

Proposed Rule 5.19: Vexatious Litigants

(A) Definitions. For purposes of this rule, the following definitions shall apply:

(1) “Vexatious litigant” means:

a. A party who, in proceedings before the State Bar Court, repeatedly relitigates or attempts to relitigate an issue of law or fact that has been finally determined by the State Bar Court or by the Supreme Court; or

b. A party who, in proceedings before the State Bar Court, repeatedly files unmeritorious motions, pleadings, or other papers, or repeatedly engages in other tactics that are in bad faith, frivolous or solely intended to cause harassment or unnecessary delay; or

c. A party who has previously been declared to be a vexatious litigant by any state or federal court in any action or proceeding.

2) “Finally determined” means that all avenues for review or appeal have been exhausted or the time for seeking review or appealing has expired.

(B) Order. On the motion of a party or on its own motion after giving notice to the parties and giving the party who is the subject of the motion the opportunity to respond, the court may issue an order declaring a party to be a vexatious litigant and imposing appropriate requirements to control the conduct of the vexatious litigant. The order shall be based on a finding that the vexatious litigant has abused the court’s process or has previously been declared to be vexatious litigant by any state or federal court, and is likely to abuse the court’s processes unless protective measures are taken. The order must state with specificity the grounds for making the finding and the grounds for any requirements imposed other than a prefiling order described in paragraph E.

(C) Notice and Hearing. No party shall be declared a vexatious litigant without being given notice and an opportunity to be heard. The party who is the subject of a motion pursuant to this rule may file a written response to the motion within 10 days after it is served and must serve the response on the opposing party in the case. In its discretion, the court may set a hearing for presentation of oral evidence or may rule on the motion solely on the basis of the documentary evidence submitted with the motion and response, including any declarations of fact made under penalty of perjury.

(D) Review. A ruling under this rule is reviewable under rule 5.150. The party must file the petition for review within 10 days after service of the ruling.

(E) Pre-filing Orders. An order declaring a party to be a vexatious litigant may prohibit the vexatious litigant from filing a motion, supplement, or amendment to any pleading in any matter before the State Bar Court without first obtaining leave of the court. The court shall grant leave to file a motion, supplement, or amendment only if it appears that the motion, supplement, or amendment has merit and has not been filed for purposes of harassment or delay. The clerk shall not file any motion, supplement, or amendment submitted by a vexatious litigant unless the vexatious litigant first obtains an order permitting the filing. A pre-filing order shall not require leave of court for a litigant to file or submit, as applicable, a request for disability accommodations, a request for a Prefiling Settlement Conference, a settlement conference statement, a response to a Notice of Disciplinary Charges, a post-

trial brief allowed by the court, or any pleading filed as permitted under these rules in response to a pleading or motion filed by the opposing party.

(F) Record of Vexatious Litigants. A copy of any order declaring a party to be a vexatious litigant shall be submitted to the Clerk, who shall maintain a record of vexatious litigants subject to pre-filing orders to be used to determine whether a pleading has been submitted in violation of such an order.

(G) Application to Vacate. A party who has been declared a vexatious litigant may file an application to vacate the order declaring them to be a vexatious litigant. The application shall be made before the judge who entered the order, if that judge is available, or to the presiding judge or their designee. A vexatious litigant whose application to vacate the order is denied shall not be permitted to file another application before 12 months have lapsed after the date of the denial of the previous application. The court may vacate an order declaring a party to be a vexatious litigant upon a showing of a material change in the facts upon which the order was granted and that the interests of justice would be served by vacating the order.