

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

ORDER OF ADOPTION

Supreme Court No. 20230030

**Amendments to North Dakota Supreme Court Administrative Rule
58 Regarding Vexatious Litigation**

[¶1] The Court considered proposed amendments to North Dakota Supreme Court Administrative Rule 58 regarding vexatious litigation. The Court considered the matter, and

[¶2] IT IS HEREBY ORDERED that the amendments to North Dakota Supreme Court Administrative Rule 58 are ADOPTED effective immediately.

[¶3] The Supreme Court of the State of North Dakota convened with the Honorable Jon J. Jensen, Chief Justice, and the Honorable Gerald W. VandeWalle, the Honorable Daniel J. Crothers, the Honorable Lisa Fair McEvers, the Honorable Jerod E. Tufte, Justices, directing the Clerk of the Supreme Court to enter the above order.

[¶4] Dated: January 25, 2023

/s/ Petra H. Mandigo Hulm
Clerk
North Dakota Supreme Court

Administrative Rule 58 - VEXATIOUS LITIGATION

Effective Date: 9/1/2022

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 ~~in the district~~ 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.

EXPLANATORY NOTE

Rule 58 was adopted, effective March 1, 2017; amended effective June 21, 2017; August 11, 2021; September 1, 2022, January 25, 2023.

Rule 58 was amended, effective September 1, 2022, to make the vexatious litigant procedure applicable to the attorney and judicial disciplinary process and to small claims court. The amendments also clarify pre-filing order procedure.

Rule 58, Section 3, was amended, effective January 25, 2023, to require pre-filing approval be obtained from a judge of the court (or where applicable, the board or commission) where the proposed filing is to be made. The prior rule required leave of a judge "in the district."

SOURCES: Joint Procedure Committee Minutes of April 29, 2022, pages 13-14; May 12-13, 2016, pages 25-29. Idaho Ct. Admin. R. 59.

STATUTES AFFECTED:

CONSIDERED: N.D.C.C. §§ 27-05-06, 27-05-22, 27-05-23, 28-27-02.