

CHAPTER 28-36 VEXATIOUS LITIGATION

28-36-01. Definitions.

As used in this chapter:

1. "Litigation" means any civil or disciplinary action or proceeding, small claims action, appeal from an administrative agency, review of a referee order by the district court, or appeal to the supreme court. The term does not include criminal actions.
2. "Vexatious conduct" means conduct that:
 - a. Serves primarily to harass or maliciously injure another party in litigation;
 - b. Is not warranted under existing law and cannot be supported by a good-faith argument for an extension, modification, or reversal of existing law;
 - c. Is imposed solely for delay;
 - d. Hinders the effective administration of justice;
 - e. Imposes an unacceptable burden on judicial personnel and resources; or
 - f. Impedes the normal and essential functioning of the judicial process.
3. "Vexatious litigant" means a litigant, either self-represented or represented by an attorney, who:
 - a. Has commenced, prosecuted, or maintained at least two litigations involving vexatious conduct, which were finally determined adversely to the litigant in the past seven years;
 - b. After litigation has been finally determined, relitigates or attempts to relitigate:
 - (1) The validity of the determination against the same party as to whom the litigation was finally determined; or
 - (2) The cause of action, claim, controversy, or any of the issues of fact or law, determined or concluded by the final determination against the same party as to whom the litigation was finally determined;
 - c. Repeatedly files unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery, or engages in any other tactics frivolous or intended to cause unnecessary burden, expense, or delay; or
 - d. Has previously been declared a vexatious litigant by any state or federal court of record in any action or proceeding.

28-36-02. Burden of proof - Entry of order restricting vexatious litigation.

1. If the court finds by a preponderance of the evidence an individual is a vexatious litigant, the court shall enter a prefiling order restricting the vexatious litigant from filing new litigation or filing documents within existing litigation without prior approval of the court.
2. A prefiling order must:
 - a. Impose all costs of the vexatious litigation against the filing party; and
 - b. Award the opposing party reasonable attorney fees and costs associated with responding to the vexatious litigant, including the cost of seeking the prefiling order.

28-36-03. Roster.

The clerk of court shall provide a copy of any prefiling orders issued under this chapter to the state court administrator and each United States district court in the state. The state court administrator shall maintain a list of vexatious litigants subject to prefiling orders. Prefiling orders in effect under supreme court rule before August 1, 2025, remain in effect.

28-36-04. Rules - Authority.

The supreme court shall adopt rules to implement this chapter.