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Administrative Rule 58 - VEXATIOUS LITIGATION

## Administrative Rule 58 - VEXATIOUS LITIGATION

Effective Date:  
1/25/2023

### Section 1. Purpose.

This rule addresses vexatious litigation, which impedes the proper functioning of the courts and court-related adjudicative bodies, while protecting reasonable access to those tribunals.

### Section 2. Definition.

(a) Litigation means any civil or disciplinary action or proceeding, including any appeal from an administrative agency, any review of a referee order by the district court, and any appeal to the supreme court.

(b) Vexatious litigant means 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.

(c) For purposes of this rule, presiding judge means the presiding judge of a district under N.D. Sup. Ct. Admin. R. 2, the chair of the disciplinary board, or the chair of the judicial conduct commission. For purposes of this rule, and as context may require, references to a judge or to the court also refer to the disciplinary board or the judicial conduct commission. When the presiding judge has recused or is disqualified from a matter, the matter shall be reassigned under N.D. Sup. Ct. Admin. R. 2(9) or (10).

### **Section 3. Pre-filing Order.**

(a) The presiding judge may enter a pre-filing order prohibiting a vexatious litigant from filing any new litigation or any new documents in existing litigation in the courts of this state as a self-represented party without first obtaining leave of a judge of the court where the litigation is proposed to be filed. A pre-filing order must contain an exception allowing the person subject to the order to file an application seeking leave to file. A pre-filing order also must contain a requirement that before ruling on the merits of any subsequent filing the court must rule on the application for leave to file.

(b) A district judge, referee, disciplinary board member, or judicial conduct commission member may request entry of a pre-filing order by the presiding judge. The presiding judge may enter a pre-filing order relating to a party to an action before the presiding judge.

### **Section 4. Finding.**

A presiding judge may determine a person is a vexatious litigant based on one or more of the following findings:

(a) in the immediately 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, conducts



unnecessary 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.

### **Section 5. Notice.**

If the presiding judge finds that there is a basis to conclude that a person is a vexatious litigant and that a pre-filing order should be issued, the presiding judge must issue a proposed pre-filing order along with the proposed findings supporting the issuance of the pre-filing order. The person who would be designated as a vexatious litigant in the proposed order will have 14 days to file a written response to the proposed order and findings. If a response is filed, the presiding judge may, in the judge's discretion, grant a hearing on the proposed order. If no response is filed within 14 days, or if the presiding judge concludes following a response and any subsequent hearing that there is a basis for issuing the order, the presiding judge may issue the pre-filing order.

### **Section 6. Appeal.**

A pre-filing order entered by a presiding judge designating a person as a vexatious litigant may be appealed to the supreme court under N.D.C.C. § 28-27-02 and N.D.R.App.P. 4.

### **Section 7. Supreme Court Order.**

The supreme court may, on the court's own motion or the motion of any party to an appeal, enter a pre-filing order prohibiting a vexatious litigant from filing any new litigation in the courts of this state as a self-represented party without first obtaining leave of a judge of the court where the litigation is proposed to be filed. If the supreme court finds that there is a basis to conclude that a person is a vexatious litigant and that a pre-filing order should be issued, the court must issue a proposed pre-filing order along with the proposed findings supporting the issuance of the pre-filing order. The person who would be designated as a vexatious litigant in the proposed order will have 14 days to file a written response to the proposed order and findings. If no response is filed within 14

days, or if the supreme court concludes following a response and any subsequent hearing that there is a basis for issuing the order, the pre-filing order may be issued.

### **Section 8. Procedures for Subsequent Filings.**

(a) Any party named in a proceeding covered by this rule may file a notice stating that the litigation plaintiff or complaining party in a disciplinary proceeding is a vexatious litigant subject to a pre-filing order. The filing of such notice stays the proceeding. The proceeding must be dismissed unless the plaintiff or complainant, within 14 days of the filing of the notice, obtains an order permitting the action to proceed. Upon receiving an application for leave to file, or upon notice from any party named in the litigation, the court must rule on the application before ruling on the merits of any proposed filing.

(b) A court may permit the filing of a document in existing litigation by a vexatious litigant subject to a pre-filing order only if it appears that the document has merit and has not been filed for the purpose of harassment or delay.

(c) If the court issues an order granting leave to file a document, a party's time to answer or respond will begin to run when the party is served with the order of the court.

### **Section 9. Sanctions; New Litigation.**

(a) Disobedience of a pre-filing order entered under this rule may be punished as a contempt of court.

(b) A court may permit the filing of a new proceeding by a vexatious litigant subject to a pre-filing order only if it appears that the proceeding or document has merit and has not been filed for the purpose of harassment or delay.

(c) If a vexatious litigant subject to a pre-filing order files any new litigation or disciplinary action without first obtaining the required leave of court to file the proceeding, the court may summarily dismiss the action.

### **Section 10. Roster.**

The clerk of court must provide a copy of any pre-filing order issued under this rule to the state court administrator, who will maintain a list of vexatious litigants subject to pre-filing orders.

### **Section 11. Effect of Pre-filing Order.**

A pre-filing order entered under this rule supersedes any other order limiting or

enjoining a person's ability to file or serve papers or pleadings in any North Dakota state court litigation.







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RULE 11. SIGNING OF PLEADINGS, MOTIONS AND OTHER PAPERS; REPRESENTATIONS TO COURT

## RULE 11. SIGNING OF PLEADINGS, MOTIONS AND OTHER PAPERS; REPRESENTATIONS TO COURT; SANCTIONS

Effective Date:  
9/15/2019

### (a) Signature.

(1) In General. Every pleading, written motion, and other paper must be signed by at least one attorney of record in the attorney's name or by a party personally if the party is self-represented. The paper must state the signer's address, electronic mail address for electronic service, and telephone number. If the signer is an attorney, the paper must contain the attorney's State Board of Law Examiners identification number. Unless a rule or statute specifically states otherwise, a pleading need not be verified or accompanied by an affidavit. The court must strike an unsigned paper unless the omission is promptly corrected after being called to the attorney's or party's attention.

(2) Notarization Not Required. Unless specifically required by court rule, a document filed with the court in a civil action is not required to be notarized. When any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, subscribed by the maker as true under penalty of perjury, and dated, in substantially the form set out at N.D.C.C. § 31-15-05.

**(b) Representations to the Court.** By presenting to the court a pleading, written motion, or other paper, whether by signing, filing, submitting, or later advocating it, an attorney or self-represented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

- (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
- (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;
- (3) the factual contentions have evidentiary support or will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and
- (4) the denials of factual contentions are warranted on the evidence or are reasonably based on belief or a lack of information.

**(c) Sanctions.**

- (1) In General. If, after notice and a reasonable opportunity to respond, the court determines that Rule 11(b) has been violated, the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation. Absent exceptional circumstances, a law firm must be held jointly responsible for a violation committed by its partner, associate, or employee.
- (2) Motion for Sanctions. A motion for sanctions must be made separately from any other motion and must describe the specific conduct that allegedly violates Rule 11(b). The motion, brief, and other supporting papers must be served under Rule 5, but must not be filed or be presented to the court if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within 21 days after service or within another time the court sets. The respondent must have 10 days after a motion for sanctions is filed to serve and file an answer brief and other supporting papers. If warranted, the court may award to the prevailing party the reasonable expenses, including attorney's fees, incurred for the motion.
- (3) On the Court's Initiative. On its own, the court may order an attorney, law firm, or party to show cause why conduct specifically described in the order has not violated Rule 11(b).
- (4) Nature of a Sanction. A sanction imposed under this rule must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated. The sanction may include nonmonetary directives; an order to pay a penalty into court; or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of part or



all of the reasonable attorney's fees and other expenses directly resulting from the violation.

(5) **Limitations on Monetary Sanctions.** The court must not impose a monetary sanction:

- (A) against a represented party for violating Rule 11(b)(2); or
- (B) on its own, unless it issued the show-cause order under Rule 11(c)(3) before voluntary dismissal or settlement of the claims made by or against the party that is, or whose attorneys are, to be sanctioned.

**(d) Inapplicability to Discovery.** This rule does not apply to disclosures and discovery requests, responses, objections, and motions under Rules 26 through 37.

**(e) Limited Representation.**

(1) **Preparation of Pleadings.** An attorney who complies with Rule 1.2 of the N.D. Rules of Prof. Conduct, may prepare pleadings, briefs, and other documents to be filed with the court by a self-represented party. The attorney's preparation of pleadings, briefs, or other documents does not constitute an appearance by the attorney in the case and no notice under Rule 11(e)(2) is required. Any filing prepared under this paragraph must be signed by the party designated as "self-represented."

(2) **Limited Appearance.**

(A) **In General.** An attorney who complies with Rule 1.2 of the N.D. Rules of Prof. Conduct, may make a "limited appearance" on behalf of an otherwise self-represented party involved in a proceeding to which these rules apply.

(B) **Notice.** An attorney who makes a limited appearance on behalf of an otherwise self-represented party must serve a notice of limited appearance on each party involved in the matter. The notice must state precisely the scope of the limited appearance. An attorney who seeks to act beyond the stated scope of the limited appearance must serve an amended notice of limited appearance. Upon completion of the limited appearance, the attorney must file and serve a "Certificate of Completion of Limited Appearance" as required by N.D.R.Ct. 11.2(d).

(C) **Filing.** If the action is filed, the party who received assistance of an attorney on a limited basis must file the notice of limited appearance with the court.

(3) **Scope of Rule.** The requirements of this rule apply to every pleading, written motion and other paper signed by an attorney acting within the scope of a limited representation.



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