

**Presenter Bios:**

*Steven B. Lesser, Standing Committee on Professionalism*



Mr. Lesser chairs Becker & Poliakoff's national Construction Law and Litigation practice group. Mr. Lesser is Board Certified in construction law by the Florida Bar and devotes his practice exclusively to construction law and litigation, including governmental construction claims and defense and hotel/condominium disputes. He is a Fellow of the American College of Construction Lawyers and in 2022, he was elected to the Board of Governors for a 3-year term. He has received several distinguished awards from the Florida Bar and American Bar Association (ABA) relative to his work in the construction industry. In 2019, he was the recipient of the ABA Cornerstone Award that honors a member of the Forum who has rendered long-term exceptional service to the construction industry, to the public, and to the legal profession.

*David A. Rowland, General Counsel 13<sup>th</sup> Judicial Circuit of Florida*



Mr. Rowland has served as general counsel to the Thirteenth Judicial Circuit for more than 29 years. His primary duties include rendering legal advice and counsel to the chief judge, court administrator and the other 67 judges on matters of ethics, trial procedure, case management, assignments and judicial administration. He has a host of other responsibilities including managing the court's legal department consisting of twenty-one attorneys, one paralegal specialist and various legal interns. Mr. Rowland has been the recipient of several awards in the Thirteenth Judicial Circuit, including the Employee of the Year Award in 2013. Mr. Rowland has served as a working member on the following Committees of The Florida Bar: Rules of Judicial Administration, 1999 – 2005, and 2016 – 2019; Media and Communications Law, 2005 – 2006; and Judicial Administration and Evaluation, 2007 – 2013. Mr. Rowland is a member of the Hillsborough County Bar Association and the National Association of Court Managers. Since 1991, he has been a member of the Florida Board of Bar Examiners' Reader Program, a member of the Florida Board of Bar Examiners from 2007 to 2012, chair of the Multistate Performance Test Task Force from 2008 to 2011, and has continued his service to the Bar Examiners as an emeritus member since 2012. Mr. Rowland graduated *summa cum laude* from Berry College in Rome, Georgia with a Bachelor of Science degree in political science and graduated *cum laude* from Stetson University College of Law with a juris doctor degree. He has been a member in good standing of The Florida Bar for more than 33 years.

*Judge Monique Richardson, Leon County Court*



Judge Richardson serves on the Leon County Court in the Second Judicial Circuit of Florida. She was elected to the bench in 2018. Prior to being elected, she managed her own private solo practice and was managing counsel for Legal Services of North Florida. She also previously served as a public defender in Pinellas County. She received her B.S. in Business Administration from Florida A&M University in 1993, her J.D. from University of Florida, Fredric G. Levin College of Law in 1998. In 2022, Judge Richardson served on the Supreme Court of Florida's Workgroup on Sanctions for Vexatious and Sham Litigation.



Ms. Davis graduated from FSU Law School in 2007 and has spent the vast majority of her 16-year career at the Attorney General’s Office and at the Department of State representing governmental officials and agencies in litigation of constitutional or statewide concern. At the Attorney General’s Office, Ms. Davis has worked on the BP Oil Spill, defended the constitutionality of various statutes, and even represented The Florida Bar and a few judges. At the Department of State, where I currently serve as Chief Deputy General Counsel, she has advised and defended the Division of Elections for five election cycles, and also defended the constitutionality of Florida’s election laws and the placement of candidates on the ballot, including Presidential candidates and Florida Supreme Court

Justices. This kind of litigation has frequently placed her at odds with *pro se* litigants. They are often highly professional and easy to work with but, other times, *pro se* litigants are “vexatious.” Ms. Davis is excited to share with all of you here today her experiences with and knowledge about vexatious litigation.

*Paul R. Regensdorf, Sole Practitioner*



Mr. Regensdorf is an experienced Civil Trial and Appellate Attorney from Palm City, FL with a proven history of working in the law practice industry, with Judges throughout Florida, other lawyers, and numerous satisfied clients. He is frequently retained today to consult on trial and appellate matters, and as an expert witness in a variety of substantive trial, procedural, and technological areas. Those matters often involve a wide range of issues involving attorneys’ fees, from seeking or resisting attorneys’ fees in fee-shifting cases, to client disputes, and increasingly to charging lien matters between attorneys. Professional and ethics issues, as well as standard of care issues are common as well. Mr. Regensdorf is a

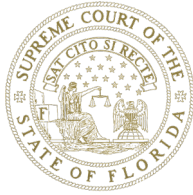
strong legal professional, having tried numerous complex jury trials to successful conclusion, and having handled hundreds of appellate matters in every state and federal court in Florida.

*Chardean M. Hill, Chair Standing Committee on Professionalism*



Chardean Hill is a sole-practitioner and owner of CMH Law & Dispute Resolution, LLC located in Brandon, Florida. She opened her own firm in May 2019, where her focus is on alternative dispute resolution, primarily mediations and arbitrations. She also does legal ethics defense and risk management for Florida lawyers and represents applicants for admission before the Florida Board of Bar Examiners. She is a Florida Supreme Court Certified Circuit Civil, Family, and County Court Mediator and a Florida Supreme Court Qualified Arbitrator. She has mediated or arbitrated disputes involving small claims, landlord-tenant, contract & indebtedness, insurance subrogation claims, commercial

evictions, personal injury, probate, guardianship, first-party and third-party insurance claims, and hurricane damage. She is also a pro bono program mediator and arbitrator for The Florida Bar’s Grievance Mediation and Fee Arbitration Program. She also lectures on a variety of ethics topics for various local bar associations and law schools. Prior to opening her own firm, she worked for The Florida Bar for about 14 years, mostly in Lawyer Regulation handling attorney grievance proceedings. Currently, she serves as a Board Member of the Ferguson-White American Inn of Court, on the Executive Council of The Florida Bar’s Alternative Dispute Resolution Section, and volunteers her time as Youth Director for girls ages 6-18 in one of her civic organizations. She received her Juris Doctor from St. Thomas University, her Master of Science in Human Resource Management from the H. Wayne Huizenga School of Business and Entrepreneurship at Nova Southeastern University, and her Bachelor of Science in Business Administration with a minor in Communications from the University of South Florida.



# Supreme Court of Florida


500 South Duval Street  
Tallahassee, Florida 32399-1925

CARLOS G. MUÑIZ  
CHIEF JUSTICE  
CHARLES T. CANADY  
JORGE LABARGA  
JOHN D. COURIEL  
JAMIE R. GROSSHANS  
RENATHA S. FRANCIS  
MEREDITH L. SASSO  
JUSTICES

JOHN A. TOMASINO  
CLERK OF COURT

SILVESTER DAWSON  
MARSHAL

## MEMORANDUM

**TO:** Chief Judges of the Trial Courts 

**FROM:** Chief Justice Carlos G. Muñiz

**DATE:** July 18, 2023

**SUBJECT:** Vexatious Litigant Template Orders

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I am writing to inform you of a new requirement to utilize template orders regarding vexatious litigants.

For historical information, the Workgroup on Sanctions for Vexatious and Sham Litigation submitted a report and recommendations to the Court regarding vexatious litigants. One of those recommendations was to ask the Florida Courts Technology Commission (FCTC) to determine: (1) How clerk case maintenance systems and court application processing systems can be modified so that filings from pro se litigants who are prohibited by court order from further pro se filings are automatically flagged and rejected; and (2) How to establish a statewide database searchable by judges, clerks, attorneys, and litigants that lists all pro se litigants subject to such court orders and, if feasible, that alerts courts and clerks in other jurisdictions when such litigant files in their jurisdiction, all with the purpose of assisting stakeholders in

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identifying pro se litigants who may be subject to filing restrictions as a vexatious litigant.

In response to recommendations from the Workgroup, the FCTC developed Order Finding a Party to be a Vexatious Litigant and Imposing Sanctions, and Order Directing a Party to Show Cause Why They Should Not Be Declared a Vexatious Litigant Pursuant to Section 68.093, Fla. Stat.

Because the judiciary must identify vexatious litigants timely to deliver justice effectively and efficiently, the FCTC will include a requirement in the next version of the Functional Requirements for CAPS to have the vexatious litigant template orders linked in CAPS for use by all judges. This will improve the consistency of orders from all courts in all cases while moving forward toward the branch's initiative for statewide standardization.

The Court determined that creating a searchable statewide database for automatically flagging and rejecting filings is inefficient and believes a more practical method is to utilize the registry currently maintained by the Clerk of the Supreme Court, pursuant to §68.093(6) Fla. Stat.

Furthermore, the Court expressed interest in evaluating whether the definition of "vexatious litigant" in Section 68.093, Fla. Stat., is underinclusive in that it omits categories of litigants who abuse the judicial process and unduly consume limited resources. As a result, the Court will direct the Judicial Management Council review the definition and, if warranted, include the issue in the branch's legislative agenda.

The Court appreciates your ongoing efforts to improve case management. Correctly identifying vexatious litigants in a timely manner could reduce judicial workload by preventing the filing of vexatious and sham litigation, which will save legal fees, costs, and time for those who are targets of such litigation.

Chief Judges of the Trial Courts

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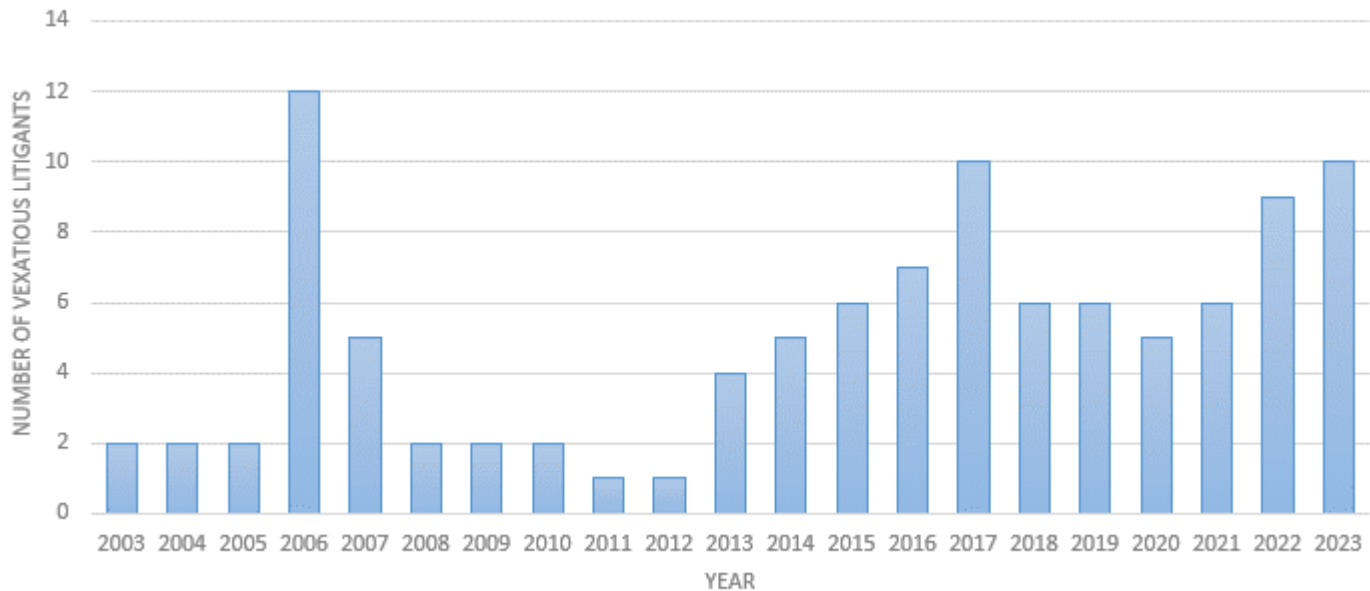
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Attachments

cc: The Honorable Lisa T. Munyon, Chair, Florida Courts  
Technology Commission  
The Honorable Carol-Lisa Phillips, Chair, Workgroup on  
Sanctions for Vexatious and Sham Litigation  
Allison (Ali) C. Sackett, State Courts Administrator  
Roosevelt Sawyer, Jr., Chief Information Officer, Office of the  
State Courts Administrator  
John A. Tomasino, Clerk, Supreme Court of Florida

## Vexatious Litigants



**IN THE THIRTEENTH JUDICIAL CIRCUIT  
HILLSBOROUGH COUNTY, FLORIDA**

**ADMINISTRATIVE ORDER S-2017-038**

**FRIVOLOUS LITIGATION SANCTION ORDERS<sup>1</sup>**

Access to Florida state courts is a right enjoyed by all persons under Article V, section 21 of the Florida Constitution, regardless of legal representation. When a person abuses his or her right to access to the courts however, the courts have an obligation to balance the litigant's right of access and the need of the courts to prevent repetitious and frivolous filings.

The frequent frivolous filing of meritless cases has the detrimental effect of consuming an inordinate amount of judicial time and resources – time and resources that therefore are not devoted to resolving potentially meritorious claims presented in other cases before the court.

Courts have the inherent authority to prohibit the deliberate and continual filing of frivolous actions that demonstrate an egregious abuse of the judicial process and ultimately interfere with the timely administration of justice. See generally *Bolton v. SE Property Holdings, LLC*, 127 So. 3d 746 (Fla. 1st DCA 2013); *Delgado v. Hearn*, 805 So. 2d 1017 (Fla. 2nd DCA 2001); and *State v. Spencer*, 751 So. 2d 47 (Fla. 1999).

The entry of this administrative order is necessary to protect the constitutional right of access to the courts for *all* litigants and permit the court to devote its finite resources to the consideration of legitimate claims filed in the Thirteenth Judicial Circuit.

By the power vested in the chief judge under article V, section 2(d), Florida Constitution; section 43.26, Florida Statutes; and Florida Rules of Judicial Administration 2.215(b)(2), it is ORDERED:

**1. Injunctive Sanction Order Defined**

For purposes of this administrative order, the term *injunctive sanction order*

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<sup>1</sup> This administrative order applies only to injunctive sanction orders issued under the court's inherent powers through case law; it does not apply to pre-filing orders issued under the Florida Vexatious Litigation Law (§68.093, Florida Statutes).

means an order – based on the court’s detailed findings after notice and an opportunity to respond<sup>2</sup> that a litigant has egregiously abused the judicial process by filing frivolous documents – enjoining the litigant from filing further documents with the court or with the clerk unless the document is signed by a member in good standing of The Florida Bar.

**2. Necessary Provisions in Injunctive Sanction Orders**

All injunctive sanction orders should include provisions that allow the Clerk of the Court (clerk) to (A) place any submissions received by the litigant after entry of the injunctive sanction order into an inactive file; and (B) accept from the litigant, file, and submit to the appellate court a notice of appeal. *G.W. v. Rushing*, 22 So. 3d 819 (Fla. 2d DCA 2009).

**3. Injunctive Sanction Orders Issued in the Circuit Civil Division**

When a judge presiding in a Circuit Civil Division enters an injunctive sanction order, the clerk is directed to not only apply the injunctive sanction order to the specific lettered division of the presiding judge who entered the order, but to also apply the injunctive sanction order to any new action subsequently filed by that litigant, regardless of what division of the Circuit Civil Division the new case would be assigned, unless the judge’s injunctive sanction order specifically limits the order’s application to the individual case.

**4. Injunctive Sanction Orders Issued in the County Civil Division**

When a judge presiding in a County Civil Division enters an injunctive sanction order, the clerk is directed to not only apply the injunctive sanction order to the specific lettered division of the presiding judge who entered the order, but to also apply the injunctive sanction order to any new action subsequently filed by that litigant, regardless of what division of the County Civil Division the new case would be assigned, unless the judge’s injunctive sanction order specifically limits the order’s application to the individual case.

**5. Copies of Injunctive Sanction Orders Forwarded to Chief Judge**

Upon issuing an injunctive sanction order, the issuing judge must forward a copy of the injunctive sanction order to the chief judge electronically to enable the chief judge to distribute the injunctive sanction order to the judges of the affected division(s).

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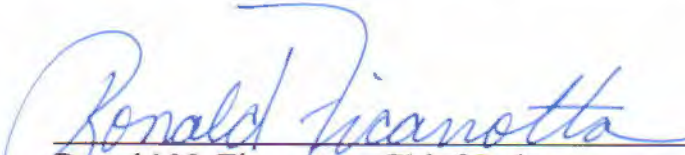
<sup>2</sup> See *Bolton v. SE Property Holdings, LLC*, 127 So. 3d 746 (Fla. 1st DCA 2013).



**6. Effective Date**

This administrative order is effective immediately and applies to all injunctive sanction orders issued prospectively.

ENTERED in Tampa, Hillsborough County, Florida on June 5, 2017.

  
Ronald N. Ficarrotta, Chief Judge

Original to: Pat Frank, Clerk of the Circuit Court

Copy to: All Circuit Civil and County Civil Division Judges  
Gina Justice, Court Administrator  
Hillsborough County Bar Association

**ORDER DIRECTING {PARTY}  
TO SHOW CAUSE WHY {PARTY}  
SHOULD NOT BE DECLARED A VEXATIOUS LITIGANT  
PURSUANT TO SECTION 68.093, FLORIDA STATUTES**

The Court directs {Party} to show cause within 20 days of the date of this Order why the Court should not declare {Party} to be a vexatious litigant pursuant to section 68.093, Florida Statutes. Specifically, it appears that {Party} qualifies as a vexatious litigant in that {Party}: (*must check one*)

- previously was found to be a vexatious litigant pursuant to this section in case number {identify case number} in {identify court}; see § 68.093(2)(d)2., Fla. Stat., or
  
- within the immediate preceding 5-year period, commenced, prosecuted, or maintained, while a self-represented litigant, five or more civil actions in any court in this state which have been finally and adversely determined (i.e., no appeal pending) against {Party}. See § 68.093(2)(d)1., Fla. Stat. (*Note: “civil action” is defined by section 68.093(2)(a) to include those actions governed by the Florida Rules of Civil Procedure or Florida Probate Rules but excludes an action governed by the Florida Family Law Rules or the Florida Small Claims Rules.*)
  1. {identity of case #1}.
  2. {identity of case #2}.
  3. {identity of case #3}.
  4. {identity of case #4}.
  5. {identity of case #5}.

Failure to respond as directed or failing to explain why the above cases do not qualify {Party} as a vexatious litigant could result in the Court precluding {Party}, as a self-represented litigant, from filing future civil actions in this Judicial Circuit.

**ORDER FINDING {PARTY}  
TO BE A VEXATIOUS LITIGANT AND IMPOSING SANCTIONS**

On: *(must check one)*

- the Court's own motion following a show cause order [DIN \_\_\_]; or
- {Movant's} motion to declare {Party} a vexatious litigant [DIN \_\_\_];

The Court finds that {Party} qualified as a vexatious litigant pursuant to section 68.093, Florida Statutes, in that {Party}: *(must check one)*

- previously was found to be a vexatious litigant pursuant to this section in case number {identify case number} in {identify court}; see § 68.093(2)(d)2., Fla. Stat., or
- within the immediate preceding 5-year period, commenced, prosecuted, or maintained, while a self-represented litigant, five or more civil actions in any court in this state (excluding actions governed by the Florida Small Claims Rules or the Florida Family Law Rules) which have been finally and adversely determined (i.e., no appeal pending) against {Party}. See § 68.093(2)(d)1., Fla. Stat.

1. {identity of case #1}.
2. {identity of case #2}.
3. {identity of case #3}.
4. {identity of case #4}.
5. {identity of case #5}.

The Court further finds that {Party's} actions have substantially interfered with the orderly process of judicial administration due to the judicial and clerical labor necessary to address.

The Court further finds that {Party} has the following identifying information: *(please identify as much known descriptive information, if any, e.g., birth date, social security number, sex, email address, etc.)*

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IT IS THEREFORE ORDERED AND ADJUDGED:

1. {Party} is declared to be a vexatious litigant pursuant to section 69.093(2)(d), Florida Statutes.

2. The Court imposes the following sanction(s): *(check all that apply)*

Within \_\_\_\_ days of the date of this Order, {Party} **in this case** shall furnish security in the amount of \$\_\_\_\_\_ by posting a bond with the Clerk or depositing funds in the Registry of the Court to ensure payment to {specified defendant} in an amount reasonably sufficient to cover the defendant's anticipated, reasonable expenses of litigation, including attorney fees and taxable costs. Failure to comply with this directive may result in the Court dismissing that defendant with prejudice. See § 68.093(3), Fla. Stat.

{Party} is prohibited, as a self-represented litigant, from filing **any new civil action** in this Judicial Circuit without obtaining prior permission from the circuit civil administrative judge for the County in which {Party} seeks to file the new civil action. If the County does not have such an administrative judge, application must be made to the chief judge of the circuit. For purposes of this directive, "civil action" is defined by section 68.093(2)(a) to mean an action governed by the Florida Rules of Civil Procedure or Florida Probate Rules but excludes an action governed by the Florida Family Law Rules or the Florida Small Claims Rules. Nothing in this Order prohibits an attorney in good standing with The Florida Bar from filing a civil action on behalf of {Party}. See § 68.093(4), Fla. Stat.

Additional sanctions: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
See § 68.093(7), Fla. Stat.

3. If the Court prohibited {Party}, as a self-represented litigant, from filing any new civil action:

a. The Clerk(s) of this Court is/are directed not to docket any future civil action {Party} attempts to file as a self-represented litigant in any Court within this Judicial Circuit. Upon any attempt by {Party} to do so, and if the Clerk is

positively able to identify the filer as being subject to this Order, the Clerk will reject the filing. If the Clerk is not able to positively identify the filer as being subject to this Order, the Clerk shall notify the circuit civil administrative judge for that county, and if none, the chief judge. If the Clerk later discovers the Clerk docketed a new civil action covered by this Order, the Clerk shall notify the circuit civil administrative judge for that county, and if none, the chief judge. This provision does not limit a defendant's ability to file contemplated by section 68.093(5).

- b. If {Party}, as a self-represented litigant, seeks to file a new civil action, {Party} shall file a motion with the Clerk of this Court entitled "Vexatious Litigant's Motion for Permission to File A New Civil Action" and include a copy of this Order. The Clerk shall send that motion together with the proposed complaint and this Order to the circuit civil administrative judge for that county, and if none, the chief judge. The administrative judge or chief judge may condition the filing of the proposed action upon the furnishing of security as defined by section 68.093(2)(c). See § 68.093(4), Fla. Stat.

4. The relief provided in this Order is cumulative to any other relief or remedy allowed by law. See § 68.093(7), Fla. Stat. {Party's} violation of this Order is punishable by contempt of court.

5. Pursuant to section 68.093(6), the Clerk of this Court is directed to provide a copy of this Order to the Clerk of the Supreme Court of Florida via email at [tomasino@flcourts.org](mailto:tomasino@flcourts.org) for inclusion on the registry of vexatious litigants.

# Florida's Vexatious Litigant Statute: Pitfalls and Prospects for Managing the Vexing Litigant

By: Lyndsey E. Siara<sup>i</sup> and Andrea K. Holder<sup>ii iii</sup>

As practitioners, we occasionally face situations that seem unfair to our clients. We sometimes see claims or motions that are so obviously lacking merit that reading them leaves us astounded that they have been filed in the first place. What can be done on behalf of your client when the opposing party repeatedly brings meritless cases or files baseless motions? Vast amounts of time and money are wasted addressing these filings, and the frustrations of both lawyer and client can intensify. Not only is this a problem for the practitioner, but for courts too. Judges and their staff, as well as other court personnel can easily spend hundreds of hours managing the voluminous record the vexatious or frivolous litigant creates; it is the antithesis of judicial economy.

When an attorney is the source of the trouble, in addition to using the methods to be discussed in this article, there may also be a reportable professionalism offense under Florida Rule of Judicial Administration 2.515, among others. More often than not, however, this scenario involves a *pro se* litigant.<sup>1</sup> So what can a practitioner do?

The Vexatious Litigant Statute may offer relief. But before you say “why, yes, this litigant is the very definition of ‘vexatious,’” you should be aware of several pitfalls to avoid to determine whether the statute can be invoked. And remember that a *vexing litigant* may not qualify as a *vexatious litigant*. If the Vexatious Litigant Statute is not available for your case, there may be another way to curb the problematic conduct. This article explores the nuances of the statute and provides a fall back if the statute is inapplicable to your problem litigant.

## Vexatious Litigation

What does “vexatious” really mean? Merriam-Webster defines it as “intend[ing] to harass.” In law, we use the term to describe an action brought without sufficient grounds for success; one which is brought purely to cause frustration to the opposition.

Florida's Vexatious Litigant Law, found in Section 68.093, Florida Statutes, is one tool that can be used to control “vexatious” litigants and reduce the burden they place on the parties and the court.<sup>2</sup> The allure of the Vexatious Litigant Law is apparent. Yet the details of this statute can leave the practitioner navigating a minefield. Here, we aim to highlight the details of the statute, and provide a useful framework from which the practitioner can evaluate whether to pursue sanctions under this statute. Follow the checklist below for suggestions on how to present a procedurally-

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<sup>i</sup> Lyndsey Siara is a Senior Staff Attorney at the Thirteenth Judicial Circuit in Tampa, Florida. She assists the judges of the Circuit Civil Division with research and writing.

<sup>ii</sup> Andrea Holder is an attorney with Rocke, McLean & Sbar P.A. in Tampa, Florida. Her practice areas include commercial litigation, real estate litigation, business torts and noncompete agreements.

<sup>iii</sup> The authors would like to thank Ari Fitzgerald, Senior Staff Attorney at the Thirteenth Judicial Circuit, for her invaluable edits.

and substantively-correct motion, and consider an alternative approach if the statutory parameters are unmet.

### **What is a “vexatious litigant?”**

Section 68.093 defines a “vexatious litigant” as a person who, in the immediately preceding five-year period, has commenced, prosecuted, or maintained, *pro se*, five or more civil actions in any court in this state which actions have been finally and adversely determined against such person or entity.<sup>3</sup> The statute goes on to more particularly define several aspects of its vexatious litigant definition.

To qualify, an action must be a civil action governed by the Florida Rules of Civil Procedure or the Florida Probate Rules.<sup>4</sup> **Family law matters or those governed by the Florida Small Claims Rules do not qualify.**<sup>5</sup> To qualify as one of the five actions needed under the statute, such action must have been commenced *pro se*. If the action was originally filed by a licensed Florida Bar attorney, *even if that attorney later withdraws*, the action still cannot count for purposes of the vexatious determination.<sup>6</sup> This is likely because in order for the attorney to have filed the action, he or she must have attested that there was good ground to support the complaint.<sup>7</sup> Therefore, that action originally bearing an attorney’s signature, by principle, cannot be labeled as vexatious. Finally, an action cannot qualify under the statute where the appeal of such action is still pending.<sup>8</sup>

- Refer to this handy checklist. In the past five years, has the litigant:
- ✓ Commenced, prosecuted, or maintained at least 5 civil actions?
  - ✓ In the state of Florida?
  - ✓ That were governed by Florida Rules of Civil Procedure or Florida Probate Rules?
  - ✓ That were all filed *pro se*?
    - If the action was filed by an attorney, even if the attorney withdraws, the action does not count.
  - ✓ That were finally and adversely determined against the litigant?
    - If an appeal is pending, the action is not final.

Before filing a motion under Section 68.093 seeking to declare a litigant vexatious, a prudent practitioner should list all the cases that might qualify under the statute, then, work down the checklist provided above. If at the end of this inquiry, you have five cases that meet the statutory requirements, your legwork will serve as the basis for your motion; insert into the motion a table which lays out the satisfactory cases to make easy the court’s review.

### **Requesting Security**

The statute provides your next steps. It instructs the following:

In any action pending in any court of this state, including actions governed by the Florida Small Claims Rules,<sup>9</sup> any defendant may move the court, upon notice and hearing, for an order requiring the plaintiff to furnish security. The motion shall be based on the grounds, and supported by a showing, that the plaintiff is a vexatious litigant and is not reasonably likely to prevail on the merits of the action against the moving defendant.<sup>10</sup>

The statute contemplates that it will be initially invoked by a defendant seeking to require a plaintiff to furnish security.

Under the statute, “security” is defined as “an undertaking by a vexatious litigant to ensure payment to a defendant in an amount reasonably sufficient to cover the defendant’s anticipated, reasonable expenses of litigation, including attorney’s fees and taxable costs.”<sup>11</sup> To impose a security, the court must find both that the plaintiff is a vexatious litigant, as defined in the statute, *and* that the plaintiff is not reasonably likely to prevail on the merits of the present action.<sup>12</sup> This is where many practitioners run afoul of the statutory requirements.

This is a two-part test. Avoid becoming so consumed with meeting the *vexatious litigant* definition that you forget to address the second finding the court must make. Without also finding that the litigant is not reasonably likely to prevail on the merits, the court cannot impose the security sanction based merely on the finding that the litigant is indeed a vexatious litigant. Thus, without the second half, the result would be a finding without consequence.

### **Procedural Requirements**

An evidentiary hearing is required on a motion to furnish security under Section 68.093.<sup>13</sup> Evidence in support of the two findings the court must make can be in the form of live witnesses or through affidavit.<sup>14</sup> If the court is convinced that the plaintiff meets the statutory definition of a vexatious litigant and that the plaintiff is not reasonably likely to prevail on the merits, then the court can require the plaintiff to furnish security to the defendant in an amount and at a time the court finds appropriate.<sup>15</sup>

Although the prospect of furnishing security would seem effective, the most effective piece of the Vexatious Litigant Statute allows the court to immediately dismiss the action *with prejudice* where a plaintiff fails to furnish the ordered security.<sup>16</sup> The statute places a strong enforcement tool in the court’s hands.

### **Pre-Filing Order**

The statute also aims to eliminate the “well, I’ll just file another action” mentality that may follow a dismissal for failure to post security. To prevent a vexatious litigant from simply filing yet another frivolous action, the court, *on its own motion or on the motion of any party*, can enter a pre-filing order that prohibits the newly-labeled vexatious litigant from filing any new *pro se* action without first obtaining leave of the administrative judge.<sup>17</sup> Prudent practitioners should specifically request a pre-filing order in their Section 68.093 motion. When dealing with a vexatious litigant, obtaining all safeguards available under the statute is one’s best line of defense.

If a vexatious litigant seeks leave of the administrative judge to file a new action despite the pre-filing order’s prohibition, such leave shall only be granted where the litigant shows that the proposed action is meritorious and is not being filed for the purpose of delay or harassment.<sup>18</sup> In granting leave to file a new *pro se* action, the administrative judge can require the litigant to furnish security.<sup>19</sup> Once again, the statute adds another layer of protection for the alert opponent.

Although the statute includes directions to the clerk for properly handling new actions that a vexatious litigant attempts to file in violation of the pre-filing order, for the situation where those



safeguards fail, the statute also allows the administrative judge to punish the vexatious litigant with contempt for failing to comply with the pre-filing order.<sup>20</sup>

The pre-filing order should direct the trial court clerk to provide a copy to the Clerk of the Florida Supreme Court, who is tasked with maintaining a registry of all vexatious litigants.<sup>21</sup> This is intended to prevent a vexatious litigant from wreaking havoc all throughout the State. A search of this registry may short-circuit the laborious process detailed above because the definition of a vexatious litigant also includes “[a]ny person or entity previously found to be a vexatious litigant pursuant to this section.”<sup>22</sup> Thus, where a litigant was deemed to be vexatious in one circuit of this State, that determination can be used to meet the first part of the two-part test for requiring security in another circuit. This should reduce the state-wide impact a vexatious litigant can have on the parties and the court. To obtain an up-to-date copy of the registry, simply call or email the Clerk of the Florida Supreme Court. But don’t be surprised if your litigant is not on the list. As of the date of this article, only 57 litigants in the entire State have been dubbed *vexatious*. If your litigant is on the list, though, you’ll be glad you checked.

Finally, the pre-filing order should summarize the directions to the clerk that are outlined in the statute. After entry of a pre-filing order, the clerk is directed not to file any new *pro se* action by that vexatious litigant unless accompanied by an order from the administrative judge permitting the filing.<sup>23</sup> Recognizing that the Clerk’s Office is run by fallible human beings, the statute goes on to explain that if a vexatious litigant is mistakenly permitted to file a new *pro se* action in violation of the pre-filing order, *any party* can file a notice highlighting the error, and the administrative judge will automatically dismiss the action with prejudice.<sup>24</sup> And don’t forget the administrative judge is also empowered to punish the vexatious litigant’s disobedience with contempt of court. Consider this request where you find the situation necessitates such.

How does one make such a request? The statute is silent on the mechanics of actually requesting this available sanction. If the pre-filing order sanctions were appropriately implemented, no active case would exist within which to file a motion through the e-filing portal. This creates a conundrum for not only the contempt-seeking defendant, but also the litigant seeking administrative judge approval to file a new action. One possibility is to hand-deliver the motion to the clerk with a request for creation of an administrative file, and forwarding to the administrative judge for consideration. Always consult any circuit-specific administrative orders or local rules before making a final decision.

Undoubtedly, the requirements of Section 68.093 are stringent and often hard to satisfy. If the litigant does not qualify under the Vexatious Litigant Statute, there are other options with less rigid parameters that can be utilized to control the litigant’s litigiousness. Rather than arguing for application of Section 68.093 where the strict requirements are not undoubtedly met, the cautious practitioner might request sanctions under the court’s inherent authority and case law elaborating on such authority. Or, where the area is a bit gray and the outcome not so clear, the most prudent practitioner should request relief under both Section 68.093 addressing vexatious litigants and under case law addressing frivolous litigants.<sup>25</sup>

## **Frivolous Litigation**

So what can you do if the factors for the vexatious litigant statute are not met but you are still dealing with a litigant filing baseless and abusive pleadings or actions? Well, you can seek redress through the inherent authority of the court. A person's right of access to the courts is not unlimited. Indeed, the court has the inherent authority to prohibit the deliberate and continual filing of frivolous actions and documents which demonstrate an egregious abuse of the judicial process and interfere with the timely administration of justice.<sup>26</sup> It is clear that a litigant's right to access the courts may be restricted upon showing an egregious abuse of the judicial process.<sup>27</sup> This abuse is often demonstrated through a "pattern of filing baseless papers, pleadings and actions."<sup>28</sup>

### **Pro Se Litigants**

Once again, these situations typically involve *pro se* litigants. *Pro se* litigants are held to the same standards as a reasonable attorney.<sup>29</sup> Where the litigant fails to meet that standard and abuses the judicial process, the court can utilize an injunctive sanction order to require compliance.<sup>30</sup> Such sanctions ensure the case will proceed on the substantive issues and allows the court to otherwise "devote its finite resources to the consideration of legitimate claims filed by others."<sup>31</sup>

The case of *Ardis v. Ardis* illustrates a situation wherein frivolous litigation may be afoot but might not satisfy the Vexatious Litigant Statute.<sup>32</sup> There, the First District Court of Appeal highlighted the numerous *pro se* petitions and appeals filed by Mr. Ardis.<sup>33</sup> The appellate court noted that some of the underlying matters from which those appellate proceedings stemmed were a dissolution of marriage and an injunction against domestic violence—both of which are excluded from qualifying as one of the five cases needed under Section 68.093.<sup>34</sup> However, the volume of cases filed by Mr. Ardis and his excessive and frivolous motion practice became a burden on the courts, necessitating restriction.<sup>35</sup> The lesson here is where the explicit requirements of section 68.093 are not met, but the record is replete with meritless, voluminous, or frivolous filings, explore this case law which permits the court to exercise its inherent authority to control the fair administration of justice and impose sanctions for abusing the legal process.<sup>36</sup> And then seek an injunctive sanction order.

Your local jurisdiction may also have an applicable Administrative Order which addresses the issue. In the Thirteenth Judicial Circuit, Administrative Order S-2017-038 (Frivolous Litigation Sanction Orders) defines the problem and lays out a local procedure for addressing frivolous litigation.<sup>37</sup> Investigate whether a similar order exists in your jurisdiction and consider it a guide for handling these situations.

### **Available Sanctions**

An injunctive sanction order can enjoin the abusive litigant from filing further documents *pro se* with the court or clerk unless the document is signed by a member in good standing of The Florida Bar.<sup>38</sup> This restriction is usually accompanied by a directive to obtain counsel, the failure of which can result in the dismissal of the pending action.<sup>39</sup>

The Court can also prevent the filing of any new *pro se* action and direct the clerk to reject any future *pro se* filings.<sup>40</sup> Another effective sanction is removing a litigant's indigent status.<sup>41</sup> Frivolous litigants are often empowered to be so because they act with the financial impunity that

the indigent status affords them. When a litigant is not required to support their legal actions with their pocketbook, the motivation to not file frivolous actions is reduced.

Understandably, the Injunctive Sanction Order must contain detailed findings that the litigant has egregiously abused the judicial process. Due process requires notice and an opportunity to respond before sanctions can be imposed.<sup>42</sup> This is accomplished through an Order to Show Cause directed at the litigant, followed by a hearing at which the litigant can attempt to show cause why he or she should not be sanctioned for having engaged in frivolous litigation. The notice must make the litigant aware of the range of possible sanctions the court may impose, or else risk an appellate finding that the sanctions were overbroad in light of the notice.<sup>43</sup> It is imperative that a hearing be held before sanctions are imposed.<sup>44</sup> Only after satisfying these procedural safeguards may the trial court appropriately fashion a sanction for frivolous conduct.

**Vexing Prisoners**

When a *pro se* prisoner is behind the frivolous filings, the court may further sanction the behavior by directing the clerk to forward a copy of the injunctive sanction order to the correctional facility for appropriate disciplinary action.<sup>45</sup> Section 57.085, which addresses the deferral of prepayment of court costs and fees for indigent prisoners, further assists the courts with preventing the frivolous filings of *pro se* prisoners. A detailed analysis of that statute is beyond the scope of this article, but if you are dealing with a *pro se* prisoner, we encourage you to review this provision.

**Consider Cumulative Relief**

When faced with a problematic litigant, consider it wise to request conjunctive and alternative relief. The Vexatious Litigant Statute explicitly provides for such joint relief.<sup>46</sup> And requesting alternative relief under the court’s inherent authority ensures that even if the statutory parameters of the vexatious litigant law are unmet, there is some basis upon which the court may impose sanctions to control the vexing conduct. Review the chart below for a synopsis of the available relief under each.

**Available Sanctions for the Vexing Litigant**

<p align="center"><b><u>Vexatious Litigant</u></b> <b>Section 68.093</b></p>	<p align="center"><b><u>Frivolous Litigant</u></b> <b>Injunctive Sanction Order</b> <b>Court’s Inherent Authority</b></p>
<ul style="list-style-type: none"> <li>• Obtain security upon meeting statute’s two-prong test               <ul style="list-style-type: none"> <li>○ Dismissal with prejudice where security not posted</li> <li>○ Once security filed, case proceeds</li> </ul> </li> <li>• Pre-filing order prohibiting filing of future <i>pro se</i> actions without leave of administrative judge               <ul style="list-style-type: none"> <li>○ If litigant violates, any party can file a notice highlighting the error, and the administrative</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Enjoin litigant from filing <i>in present action</i> any further documents with court or clerk unless document is signed by a member in good standing of The Florida Bar               <ul style="list-style-type: none"> <li>○ If litigant fails to obtain counsel, case can be dismissed</li> </ul> </li> <li>• Prohibit filing of future <i>pro se</i> actions               <ul style="list-style-type: none"> <li>○ Issuing judge should forward copy of injunctive sanction</li> </ul> </li> </ul>

<p>judge will automatically dismiss the action with prejudice</p> <ul style="list-style-type: none"> <li>○ Disobedience may also be punished as contempt of court by the administrative judge</li> <li>○ Administrative judge may condition future filing upon the furnishing of security</li> </ul> <ul style="list-style-type: none"> <li>● Relief can be cumulative</li> </ul>	<p>order to the chief judge for distribution to the judges of the affected division(s)</p> <ul style="list-style-type: none"> <li>○ If new action mistakenly filed and assigned by clerk, judge can dismiss based on injunctive sanction order</li> </ul> <ul style="list-style-type: none"> <li>● Remove indigent status</li> </ul>
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Depending on the circumstances, you may need to follow a dual approach. Because the supportive evidence will often be similar, save yourself, your client, and the court time, energy, and money by requesting both types of relief.

One final note: the imposition of either order is effective with respect to the case in which it is entered, and any *future* filings. Note however that it will not impact other-pending matters. Thus, while either order operates prospectively (depending on the specific language of the order), they have no retroactive application.

Although the Vexatious Litigant Statute can be an effective tool, avoid being blinded by its allure. Don't forget "vexatious" is not the same as "vexing." The benefit of the *vexatious* label is in the available sanctions. Consider the pitfalls of requesting solitary relief under section 68.093 as the *vexatious* label may not achieve the ultimate goal of curbing the problematic conduct. Carefully examine the parameters of the Vexatious Litigant Statute and consider requesting alternative or conjunctive relief where the circumstances support it.

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<sup>1</sup> The authors acknowledge that in recent years, the Florida Supreme Court has replaced the term "pro se litigant" with "self-represented litigant." However, because section 68.093 utilizes the term "pro se," we similarly employ it here.

<sup>2</sup> See generally *Smith v. Fisher*, 965 So. 2d 205, 209 (Fla. 4th DCA 2007) ("Where there is smoke, there is fire. The average citizen does not file five, pro se, non-small claims civil lawsuits in a lifetime.")

<sup>3</sup> § 68.093(2)(d), Fla. Stat. (2000).

<sup>4</sup> § 68.093(2)(a).

<sup>5</sup> *Id.*

<sup>6</sup> See § 68.093(2)(d)2.

<sup>7</sup> See Fla. R. Jud. Admin. 2.515.

<sup>8</sup> See § 68.093(2)(d)2.

<sup>9</sup> The statute may be invoked in the context of a small claims case. But as noted above, small claims cases do not qualify as one of the five cases needed to meet the statutory parameters.

<sup>10</sup> § 68.093(3)(a).

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<sup>11</sup> § 68.093(2)(c).

<sup>12</sup> *See Fisher*, 965 So. 2d at 210.

<sup>13</sup> *See* § 68.093(3)(b).

<sup>14</sup> *See id.*

<sup>15</sup> *See id.*

<sup>16</sup> *See* § 68.093(3)(c).

<sup>17</sup> *See* § 68.093(4).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *See* § 68.093(6).

<sup>22</sup> *See* § 68.093(2)(d)(2).

<sup>23</sup> *See* § 68.093(5).

<sup>24</sup> *See id.* *See also Paylan v. Frank*, 2D20-0942 (Fla. 2d DCA April 24, 2020) (denying petition for writ of mandamus seeking to require clerk of court to accept new *pro se* filing after entry of vexatious litigant prefiling order and injunctive sanction order).

<sup>25</sup> *See generally Paylan v. Goudie*, 45 Fla. L. Weekly D64, 2020 WL 34527 (Fla. 2d DCA 2020) (denying petition for writ of certiorari challenging a nonfinal injunctive sanction order finding litigant to be a vexatious litigant and subject to prefiling requirements for future actions).

<sup>26</sup> *See generally State v. Spencer*, 751 So. 2d 47 (Fla. 1999); *Bolton v. SE Prop. Holdings, LLC*, 127 So. 3d 746 (Fla. 1st DCA 2013); *Delgado v. Hearn*, 805 So. 2d 1017 (Fla. 2d DCA 2001).

<sup>27</sup> *See e.g., Attwood v. Singletary*, 661 So. 2d 1216 (Fla. 1995).

<sup>28</sup> *Ardis v. Ardis*, 130 So. 3d 791, 793 (Fla. 1st DCA 2014).

<sup>29</sup> *See Kohn v. City of Miami Beach*, 611 So. 2d 538, 539 (Fla. 3d DCA 1992) (concluding that “it is a mistake to hold a *pro se* litigant to a lesser standard than a reasonably competent attorney”); *see also Gladstone v. Smith*, 729 So.2d 1002, 1004 (Fla. 4th DCA 1999) (citing *Kohn* and stating that a lesser standard would only encourage continued frivolous litigation), *cause dismissed* 773 So. 2d 55 (Fla. 2000).

<sup>30</sup> *See generally Platel v. Maguire, Voorhis & Wells, P.A.*, 436 So. 2d 303, 304 (Fla. 5th DCA 1983) (quoting trial court order that “when one person, by his activities, upsets the normal procedure of the court so as to interfere with the causes of other litigants, it is necessary to exercise restraint upon that person”), *cert denied*, 465 U.S. 1069 (1984).

<sup>31</sup> *See e.g., Peterson v. State*, 817 So. 2d 838, 840 (Fla. 2002).

<sup>32</sup> *See Ardis*, 130 So. 3d 791.

<sup>33</sup> *See id.* at 793.

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<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> See generally *Spencer*, 751 So. 2d 47; *Bolton*, 127 So. 3d 746; *Delgado*, 805 So. 2d 1017; *Attwood*, 661 So. 2d 1216; *Ardis*, 130 So. 3d 791.

<sup>37</sup> See AO S-2017-038 at <https://www.fljud13.org/Portals/0/AO/DOCS/S-2017-038.pdf>.

<sup>38</sup> See generally *Platel*, 436 So. 2d at 304 (agreeing with trial court that requirement that pleadings be accompanied by an attorney's signature does not amount to a complete denial of access and thereafter prohibiting *pro se* appearance); see also *Ardis*, 130 So. 3d at 796.

<sup>39</sup> See *Ardis*, 130 So. 3d at 796.

<sup>40</sup> Compare *Walker v. Ellis*, 28 So. 3d 91 (Fla. 1st DCA 2009), *rev. denied* 46 So. 3d 48 (Fla. 2010), with *Sussman v. Dept. of Corrections*, 276 So. 3d 68 (Fla. 1st DCA 2019) (concluding that severe sanction of total prohibition on *pro se* filings was not supported by the record), dismissing review 2019 WL 6040325 (Fla.); see also *Brinson v. State*, 215 So. 3d 1260, 1261 (Fla. 5th DCA 2017) (finding prohibition of future *pro se* actions generally permissible but overbroad in this case, particularly given the content of the show cause order).

<sup>41</sup> See *Martin v. State*, 747 So. 2d 386, 387 (Fla. 2000) (citing *Martin v. Marko*, 651 So. 2d 819 (Fla. 4th DCA 1995)).

<sup>42</sup> See *Spencer*, 751 So. 2d at 48; see also *Bolton*, 127 So. 3d at 748.

<sup>43</sup> See *Brinson v. State*, 215 So. 3d 1260, 1261 (Fla. 5th DCA 2017) (finding sanctions order prohibiting all future *pro se* filings overbroad where show cause order only provided notice of such a ban related to filings in specific case, not all future, even unrelated cases); see also *Harris v. Gattie*, 263 So. 3d 829 (Fla. 2d DCA 2019) (stating that it would "behoove" the trial court to provide notice of such a broad-reaching sanction).

<sup>44</sup> See *Harris*, 263 So. 3d at 832 (granting petition for certiorari and remanding where sanctions order was entered without notice and a hearing).

<sup>45</sup> See *Walker*, 28 So. 3d at 93 (citing § 944.279, Fla. Stat. (2004)).

<sup>46</sup> See § 68.093(7) ("The relief provided under this section shall be cumulative to any other relief or remedy available to a defendant under the laws of this state and the Florida Rules of Civil Procedure.").

130 So.3d 791  
District Court of Appeal of Florida, First District.

Robert Michael ARDIS, Petitioner,  
v.  
Sarah Harper ARDIS, Respondent.

No. 1D13-5509  
|  
Feb. 4, 2014.

### Synopsis

**Background:** Husband in marital dissolution proceeding filed a petition for writ of prohibition challenging an order denying his twelfth motion to disqualify the successor judge that had been assigned to the proceeding.

The District Court of Appeal held that husband's numerous pro se appellate filings constituted an abuse of process that warranted sanctions.

Petition denied; sanctions imposed.

### Attorneys and Law Firms

\*792 Robert Michael Ardis, pro se, Petitioner.

No appearance for Respondent.

### ORDER IMPOSING SANCTIONS

#### PER CURIAM.

The issue before this court is whether to impose sanctions against Robert Michael Ardis ("Ardis"), a pro se litigant, for abuse of the legal process. See Fla. R. App. P. 9.410 (providing that courts may impose sanctions for the filing of any proceeding, motion, brief, or other paper that is frivolous or in bad faith). Due to his incessant meritless filings in this court, Ardis was directed to show cause

why he should not be barred from future pro se appearances in this court. Ardis filed a response to the order to show cause.

After reviewing Ardis's response, we conclude that Ardis has failed to set forth a legal basis that would preclude the imposition of sanctions. Ardis has engaged in a pattern of filing voluminous, repetitive and meritless pleadings, motions or other requests for relief in this court. Upon an exhaustive review of Ardis's numerous filings in this court, we conclude that Ardis has abused the processes of the court. Accordingly, in order to preserve the right of access to the courts for all litigants in this district and to promote the interests of justice, we hereby prohibit Ardis from proceeding pro se in any matter before this court.

### Analysis

Courts may, upon a demonstration of egregious abuse of judicial process, restrict parties from filing pro se pleadings with the court. *State v. Spencer*, 751 So.2d 47, 47 (Fla.1999). "It is well-settled that courts have the inherent authority and duty to limit abuses of judicial process by pro se litigants." *Golden v. Buss*, 60 So.3d 461 (Fla. 1st DCA 2011); see *Jackson v. Fla. Dep't of Corr.*, 790 So.2d 398, 400 (Fla.2001) (noting that the supreme court has inherent power to regulate and sanction a disruptive litigant); *McCutcheon v. State*, 44 So.3d 156, 162 (Fla. 4th DCA 2010) (concluding that the litigant's appeals were frivolous, malicious, and not filed in good faith).

\*793 This court does not impose sanctions against pro se litigants lightly. However, a citizen abuses the right to pro se access by filing repetitious and frivolous pleadings, thereby diminishing the ability of the courts to devote their finite resources to the consideration of legitimate claims. See *Rivera v. State*, 728 So.2d 1165, 1165 (Fla.1998); *Attwood v. Singletary*, 661 So.2d 1216, 1216 (Fla.1995). In the majority of cases where this court has imposed sanctions against a pro se party, the litigant has made frivolous and repeated challenges to the same criminal judgment and sentence.<sup>1</sup> However, this court has also imposed sanctions in cases involving parole revocation,<sup>2</sup> probate actions,<sup>3</sup> civil matters<sup>4</sup> and workers' compensation claims,<sup>5</sup> where pro se litigants have demonstrated a pattern of filing baseless papers, pleadings and actions in this court.

The petitioner in this case, Robert Michael Ardis, has filed numerous pro se petitions and appeals with regard to

several underlying cases pending in the circuit court in and for Escambia County: one case involves an injunction against domestic violence, another concerns Ardis's termination of employment by Pensacola State College, and another involves a dissolution-of-marriage action. Ardis has not been successful in obtaining relief in any case or petition that he has presented to this court.<sup>6</sup> However, it is not only the volume of cases filed, but Ardis's excessive and frivolous motion practice in the pending cases which has become a burden on this court.

For example, after the appeal concerning Ardis's termination from employment from Pensacola State College, case number 1D12-2638, was affirmed without comment in *Ardis v. Pensacola State College*, 109 So.3d 782 (Fla. 1st DCA 2013) (table), Ardis filed multiple unauthorized motions. This court directed that Ardis not file any further pleadings unless directed to do so, in order for this court to sort out all of his \*794 post-opinion filings. When Ardis continued filing motions in violation of this court's prior order, this court issued a show cause order on sanctions. This court struck several post-opinion filings as a sanction for his excessive and frivolous motion practice in that case and cautioned him against any further motion filings related to that case. Seven months later and after the term of court had ended, Ardis filed an untimely motion to recall mandate. The court issued an opinion imposing sanctions to prohibit Ardis from filing any further pro se filings in that case and in any other case related to his termination from employment at Pensacola State College. See *Ardis v. Pensacola State College*, 128 So.3d 260 (Fla. 1st DCA 2013).

In the case involving Ardis's dissolution of marriage, *Ardis v. Ardis*, case number 1D12-5472, Ardis filed eight successive motions to stay a non-final order on appeal. Each motion for stay was denied, yet Ardis continued to file motions for stay of the same order. Upon the filing of the seventh motion to stay, the court issued a show cause order on sanctions. The order was discharged, but Ardis was warned that sanctions could be imposed if he continued to engage in excessive motion practice. Five days later, Ardis filed an eighth motion for a stay. Another show cause order on sanctions issued, and Ardis was warned that he could be barred from proceeding pro se if he continued to file frivolous motions in that case.

In *Ardis v. Ardis*, case number 1D13-4489, Ardis filed a pro se petition for writ of habeas corpus to challenge his detention based on a finding of criminal contempt in his dissolution action. Because Ardis was represented by counsel in an appeal from the order on criminal contempt pending in *Ardis v. Ardis*, case number 1D13-4463, this

court dismissed the pro se petition as unauthorized pursuant to *Logan v. State*, 846 So.2d 472 (Fla.2003) (holding that generally, a criminal defendant has no right to partially represent himself and, at the same time, be partially represented by counsel). In addition, based on Ardis's unsuccessful requests for relief in multiple cases in this court, his excessive motion practice and his failure to heed prior cautions about his frivolous pro se filings, this court directed Ardis to show cause why he should not be prohibited from future pro se filings. See *Spencer*, 751 So.2d at 48 (recognizing the potential for abuse of the right to pro se access to the courts, but declaring it is important for courts to first provide notice and an opportunity to respond before issuing sanctions against a litigant). Ardis then filed a motion to disqualify all 15 members of this court based on prior adverse rulings.<sup>7</sup> It is well-established that adverse judicial rulings may not serve as a basis for disqualification. See *Jackson v. State*, 599 So.2d 103, 107 (Fla.1992); *Gilliam v. State*, 582 So.2d 610, 611 (Fla.1991); *Tafero v. State*, 403 So.2d 355, 361 (Fla.1981); *Dep't of Agric. & Consumer Serv. v. Broward County*, 810 So.2d 1056 (Fla. 1st DCA 2002). The show cause order on sanctions is pending in that case.

In *Ardis v. Ardis*, case number 1D13-2177, Ardis sought a writ of prohibition to review an order which denied a motion to disqualify the successor judge in his dissolution action. Ardis had filed multiple motions to disqualify the original trial judge. When the original trial judge granted Ardis's \*795 fifth motion to disqualify, a successor judge was appointed. Ardis then filed multiple motions to disqualify the successor judge. The petition was denied on the merits without comment.

In *Ardis v. Ardis*, case number 1D13-4293, Ardis filed a pro se petition for writ of prohibition in the dissolution action to review an order which denied a motion to disqualify the successor judge.<sup>8</sup> That petition was dismissed for failure to comply with an order of this court.

The petition at issue in this case sought a writ of prohibition to review an order which denied Ardis's *twelfth* motion to disqualify the successor judge. In the petition, Ardis repeatedly expresses his hatred for the successor judge<sup>9</sup> and complains that the trial judge has not granted the relief sought by Ardis. The fact that a judge has made prior adverse rulings against a litigant is not a legally sufficient basis to support disqualification. See, e.g., *Chamberlain v. State*, 881 So.2d 1087 (Fla.2004). Likewise, the fact that a judge may have familiarity with the parties and evidence from earlier proceedings does not warrant disqualification. See *K.H. v. State, Dep't of Health & Rehab. Servs.*, 527 So.2d 230 (Fla. 1st DCA



1988). Moreover, the fact that a judge has previously heard the evidence and may have formed an opinion based on that evidence generally does not establish a legally sufficient basis for disqualification. *See, e.g., Williams v. State*, 987 So.2d 1 (Fla.2008).

Normally, whether a motion to disqualify the trial judge is legally sufficient requires a determination as to whether the alleged facts would create in a reasonably prudent person a well-founded fear of not receiving a fair and impartial trial. *See Fla. R. Jud. Admin. 2.330(d)(1); Zuchel v. State*, 824 So.2d 1044, 1046 (Fla. 4th DCA 2002). In determining the legal sufficiency of such a motion, the court must also determine if the facts alleged, which must be taken as true, would prompt a reasonably prudent person to fear that he or she could not receive a fair and impartial trial. *See Hayslip v. Douglas*, 400 So.2d 553, 556 (Fla. 4th DCA 1981). However, a successive motion to disqualify a trial judge is evaluated under a higher standard. Florida Rule of Judicial Administration 2.330(g) provides:

If a judge has been previously disqualified on motion for alleged prejudice or partiality under subdivision (d)(1), a successor judge shall not be disqualified based on a successive motion by the same party unless the successor judge rules that he or she is in fact not fair or impartial in the case. Such a successor judge may rule on the truth of the facts alleged in support of the motion.

The Florida Supreme Court has held that a “more stringent” standard of review applies when evaluating an order denying a successive motion: “whether the record clearly refutes the successor judge’s decision to deny the motion.” *Kokal v. State*, 901 So.2d 766, 774 (Fla.2005). The denial of a motion to disqualify a successor judge is reviewed for abuse of discretion, *see \*796 King v. State*, 840 So.2d 1047, 1049 (Fla.2003), and should only be disturbed if “the record clearly refutes the successor judge’s decision to deny the motion.” *Pinfield v. State*, 710 So.2d 201, 202 (Fla. 5th DCA 1998); *see also Quince v. State*, 732 So.2d 1059, 1062 (Fla.1999) (“A court’s ruling on a discretionary matter will be sustained unless

no reasonable person would take the view adopted by the court.”). Ardis’s motion to disqualify the original trial judge having been granted, the denial of Ardis’s motion to disqualify the successor judge is reviewed by the higher standard. Ardis failed to meet that standard and we denied the petition for writ of prohibition on the merits.

Based on Ardis’s unsuccessful requests for relief in multiple cases in this court, his relentless motion practice and his blatant disregard for the previous admonitions from this court concerning his meritless pro se filings, this court directed Ardis to show cause why he should not be prohibited from future pro se filings. In response, Ardis filed a pleading entitled “Motion of Disgust and Similar Sentiments of Loathing” expressing his displeasure with the rulings of this court.<sup>10</sup> The pleading was treated as a motion for rehearing and denied.

Ardis then filed a response to the show cause order; however, the response does not provide a legal basis to prohibit the imposition of sanctions. Based on our review of Ardis’s appearances before this court, we find that the incessant stream of repetitious and meritless filings by Ardis constitutes an abuse of process and impose an unreasonable burden on the limited resources of this court. We conclude that sanctions are appropriate in accordance with Florida Rule of Appellate Procedure 9.410 and this court’s authority to control its docket. *See May v. Barthet*, 934 So.2d 1184 (Fla.2006); *Lee v. Fla. Dep’t of Corr.*, 873 So.2d 489 (Fla. 1st DCA 2004). Accordingly, we hold that Robert Michael Ardis is barred from proceeding pro se in any case before this court. The Clerk of the Court is directed not to accept any future filings from Ardis unless they are signed by a member in good standing of The Florida Bar. Ardis shall have thirty days from date of this order to secure the services of counsel, who shall file a notice of appearance, in any other active case before this court where Ardis is currently representing himself. If Ardis fails to secure counsel or if no notice of appearance of counsel is filed within thirty days, the Clerk is directed to dismiss the case.

PETITION DENIED; SANCTIONS IMPOSED.

PADOVANO, ROWE and OSTERHAUS, JJ., concur.

#### All Citations

130 So.3d 791, 39 Fla. L. Weekly D260

### Footnotes

<sup>1</sup> See e.g., *Baldwin v. State*, 104 So.3d 390 (Fla. 1st DCA 2013); *Williams v. State*, 102 So.3d 669 (Fla. 1st DCA 2012); *Ward v. State*, 75 So.3d 348 (Fla. 1st DCA 2011); *Obojes v. State*, 946 So.2d 602 (Fla. 1st DCA 2006).

<sup>2</sup> *Van Zant v. Fla. Parole Comm'n*, 94 So.3d 622 (Fla. 1st DCA 2012).

<sup>3</sup> *Pflaum v. Pflaum*, 974 So.2d 579 (Fla. 1st DCA 2008).

<sup>4</sup> *Johnson v. Wilbur*, 981 So.2d 479 (Fla. 1st DCA 2008).

<sup>5</sup> *Winford v. Pella Window and Doors*, case number 1D13–2847 (September 24, 2013, order imposing sanctions); *Glindmeier v. Kaebel Wholesales*, case number 1D11–5488 (August 7, 2012, order imposing sanctions).

<sup>6</sup> In case number 1D10–0014, an appeal from an injunction against domestic violence was affirmed. In case number 1D10–0030, an appeal from an injunction against domestic violence was dismissed for failure to file the initial brief. In case number 1D12–2638, an appeal in the employment case was affirmed without comment. In case numbers 1D12–3242, 1D12–4545 and 1D13–2177, petitions for writs of prohibition in the dissolution action were denied. In case number 1D12–4547, an appeal in the dissolution action was voluntarily dismissed after a show cause order on jurisdiction issued. In case numbers 1D12–4884 and 1D12–4885, appeals in the dissolution action were dismissed by this court for lack of jurisdiction. In case number 1D12–5472, an appeal in the dissolution action was affirmed without comment. In case number 1D12–5473, an appeal in the dissolution action was dismissed when Ardis failed to file a response to a show cause order on jurisdiction. In case numbers 1D13–1167, 1D13–1168 and 1D13–1169, voluntary dismissals were filed in appeals from the dissolution action. In case number 1D13–4293, a petition for writ of prohibition in the dissolution action was dismissed for failure to comply with an order of this court. In case number 1D13–4489, a petition for writ of habeas corpus was dismissed as unauthorized.

<sup>7</sup> In a motion to recall mandate filed in case number 1D12–5472, the non-final appeal in which Ardis had filed eight motions for stay, Ardis attached a pleading he had filed in the U.S. Court of Appeals for the Eleventh Circuit in which he stated that he had been “incensed” by this court’s show cause order on sanctions in this case and, in response, he filed the motion to disqualify all of the judges of this court.

<sup>8</sup> In the petition filed in case number 1D13–4293, Ardis expresses contempt for the successor judge, accusing the successor judge of being abusive, spiteful, unethical, vindictive and practicing a “perversion of justice.” Ardis also contends that “the office of the state attorney is abusing its authority and being biased toward [Ardis].” Further, Ardis states that he has “made no secret of his disgust and loathing” for counsel for the former wife.

- <sup>9</sup> In the petition filed in this case, Ardis repeatedly expresses that he “hate[s]” the successor judge, and refers to the successor judge as a “jerk,” a “little tyrant,” and a “dishonorable man.”
- <sup>10</sup> In that pleading, Ardis asserts his “disgust and loathing” for this court, refers to this court’s decision in the employment cases as “asinine,” expresses his belief that he is being “screwed over,” and states that this court is “cowardly,” “an unethical crock,” and has a “blatant pro se bias.”

263 So.3d 829  
District Court of Appeal of Florida, Second District.

Marcus B. HARRIS, Appellant,  
v.  
Martye S. GATTIE, Appellee.

Case No. 2D17-5170

Opinion filed January 23, 2019.

### Synopsis

**Background:** In property dispute, co-beneficiary of estate filed a number of pro se motions relating to disposition of real property in the estate. The Circuit Court, Hillsborough County, Gregory P. Holder, J., entered a sanctions order barring co-beneficiary from filing any further pro se motions or pleadings in any case. Co-beneficiary appealed.

**Holdings:** The District Court of Appeal, Second District, Villanti, J., held that:

appeal would be treated as a writ of certiorari, and

order barring pro se litigant from filing any further pro se pleadings or papers violated due process.

Petition granted.

**Procedural Posture(s):** Petition for Writ of Certiorari; Motion to Amend the Complaint.

\*830 Appeal pursuant to Fla. R. App. P. 9.130 from the Circuit Court for Hillsborough County; Gregory P. Holder, Judge.

### Attorneys and Law Firms

Marcus B. Harris, pro se.

No appearance for Appellee.

### Opinion

VILLANTI, Judge.

Marcus Harris appeals the order sanctioning him for allegedly filing frivolous pleadings by forbidding him from filing further pro se papers in this case and any other case in which he is a litigant. We treat Harris's appeal as a petition for writ of certiorari.<sup>1</sup> See, e.g., [Owens v. Forte](#), 135 So.3d 445, 445-46 (Fla. 2d DCA 2014) (reviewing order precluding a party from filing further pro se pleadings through certiorari); [Balch v. HSBC Bank, USA, N.A.](#), 128 So.3d 179, 181 (Fla. 5th DCA 2013) (concluding that an order sanctioning a pro se litigant and prohibiting future pro se filings is not a final, appealable order and converting the appeal to a petition for writ of certiorari); [Epps v. State](#), 941 So.2d 1206, 1206-07 (Fla. 4th DCA 2006) (reviewing order precluding a party from filing further pleadings pro se through certiorari); [Favreau v. Favreau](#), 940 So.2d 1188, 1189 (Fla. 5th DCA 2006) (treating notice of appeal of order barring further pro se pleadings as a petition for writ of certiorari).<sup>2</sup> And we grant certiorari and quash the sanctions order because the trial court failed to follow the proper procedures before imposing this sanction on Harris.

The underlying case arises out of a dispute between Harris and some of his relatives concerning the disposition of some real property that was included in his uncle's estate. Harris is currently serving a term in Florida State Prison, and, due in part to his incarceration, Harris had difficulty effecting service of his complaint on his niece and grandniece. Because of this, Harris filed a number of motions with the court relating to service of the complaint. The trial court timely ruled on each of these motions.

Before his initial complaint had been served on all defendants, Harris filed a motion for leave to file an amended complaint, and he attached the proposed amended complaint to that motion. On October 27, 2017, the trial court granted this motion and deemed the amended complaint filed as of that date. However, shortly thereafter, on November 13, 2017, the trial court sua sponte entered an order barring Harris from filing any further pro se motions or pleadings in this case and any other case. There is no indication in either the sanctions order itself or the trial court's docket that the court provided notice to Harris that the court was considering imposing sanctions against him or that the court afforded him an opportunity to be heard before the sanction was imposed. Upon receipt of the sanctions order, Harris promptly sought review in this court.

As noted above, while Harris filed a notice of appeal directed to the sanctions order, we treat this appeal as a \*831 petition for writ of certiorari. To be entitled to the

issuance of such a writ, Harris must show “(1) a departure from the essential requirements of the law, (2) resulting in material injury for the remainder of the case (3) that cannot be corrected on postjudgment appeal.” Williams v. Oken, 62 So.3d 1129, 1132 (Fla. 2011) (quoting Reeves v. Fleetwood Homes of Fla., Inc., 889 So.2d 812, 822 (Fla. 2004) ). The departure from the essential requirements of the law sufficient to warrant relief through certiorari is something more than simple legal error. Instead, “[a] district court should exercise its discretion to grant certiorari review only when there has been a violation of a clearly established principle of law resulting in a miscarriage of justice.” Allstate Ins. Co. v. Kaklamanos, 843 So.2d 885, 889 (Fla. 2003) (citing Ivey v. Allstate Ins. Co., 774 So.2d 679, 682 (Fla. 2000) ). Such a miscarriage can occur when a party’s due process right to notice and an opportunity to be heard has been abridged by the court. See, e.g., Presidio Networked Sols., Inc. v. Taylor, 115 So.3d 434, 435 (Fla. 2d DCA 2013) (noting that the trial court’s failure to provide notice and opportunity to be heard to Presidio was a “complete denial of due process” sufficient to “constitute[ ] the type of irreparable harm that is subject to certiorari review”); K.G. v. Fla. Dep’t of Children & Families, 66 So.3d 366, 368-69 (Fla. 1st DCA 2011) (holding that the court’s failure to afford the mother an opportunity to be heard at the shelter hearing constituted a departure from the essential requirements of the law sufficient to be subject to review by certiorari).

In the context of sanctioning a pro se litigant by barring further pro se pleadings, the supreme court has recognized that there must be a balance between a litigant’s right of access to the courts and any abuse of that process.

We have recognized the importance of the constitutional guarantee of citizen access to the courts, with or without an attorney. See, e.g., Rivera [v. State], 728 So.2d [1165] at 1166 [ (Fla. 1998) ]; Attwood [v. Singletary], 661 So.2d [1216] at 1217 [ (Fla. 1995) ]; see also art. I, § 21, Fla. Const. (“The courts shall be open to every person for redress of any injury....”). Thus, denying a pro se litigant the opportunity to file future petitions is a serious sanction, especially where the litigant is a criminal defendant who has been prevented from further attacking his or her conviction, sentence, or conditions of confinement, as in Spencer and Huffman.

However, any citizen, including a citizen attacking his or her conviction, abuses the right to pro se access by filing repetitious and frivolous pleadings, thereby diminishing the ability of the courts to devote their finite resources to the consideration of legitimate claims. See Rivera, 728 So.2d at 1166; Attwood, 661

So.2d at 1216-17; Martin [v. Circuit Court, Seventeenth Judicial Circuit], 627 So.2d [1298] at 1300 [ (Fla. 4th DCA 1993) ].

State v. Spencer, 751 So.2d 47, 48 (Fla. 1999). Thus, “[c]ourts may, upon a demonstration of egregious abuse of judicial process, restrict parties from filing pro se pleadings with the court.” Id. at 47; see also Martin v. Dist. of Columbia Court of Appeals, 506 U.S. 1, 3, 113 S.Ct. 397, 121 L.Ed.2d 305 (1992) (recognizing the court’s inherent authority to sanction vexatious litigants).

However, to balance the pro se litigant’s right of access against the need of the courts to prevent abusive filings, the court must provide the pro se litigant with notice and an opportunity to be heard before such a sanction may be imposed. Spencer, 751 So.2d at 48. And this due process requirement applies to litigants involved in civil proceedings as well as criminal ones. See, e.g., Lomax v. Taylor, 149 So.3d 1135, 1136 n.2 (Fla. 2014) (citing Spencer as providing the required procedure before sanctioning a litigant in a civil case); Riethmiller v. Riethmiller, 133 So.3d 926, 926 n.3 (Fla. 2013) (same); Delgado v. Hearn, 805 So.2d 1017, 1018 (Fla. 2d DCA 2001) (applying the Spencer standard to civil litigants).

Here, neither the trial court’s order nor its docket shows that the court provided Harris with either notice or an opportunity to be heard before it sanctioned him by barring him from filing any further pro se pleadings or papers. By failing to afford Harris his due process right to notice and opportunity to be heard before it imposed sanctions, the trial court departed from the essential requirements of the law. And while the court did not bar Harris from appearing through counsel, Harris has nevertheless suffered a material injury that cannot be corrected on postjudgment appeal in that he is barred from filing any papers on his own behalf in this, or any other, civil case—a right to which he would be otherwise entitled.

For this reason, we grant Harris’s petition, quash the sanctions order, and remand for further proceedings. We do not address the merits of the trial court’s order, and, on remand, the trial court may again consider sanctioning Harris if it provides him with notice of the possibility of sanctions and an opportunity to be heard. We also note that while it may be permissible for the court to enter a sanctions order that prohibits pro se filings in other and future cases, see, e.g., Sapp v. State, 238 So.3d 875, 877-78 (Fla. 5th DCA 2018), it would behoove the trial court to provide Harris with notice of the possibility of such broad-reaching sanctions and the opportunity to be heard on the extent of those sanctions if it intends to do so, see Brinson v. State, 215 So.3d 1260, 1261 (Fla. 5th

DCA 2017) (finding sanctions order that prohibited pro se filings in future cases to be overbroad when the show cause order placing Brinson on notice of the possibility of sanctions referred only to the case in which the notice was given).

Petition granted, order quashed, and remanded for further proceedings.

LaROSE, C.J., and LUCAS, J., Concur.

**All Citations**

263 So.3d 829, 44 Fla. L. Weekly D274

**Footnotes**

- <sup>1</sup> Fla. R. App. P. 9.040(c) (“If a party seeks an improper remedy, the cause shall be treated as if the proper remedy had been sought ....”).
- <sup>2</sup> But see [Bolton v. SE Prop. Holdings, LLC](#), 127 So.3d 746 (Fla. 1st DCA 2013) (considering direct appeal of an order sanctioning a pro se litigant for filing frivolous pleadings).

751 So.2d 47  
Supreme Court of Florida.  
STATE of Florida, Petitioner,  
v.  
Randy Lavern SPENCER, Respondent.  
No. 93,795.  
|  
Sept. 23, 1999.

### Synopsis

Following denial of six prior postconviction motions challenging sentence, pro se inmate moved to correct illegal sentence. The Circuit Court, Columbia County, E. Vernon Douglas, J., denied motion, and imposed sanction barring further pro se challenges to conviction and sentence. Inmate appealed. The District Court of Appeal, 717 So.2d 95, held that notice and opportunity to be heard were required prior to imposition of sanction. On petition for review, the Supreme Court, Pariente, J., held that trial court must first provide litigant notice and reasonable opportunity to respond before prohibiting further pro se attacks on conviction and sentence as sanction for prior repeated and frivolous motions.

Affirmed; question answered.

**Procedural Posture(s):** On Appeal.

### Attorneys and Law Firms

\*47 Robert A. Butterworth, Attorney General, James W. Rogers, Tallahassee Bureau Chief, Criminal Appeals, and Trisha E. Meggs, Assistant Attorney General, Tallahassee, Florida, for petitioner.

Randy Lavern Spencer, Jasper, Florida, Respondent, pro se.

### Opinion

PARIENTE, J.

We have for review the opinion in *Spencer v. State*, 717 So.2d 95 (Fla. 1st DCA 1998), which certified conflict with the opinion in *Huffman v. State*, 693 So.2d 570 (Fla. 2d DCA 1996). We have jurisdiction. See art. V, § 3(b)(4), Fla. Const.

The relevant facts are set forth in the opinion below:

Spencer appeals from an order denying his motion to correct an illegal sentence filed pursuant to Florida Rule of Criminal Procedure Rule 3.800(a). We determine that the trial court properly denied relief. See *State v. Mancino*, 705 So.2d 1379, 1381 (Fla.1998). We do, however, find that the trial court did not follow the proper procedures when it determined that it would not entertain any further pro se challenges to Spencer's 1992 conviction and sentence. Prior to the imposition of sanctions, the trial court must issue an order to show cause which initiates a separate proceeding independent of the 3.800 action.

....

Courts may, upon a demonstration of egregious abuse of judicial process, restrict parties from filing pro se pleadings with the court....<sup>1</sup>

In \*48 *Martin v. Circuit Court, Seventeenth Judicial Circuit*, 627 So.2d 1298 (Fla. 4th DCA 1993), ... the fourth district held that the circuit court could not issue such an order without first giving the pro se litigant notice and an opportunity to be heard. See *id.* at 1299–1300. Nevertheless, in *Huffman v. State*, the Second District Court of Appeal, after acknowledging the procedural due process rights of a pro se litigant recognized in *Martin*, held that a trial court could prohibit a prisoner from filing further pro se attacks on a particular conviction or sentence without affording the prisoner notice or an opportunity to be heard prior to the imposition of the sanction. The court in *Huffman* reasoned that because the sanction imposed did not completely bar the prisoner's access to the courts on other matters, it "did not rise to the level that requires the due process safeguards discussed in *Martin*."

We find ourselves in disagreement with the second district's opinion in *Huffman*, and we certify conflict with that decision.

*Spencer*, 717 So.2d at 96 (citations omitted) (footnotes omitted).

In certifying conflict with *Huffman*, the First District reasoned that "[f]undamental fairness and the necessity of the creation of a complete record require that a party be given reasonable notice prior to the imposition at the trial level of this extreme sanction." *Id.* at 97. Therefore, the First District reversed the trial court's sanction and remanded the case with instructions that the trial court first issue an order to show cause why the sanction should

not be imposed and allow Spencer a reasonable time to respond. *See id.*

The precise issue before us is whether a trial court must first provide a litigant notice and a reasonable opportunity to respond before prohibiting further pro se attacks on his or her conviction and sentence as a sanction for prior repeated and frivolous motions.<sup>2</sup> This Court has never explicitly addressed this issue. However, as a matter of practice, this Court has first issued orders to show cause before denying a litigant access in this Court to challenge his or her conviction, sentence, or disciplinary actions during confinement. *See, e.g., Rivera v. State*, 728 So.2d 1165, 1165 (Fla.1998), petition for cert. filed, No. 98-8366 (U.S. Mar. 3, 1999); *Attwood v. Singletary*, 661 So.2d 1216, 1216 (Fla.1995).

We have recognized the importance of the constitutional guarantee of citizen access to the courts, with or without an attorney. *See, e.g., Rivera*, 728 So.2d at 1166; *Attwood*, 661 So.2d at 1217; *see also art. I, § 21, Fla. Const.* (“The courts shall be open to every person for redress of any injury....”). Thus, denying a pro se litigant the opportunity to file future petitions is a serious sanction, especially where the litigant is a criminal defendant who has been prevented from further attacking his or her conviction, sentence, or conditions of confinement, as in *Spencer* and *Huffman*.

However, any citizen, including a citizen attacking his or her conviction, abuses the right to pro se access by filing repetitious and frivolous pleadings, thereby diminishing the ability of the courts to devote their finite resources to the consideration of legitimate claims. *See Rivera*, 728

So.2d at 1166; *Attwood*, 661 So.2d at 1216-17; *Martin*, 627 So.2d at 1300. To achieve the best balance of a litigant’s right of access to courts and the need of the courts to prevent repetitious and frivolous pleadings, it is important for courts to first provide notice and an opportunity to respond before preventing that litigant from bringing further attacks on his or her conviction and sentence.

Further, providing notice and an opportunity to respond through the issuance of an order to show cause also serves to \*49 generate a more complete record.<sup>3</sup> If the litigant is thereafter denied further pro se access to the courts, the appellate courts will have an enhanced ability to determine whether the denial of access is an appropriate sanction under the circumstances.

Based on the foregoing, we approve *Spencer* to the extent it is not inconsistent with this opinion. We intend these procedures to apply prospectively. Thus, we do not disapprove *Huffman*.

It is so ordered.

HARDING, C.J., and SHAW, WELLS, ANSTEAD, LEWIS and QUINCE, JJ., concur.

#### All Citations

751 So.2d 47, 24 Fla. L. Weekly S433

#### Footnotes

<sup>1</sup> According to the trial court’s order dismissing Spencer’s final pro se motion to correct his sentence, filed on December 24, 1997, Spencer had previously filed the following motions attacking his judgment and sentence for first-degree murder: (1) motion to correct illegal sentence (3/7/95); (2) amended motion to correct illegal sentence (4/24/95); (3) motion for correction of sentence for jail time credit (5/12/97); (4) motion to amend motion to correct illegal sentence (5/21/97); (5) motion for rehearing (5/28/97); and (6) defendant’s successive motion to correct illegal sentence with supporting affidavit (6/26/97). Thus, according to the trial court’s order, in all, Spencer filed seven motions attacking the validity of his conviction and sentence. The record does not contain these prior pleadings, so the trial court’s findings as to Spencer’s litigious history are neither refuted nor substantiated.

<sup>2</sup> The district court below did not reach the issue of whether the imposition of the sanction was error, *see Spencer v. State*, 717 So.2d 95, 96 n. 2 (Fla. 1st DCA 1998), and this issue is not considered here.



- <sup>3</sup> We do not express an opinion as to whether it is always necessary, as a matter of procedure, for the order to show cause issued by a trial court to be initiated by a separate proceeding, as stated in the First District's opinion. See [Spencer, 717 So.2d at 96](#).