

House Bill 1533
House Judiciary Committee
Testimony Presented by Sara Behrens
February 8, 2023

Good morning Chairman Klemin, members of the committee. My name is Sara Behrens and I am a staff attorney with the State Court Administrator's Office. I am here today in a neutral position on House Bill 1533.

House Bill 1533 provides a remedy for those facing abusive litigation in the context of certain relationships intimate or formerly intimate relationships. We currently have in place two court rules which may be applicable to this type of situation. First, [Administrative Rule 58](#) governs vexatious litigation. AR 58 has been in place since 2017, but has been amended numerous times since that time. AR 58 defines a vexatious litigant as

[A] person who habitually, persistently, and without reasonable grounds engages in conduct that:

- (1) serves primarily to harass or maliciously injure another party in litigation;
- (2) is not warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law;
- (3) is imposed solely for delay;
- (4) hinders the effective administration of justice;
- (5) imposes an unacceptable burden on judicial personnel and resources; or
- (6) impedes the normal and essential functioning of the judicial process.

In cases where a self-represented litigant makes numerous filings in a case or files numerous cases, the opposing party may seek to have the litigant declared a vexatious litigant. The request is sent to the presiding judge of the district who then makes a determination and can declare the individual a vexatious litigant if they find one or more of the following:

- a. in the immediate preceding seven-year period the person has commenced, prosecuted, or maintained as a self-represented party at least three litigations that have been finally determined adversely to that person;
- b. after a litigation has been finally determined against the person, the person has repeatedly relitigated or attempted to relitigate, as a self-represented party, either
 - (1) the validity of the determination against the same defendant or defendants 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 defendant or defendants as to whom the litigation was finally determined;
- c. in any litigation while acting as a self-represented party, the person repeatedly files unmeritorious motions, pleadings, or other papers, conduct necessarily discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary burden, expense or delay;
- d. in any litigation, the person has previously been declared to be a vexatious litigant by any state or federal court of record in any action or proceeding; or
- e. in any disciplinary proceeding, the person has previously been declared to be a vexatious litigant in a disciplinary proceeding.

Where the presiding judge determines the individual to be vexatious, the individual is given 14 days to provide a response and if a response is received, the judge may hold a hearing. If there's no response or the response does not provide sufficient cause not to issue the order, the presiding judge may issue an order declaring the individual to be a vexatious litigant and subject the individual to a pre-filing order.

The vexatious litigant is not prohibited from filing anything further, but must obtain the court's permission to do so. The request for leave to file a document or a case must show that the filing has merit and isn't being filed simply to harass the opposing party or for delay. If the court grants the vexatious litigant's request, it would be at that point the opposing party's time to respond would begin to run, not before. If the court denies the request, the opposing party has no obligation to provide any response. Any documents filed without permission are struck from the

record and any new litigation filed without permission is summarily dismissed. The court may also consider filing without permission contempt of court. The Court has already begun putting together forms for use under AR 58. As currently written, AR 58 does not apply to parties represented by counsel.

Another rule which can be used in these situations, and applies to both self-represented parties and parties represented by counsel, is [Rule 11 of the North Dakota Rules of Civil Procedure](#).

Rule 11 requires that any pleading, written motion, or other paper filed with the court be presented for proper purposes, be warranted by existing law or make a nonfrivolous argument to extend the law, and be supported by the evidence. If found in violation of Rule 11, the party or attorney can be subject to sanctions such as nonmonetary directives or monetary penalties including payment of attorney's fees and expenses to the opposing party.

I spoke with Representative Boschee regarding the court rules and HB 1533 earlier in the week. From that conversation, I understand that litigants in the family law realm have found that the existing court rules do not always work well in their situations. The Court isn't opposed to the intent of HB 1533 but feels that it may be more appropriate in a court rule as provided for in section 3 of Article 6 of the North Dakota Constitution and § 27-02-08 (providing the supreme court may make all rules or procedure necessary for the administrative of justice). The procedure provided for in HB 1533 is similar to that in AR 58 but different enough that it could cause confusion. Court rules can more quickly be amended if the procedure doesn't work quite as intended. The Court is open to working with Representative Boschee to come up with a solution that works for all involved including amendments to AR 58 or a new court rule and development of forms for use by litigants.