 (10th Cir. 1986)
 - e. “Vexatious litigant” defined as an individual with an “abusive and lengthy history” with the Court. *Tripati v. Beaman*, 878 F.2d 351, 352 (10th Cir. 1989)
 - f. Example of a vexatious litigant order – the Tenth Circuit held that to “obtain permission to proceed pro se, petitioner must take the following steps:
 - i. File a petition with the clerk of this court requesting leave to file a pro se action;
 - ii. Include in the petition the following information:
 1. A list of all lawsuits currently pending or filed previously with this court, including the name, number, and citation, if applicable, of each case, and the current status or disposition of the appeal or original proceeding; and
 2. A list apprising this court of all outstanding injunctions or orders limiting petitioner’s access to federal court, including orders and injunctions requiring petitioner to seek leave to file matters pro se or requiring him to be represented by an attorney, including the name, number, and citation, if applicable, of all such orders or injunctions; and
 - iii. File with the clerk a notarized affidavit, in proper legal form, which recites the issues he seeks to present, including a short discussion of the legal basis asserted for modifying the district court’s decision, and describing with particularity the order being challenged. The affidavit must also certify, to the best of petitioner’s knowledge, that the legal arguments being raised are not frivolous or made in bad faith, that they are warranted by existing law or a good faith argument for the extension, modification, or reversal of

existing law, that the appeal is not interposed for any improper purpose such as delay or to needlessly increase the cost of litigation, and that he will comply with all appellate and local rules of this court.”

1. *Werner v. State of Utah*, 32 F.3d 1446, 1449 (10th Cir. 1994)