Vexatious Litigants:

The Evolution of What to do About Them

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Vexatious litigants have been around for a long time; Nevada law has developed means of addressing and containing them.

HISTORY OF VEXATIOUS LITIGANTS LISTS

The concept of vexatious litigation entered into law in 1896 with the Vexatious Actions Act in England, responding primarily to one person, Alexander Chaffers, who filed numerous actions against leading members of Victorian society. When costs were awarded against him, he failed to pay.

Australia followed suit in 1927, again prompted by one abusive individual. The first vexatious litigant law in the U.S. was enacted in California in 1963 "to address problems 'created by the persistent and obsessive litigant, who has constantly pending a number of groundless actions.'"[1]

The legislation identified as "vexatious" a litigant who maintained at least five unsuccessful civil actions in *proper person* within the past seven years, or repeatedly relitigated the same claim against the same defendant after a final adverse determination. It established procedures requiring the posting of security by the litigant, which if not done, resulted in dismissal of the action.

Forms and sample drafts on the internet have made harassment by legal filings much easier, leading to more of it. Vexatious litigants voluntarily in proper person can inflict significant economic and time-wasting harm on both the judicial system and opposing parties.

By 2007, five U.S. states (California, Florida, Hawaii, Ohio, and Texas) had passed similar legislation. Others, like Nevada, proceeded by court rule. All such rules and statutes were "to prevent abuse of the judicial system by those persons who persistently and habitually file lawsuits without reasonable grounds, or who otherwise engage in frivolous conduct in the courts."[2]

THE NEVADA RULE

Nevada courts have long-identified vexatious litigants and have issued what were known as *Goad* [3] orders, requiring such litigants to obtain court permission to file any documents that an opposing party was required to answer.

Goad v. Rollins presented the federal court with a "relentless" litigant who fought contempt at every turn, even trying to sue the judge who found him in contempt (and his bailiff),

the jailors who held him, and the friend who had loaned his ex-wife the filing fee to get to court. Eventually, his case was dismissed with prejudice, monetary sanctions in favor of all those he sued were assessed against him, and he was forbidden from filing anything on any subject involving the underlying state claim without permission in advance from the district or appellate courts.[4]

Goad went on, and on, and the cases bounced up and down the federal courts for years. In a third appeal in the Federal Circuit, the court reviewed Goad's brief, and then agreed with the U.S. that Goad's appeal was frivolous. The court dismissed the appeal and then stated that "we deem it proper to impose another sanction imposed by other courts, namely that Goad may not file any additional appeal or action in this court without first seeking leave of this court to do so."[5]

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The problem with *Goad* orders is that they are usually only effective in a specific court for a specific case.

In 2012, the Nevada Supreme Court established SCR 9.5, creating a centralized list of vexatious litigants as declared "by any court, at any level of jurisdiction," and available to all other courts.

The list allows any court in any jurisdiction in the state to know of and to take precautionary steps to keep that litigant from wasting judicial resources or causing the subject of their vexatious filings additional costs to respond. This list ensures that such litigants can't run from jurisdiction to jurisdiction or court to court still wreaking havoc.

An application to have a litigant placed on that list requires making a showing of vexatious filings, usually as to both number and baselessness. In *Jordan v. State of Nevada*,[6] the Nevada Supreme Court held that "the district court did not abuse its discretion when it declared Luckett a vexatious litigant and limited his court access accordingly." The opinion set out four factors for Nevada courts to consider when imposing court access restrictions:

- First, the litigant must be provided reasonable notice of an opportunity to oppose a restrictive order's issuance.
- Second, the court must create an adequate record for review, including a list of all the cases and documents, or an explanation of the reasons, that led it to conclude that a restrictive order was needed to curb repetitive or abusive activities.
- Third, the court must make substantive findings as to the frivolous or harassing nature of the litigant's actions. The restrictive order cannot issue merely upon a showing of litigiousness. The litigant's filings must not only be repetitive or abusive, but also be without arguable factual or legal basis, or filed with the intent to harass.
- Fourth, the order must be narrowly drawn to address the specific problem encountered.

The *Jordan* case requires that even when a litigant's misuse of the legal system is pervasive, a restrictive order that broadly restricts a litigant from filing "any" new actions without permission should be narrowly drawn, but Nevada courts "possess courts inherent powers of equity and of control over the exercise of their jurisdiction. … these authorities bestow upon Nevada courts the power to permanently restrict a litigant's right to access the courts."

LEVELS OF RESTRICTIONS

Typically, a first order would be the least restrictive – a *Goad* order requiring the abusive litigant to request and obtain permission from the court before the opposing party was required to respond to any further filings.

When that proves insufficient, a "pre-filing order" can prohibit the abusive litigant from filing anything in the case at issue, or any ***other*** litigation in Nevada in *pro per*, without first obtaining permission from the presiding justice or presiding judge of the court where the new filing is intended. A vexatious litigant who disobeys such a pre-filing order may be punished for contempt of court.

The judge of the court applied to should only permit the filing of additional litigation if it appears meritorious and not being filed for the purpose of harassment or delay; a court could condition the filing of the new litigation upon the furnishing of security for the benefit of the defendant, which is simpler and more efficient than seeking collection of fees after responding to a motion that should not have been filed.

Parties and counsel confronted by abusive litigants have been given the tools necessary to protect themselves from "relentless" litigants seeking to misuse the court system to inflict harm for its own sake. When a restrictive order is needed to curb repetitive or abusive activities, it can be documented, applied for, and obtained, at least minimizing the damage done.

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ENDNOTES:

1. *In re R.H.,* 170 Cal. App. 4th 678, 688 (Ct. App. 2009).
2. Annot., Validity, Construction and Application of State Vexatious Litigant Statutes, 45 ALR 6th 493, 514 § 2 (2009).
3. *Goad v, Rollins,* 921 F.2d 69 (5th Cir.), *cert. denied,* 500 U.S. 905, 111 S. Ct. 1684 (1991).
4. *Id.; see also Castro v. United States,* 775 F.2d 399, 408 (1st Cir. 1985); *Pavilonis v. King,* 626 F.2d 1075, 1079 (1st Cir.), *cert. denied* 449 U.S. 829, 66 L. Ed. 2d 34, 101 S. Ct. 96 (1980) (Federal courts plainly possess discretionary powers to regulate the conduct of abusive litigants).
5. *Goad v. United States,* 2000 U.S. App. LEXIS 20189 (No. 00-5063, July 21, 2000).
6. *Jordan v. State of Nevada,* 121 Nev. 44, 100 P.3d 30 (2005).