2023 HOUSE JUDICIARY

HB 1533

2023 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

HB 1533
2/8/2023

Relating to protecting survivors of domestic abuse from abusive litigation.

9:00 AM Chairman Klemin opened the hearing. Members present: Chairman Klemin, Vice Chairman Karls, Rep. Bahl, Rep. Christensen, Rep. Henderson, Rep. S. Olson, Rep. Rios, Rep. S. Roers Jones, Rep. Satrom, Rep. Schneider, Rep. VanWinkle, and Rep. Vetter. Absent: Rep. Cory.

Discussion Topics:

- Financial and physical abuse.
- Self-representation.
- Abusive litigation.
- Vexatious litigant.
- Supreme court rule process.
- Rule 58.

Rep. Boschee, District 44, introduced the bill, Testimony 19714, and proposed amendment 23.0308.02001
Mark Jorritsma, Executive Director ND Family Alliance Legislative Action: Testimony 19568
Jennifer Williams, Fargo resident: Testimony 19746
Kayla Jones: Testimony # 19706
Seth O'Neill, CAWS ND: Testimony 19668
Sarah Behrens, Staff Attorney with State Court Administrator's Office: Testimony 19751

Additional written testimony:
Amanda Anderson, Testimony 19402
Richard Linnerooth, Linnerooth Law Office, Fargo, ND. Testimony 19569
Heather Zins: Testimony 19753

Hearing closed at 10:08 AM.

Delores Shimek, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

HB 1533
2/15/2023

Relating to protecting survivors of domestic abuse from abusive litigation.

9:14 AM Chairman Klemin opened the meeting. Members present: Chairman Klemin, Vice Chairman Karls, Rep. Bahl, Rep. Christensen, Rep. Cory, Rep. Henderson, Rep. S. Olson, Rep. Rios, Rep. S. Roers Jones, Rep. Satrom, Rep. Schneider, Rep. VanWinkle, and Rep. Vetter

Discussion Topics:

- Amendment
- Abusive litigation.
- Supreme Court rules.
- Vexation litigation.

Rep. Boschee: Introduced the amendment 23.038.02001. Testimony #27118

Rep. Shannon Roers Jones moved the amendment 23.0308.02002.
Seconded by Vice Chairman Karls

Representatives	Vote
Representative Lawrence R. Klemin	Y
Representative Karen Karls	Y
Representative Landon Bahl	Y
Representative Cole Christensen	Y
Representative Claire Cory	Y
Representative Donna Henderson	Y
Representative SuAnn Olson	Y
Representative Nico Rios	Y
Representative Shannon Roers Jones	Y
Representative Bernie Satrom	Y
Representative Mary Schneider	Y
Representative Lori VanWinkle	Y
Representative Steve Vetter	Y

Roll Call Vote: 13 Yes 0 No 0 Absent

Rep. Shannon Roers Jones moved a Do Pass as Amended;
Seconded by Rep. Christensen

Representatives	Vote
Representative Lawrence R. Klemin	Y
Representative Karen Karls	Y
Representative Landon Bahl	Y
Representative Cole Christensen	Y
Representative Claire Cory	Y
Representative Donna Henderson	Y
Representative SuAnn Olson	Y
Representative Nico Rios	Y
Representative Shannon Roers Jones	Y
Representative Bernie Satrom	Y
Representative Mary Schneider	Y
Representative Lori VanWinkle	Y
Representative Steve Vetter	N

Roll Call Vote: 12 Yes 1 No 0 Absent
Carrier: Rep. Shannon Roers Jones

Meeting closed at 9:43 AM.

Delores Shimek, Committee Clerk

23.0308.02003
Title.03000

Adopted by the House Judiciary Committee

February 15, 2023

2-15-23

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1533

Page 2, line 12, remove "or domestic partner"

Page 2, line 12, remove "or domestic"

Page 2, line 13, remove "partner"

Page 2, remove lines 19 through 30

Page 3, remove lines 1 through 31

Page 4, line 7, after the underscored semicolon insert "and"

Page 4, line 10, replace "; and" with an underscored period

Page 4, remove lines 11 through 13

Page 4, remove lines 18 through 31

Page 5, remove lines 1 through 31

Page 6, remove lines 1 through 4

Page 6, after line 4, insert:

"**Rules - Authority.**

The supreme court may adopt rules to implement this chapter."

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1533: Judiciary Committee (Rep. Klemin, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). HB 1533 was placed on the Sixth order on the calendar.

Page 2, line 12, remove "or domestic partner"

Page 2, line 12, remove "or domestic"

Page 2, line 13, remove "partner"

Page 2, remove lines 19 through 30

Page 3, remove lines 1 through 31

Page 4, line 7, after the underscored semicolon insert "and"

Page 4, line 10, replace "; and" with an underscored period

Page 4, remove lines 11 through 13

Page 4, remove lines 18 through 31

Page 5, remove lines 1 through 31

Page 6, remove lines 1 through 4

Page 6, after line 4, insert:

"**Rules - Authority.**

The supreme court may adopt rules to implement this chapter."

Renumber accordingly

2023 SENATE JUDICIARY

HB 1533

2023 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

HB 1533
3/13/2023

A bill relating to protecting survivors of domestic abuse from abusive litigation.

11:16 AM Chairman Larson opened the meeting.

Chairman Larson and Senators Myrdal, Luick, Sickler, Estenson, Braunberger and Paulson are present.

Discussion Topics:

- Harassment
- Misuse of courts
- Meritorious court filings

11:17 AM Representative Joshua Boschee introduced the bill and provided written testimony #24162.

11:25 AM Mark Jorritsma, Executive Director, North Dakota Family Alliance Legislative Action, testified in favor of the bill and provided written testimony #24055.

11:28 AM Jennifer Willliams testified in favor of the bill and provided written testimony #24139.

11:37 AM Seth O'Neill, Attorney, CAWS North Dakota, testified in favor of the bill and provided written testimony #23782.

11:42 AM Sara Behrens, Staff Attorney, State Court Administrator's Office, testified neutral on the bill and provided written testimony #24143, 24302.

11:54 AM Chairman Larson closed the public hearing.

1:54 AM Senator Braunberger moved to Do Pass the bill. Motion seconded by Senator Myrdal.

Senators	Vote
Senator Diane Larson	Y
Senator Bob Paulson	Y
Senator Jonathan Sickler	Y
Senator Ryan Braunberger	Y
Senator Judy Estenson	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Motion passes 7-0-0

Senator Braunberger will carry the bill.

This bill does not affect workforce development.

11:57 AM Chairman Larson closed the meeting.

Rick Schuchard, Committee Clerk

REPORT OF STANDING COMMITTEE

HB 1533, as engrossed: Judiciary Committee (Sen. Larson, Chairman) recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1533 was placed on the Fourteenth order on the calendar. This bill does not affect workforce development.

TESTIMONY

HB 1533

HB 1533 - Protecting Domestic Violence Victims from Abusive Litigation

Written Testimony of Amanda Anderson
February 6, 2023

To Rep. Boschee, Rep. Klemin, Rep. Pyle, Rep. Roer-Jones, Rep. Schneider, Sen. Braunberger, Rep. Hanson, Rep. Ista,and the Judiciary Committee:

My name is Amanda Anderson and I am a resident of Fargo, ND. I am writing this in support of HB1533, protecting domestic violence victims from abusive litigation.

This bill is an important piece of legislation that aims to protect those who have been through domestic violence and finding a way out. Abusers have the ability to continue their abuse through the court system, the very system that is meant to protect. It is not only a continuation of emotional and mental abuse, but it is an enormous financial burden as well.

My personal experience has been difficult. While going through my divorce, I obtained a disorderly conduct restraining order. Due to safety concerns, we used a safe exchange facility. We utilized a parenting coordinator as a means to keep us out of court; however, he was able to continue to fight me in court for every little thing he wanted—additional parenting time, custody, money, literally anything he wanted- baseless things that shouldn't have been warranted in a courtroom. Our case filing is extremely extensive. I've been divorced for over a decade but am STILL being brought back to court—next month in fact.

When it was early on in my divorce, every time I would get court paperwork, it was like emotional and mental abuse all over again. It was hard for me to be a good parent. It was difficult to continuously be brought back to defend myself for no reason. It was extremely expensive. With the amount of money I've spent defending myself, I could have easily put one of my children through college. All for no reason except that it was a legal way for an abuser to continue to reach a victim. A way to control.

While doing my exchanges at Rainbow Bridge, I met others like me. Others who were in my situation, with no where to turn for help. Parents spending every penny they have to defend themselves, just trying to be the best parents they could be while dealing internally with the emotional turmoil, trying to keep themselves and their children safe. It has made relationships hard. It's taken time away from work, my children, family and friends. This bill is important, it's necessary. Courts need to be allowed to handle important matters, not give abusers the ability to legally terrorize their victims.

I would appreciate your support in passing this bill.

NORTH DAKOTA Family Alliance LEGISLATIVE ACTION

Faith · Family · Freedom

Testimony Supporting Senate Bill 1533

Mark Jorritsma, Executive Director
North Dakota Family Alliance Legislative Action
February 8, 2023

Dear Chairman Klemin and members of the House Judiciary Committee. My name is Mark Jorritsma and I am the Executive Director of North Dakota Family Alliance Legislative Action. We are here today to testify in support of House Bill 1533 and ask that you issue a "DO PASS" out of committee.

North Dakota Family Alliance Legislative Action supports the intent of this bill for a number of reasons. First, there are actual cases of domestic abuse victims being subjected to abusive litigation right here in North Dakota. In other words, while it is frequently the case that the legislature is hesitant to implement laws for situations that do not already exist, this is not one of those cases and cannot be rejected on that basis.

Second, our organization is a staunch supporter of protecting victims of domestic abuse, from both a faith and societal basis. While we understand that situations like this can sometimes be very complex, we will side with the victim and, unfortunately too often, the children that get caught up in these situations. These individuals need a fresh start to their lives and this bill would help facilitate that. As long as abusive litigation continues, their lives are put on hold and they continue to suffer with the memories of the abuse they were trying to escape.

Finally, there is the matter of the court system. Our court system in North Dakota, like many other states, is continually running at full speed and nevertheless has a significant backlog of critical cases. The point of this bill is that abusive litigation does not fall into the category of "critical cases" by its very definition. It further clogs our court system for all the wrong reasons.

While there is always the possibility of laws going too far and actually creating an unfair situation for fathers, we believe that what this bill seeks to do greatly outweighs that small likelihood. For these reasons, North Dakota Family Alliance Legislative Action requests that you render a "DO PASS" on House Bill 1533. Thank you for the opportunity to testify, and I'd be happy to stand for any questions.

1515 Burnt Boat Dr., Suite C-148, Bismarck, ND 58503
mark@NDfamilyalliance.org
701·355·6425
www.ndfamilyalliance.org

HB 1533 - Protecting Domestic Violence Victims from Abusive Litigation

Richard Linnerooth – 112 University Drive North Suite #115, Fargo, North Dakota 58102

February 6, 2023

To: Rep. Boschee, Sen. Braunberger, Rep. Hanson, Rep. Ista, Rep. Klemin, Rep. Pyle, Rep. Roers Jones, Rep. Schneider and Judiciary Committee

My name is Richard Linnerooth. I have lived in Fargo for most of my life and have had my own law practice in Fargo for 39 years. My practice area has mainly been family law. I fully support HB 1533-Protecting Domestic Violence Victims from Abusive Litigation.

I represented Jennifer Williams in her initial divorce starting in 2016 which resulted in 4 days of trial continuing into 2017 with Judgment being entered in February of 2018. It was highly litigated. I witnessed first-hand what I believed to be abusive litigation against her that has lasted not only through the trial but continues through today's date. She fits the description regarding the persons that HB 1533 is designed to protect.

I have reviewed the bill in detail and find it to be very detailed and well thought out. I have witnessed firsthand abusive litigation against domestic violence victims in my experience representing hundreds of clients over my 39 years of practice. I fully support this bill.

LINNEROOTH LAW OFFICE
/s/ Richard J. Linnerooth
Richard J. Linnerooth
112 N. University Dr. Ste 115
Fargo, ND 58102
(701) 298-9090
ND Atty. ID# 04207
MN Atty. ID# 179723
linneroothlaw@gmail.com

521 E Main Avenue
Suite 320
Bismarck, ND 58501

Phone 701.255.6240
Toll Free 888.255.6240
Fax 701.255.1904

cawsnorthdakota.org
contact@cawsnorthdakota.org

@cawsnorthdakota

House Bill No. 1533
House Judiciary Committee
Testimony Presented by Seth O'Neill, JD, MSW
Email: soneill@cawsnorthdakota.org
February 8, 2023

Chairman Klemin and members of the Committee, my name is Seth O'Neill and I am representing CAWS North Dakota in support of HB 1533. This bill would allow abusive litigation victims to be protected through a court order limiting abusive claims.

In domestic violence situations, offenders seek to have power and control over their victims. When a victim escapes an abusive relationship, the offender seeks to maintain control over the victim. One of the most common ways is through the legal system. If an offender has a domestic violence protection order against them they are not allowed to contact the victim. Instead, some offenders file abusive claims against their victim in a court of law which they are currently allowed to do. These offenders are typically pro-se and file countless claims in family law situations.

The North Dakota Supreme Court Administrative Rule 58 has a process to declare someone a vexatious litigant. However, the process requires that "the person has repeatedly relitigated or attempted to relitigate, as a self-represented party the validity of the determination against the same defendant or defendants as to whom the litigation was finally determined[1]"

Oftentimes in family law cases, an individual may seek to bring up what seems like new issues but are simply relitigating issues. Under the vexatious litigant procedure, this would be

[1] See North Dakota Supreme Court Administrative Rule 58(4)(b)

unlikely for this individual to be declared a vexatious litigant as each instance could be constituted a new determination or claim. In addition, the vexatious litigant process is purposely broad and does not specifically apply to domestic violence abusers. In a prior role, I was successful in getting an individual declared a vexatious litigant after the individual repeatedly filed over 30 frivolous lawsuits against anyone who upset the individual. This is the type of situation that the vexatious litigant process was designed for.

In North Dakota, we need a process in law to protect domestic violence victims from abusive litigation from their partner and I believe this bill does that while still respecting access to the courts. The North Dakota Supreme Court has recognized the ability of a court to "control its docket, so as to stem abuse of the judicial process from vexatious and meritless litigation.[2]" This bill gives the courts the ability control abuse of the judicial process by protecting domestic violence victims and freeing up the courts for more important matters.

We encourage the committee to give HB 1533 a do pass recommendation. I appreciate your time and I am happy to answer any questions you may have. Thank you.

[2] See Holkesvig v. Grove, 2014 ND 57, ¶ 17, 844 N.W.2d 557.

STATE OF NORTH DAKOTA
COURTS

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.

Explanatory Note

Version History

APPENDIX H

ABUSIVE LITIGATION AND DOMESTIC VIOLENCE SURVIVORS

by Legal Voice Violence Against Women Workgroup[1]

These materials are intended to assist in recognizing and addressing abusive litigation against domestic violence survivors. The term "abusive litigation" includes the misuse of court proceedings by abusers to control, harass, intimidate, coerce, and/or impoverish survivors. Although the practice is common, it does not have a generally recognized name. It has also been described as legal bullying, stalking through the courts, paper abuse, and similar terms.

Court proceedings can provide a means for an abuser to exert and reestablish power and control over a domestic violence survivor long after a relationship has ended. The legal system that a survivor believed would provide protection becomes another weapon that an abuser can use to cause psychological, emotional, and financial devastation.

Abusive litigation against domestic violence survivors arises in a variety of contexts. Family law cases such as dissolutions, parenting plan actions or modifications, and protection order proceedings are particularly common forums for abusive litigation. It is also not uncommon for abusers to file civil lawsuits against survivors, such as defamation, tort, or breach of contract claims. Even if a lawsuit is meritless, forcing a survivor to spend time, money, and emotional resources responding to the action provides a means for the abuser to assert power and control over the survivor.

It is important for courts to recognize when litigation is being misused as a tool of abuse and to take appropriate steps to curb such actions.

I. Recognizing Abusive Litigation and Its Impact on Survivors

A. Common Abusive Litigation Tactics

Abusers may use a wide range of tactics against domestic violence survivors in the legal system. Domestic violence survivors and advocates report that common tactics used by abusers include:

1. Protection Order Cases

[1] The Legal Voice Violence Against Women Workgroup conducted numerous interviews with survivors of domestic violence, advocates, attorneys, and judicial officers in drafting these materials. Workgroup members who contributed to these materials include Antoinette Bonsignore, Erica Franklin, Michelle Camps Heinz, Bess McKinney, Mary Przekop, Evangeline Stratton, and David Ward.

- Portraying themselves as the victim by seeking their own protection orders against the survivor and/or the survivor's friends and family.

2. Family Law Cases

- Seeking sole or primary custody of a child as punishment or retaliation for leaving, seeking a protection order, or seeking court-ordered financial support.

- Filing repeated motions to modify the terms of parenting plans, child support orders, or protection orders.

- Bringing contempt motions against a survivor without cause.

- Portraying the survivor as an unfit and incompetent parent, including making requests for mental health evaluations in an attempt to undermine the survivor.

- Reneging on agreements developed through mediation or settlement negotiations.

- Perpetuating the myth that women will fabricate domestic violence allegations and pursue a protection order simply for use as leverage in divorce and child custody proceedings.[2]

3. General Litigation Tactics

- Filing frivolous motions, appeals, motions for revisions, and motions for reconsideration of court orders.

- Attempting to re-litigate issues that have already been decided by the court.

- Bringing similar or parallel litigation in a different court or county after receiving unfavorable rulings.

- Abusing the discovery process by seeking embarrassing or irrelevant information about the survivor and by demanding excessive discovery.

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[2] Joan Zorza, *Batterer Manipulation and Retaliation in the Courts: A Largely Unrecognized Phenomenon Sometimes Encouraged by Court* Practices, 3 Domestic Violence Report 67, 67 (1998).

- Delaying or protracting court proceedings as long as possible, such as by repeatedly seeking continuances or frequently changing attorneys, in order to prolong the abuser's control over the survivor and deplete the survivor's financial and emotional resources.

- Deliberately refusing to comply with court orders, forcing the survivor to spend money, time, and energy to enforce the orders.

4. Threats and False Reports

- If the survivor is an immigrant, threatening to make reports to immigration authorities to have the survivor deported and possibly to separate the survivors from their children.

- Making false reports to Child Protective Services (CPS).

- Falsely reporting to the police and/or courts that the survivor is abusing drugs or alcohol or withholding court-ordered access to children.

5. Retaliatory Lawsuits

- Suing a survivor for defamation if the survivor reports the abuse, or suing the survivor for other tort or breach of contract claims.

- Suing or threatening to sue anyone who helps the survivor, including friends, family, advocates, lawyers, and law enforcement officials.

6. Actions Against Judicial Officers and Attorneys

- Attempting to have a judge disqualified from a case, filing judicial conduct complaints, and/or suing a judicial official after receiving an unfavorable ruling.

- Filing bar complaints or lawsuits against the survivor's attorney, in order to intimidate the attorney from continuing representation.

- Repeatedly contacting survivor's attorney in order to harass the attorney or to increase the survivor's legal fees

B. Impact of Abusive Litigation on Survivors

Abusive litigation has serious impacts on survivors of domestic violence. Survivors and advocates report that effects of abusive litigation may include:

1. Loss of Trust in the Legal System

Survivors who face abusive litigation come to view the legal system as a forum for abuse and lose trust in the legal system. These experiences may deter survivors from leaving abusive relationships or from seeking legal remedies or police assistance because doing so may expose them to protracted litigation or the loss of custody of their children.

2. Forced Contact With Abusers

Court proceedings allow abusers to compel survivors to have contact with them after a relationship has ended, particularly in cases where a couple has children together. Litigation enables abusers to maintain control over survivors, especially when the survivor is self-represented and must confront the abuser in court alone every time a matter is heard. This can be particularly problematic when the abusive partner is self-represented and can directly question the survivor in court.

3. Coercion to Make Concessions in Order to End Litigation

The threat of abusive litigation can be used to compel survivors to make concessions in order to end the litigation. This is particularly a danger in child custody and child support proceedings. Abusive litigation may lead to a survivor "relinquishing custody of the children, giving up demands for child support, giving in to less desirable resolutions in order to end the fight, or even returning to the batterer out of fear or necessity."[3]

4. Financial Impacts

Abusive litigation often causes survivors financial devastation. Deliberately running up legal expenses is one of the most common strategies of abusers, in the hopes of leaving the survivor without representation and causing emotional distress and anxiety.

Survivors also suffer financial impacts if they are forced to miss work or pay for child care in order to appear in court. Some survivors report that they are

[3] Mary Przekop, *One More Battleground: Domestic Violence, Child Custody, and the Batterers' Relentless Pursuit of their Victims Through the Courts*, 9 Seattle J. Soc. Just. 1053, 1084 (2011).

unable to keep jobs because they must constantly appear in court or respond to legal filings.

Abusers may also try to use the resulting financial devastation against the survivor in custody disputes to suggest the survivor is now incapable of providing a stable and secure home because of a lack of financial resources.

5. Emotional and Psychological Impacts

Court proceedings are emotionally and psychologically difficult for many litigants. However, domestic violence survivors are particularly vulnerable when an abuser uses the litigation process as a tool of harassment and control.

Survivors report living in fear that they will be served with legal papers and forced to appear in court to defend themselves or to keep their children. They must keep meticulous records of all matters related to their children to be ready for the next time they face a motion for contempt or a parenting plan modification. They know that any action they take—starting a new relationship, being late to a custody exchange, making decisions about a child's education or medical care—may cause the abuser to file a new legal proceeding or motion against them.

6. Isolation from Support Networks and Attorneys

Abusers sometimes threaten to sue a survivor's friends, family members, advocates, or others who provide support to the survivor. Such threats can be an effective way to isolate a survivor from support networks.

Abusive litigation may also cause a survivor to lose legal representation. Many attorneys cannot continue to represent a survivor when faced with constant motions and court appearances, particularly if the survivor is unable to pay. In addition, threats by an abuser to sue or to file a bar complaint against the survivor's attorney may result in the attorney withdrawing from the case.

C. Why Do Abusers Use Abusive Litigation?

Litigation is a way that abusers can attempt to reestablish and retain control over a survivor, particularly when other forms of contact with the survivor have been restricted. The need to reassert control after the survivor physically separates from the batterer manifests itself in litigation tactics that are designed to overwhelm the survivor's life.

Abusive litigation is often prompted by a survivor's decision to leave or separate. Trigger points may include filing for divorce or for a protection order, reporting physical abuse, or calling police for assistance.

D. Prevalence of Abusive Litigation Against Survivors

There is not yet statistical data regarding the prevalence of abusive litigation against domestic violence survivors. However, narrative studies describing abusive litigation tactics have noted its prevalence, as reported by domestic violence survivor advocates around the country.[4]

1. Battered Mothers' Testimony Projects

The Battered Mothers' Testimony Project (BMTP) at the Wellesley Centers for Women[5] and the Arizona Coalition Against Domestic Violence Battered Mothers' Testimony Project[6] have documented abusive litigation from narrative research derived from domestic violence survivors.

The Wellesley BMTP involved interviews with 40 domestic violence survivors. The report concluded:

> [T]here are batterers who use the family court system as a tool for ongoing harassment, retaliation, and intimidation of battered mothers. This misuse of the court process often goes unpunished, resulting in financial as well as emotional harm to women and children. The specific litigation abuse tactics include filing multiple harassing, baseless, or retaliatory motions in court. . . . Nearly half of the survivors reported to us that their ex-partners made false allegations against them, such as accusing them of abusing, neglecting, or kidnapping the children, of denying the fathers visits with the children, of being a flight risk, and of using drugs. . . . Finally, more than half of the survivors stated that their ex-partners were using parallel actions in courts of different jurisdictions to manipulate the courts to their advantage.[7]

The Arizona BMTP involved interviews with 57 domestic violence survivors and found:

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[4] Susan L. Miller and Nicole L. Smolter, "*Paper Abuse": When All Else Fails, Batterers Use Procedural Stalking*, 17 Violence Against Women 637 (2011).
[5]Battered Mothers' Testimony Project at the Wellesley Centers for Women, *Battered Mothers Speak Out: A Human Rights Report on Domestic Violence and Child Custody in the Massachusetts Family Courts* (Nov. 2002).
[6]Arizona Coalition Against Domestic Violence, *Battered Mothers' Testimony Project: A Human Rights Approach to Child Custody and Domestic Violence* (June 2003).
[7] Kim Y. Slote et al., *Battered Mothers Speak Out: Participatory Human Rights Documentation as a Model for Research and Activism in the United States*, 11 Violence Against Women 1367, 1387-88 (2005).

- By and large, the systems of control the perpetrator established pre-divorce, including physical and sexual violence and child abuse, were maintained post-separation with the added ability to use the court system to abuse the victims.

- 84% of the study participants "reported that their ex-partners continued to use money to control them, primarily through the creation of high legal expenses." In addition, participants reported that "the abuser used the legal system itself as a means of harassment and continued abuse."[8]

- In the words of one survivor: "The most horrible sufferings have been not only physical, they have been emotional, psychological and financial! He never stops harassing me—the courts are his legal playgrounds! He uses the courts to inflict suffering—he constantly and I do mean constantly has me in court—his lawyer helps him to wear us out. . . . The end is never coming—it never ends!"[9]

2. Reports from Washington Attorneys and Advocates

Attorneys and advocates in Washington who work with domestic violence survivors also report a high prevalence of abusive litigation against survivors. Reports include:

- An attorney who represents survivors indicated that nearly every case she takes involves abusive litigation, particularly in cases where the survivor had been self-represented. The attorney describes abusive litigation as a "constant barrage" that overtakes the survivor's life.

- Other attorneys report that abusers commonly "bury the survivor in documents by filing lots of motions," requiring frequent court appearances. "Survivors end up missing a lot of work and often end up losing their jobs."

- Another attorney stated that she has seen countless instances of abusive litigation against survivors in family law matters. Common tactics include seeking sole custody of children and prolonging litigation. She reports that such litigation "takes an enormous toll" and often results in survivors "relenting and giving in, just to make it stop."

[8]Arizona BMTP at 39.
[9]*Id*. at 88.

II. The Court's Inherent Authority to Control Abusive Litigants

Courts have considerable authority to respond to abusive litigation tactics, while upholding litigants' constitutional rights to access to the courts. Much of this authority is based on the court's inherent authority to control the conduct of litigants.

A. Courts Have Inherent Authority to Curb Abusive Litigation

Courts have inherent authority to facilitate the orderly administration of justice. RCW 2.28.010(3) provides that "[e]very court of justice has power… [t]o provide for the orderly conduct of proceedings before it or its officers."

This authority provides broad power for courts to address abusive litigation tactics. *Yurtis v. Phipps*, 143 Wn. App. 680, 693, 181 P.3d 849 (2008) ("In Washington, every court of justice has inherent power to control the conduct of litigants who impede the orderly conduct of proceedings. Accordingly, a court may, in its discretion, place reasonable restrictions on any litigant who abuses the judicial process.").

This authority is also consistent with CR 1, which provides that Washington's Civil Rules "shall be construed and administered to secure the just, speedy, and inexpensive determination of every action."

B. Exercising this Inherent Authority is Essential to Delivering Justice for Domestic Violence Survivors

In the absence of judicial intervention, domestic violence survivors facing abusive litigation tactics may be denied meaningful access to justice. *In re Marriage of Brown*, 147 Wn. App. 1020 (2008) (unpublished).[10]

By monopolizing limited resources, abusive litigants may also seriously impact the judicial system at large. *Yurtis*, 143 Wn. App. at 693 (recognizing "the potential for abuse of this revered system by those who would flood the courts with repetitious, frivolous claims which already have been adjudicated at least once"); *In re Sindram*, 498 U.S. 177, 179-180 111 S. Ct. 596, 597 (1991) ("The goal of fairly dispensing justice…is compromised when the Court is forced to devote its limited resources to the processing of repetitious and frivolous requests.").

To safeguard the integrity of the judicial system, courts have an obligation to restrain abusive litigants. *In re Marriage of Giordano*, 57 Wn. App. 74, 77-78, 787

[10] Several unpublished cases are cited in this chapter because there are few published cases regarding abusive litigation against domestic violence survivors. The reader is cautioned that unpublished decisions by Washington appellate courts are not precedential and may not be cited to the courts of Washington. GR 14.1.

P.2d 51 (1990) ("If access is to be guaranteed to all, it must be limited as to those who abuse it"); *cf. In re McDonald*, 489 U.S. 180, 184, 109 S. Ct. 993 (1989) ("A part of the Court's responsibility is to see that [judicial] resources are allocated in a way that promotes the interests of justice.").

C. Abusive Litigation May Be Restrained Without Compromising the Constitutional Rights of Litigants

There is no absolute and unlimited constitutional right of access to courts. *Giordano*, 57 Wn. App. at 77 (quoting *Ciccarelli v. Carey Canadian Mines, Ltd.*, 757 F.2d 548, 554 (3d Cir. 1985)); *accord In re Marriage of Lilly*, 75 Wn. App. 715, 719, 880 P.2d 40 (1994).

Due process requires "only that the individual be afforded a reasonable right of access, or a meaningful opportunity to be heard, absent an overriding state interest." *Yurtis*, 143 Wn. App. at 694; *see also Giordano*, 57 Wn. App. at 77. The requirement that litigation proceed in good faith and comply with court rules "has always been implicit in the right of access to the courts." *Giordano*, 57 Wn. App. at 77. Thus, within certain parameters, courts may limit access to the court system to abusive litigants while maintaining constitutional guarantees.

While the trial court may regulate access to the courts, it must ensure that "the party can still access the court to present a new and independent matter." *Bay v. Jensen*, 147 Wn. App. 641, 657, 196 P.3d 753, 761 (2008). Similarly, an order restricting access to the courts must not be absolute and, instead, should provide a "safety valve for emergencies." *See Giordano*, 57 Wn. App. at 78; *Bay*, 147 Wn. App. at 762.

D. Courts Have Broad Authority to Fashion Injunctive Relief to Curtail Abusive Litigation.

Courts may issue far-reaching injunctive relief upon a specific and detailed showing of a pattern of abusive and frivolous litigation. *Whatcom County v. Kane*, 31 Wn. App. 250, 253, 640 P.2d 1075 (1981); *see also Burdick v. Burdick*, 148 Wash. 115 (1928) (upholding order enjoining an action brought purely for vexatious purposes); *Yurtis*, 143 Wn. App. at 696 (barring litigant from "filing any appeals or further claims" against opposing party); *Giordano*, 57 Wn. App. at 78 (upholding trial court's imposition of moratorium on motions).

In fashioning injunctive relief, the trial court should avoid issuing a more comprehensive injunction than is necessary to remedy proven abuses. *Whatcom County*, 31 Wn. App. at 253. If appropriate, the court should consider less drastic remedies. *Id.*

Pursuant to CR 65(d), courts deploying injunctive relief to address abusive litigation must state the reasons for doing so. *Id.* (requiring a specific and detailed showing of a pattern of abusive and frivolous litigation); *Yurtis*, 143 Wn. App. at 693 (noting that proof of mere litigiousness is insufficient); CR 65(d). Finally, as noted above, an order restricting access to the courts must provide a "safety valve for emergencies" and may not bar "access to the court to present a new and independent matter." *Bay*, 147 Wn. App. at 657-62.

A state court may not enjoin a litigant from filing new actions in *federal* court. *Giordano*, 57 Wn. App. at 78-79.

Because the court has inherent power to rein in the conduct of disruptive litigants, the court may issue injunctive relief *sua sponte*. *Yurtis*, 143 Wn. App. at 693.

E. Tools to Exercise Inherent Authority

RCW 2.28.010(3) provides a court with broad power to provide for the orderly conduct of proceedings before it or its officers. This provides courts considerable discretion and creativity in fashioning remedies to curb abusive litigants. *Yurtis*, 143 Wn. App. at 693. The list that follows is a non-exhaustive sampling of available mechanisms for combating abusive litigation.

- **Require authorization for the filing of new actions**. *See Harmon v. Bennett*, 126 Wn. App. 1064 (2005) (unpublished) (affirming trial court order prohibiting abusive litigant from filing further lawsuits without express permission from court); *In re Martin-Trigona*, 763 F.2d 140, 142 (2d Cir. 1985) (upholding order enjoining vexatious litigants from filing "any new lawsuit, action, proceeding, or matter in any federal court, agency, tribunal, committee, or other federal forum of the United States" without leave of the forum).

- **Impose conditions on the filing of new actions or appeals**. *Ng v. Quiet Forest II Condominium Owners Ass'n*, 92 Wn. App. 1026 (1998) (unpublished) (upholding trial court order enjoining litigant from filing new actions without meeting certain conditions where litigant had filed multiple duplicative lawsuits and had not responded to sanctions). *Lysiak v. Comm'r of Internal Revenue*, 816 F.2d. 311 (7th Cir. 1987) (requiring abusive litigant to seek the court's leave to appeal and, in so doing, certify that his appeal is taken in good faith and that the claims he raises are not frivolous, and that they have not been raised and disposed of on the merits by this Court in previous appeals).

- **Require abusive litigant to attach court opinions, previous filings, and/or order of injunction to all subsequent filings.** *Harrison v. Seay*, 856 F. Supp.

1275 (W.D. Tenn. 1994) (barring abusive litigant from filing future complaints without attaching a copy of the injunction and an affidavit listing all pending suits and all previous actions involving the same defendants).

- **Limit number of allowable filings.** *In re Marriage of Giordano*, 57 Wn. App. at 78 (upholding moratorium on motions until trial, with certain exceptions); *In re Tyler*, 839 F.2d 1290 (8th Cir. 1988) (limiting number of allowable in forma pauperis petitions per month).

- **Require abusive litigant to post a bond for attorneys' fees at outset**. *Berry v. Deutsche Bank Trust Co. Americas*, 632 F. Supp. 2d 300, 307-08 (S.D.N.Y. 2009) (requiring plaintiff to post appeal bond based on history of duplicative and meritless filings and failure to pay previous fee awards).

- **Enjoin further actions or appeals.** *Burdick v. Burdick*, 148 Wash. 115 (1928) (upholding order enjoining an action brought purely for vexatious purposes); *Yurtis*, 143 Wn. App. at 696 (barring litigant from filing any appeals or further claims against opposing party).

- **Condition further proceedings on payment of attorneys' fees and/or sanctions.** *In re Marriage of Lily*, 75 Wn. App. at 720 (upholding trial court order prohibiting further proceedings until attorneys' fees award for intransigence had been paid); *Stevenson v. Canning*, 166 Wn. App. 1027 (2012) (unpublished) (conditioning abusive litigant's right to participate further in proceedings on payment of sanctions owed).

- **Retain jurisdiction over a matter to control abusive litigation tactics.** *In re Marriage of Hollingshead*, 157 Wn. App. 1039 (2010) (unpublished) (upholding trial court's retention of jurisdiction as a proper restriction on abusive litigant).

- **Impose sanctions.** *State v. S.H.*, 102 Wn. App. 468, 8 P.3d 1058 (2000) (discussing court's inherent authority to sanction litigation conduct outside the context of Rule 11); *see generally* CR 11 (allowing sanctions to be imposed by trial court); RAP. 18.9 (allowing sanctions to be imposed by appellate court).

III. Sanctions Under Civil Rule 11

In addition to the inherent authority of courts to control proceedings and litigants, Civil Rule 11 (CR 11) provides courts with an important tool to impose sanctions to curb abusive litigation tactics of litigants and/or attorneys.

A. CR 11 in the Context of Abusive Litigation

CR 11 was adopted to deter baseless filings, to curb abuses of the judicial system, and to reduce delaying tactics, procedural harassment, and mounting legal costs. *Bryant v. Joseph Tree, Inc.*, 119 Wn.2d 210, 219, 829 P.2d 1099 (1992). The Rule requires that every pleading, written motion, or legal memorandum signed by an attorney or self-represented litigant to be:

- Well grounded in fact,
- Warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law, and
- Not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

A violation of CR 11 and consequent sanctions may be imposed sua sponte by the court. Courts have wide discretion as to how to sanction those violating CR 11. *Snohomish County v. Citybank*, 100 Wn. App. 35, 43, 995 P.2d 119 (2000). Although CR 11 sanctions often involve monetary sanctions, the rule provides discretion for courts to be creative in finding effective solutions to frivolous and improper litigation.

Washington's version of CR 11 is similar to its federal counterpart. Given the overall similarity, Washington state courts may look to the federal courts' interpretation of Federal Rule of Civil Procedure 11 for guidance. *Miller v. Badgley*, 51 Wn. App. 285, 300 n.10, 753 P.2d 530 (1988).

B. Scope of CR 11

CR 11 applies to every pleading, motion, and legal memorandum submitted to the court. This definition includes affidavits and declarations, as well as advocacy related to documents previously submitted to the court. *Miller*, 51 Wn. App. at 302-03 (holding that an affidavit was improper under CR 11); *MacDonald v. Korum Ford*, 80 Wn. App. 877, 881-82, 912 P.3d 1052 (1996) (holding that party violated CR 11 because it pursued claim even after deposition revealed it to be frivolous).

The rule requires that pleadings, motions, and legal memorandum submitted to the court be signed, either by an attorney of record or by a pro se litigant. A self-represented litigant may be sanctioned under CR 11. *In re Lindquist*, 172 Wn.2d 120, 136, 258 P.3d 9 (2011).

By its terms, CR 11 addresses two types of problems: (1) filings that lack a legal or factual basis or (2) filings interposed for any improper purpose. *Bryant v. Joseph Tree, Inc.*, 119 Wn.2d 210, 217-20, 829 P.2d 1099 (1992). To sanction a party for violating CR 11, a court need only find that the party's filing either lacks a basis or is filed for an improper purpose.

1. Well Grounded in Fact and Law

CR 11 requires an attorney or self-represented litigant to undertake "an inquiry reasonable under the circumstances" prior to signing pleadings, motions and legal memorandum.

A nonexclusive list of factors that a court may consider when assessing whether an inquiry is reasonable and whether the subsequent document is well grounded in fact and law are: (1) time available to the signer; (2) whether a signing attorney accepted a case from another member of the bar; (3) the complexity of the factual and legal issues; and (4) the need for discovery to develop factual circumstances underlying a claim. *Miller*, 51 Wn. App. at 301-02.

The court may also consider the extent of the attorney's reliance upon the client for factual support, but an attorney's "'blind reliance' on a client . . . will seldom constitute a reasonable inquiry." *Id.*

Courts have rejected arguments that CR 11 sanctions will "chill an attorney's enthusiasm or creativity in pursuing new theories in an area of the law." *Layne v. Hyde*, 54 Wn. App. 125, 134-5, 773 P.2d 83 (1989). If a court finds that a legal argument "cannot be supported by any rational argument on the law or facts," then it is improper. *Id.*

2. Improper Purpose

An improper purpose under CR 11 encompasses filings that constitute delaying tactics, procedural harassment, and/or create mounting legal costs. *Bryant*, 119 Wn.2d at 219. The court need not find that the motions are frivolous if successive motions and papers have become so harassing and vexatious that they justify sanctions even if they are not totally frivolous. *Aetna Life Ins. Co. v. Alla Med. Serv., Inc.*, 855 F.2d 1470, 1476 (9th Cir. 1988).

The court is given wide discretion under CR 11 to determine what constitutes an "improper purpose." *Copper v. Viking Ventures*, 53 Wn. App. 739, 742-43, 770 P.2d 659 (1989). For example, Washington courts have found an improper purpose where:

- An attorney attempted to file multiple affidavits of prejudice. *Suarez v. Newquest*, 70 Wn. App. 827, 834, 855 P.2d 1200 (1993).

- A party threatened to "destroy" the opposing party and force her to "incur substantial legal costs. *In re Cooke*, 93 Wn. App. 526, 529, 969 P.2d 127 (1999).

C. Operation of CR 11

Prior to the imposition of sanctions under CR 11, either the moving party or the court itself should notify the offending party of the objectionable conduct and provide him or her with an opportunity to mitigate the sanction. *Biggs*, 124 Wn.2d at 198 n.2, 202. A general notice of possible CR 11 sanctions is sufficient. *Id.* If a party, rather than the court, moves for sanctions, it bears the burden to justify the motion.

A court evaluates the claims of a CR 11 violation using an objective standard: "whether a reasonable attorney in like circumstances could believe his or her actions to be factually and legally justifiable." *Bryant*, 119 Wn.2d at 220.

D. Permissible Sanctions Under CR 11

If an attorney or a party violates CR 11, courts have wide discretion to craft a sanction that is "appropriate."

CR 11 provides: "If a pleading, motion, or legal memorandum is signed in violation of this rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or legal memorandum, including a reasonable attorney fee."

While the sanction language of CR 11 explicitly authorizes monetary penalties, Washington courts have emphasized that a court's crafting of "appropriate" sanctions is most important. *Miller*, 51 Wn. App. at 303. What is appropriate will be a sanction that most effectively deters baseless filings and curbs the abuses of the judicial system. *Euster v. City of Spokane*, 110 Wn. App. 212, 39 P.3d 389 (2002). Thus, a sanction imposed under CR 11 must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated. *Miller*, 51 Wn. App. at 300. The sanction may include nonmonetary directives. *Id.*

The sanctions fashioned by federal courts provide guidance for some possible non-monetary sanctions. For example, federal courts have sanctioned a party or an attorney by:

- Dismissing the entire case with prejudice. *Combs v. Rockwell Intl. Corp.*, 927 F.2d 486, 488 (9th Cir. 1991).

- Barring a litigant from filing similar suits without leave of the court. *Stone v. Baum*, 409 F. Supp. 2d 1164, 1171 (D. Ariz. 2005).

- Referring the matter to the state bar association. *Whitehead v. Food Max of Miss., Inc.*, 332 F.3d 796, 808 (5th Cir. 2003).

- Resolving all disputes regarding jurisdictional issues in favor of the non-offending party. *Boron v. West Texas Exports, Inc.*, 680 F. Supp. 1532, 1537-38 (S.D. Fla. 1988).

E. Use of CR 11 Sanctions in Cases Involving Domestic Violence Survivors

There are few published cases that illustrate the use of CR 11 sanctions against an abusive litigant in the context of domestic violence. Indeed, it is been observed that relatively few cases involving sanctions under CR 11 reach the appellate level. Frederic C. Tausand & Lisa L. Johnson, *Current Status of Rule 11 In the Ninth Circuit and Washington State*, 14 U. Puget Sound L. Rev. 419, 443 (1991). However, those cases that do use CR 11 against abusive litigants in the context of domestic violence illustrate how the rule may be used to fashion appropriate sanctions.

In *Danvers v. Danvers*, for instance, the court affirmed the district court's imposition of Rule 11 sanctions against the plaintiff, the defendant's former husband, because he brought the claim to harass her and to increase her litigation costs. *Danvers v. Danvers*, 959 F.2d 601, 604 (6th Cir. 1992). The sanctions were the amount of the defendant's attorney's fees. The court noted the prior family law issues between the parties, including the "allegation of domestic violence." The husband's complaint "alleged a conspiracy between the defendant and the judge" that he alleged "deprived him of his constitutional right to a parental relationship with his son. These claims match common tactics used by abusers.

Given the language of CR 11 and the discretion it provides for effective sanctions, it can be a powerful tool in dealing with abusive litigation in the context of domestic violence. However, courts should be aware that a motion for CR 11 sanctions may also be misused by the abuser as a weapon against a survivor.

IV. Awarding Attorneys' Fees and Expenses

Washington law authorizes, and in some instances requires, courts to award attorneys' fees and expenses to a party who is subjected to frivolous, vexatious, or abusive litigation. Awards of

attorneys' fees can be an effective way to curb abusive litigation and send an important signal to survivors that the court will not tolerate abusive tactics.

A. Mandatory Awards of Attorneys' Fees in Family Law Cases

Washington statutes specify a number of instances in which courts are required to award attorneys' fees in family law proceedings when a party brings a baseless motion or otherwise disturbs the integrity of the process without good reason. For example:

- If the court finds that a motion for contempt for noncompliance or interference with a parenting plan was brought without reasonable basis, it "shall order the moving party to pay to the nonmoving party, all costs, reasonable attorneys' fees, and a civil penalty of not less than one hundred dollars." RCW 26.09.160(7).

- When a parenting plan provides an alternative dispute resolution process, "the court shall award attorneys' fees and financial sanctions to the prevailing parent" where it finds that "a parent has used or frustrated the dispute resolution process without good reason." RCW 26.09.184(4)(d).

- If a court finds that a motion to modify a prior decree or parenting plan has been brought in bad faith, the court "shall assess the attorney's fees and court costs of the nonmoving parent against the moving party." RCW 26.09.260(13).

B. Attorneys' Fees Based on the Resources of the Parties

RCW 26.09.140 provides a court may "from time to time after considering the resources of both parties" order a party to pay costs to the other party as well as attorneys' fees. The court may order that attorneys' fees be paid directly to the attorney, and in such cases, the attorney has the authority to enforce the order.

A trial court has great discretion in setting fee awards, and the appellate court will not reverse the determination unless it is untenable or manifestly unreasonable. *Edwards v. Edwards*, 83 Wn. App. 715, 724-25, 924 P.2d 44 (1996).

In determining whether to award costs and fees pursuant to RCW 26.09.140, courts generally consider the need of the party requesting the fees, the ability to pay of the party against whom the fee is being requested, and the general equity of the fee given the disposition of the marital property. *In re Marriage of Van Camp*, 82 Wn. App. 339, 342, 918 P.2d 509 (1996).

C. Attorneys' Fees Based on Intransigence

Courts also consider whether intransigence on the part of one of the parties caused the other party to incur additional legal expenses. *In re Marriage of Crosetto*, 82 Wn. App. 545, 563-64, 918 P.2d 954 (1996). Examples of intransigence may include engaging in "foot-dragging" or obstruction, filing repeated unnecessary motions, or making a trial unduly difficult. *In re Marriage of Greenlee*, 65 Wn. App. 703, 708, 829 P.2d 1120 (1992). Once intransigence is established, the court need not consider the financial needs of the party requesting fees. *Crosetto*, 82 Wn. App. at 564; *Mattson v. Mattson*, 95 Wn. App. 592, 604, 976 P.2d 157 (1999) (party's intransigence can substantiate a trial court's award of attorney fees, regardless of the factors enunciated in RCW 26.09.140; attorney fees based on intransigence are an equitable remedy).

D. Attorneys' Fees in Domestic Violence Protection Order Cases

Following a domestic violence protection order hearing, a court may require the respondent to reimburse the petitioner for costs incurred in bringing the action, including reasonable attorneys' fees, as well as administrative court costs and service fees. RCW 26.50.060(1)(g).

By contrast, when a petitioner is unsuccessful in seeking a domestic violence protection order, the respondent is not entitled to seek attorneys' fees and costs. *See Hecker v. Cortinas*, 110 Wn. App. 865, 871, 43 P.3d 50 (2002).

E. Attorneys' Fees for Frivolous Actions or Defenses

RCW 4.84.185 allows a court to award fees and expenses to the prevailing party upon written findings by the judge that an action, counterclaim, cross-claim, third party claim, or defense was frivolous and advanced without reasonable cause.

The purpose of the statute is to discourage frivolous lawsuits and to compensate the targets of such lawsuits for fees and expenses incurred in responding to meritless cases. *Biggs v. Vail*, 119 Wn.2d 129, 137, 830 P.2d 350 (1992). An action is "frivolous" within the meaning of this statute if it cannot be supported by any rational argument on the law or facts. *Goldmark v. McKenna*, 172 Wn.2d 568, 582, 259 P.3d 1095 (2011).

F. Attorneys' Fees on Appeal

RCW 26.09.140 authorizes equitable awards of attorneys' fees incurred on appeal, as well as statutory costs. In determining whether to award fees and costs on appeal pursuant to RCW 26.09.140, courts look to the merits of the appeal in addition to the factors listed in the statute. *In re Marriage of Davison*, 112 Wn. App. 251, 260, 48 P.3d 358 (2002).

RAP 14.2 allows an appellate court to award costs to the prevailing party, and RAP 18.1 sets forth the procedures for recovering attorneys' fees or expenses on appeal.

V. Case Management Techniques for Curbing Abusive Litigation Against Domestic Violence Survivors

As discussed in previous sections, judicial officers have the inherent authority to control court proceedings and to sanction abusive litigants. In addition to the specific mechanisms detailed above, the following case management techniques may be useful in curbing abusive litigation tactics against domestic violence survivors.

A. Consolidating All Related Cases Before the Same Judicial Officer

Courts have discretion to consolidate multiple cases under one unified cause of action before the same judicial officer. Washington Civil Rule 42(a) provides:

> When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

Consolidation is an important management tool in domestic relations cases where the same parties are involved in protection order, dissolution, custody, or dependency matters that overlap.

If the court has jurisdiction over the parties and no other procedure is established by statute or rule to resolve complex overlapping issues, other civil matters may also be consolidated with domestic relations matters. *Angelo v. Angelo*, 142 Wn. App. 622, 175 P.3d 1096 (2008) (upholding trial court's consolidation of tort and dissolution cases).

It is often not clear to self-represented parties that they may request consolidation or where such motions are properly filed. The procedure is often guided by local court rules. Providing clarity to unrepresented parties on the proper local procedure should be emphasized.

B. Evaluating Requests for Continuances Carefully

Survivors and advocates report that abusers often attempt to prolong legal proceedings as long as possible in order to cause financial and emotional harm and

to maintain control over the survivor. As a result, requests for continuances should be evaluated carefully in cases involving domestic violence survivors.

The decision to grant or deny a continuance is within the discretion of the trial court and will only be disturbed if the grounds for the decision are manifestly unreasonable or untenable. *State v. Chichester*, 141 Wn. App. 446, 453, 170 P.3d 583 (2007). Courts may consider many factors, including "surprise, diligence, redundancy, due process, materiality, and maintenance of orderly procedure." *State v. Downing*, 151 Wn.2d 265, 273 87 P.3d 1169 (2004). Ultimately, a decision depends on the facts of the case. *State v. Eller*, 84 Wn.2d 90, 96, 524 P.2d 242 (1974).

1. Continuances of Motion Hearings

Courts will often grant at least one continuance request to each party. However, courts should ensure that each request for a continuance be justified. More than one request for a continuance should trigger the court to assess the factors above, and facts of the case.

If domestic violence is alleged, the court should consider the possibility that the abuser is using additional continuance requests to drag out the litigation process, to inflict an emotional and financial toll upon the survivor, and/or to discourage the survivor from pursuing the matter.

2. Parallel Criminal Investigations or Cases

In protection order and family law proceedings, requests for continuances due to a concurrent criminal investigation should not be repeatedly granted, and only for a reasonable period of time. Potential Fifth Amendment issues should be identified, and if there is an investigation or charges filed, the respondent should be advised of his rights, and allowed time to consult with an attorney about his or her rights.

However, the protection order or family law proceedings should not be continued pending the outcome of a criminal investigation, as this places an undue burden on survivors to continue coming to court while the investigation is ongoing. If a continuance is granted on this basis, it should be once, and for a reasonable amount of time to resolve criminal issues. Otherwise, the abuser has been advised of his or her rights and does not have to respond should he or she choose to invoke those rights.

3. Continuing a Trial Date

A trial date may be continued, but only for good cause. CR 40(d). Local rules may require extraordinary circumstances if the deadline for changing the trial date has passed according to a case schedule (*E.g.*, King County Local Civil Rule 40(e)(2)). Judges should exercise discretion in domestic violence cases to prevent the abusive tactic of seeking continuances frequently and without good cause.

C. Requiring Confirmation of Motion Hearings

Some local court rules require that litigants confirm family law motions two to three days prior to the scheduled hearing. (*E.g.*, King County Local Family Law Rule 6(c)). The Washington Civil Rules do not require confirmation, but nor do they prohibit the requirement.

Requiring confirmation may help to ensure that motions are not filed frivolously or to further abusive litigation. Courts may use their inherent power to control litigation by ordering confirmation of motions even when not required by local rule.

Further, if a litigant has established a pattern of filing, yet striking or failing to timely confirm a motion hearing, the courts may again use their inherent authority to impose sanctions on the non-complying litigant.

D. Ordering Dismissals of Cases

The court may grant an involuntary dismissal of a case when the moving party has failed to prosecute the case, or failed to comply with the rules or court orders. CR 41(b). If no action has occurred in a case for a year, the clerk of court can dismiss the action upon notice to the parties. CR 41(b)(2).

A party can make a motion to dismiss based on failure to prosecute, or sometimes under local rules for failure to follow the case schedule. Other bases for dismissal include lack of jurisdiction or insufficient process/service. CR 12(b).

Courts can curb abusive litigation by dismissing actions that are not properly filed or prosecuted. In addition, a court can help curb abusive litigation by being aware of previous dismissals in a case, or by the parties. In addition, courts may require an abusive litigant to include previous orders of dismissal with any new petition or motion filed.

E. Issuing Oral Admonishments and Rulings

Courts should not overlook their ability to make oral rulings or admonishments of the parties before it. As discussed in Section II, the court has the authority and an obligation to restrain abusive litigants and with that comes broad authority to fashion appropriate remedies. If the court is confronted with an abusive litigant, the court has the authority and discretion to orally admonish the litigant and to direct him or her to reform behavior.

A court does not need to enter formal findings or enter any binding order to speak frankly and candidly to the litigants before it. An oral ruling or admonishment may not have any binding effect. *State v. Bryant*, 78 Wn. App. 805, 812, 901 P.2d 1046 (1995) (Oral ruling has no final or binding effect unless formally incorporated into the findings, conclusions, and judgment.). Nonetheless, it can provide the parties with a clear understanding of where the court stands.

Survivors report that admonishments are an important and often effective tool for deterring an abusive litigant from continuing to engage in the behavior addressed by the court. Further, if the abusive litigant does not stop engaging in the abusive tactic addressed by the court, then the previous oral ruling or admonishment by the court can be incorporated into a subsequent order as a finding of fact or basis for entering the order. *Pearson v. State Dept. of Labor and Industries,* 164 Wn. App. 426, 441, 262 P.3d 837 (2011) (oral opinion of the court which is later incorporated into a written opinion can be relied upon if the oral opinion is consistent with the findings and judgment of the written opinion).

F. Screening Motions or Complaints Before Requiring a Response or Appearance from the Non-Moving Party

When an abusive litigant is engaging in the common tactic of filing numerous documents with the court that require a survivor to make repeated responses and/or court appearances, the court may enter an order indicating that the non-moving party need not respond to a motion or appear for a hearing unless requested by the court. Such a process is similar to local court rules that provide a party should not file a response to a motion for reconsideration unless requested by the court. (*E.g.*, King County Local Civil Rules 59(b)).

G. Placing Reasonable Limits on Discovery

Discovery can often be a point in litigation where the parties are permitted under the rules to ask invasive questions or request private documents. With some exceptions, if the discovery request is "reasonably calculated to lead to the discovery of admissible evidence," the request is likely properly within the scope of discovery. CR 26(b).

However, where a party is demonstrating abusive tactics and discovery is ongoing, the court has the authority to limit the scope of discovery in several ways. CR 26(f). A non-exhaustive list of options include:

1. **Require a discovery conference between the parties and/or the court.** Under CR 26(f), the parties may be directed by the court to have a discovery conference, or a party may request to have a discovery conference with the court. The rule allows the parties to limit the scope as necessary, which means that the court has the authority to properly and reasonably limit the scope of discovery in cases where there is a history of domestic violence and/or abusive litigants. The rule also requires each party to participate in good faith.
   NOTE: Where one or both of the parties is self-represented and there is any allegation of domestic violence or abusive litigation tactics, the court should step in at the outset and hold a discovery conference to limit the scope and identify any issues that may require a protective order or other relief, such as an *in camera* review of more sensitive materials.

2. **Limit the persons subject to discovery.** Where the survivor can identify persons who may have relevant but limited knowledge, the court may limit the scope of discovery as to a particular person. Similarly, where a party cannot show the relevance of deposing a certain witness, the court may prohibit an abusive litigant from taking that witness's deposition unless there is a showing of good cause.

3. **Limit the length of depositions or the number of interrogatories**.

4. **Grant protective orders for specific issues or other areas of discovery**. If a survivor can identify any issues or areas of discovery that may become unnecessarily invasive or will involve requests for irrelevant information, a protective order can provide the relief needed. Under CR 26(c), either a party or the person from whom discovery is sought, may seek a protective order from the court, which may be granted "where justice requires to protect a person from annoyance, embarrassment, oppression, or undue burden or expense."

5. **Prohibit certain discovery methods to protect a party from harassment/abusive litigant behavior**. CR 26(c) provides the court the authority to protect parties from "annoyance, embarrassment, oppression or undue burden or expense" by limiting, among other things, the methods and the terms and conditions upon which the discovery is to take place.

6. **Impose sanctions for violations.** If the court orders any limitations on discovery pursuant to CR 26(f) and a party fails to obey the order, the court may make such orders in regard to the failure as are just, including a variety of sanctions under CR 37(b).[11] The language of CR 37(b) is clear that the sanctions listed are not an exhaustive list, and that the court has authority to fashion other remedies it deems appropriate to the case. *Burnet v. Spokane Ambulance,* 131 Wn.2d 484, 494, 933 P.2d 1036 (1997) (courts have broad discretion as to the choices of sanctions for violation of a discovery order).

VI. Anti-SLAPP Remedies

It is not uncommon for abusers to file civil lawsuits against a survivor based on statements the survivor made in court or in written pleadings. Abusers have also sued survivors for calling law enforcement to report domestic violence.

Washington has adopted an "anti-SLAPP" (Strategic Litigation Against Public Participation) law that provides broad immunity from civil liability to individuals based on their oral or written communications with government agencies, such as the police or the courts. RCW 4.24.510–.525. Advocates have successfully invoked similar anti-SLAPP laws in Washington and in other states to address abusive litigation directed against domestic and sexual violence survivors.[12]

A. History of Washington's Anti-SLAPP Law

Washington's anti-SLAPP law was enacted in 1989, and was the first law of its kind in the country. RCW 4.24.500–.510.

In 2002, the Legislature amended the statute to eliminate a requirement that a communication must be made in "good faith" in order for the person being sued to enjoy immunity from civil liability.[13] This change in the law is particularly significant for domestic violence survivors. Eliminating this requirement removes any burden from the survivor to prove that a claim/complaint was made in "good faith" so as not to dissuade survivors from reporting protection order violations or any reports of violence to the police out of fear of being sued.

The 2002 amendments also added a $10,000 statutory penalty against litigants who filed claims in violation of the anti-SLAPP law, with the proviso that such statutory

[11] Sanctions could include an order compelling discovery, an award of expenses and attorney's fees, an order refusing to allow the disobedient party to support or oppose designated claims or defenses, an order striking out parts of or entire pleadings or staying further proceedings until order is obeyed, or an order finding contempt.

[12] Wendy Murphy, *Massachusetts Anti-SLAPP statute used to dismiss abuser's retaliatory litigation*, Sexual Assault Report (1998).

[13] Bruce E.H. Johnson & Sarah K. Duran, *A View From the First Amendment Trenches: Washington State's New Protections for Public Discourse and Democracy*, 87 Wash. L. Rev. 495, 511 (2012).

damages may be denied if the court finds that information was communicated in bad faith. Notably, "[b]ad faith does not deny the speaker immunity; it merely prevents him or her from receiving the $10,000 statutory penalty."[14] RCW 4.24.510.

In 2010, the Legislature added new provisions to the anti-SLAPP law, which were separately codified as a new section of the law at RCW 4.24.525. The new provisions expanded the scope of the anti-SLAPP law by providing broader protections for the types of public participation covered under the Act and by establishing special procedures for resolving claims. However, the 2010 statute, as codified at RCW 4.24.525, was found to be unconstitutional by the Washington Supreme Court in 2015. *Davis v.* Cox, ___ Wn.2d ___, 2015 Wash. LEXIS 568 (May 28, 2015).

It should be noted that the decision in *Davis v. Cox* did not concern or strike down the previously enacted provisions of the anti-SLAPP law, which are codified at RCW 4.24.500 - .520.

B. Protections Under the Anti-SLAPP Law

1. **Civil immunity from claims based on communications to government agencies**: RCW 4.24.510 provides that "[a] person who communicates a complaint or information to any branch or agency of federal, state, or local government . . . is immune from civil liability for claims based upon the communication to the agency or organization regarding any matter reasonably of concern to that agency or organization."

2. **Civil immunity does not depend on whether a communication was made in good faith:** RCW 4.24.510 provides immunity regardless of whether a complaint to a government agency was made in good faith. In 2002, the Legislature specifically amended the anti-SLAPP statute to remove a "good faith" requirement for civil immunity based on communications protected by the law. *See Bailey v. State*, 147 Wn. App. 251, 261, 191 P.3d 1285 (2008) (noting "[f]ormer RCW 4.24.510 contained a good faith requirement. This phrase was deleted by amendment [in 2002]." As a result, courts have held that civil immunity attaches under RCW 4.24.510 without the need to determine whether a communication to a government agency was made in good faith. *Id.*; *see also Lowe v. Rowe*, 173 Wn. App. 253, 260, 294 P.3d 6 (2012) (noting "the 2002 amendments eliminated the 'good faith' reporting language of the 1989 law").

[14] *Id*. at 512.

3. **Mandatory attorney fee and costs provisions:** RCW 4.24.510 provides a mandatory award of attorney's fees and costs to a party who prevails in establishing the anti-SLAPP defense provided by the statute. The award of attorney's fees does not depend on whether a communication was made in good faith. *See Lowe*, 173 Wn. App. at 264 (noting that party was entitled to attorney's fees under anti-SLAPP statute for successfully defending immunity)..

4. **Statutory damages:** RCW 4.24.510 provides that a party prevailing on an anti-SLAPP defense shall receive statutory damages in the amount of $10,000, but further provides that "[s]tatutory damages may be denied if the court finds that the complaint or information was communicated in bad faith." As a result, the court may deny statutory damages if it determines that a prevailing party's communication to a government agency was made in bad faith. *Lowe*, 173 Wn. App. at 262.

5. **How can Anti-SLAPP laws be used against domestic violence survivors**? It is important to recognize the potential downside that anti-SLAPP laws can represent for domestic violence survivors. Anti-SLAPP laws can also be used as a weapon against survivors.[15] For instance, survivors may be prohibited from suing their abusers when the abuser attempts to harm them by making a false report to child protective services, by making a report to immigration officials, or by seeking retaliatory protection orders against the survivor, and against the survivor's friends and family.

[15] Barbara Hart, *Litigation Abuse: DV and the Law*, National Bulletin on Domestic Violence Prevention, July 2011, Vol. 17, No. 7.

Selected Resources

1. Arizona Coalition Against Domestic Violence, *Battered Mothers' Testimony Project: A Human Rights Approach to Child Custody and Domestic Violence* (June 2003) (*available at http://www.thelizlibrary.org/therapeutic-jurisprudence/AZ-Battered-Mothers-Testimony-Project-Report.pdf*).

2. Battered Mothers' Testimony Project at the Wellesley Centers for Women, *Battered Mothers Speak Out: A Human Rights Report on Domestic Violence and Child Custody in the Massachusetts Family Courts* (Nov. 2002).

3. Lundy Bancroft, *The Batterer as Parent: Addressing the Impact of Domestic Violence on Family Dynamics* (2d ed. 2011).

4. Barry Goldstein & Elizabeth Liu, *Representing the Domestic Violence Survivor* (2013).

5. Mo Therese Hannah & Barry Goldstein eds., *Domestic Violence, Abuse, & Child Custody: Legal Strategies & Policy Issues* (2010).

6. Barbara Hart, *Litigation Abuse: DV and the Law*, National Bulletin on Domestic Violence Prevention, July 2011, Vol. 17, No. 7.

7. Peter G. Jaffe *et al.*, *Common Misconceptions in Addressing Domestic Violence in Child Custody Disputes*, 54 Juv. and Family Ct. J. 57 (2003).

8. Bruce E.H. Johnson & Sarah K. Duran, *A View From the First Amendment Trenches: Washington State's New Protections for Public Discourse and Democracy*, 87 Washington Law Review 495, 497 (2012).

9. Esther L. Lenkinski *et al.*, *Legal Bullying: Abusive Litigation Within Family Law Proceedings*, 22 Canadian Fam. L. Quarterly 337 (2004).

10. Donna J. King, *Naming the Judicial Terrorist: An Expose of an Abuser's Successful Use of a Judicial Proceeding for Continued Domestic Violence*, 1 Tenn. J. of Race, Gender, & Social Justice 153 (2012) (*available at* http://trace.tennessee.edu/rgsj/vol1/iss1/6/).

11. Susan L. Miller and Nicole L. Smolter; *"Paper Abuse": When All Else Fails, Batterers Use Procedural Stalking*, 17 Violence Against Women 637 (2011) (*available at http://vaw.sagepub.com/content/early/2011/04/28/1077801211407290.full.pdf*).

12. National Council of Juvenile & Family Court Judges, *Batterer Manipulation of the Courts to Further Their Abuse, and Remedies for Judges*, Synergy, Vol. 12 No. 1 (2008) (*available at http://www.ncjfcj.org/sites/default/files/synergy-12-1.pdf*).

13. National Council of Juvenile & Family Court Judges, *A Judicial Guide to Child Safety in Custody Cases*, at 22-24 (2008) (*available at* http://www.ncjfcj.org/sites/default/files/judicial%20guide_0_0.pdf).

14. Leah J. Pollema, *Beyond the Bounds of Zealous Advocacy: The Prevalence of Abusive Litigation in Family Law and the Need for Tort Remedies*, 75 Univ. Mo. K.C. L. Rev. 1107 (2007).

15. Mary Przekop, *One More Battleground: Domestic Violence, Child Custody, and the Batterers' Relentless Pursuit of their Victims Through the Courts*, 9 Seattle J. Soc. Just. 1053 (2011).

16. Public Participation Project, *State Anti-SLAPP Laws and Judicial Decisions* (*available at* http://www.anti-slapp.org/your-states-free-speech-protection).

17. Kim Y. Slote *et al.*, *Battered Mothers Speak Out: Participatory Human Rights Documentation as a Model for Research and Activism in the United States*, 11 Violence Against Women 1367 (2005).

18. Rita Smith and Pamela Coukos, *Fairness and Accuracy in Evaluations of Domestic Violence and Child Abuse in Custody Determinations*. 36 No. 4 Judges J. 38 (1997).

19. Andrea Vollans, *Court-Related Abuse and Harassment: Leaving an Abuser Can Be Harder Than Staying*; YWCA Vancouver, Canada (2010) (*available at http://www.bcwomens.ca/NR/rdonlyres/8D65CADE-8541-4398-B264-7C28CED7D208/50364/LitigationAbuseFINAL.pdf).*

20. Joan Zorza, *Batterer Manipulation and Retaliation in the Courts: A Largely Unrecognized Phenomenon Sometimes Encouraged by Court Practices*. 3 Domestic Violence Report 67 (1998) (*available at http://www.ncadv.org/conferences/2012handouts/Zorza,%20Joan--Batterer.Manipulation.&.Retaliation.in.Courts.pdf*).

Good morning, Chairperson, and members of the House. My name is Kayla Jones, and I am here to testify in support of HB1533.

I am a survivor of domestic violence, and I left my abuser and filed for a divorce over 11 years ago. The domestic violence I experienced while I was still with my now ex-husband isn't unique. Many others have a similar story. I thought the abuse would end when I left. It didn't stop, it just looked different.

I met my abuser 20 years ago. I filed for my first Domestic Violence Protection Order in October of 2008. Most recently, I was granted a one-year Disorderly Conduct Restraining Order in August 2022. Which is currently on appeal to the Supreme Court.

In February 2012, my ex-husband was charged with Perjury. He was charged with this because he lied under oath to get a Disorderly Conduct Restraining Order against me. He said he did it to prove a point, that a Judge would sign anything. Since being charged with Perjury, he has obsessively argued in court documents that I lie under oath and has tried several times to have me charged with the crime. He's been unsuccessful with these attempts because I do not lie under oath.

In my divorce case, my ex-husband has filed recusals on six District Court Judges. He has established a pattern to request to disqualify a Judge when hearings, or decisions, do not have his desired outcome. There is even a history of making recusal demands before an order is even issued, because he anticipates the Judge will not rule in his favor.

My ex-husband consistently argues that the Court has a bias against him and favors me. However, he is consistently given leeway in his filings, arguments, and testimony. For example, during a two-hour court hearing, he was given 1 hour 45 minutes of time to present his evidence, leaving my attorney and I fifteen (15) minutes. My ex-husband admits in a brief submitted to the Court that "there have been some motions [he] should have never filed during the interim period of the divorce…" He has filed many pleadings, by his own admission, that lack validity in the law or fact. This makes it extremely difficult for my attorney to respond to the claims. This forces my attorney to spend time trying to find legal or factual support to take a position on the allegations. Of course, this means additional attorney fees for me. Many of his briefs are over 30 pages long, some are even over 100 pages. He often files things improperly, and not dated and/or labeled correctly, causing confusion with the Court and my attorney's office.

He continues to attempt to re-litigate certain issues that are long in the past. He wants to re-address issues that have been decided many times already by the court. For instance, he has repeatedly filed to recuse different Judges, states allegations of parental alienation, argues I am controlling, and that I lie under oath. In a Petition filed in 2021, he argues concerns that were already decided in 2013. In 2021 alone, he filed three separate motions accusing me of perjury. While preparing for a court hearing in February 2021, I was forced to listen to testimony I gave in September 2012. I was forced to listen to this because he submitted it as evidence. During this testimony I was talking about the violence that happened during our relationship over 9 years prior. This was difficult for me to listen to. I've worked hard to address my traumatic experiences, and he insists on pulling me back in. There are times I think he will never let me move on. He does this to try to maintain power and control over me.

Since the beginning of the divorce, my ex-husband engages in a pattern of name-calling, makes derogatory comments, and threatens myself, my attorney, and the Court. The Court didn't take a stance

on this until March 2021, saying if the behavior continued, they would hold him in contempt of court. His behavior continues, and he has yet to be held in contempt because of his behavior. Because there aren't consequences, he seems to feel validated and continues the name calling, derogatory comments, and threats.

Also in March 2021, nine years after this journey began, my attorney and I motioned the Court to have my ex-husband declared a vexatious litigant. At that time there was fourteen (14) appeals entered to the North Dakota Supreme Court and approximately 1,700 entries to the Register of Actions. He was declared a Vexatious Litigant in May 2021, and he immediately appealed the decision. The Supreme Court heard oral arguments in November 2021. In May 2022, the Supreme Court vacated the District Court's ruling, but entered their own order to declare him a vexatious litigant. Just this part of the case cost me nearly $10,000 in attorney fees. When the proposition was presented to me to ask the court to declare him a vexatious litigant, it seemed worth the investment. I thought it would end the frivolous filings, and the legal abuse. However, he just became creative again. Now that his access to the Court is restricted, he emails my attorney, sometimes up to 20 emails a day, which results in me accruing more attorney fees.

Presently there are sixteen (16) appeals entered in my divorce case and the Register of Actions contains nearly 1,800 entries. In this case, there are at least eight separate Motions for Contempt that he brought against me. All the contempt motions have been denied. I have consistently been represented by an attorney since the very beginning of the divorce. Except for a few months, my ex-husband has represented himself pro se. There are at least four (4) other appeals to the supreme court outside of my divorce case that he has filed that involve me.

Recently, in August 2022, the Presiding Judge of the South Central Judicial District requested the North Dakota Supreme Court assign a judge outside the South Central district to handle any future proceedings. This request is made because "the judges of this district are acquainted with the plaintiff/defendant and feel that in the best interest of justice should disqualify themselves." This request affected the Disorderly Conduct Restraining Order that I was granted in 2022. While awaiting a Judge assignment, the hearing was postponed by weeks. The assigned Judge, and their recorder, traveled to Mandan from Jamestown for an hour and a half hearing. This is frustrating because if my ex-husband didn't use the court system to abuse me, we could have continued to use Judges in our district, and there wouldn't be a waste in resources.

In closing, my ex-husband has used the court system for over eleven years to continue to abuse me. He uses our Judgment to try to manipulate a situation and uses our children as a vessel to continue the abuse. He uses the court to try to maintain power and control over me. The ten years it took for some relief is too much. It has cost me tens of thousands of dollars to fight this battle. I cannot even fathom how much his abuse has cost the state of North Dakota. I know how lucky I am to have legal representation the entire time, many others don't have that luxury. I've missed dinners with my children and husband, and bedtime stories, I've been unable to sleep, and gone through emotional turmoil to respond to frivolous court filings or to prepare for court. I've used hours, upon hours of paid time off to prepare documents and attend court hearings.

Domestic violence doesn't always end when a victim leaves their abuser. Please pass this bill to end an abusers ability to attack their victims by using the court system.

Legislative Assembly

North Dakota House of Representatives

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360

Representative Josh Boschee
District 44
517 First Street North
Fargo, ND 58102-4540
jboschee@ndlegis.gov

Minority Leader

COMMITTEES:
Industry, Business and Labor

February 8, 2023

Good morning Chairman Klemin and members of the House Judiciary Committee,

For the record, my name is Josh Boschee and I serve as a Representative from District 44, which comprises downtown and north Fargo.

HB 1533 was introduced to provide a formal process in which the Courts can evaluate whether an individual is using their access to the Courts to continue to harass, intimidate and abuse someone they have already been found guilty of domestic violence or disorderly conduct against.

Over the past year and a half, I have learned a lot about how an abuser is able to use their Constitutionally protected access to the Courts to not only emotionally and mentally abuse their former partner or spouse, but also financially abuse these individuals as it requires the abused individual to retain legal counsel and respond in a timely manner in order to protect their children, their home and other assets. Following my introduction of HB 1533, you will hear directly from individuals who have had to endure this kind of abuse for five or more years. There is also additional written testimony by those that are able to publicly share their experiences. According to these women's experiences, there are many other North Dakotans that they have met who have faced similar abuse but are unable to speak publicly out of fear of further retaliation and abuse from their former spouses.

Walk through how abusive litigation plays out in the Court.

Mr. Chairman and members of the Committee, the bill draft in front of you is modeled off legislation from another state. I'd like to walk you through it so you can see how the abusive litigation process can help reduce the abuse of the Court's resources and help bring an end to the continued abuse of fellow North Dakotans.

In order for an individual to access abusive litigation, they have to be in or have been in an intimate relationship or a sufficient relationship as defined under NDCC 14-07.1-02, which is our domestic violence protection order statute. The filing party must have been found guilty by a court of domestic violence or disorderly conduct.

Page 3, lines 13 through line 17 on page 4 outlines the hearing procedure which requires an individual to file a motion with the Court asking the Court to review the allegations of abusive litigation. This would allow for a time out so that the facts can be laid out of how the filing party is using court procedures to continue to harass, intimidate or abuse the other individual. The judge

would weigh the facts and make a determination. If the judge finds by a preponderance of the evidence that abusive litigation is occurring, they will enter an order restricting abusive litigation by the filing party for a period of 48 to 72 months. The filing party will be responsible for all costs associated with the abusive litigation, including reasonable attorney's fees for the opposing party.

If the judge finds that abusive litigation is not occurring, the proceedings will continue.

Page 4, line 18 is the integral part of the abusive litigation process. This comes into play if a judge determines an individual has filed abusive litigation. It requires the individual to request permission from the Court to be able to file future filings against the opposing party for the period determined by the judge. This is important because it provides the filing party access to the Court but doesn't require the opposing party to have to respond to every filing, unless the Court determines the filing is appropriate. This is how we can reduce an abuser's ability to use the Court to continue harassing, intimidating and abusing their former partner or spouse.

For those of you familiar with current Court procedures, you may be asking why this wouldn't fall under Rule 58: Vexatious Litigation. There are a few key factors:

- Abusive litigation is specific to individuals who have had an intimate relationship with one party found guilty of domestic violence or disorderly conduct. Vexatious litigation is an option to all individuals, including those that qualify under abusive litigation.
- Vexatious litigation is only an option if the filing party is not represented by an attorney. Abusive litigation is available if either or both parties are represented by an attorney. This helps reduce the amount of money, time, and resources the opposing party has to access to respond to ongoing and continuous filings.
- By having two separate processes, if an individual is found to be an abusive litigant, they can still access other aspects of the Courts without seeking permission from the Court. Whereas a vexatious litigant needs to seek the Court's permission in all other aspects of the Court.

Mr. Chairman, I did visit with a representative from the Courts earlier this week to discuss HB 1533 and their current Rule 58. Based on that conversation, I am confident that the Court will help provide input to make 1533 work for their processes as a new statute, updating their current rules or a combination of the two.

After me, you will hear directly from at least two women who have lived the past five plus years through the type of abuse this legislation will hopefully great reduce for future North Dakotans. As well as others who support this type of process. I request the Committee's support of HB 1533 and happy to answer questions to the best of my ability.

Testimony of Jennifer Williams

February 8, 2023

Members of the Judiciary Committee,

My name is Jennifer Williams and I am a resident of Fargo, North Dakota. I am here today to testify in support of House Bill 1533, which seeks to protect survivors of domestic abuse from abusive litigation. I am a survivor of domestic violence. I am very familiar with abusive litigation as it is something I have experienced first-hand since leaving my abuser in 2016. I want my story to help create awareness. Abusive litigation is here in North Dakota. Many of us face it and we often face it alone. There is no protection and often no resources. Due to this, I have become passionate in ensuring I do whatever possible to prevent this from happening to others here in North Dakota. I'm urging the Committee to issue a "DO PASS" so that we can ensure that protection and prevention is in place.

I was married for one year. I moved out, practically overnight as the physical abuse escalated to the point that I found myself texting someone that if something happened to me, he did it. I feared he would kill me. An incident later proved my fears were real. I thought the threats, manipulation, emotional and physical abuse would end when I left. I was wrong.

I had never heard of the term abusive litigation prior to my divorce. I learned very quickly, what it entailed though. I also learned that there are no resources available. It's not something I could just leave, like I did before. I was told if I didn't respond to the filings I was all of a sudden inundated with, I could possibly lose my kids. I was basically told I needed to just deal with it. Do victims of any other type of abuse get told to just deal with it? I was forced to pay thousands of dollars, as a single parent, whenever he felt like filing something. He had all the control, this abuse felt worse than the abuse I endured in the home. It made me understand domestic violence better and why some victims returned to their abuser. I knew this needed to be fixed.

My case has all the red flags of abusive litigation. There's excessive discovery. I was served 11 rounds of just in my divorce alone. Multiple Motions for Contempt have been filed against me, as retaliation it seemed. These all consisted of false accusations or allegations that don't rise to contempt. I was never found in contempt but had to defend each one. Defendant has been found in contempt multiple times and shows complete disregard for the judgment with little to no consequence. I've had to defend multiple motions that were found untimely or not supported by law. A Motion to Void Marriage was filed three months after our trial, claiming I was "fraudulent". He stated I knew the person who married us wasn't licensed to do so in North Dakota. A letter was sent to the Court, while awaiting a decision, months after trial, with more false allegations against me. A month after our Judgment, a Motion for Reconsideration and Clarification was filed. He attempted to use this modify his child support and modify his parenting time. Months later, another Motion to Modify Child Support and Parenting Time was filed. While the Court has ordered attorney files for several of these motions, attorney fee awards were often for much less than the cost to defend the litigation. This would incentivize the abuser to continue this behavior. This is just a glimpse into what I experienced in terms of filings.

A Demand for Change of Judge was denied, a Demand for Change of Venue was filed right after. I realized then how an abuser can manipulate the system to get what they want. This Change of Venue

was filed with yet another Motion to Modify Child Support, after others were denied. Once a judge evaluates one's credibility, especially the abuser, they will seek to change. Again, this is a common tactic. When a case has over 1,000 filings, there is no way for a court to review the case history. These actions prove to be extremely detrimental to the children involved in these situations. I have witnessed that firsthand now. I filed a Motion for Rule 11 Sanctions. I understand this was untimely; however, it was not frivolous. It raised concerns as to what was initially filed, by my abuser, to change parenting time and other modifications. It's alarming.

My trial court made findings of serious bodily injury, domestic violence. During the disorderly conduct restraining order hearing, the Court noted a history of domestic violence, victimization, and intimidation by the Defendant. The victimization and intimidation continue in filings today. The harassment and name calling is evident in every single filing. He is allowed to do this whenever he wants, I just endure it. If House Bill HB 1533 were in place today, he wouldn't have had the opportunity to continue this abuse. I wouldn't have to just tolerate this as a victim, I shouldn't have to, no one should have to. I have spent thousands of hours I bet dealing with this. My attorney fees have amounted to close to $200,000 now. This takes away from my children and our future. Imagine a single parents, being forced into that debt simply because they are a survivor of domestic abuse.

In 2021, I submitted a complaint regarding opposing counsel, to the Disciplinary Board of the North Dakota Supreme Court. I feared retaliation so I hesitated, I waited longer than I should've due to that fear. Opposing counsel was publicly reprimanded by the hearing panel as a sanction for violations of Rule 3.4 (c)-(d) of the North Dakota Rules of Professional Conduct. It found that she "overidentified" with her client and that there was a "lack of separation between herself and the client". It found that I was "injured as a result of Aldrich's conduct because she was required to respond to the additional, improper discover requests and late motions." It also found that "there are multiple instances in which the Rules of Civil Procedure were not properly followed." In my disciplinary complaint, I refer that two separate courts made findings of domestic violence, which opposing counsel blatantly ignores. In her response to the complaint, she rants, calling me a liar at nearly every chance she gets. She accuses me of lying about the abuse. She submits three affidavits, from my abuser, his mother and sister. All calling me names, accuses me of lying about the abuse. I don't understand why an attorney would submit affidavits in her response to a disciplinary complaint but that goes to show that opposing counsel contributes in allowing the abuser to continue the abuse. She is still representing him, same situation as it won't end. Again, having a bill like HB 1533 would also prevent this type of situation from taking place. This is uncalled for. The Disciplinary Board is not able to address domestic violence issues.

Abusive litigation is abuse. It's emotional, psychological, financial and everything in between. It allows harassment, stalking, name calling and accusations to be made, requiring you to defend. We must put protections in place to prevent everything that I have described above. This is just a glimpse of what I have experienced. Vexatious litigant has not worked for me as my abuser is not self-represented and often, the court is not quick to make a finding that a motion is necessarily frivolous. I am asking for a "DO PASS" so that there is a separate protection in place for domestic abuse victims. The time is now.

Thank you for your consideration.

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.

Good morning, Chairsuperson, and members of the House. My name is Heather Zins, and I writing this letter in support of HB1533.

I am a victim of litigation abuse, even as I type this letter I fear how its submission will be used against me in the court system by my child's father.

I met my abuser in 2004 and had our child that same year. Our relationship was toxic from the start and got worse after having a child together. In early 2005 I was granted a one year Protection Order against my child's father. The Protection Order was then extended another 2 years due a violation of the order.

Little did I know that the Protection Order would only be the start of what has been an 18 year drawn out problem for me, my family and the court system.

In our child support docket there has been nearly 700 filings. There have also been multiple Supreme Court appeals. I have had legal representation the entire time, while he has represented himself pro se. This ongoing court struggle has not only cost me thousands of dollars but also time with my family and time off from my work.

While the cost of legal representation adds up I have also not been receiving child support. The Child Support Enforcement Unit is unable to proceed in collection because the case has constantly been reopened with new filings.

There have been multiple occasions where there has been a ruling regarding events and then years later he will rehash these old traumatic events with new litigation. It's as if he's forcing me to relive these times by having to read the sometimes 30 to 60 page affidavits or briefs. Then once we are back in the court room, because he is Pro Se, he can personally ask questions of me while I am on stand. I view this as a whole new form of abuse.

Our most recent situation has been having to fight to keep my personal and business financial and tax information protected against his scrutiny and abuse. He believes he has every right to view this personal information.

As my child recently turned 18 years old a person would think that we have reached the end of this litigation abuse, however, my attorney and I strongly feel this is not the case.

In closing I ask to please pass this bill to end an abusers ability to attack their victims by utilizing the court system.

521 E Main Avenue
Suite 320
Bismarck, ND 58501

Phone 701.255.6240
Toll Free 888.255.6240
Fax 701.255.1904

cawsnorthdakota.org
contact@cawsnorthdakota.org

@cawsnorthdakota

House Bill No. 1533
Senate Judiciary Committee
Testimony Presented by Seth O'Neill, JD, MSW
Email: soneill@cawsnorthdakota.org
March 13, 2023

Chairwoman Larson and members of the Committee, my name is Seth O'Neill and I am representing CAWS North Dakota in support of HB 1533. This bill would allow abusive litigation victims to be protected through a court order limiting abusive claims.

In domestic violence situations, offenders seek to have power and control over their victims. When a victim escapes an abusive relationship, the offender seeks to maintain control over the victim. One of the most common ways is through the legal system. If an offender has a domestic violence protection order against them they are not allowed to contact the victim. Instead, some offenders file abusive claims against their victim in a court of law which they are currently allowed to do. These offenders are typically pro-se and file countless claims in family law situations.

The North Dakota Supreme Court Administrative Rule 58 has a process to declare someone a vexatious litigant. However, the process requires that "the person has repeatedly relitigated or attempted to relitigate, as a self-represented party the validity of the determination against the same defendant or defendants as to whom the litigation was finally determined[1]"

Oftentimes in family law cases, an individual may seek to bring up what seems like new issues but are simply relitigating issues. Under the vexatious litigant procedure, this would be

[1] See North Dakota Supreme Court Administrative Rule 58(4)(b)

unlikely for this individual to be declared a vexatious litigant as each instance could be constituted a new determination or claim. In addition, the vexatious litigant process is purposely broad and does not specifically apply to domestic violence abusers. In a prior role, I was successful in getting an individual declared a vexatious litigant after the individual repeatedly filed over 30 frivolous lawsuits against anyone who upset the individual. This is the type of situation that the vexatious litigant process was designed for.

In North Dakota, we need a process in law to protect domestic violence victims from abusive litigation from their partner and I believe this bill does that while still respecting access to the courts. The North Dakota Supreme Court has recognized the ability of a court to "control its docket, so as to stem abuse of the judicial process from vexatious and meritless litigation.[2]" This bill gives the courts the ability control abuse of the judicial process by protecting domestic violence victims and freeing up the courts for more important matters.

We encourage the committee to give HB 1533 a do pass recommendation. I appreciate your time and I am happy to answer any questions you may have. Thank you.

[2] See Holkesvig v. Grove, 2014 ND 57, ¶ 17, 844 N.W.2d 557.

NORTH DAKOTA Family Alliance LEGISLATIVE ACTION

Faith · Family · Freedom

Testimony Supporting Senate Bill 1533

Mark Jorritsma, Executive Director
North Dakota Family Alliance Legislative Action
March 13, 2023

Good morning Madam Chair Larson and members of the Senate Judiciary Committee. My name is Mark Jorritsma and I am the Executive Director of North Dakota Family Alliance Legislative Action. We are here today to testify in support of House Bill 1533 and ask that you issue a "DO PASS" out of committee.

North Dakota Family Alliance Legislative Action supports the intent of this bill for a number of reasons. First, there are actual cases of domestic abuse victims being subjected to abusive litigation right here in North Dakota. In other words, while it is frequently the case that the legislature is hesitant to implement laws for situations that do not already exist, this is not one of those cases and cannot be rejected on that basis.

Second, our organization is a staunch supporter of protecting victims of domestic abuse, from both a faith and societal basis. While we understand that situations like this can sometimes be very complex, we will side with the victim and, unfortunately too often, the children that get caught up in these situations. These individuals need a fresh start to their lives and this bill would help facilitate that. As long as abusive litigation continues, their lives are put on hold and they continue to suffer with the memories of the abuse they were trying to escape.

Finally, there is the matter of the court system. Our court system in North Dakota, like many other states, is continually running at full speed and nevertheless has a significant backlog of critical cases. The point of this bill is that abusive litigation does not fall into the category of "critical cases" by its very definition. It further clogs our court system for all the wrong reasons.

While there is always the possibility of laws going too far and actually creating an unfair situation for fathers, we believe that what this bill seeks to do greatly outweighs that small likelihood. For these reasons, North Dakota Family Alliance Legislative Action requests that you render a "DO PASS" on House Bill 1533. Thank you for the opportunity to testify, and I am happy to stand for any questions.

1515 Burnt Boat Dr., Suite C-148, Bismarck, ND 58503
mark@NDfamilyalliance.org
701·355·6425
www.ndfamilyalliance.org

Testimony of Jennifer Williams in Support of HB1533

Senate Judiciary Committee

Chairman Larson and members of the Committee, my name is Jennifer Williams and I am a resident of Fargo, ND. I am here today to testify in support of House Bill 1533, which seeks to protect survivors of domestic abuse from abusive litigation. I am a survivor of domestic violence. I am very familiar with abusive litigation as it is something I have experienced first-hand since leaving my abuser in 2016.

Abusive litigation is here in North Dakota. Many of us face it and we often face it alone. We don't' talk about it for fear of retaliation or something bad happening for speaking up against our abuser. While there is awareness of it happening, abusive litigation is basically allowed to continue and there are no resources. I have become passionate in ensuring I do whatever possible to prevent this from continuing and happening to others here in North Dakota. I'm urging the Committee to issue a "DO PASS" so that we can ensure that protection and prevention is in place.

I was married for one year. I moved out, practically overnight as the physical abuse escalated to the point that I found myself texting someone that if something happened to me, he did it. I feared he would kill me. An incident later proved my fears were real. I thought the threats, manipulation, emotional and physical abuse would end when I left. I was wrong.

Prior to leaving, I didn't know what abusive litigation was. I quickly learned. This time I couldn't leave the abuse, like I did before. It's not something I could just leave, like I did before. My abuser used the court system to continue to abuse. If I didn't respond to his crazy accusations and the filings I was inundated with, I was told I could possibly lose my kids. I was told I need to "just deal with it". Do victims of any other type of abuse get told to just deal with it? As a single parent, I was forced to pay thousands of dollars whenever he felt like filing false accusations against me or a motion that had no evidence. He controlled me in more ways than before. The abuse was worse than when I lived in the home. It made me understand domestic violence, the impacts of it and why some victims returned to their abuser.

My case has all the red flags of abusive litigation. There's excessive discovery. I was served 11 rounds of just in my divorce alone. Several subpoenas filed on me, untimely and evident that it was being used as a means of abuse. Multiple Motions for Contempt have been filed against me, as retaliation it seemed. These all consisted of false accusations or allegations that don't rise to contempt. I was never found in

contempt but had to defend each one. Defendant has been found in contempt multiple times and shows complete disregard for the judgment with little to no consequence. I've had to defend multiple motions that were found untimely or not supported by law. A Motion to Void Marriage was filed three months after our trial, claiming I was "fraudulent", again denied. A letter was sent to the Court, while awaiting a decision, months after trial, with more false allegations against me. Within a year and a half of our divorce, Defendant filed three motions to change parenting time, financial obligations and child support. A Demand for Change of Judge was denied, a Demand for Change of Venue was filed right after. I realized then how an abuser can manipulate the system to get what they want. I learned afterwards that this is common with abusive litigation. When a case has over 1,000 filings, there is no way for a court to review the case history and credibility. These actions prove to be extremely detrimental to the children involved in these situations, which I have witnessed firsthand now. I filed a Motion for Rule 11 Sanctions and while I now understand this was untimely, it was not frivolous. It raised concerns as to what was initially filed, by my abuser and his counsel, to change parenting time and other modifications. It's alarming.

When attorney fees are awarded, they are for often far less than the cost to defend the litigation. Attorney fees are not promised, even when motions are denied. This would incentivize the abuser to continue the behavior. When you are self-represented, no fees can be awarded. Self-representation can also have detrimental effects on one's mental and physical being, it's time consuming and can cause one to risk losing their job. This is what an abuser wants. Being a victim of abuse should not force you into that process, that's not a resolution. From my experience, the abuser will also make the process a lot more difficult. I would not wish that on anyone going through this.

Vexatious litigant or Rule 58 has not worked for me as my abuser has always been represented. The court is also not quick to make a finding that a motion is necessarily "frivolous". Requesting for a Vexatious litigant also takes a showing of numerous frivolous motions, the court does not always make that separate finding. Rule 11 is also not an option as it is timely and attorneys often do not want to file this type of motion, I have been told many times that it's not worth it.

My trial court made findings of serious bodily injury, domestic violence. During the disorderly conduct restraining order hearing, the Court noted a history of domestic violence, victimization, and intimidation by the Defendant. The victimization and intimidation continue in filings today. The harassment and name calling is evident in every single filing. I just endure it. I shouldn't have to, no one should have to. I have spent thousands of hours I bet dealing with this. My attorney fees have totaled close to $200,000.

Imagine single parents, being forced into that debt simply because they are a survivor of domestic abuse. Imagine the children that this takes away from and the quality of life this leaves.

In 2021, I submitted a complaint regarding opposing counsel, to the Disciplinary Board of the North Dakota Supreme Court. I feared retaliation so I hesitated, I waited longer than I should've due to that fear. Opposing counsel was publicly reprimanded by the hearing panel as a sanction for violations of Rule 3.4 (c)-(d) of the North Dakota Rules of Professional Conduct. It found that she "overidentified" with her client and that there was a "lack of separation between herself and the client". It found that I was "injured as a result of Aldrich's conduct because she was required to respond to the additional, improper discover requests and late motions." It also found that "there are multiple instances in which the Rules of Civil Procedure were not properly followed." Counsel has blatantly ignored prior court findings of domestic violence; continues to claim I lied about the abuse. In her response to the complaint, she rants, falsely accuses me and calls me a liar at nearly every chance she gets. I can't imagine victim shaming in this manner ever being publicly accepted. While this behavior is not understood, it evidences that the abuser is allowed to continue the abuse through counsel, through someone else. Even when there was a restraining order and protection order. Recent filings will show this continues. I just responded to false accusations, name-calling, and false statements which they know to be false. HB 1533 would also limit this practice as well.

Abusive litigation is abuse. It's emotional, psychological, financial and everything in between. HB 1533 would protect so many from having to experience this. Our Court system is there to protect us but I, along with many others, have not been protected. I am asking for a "DO PASS" so that we do have that protection.

Thank you for your consideration.

House Bill 1533
Senate Judiciary Committee
Testimony Presented by Sara Behrens
March 13, 2023

Good morning Chair Larson, 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 last month. 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 worked with Representative Boschee on amendments to this Bill in the House. The Court is not opposed to the Bill in its current form. The Court is working on amendments to AR 58 and development of forms for use by litigants.

Legislative Assembly

North Dakota House of Representatives

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360

Representative Josh Boschee
District 44
517 First Street North
Fargo, ND 58102-4540
jboschee@ndlegis.gov

Minority Leader

COMMITTEES:
Industry, Business and Labor

March 13, 2023

Good morning Chair Larson and members of the Senate Judiciary Committee,

For the record, my name is Josh Boschee and I serve as a Representative from District 44, which comprises downtown and north Fargo.

HB 1533 was introduced to provide a formal process in which the Courts can evaluate if an individual is using their access to the Courts to continue to harass, intimidate and abuse someone they have been found guilty of domestic violence or disorderly conduct against.

Over the past year and a half, I have learned a lot about how an abuser is able to use their Constitutionally protected access to the Courts to not only emotionally and mentally abuse their former partner or spouse, but also financially abuse these individuals as it requires the abused individual to retain legal counsel and respond in a timely manner in order to protect their children, their home and other assets. Following my introduction of HB 1533, you will hear directly from individuals who have had to endure this kind of abuse for five or more years. There is also additional written testimony by those that are able to publicly share their experiences. According to these women's experiences, there are many other North Dakotans that they have met who have faced similar abuse but are unable to speak publicly out of fear of further retaliation and abuse from their former spouses.

Walk through how abusive litigation plays out in the Court.

The originally introduced version of 1533 was modeled off other state's legislation and was amended by the House Judiciary Committee in partnership with the state Supreme Court. The committee, with my support, removed the specific procedures from statute and are deferring to the Courts to establish a procedure that best works for their processes. As I understand it, they will most likely propose to amend their Rule 58, which is specific to Vexation Litigation, to be inclusive of the individuals who qualify under Abusive Litigation.

In order for an individual to access abusive litigation, they have to be in or have been in an intimate relationship or a sufficient relationship as defined under NDCC 14-07.1-02, which is our domestic violence protection order statute. The filing party must have been found guilty by a court of domestic violence or disorderly conduct.

As you look at the bill draft in front of you, Page 2, lines 19 through line 3 on page 3 outlines the hearing procedure which requires an individual to file a motion with the Court asking the Court to

review the allegations of abusive litigation. This would allow for a time out so that the facts can be demonstrated of how the filing party is using court procedures to continue to harass, intimidate or abuse the other individual. The judge would weigh the facts and make a determination. If the judge finds by a preponderance of the evidence that abusive litigation is occurring, they will enter an order restricting abusive litigation. The filing party will be responsible for all costs associated with the abusive litigation, including reasonable attorney's fees for the opposing party.

If the judge finds that abusive litigation is not occurring, the proceedings will continue.

For those of you familiar with current Court procedures, you may be asking why this wouldn't already fall under Rule 58: Vexatious Litigation. There are a few key factors:

- Abusive litigation is specific to individuals who have had an intimate relationship with one party found guilty of domestic violence or disorderly conduct. Vexatious litigation is an option to all individuals, including those that qualify under abusive litigation.
- Vexatious litigation is only an option if the filing party is not represented by an attorney. Abusive litigation is available if either or both parties are represented by an attorney. This helps reduce the amount of money, time, and resources the opposing party has to access to respond to ongoing and continuous filings.

Some may ask, if the Court is willing to address Abusive Litigation, why don't they just do so without legislation.

As someone who hasn't spent a lot of time on court proceedings, I've learned a lot about the Courts' processes throughout the drafting, introduction and discussion on 1533. They take their role of ensuring access to the Courts very seriously, which is important. So having something in statute to back judges up in addressing Abusive Litigation will be helpful in not only ensuring victims of domestic violence experience less abuse, harassment and/or intimidation through judicial proceedings, but also that the resources of the Courts aren't abused.

After me, you will hear directly from at least two women who have lived the past five plus years of their life through the type of abuse this legislation will hopefully reduce for future North Dakotans.

I request the Committee's support of HB 1533 and am happy to answer questions to the best of my ability.

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.

[redacted]

[redacted]

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.

[redacted]

[redacted]

23.0308.02001
Title.

Prepared by the Legislative Council staff for
Representative Boschee
February 13, 2023

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1533

Page 2, line 12, remove "or domestic partner"

Page 2, line 12, remove the second "or domestic"

Page 2, line 13, remove "partner"

Page 2, remove lines 19 through 30

Page 3, remove lines 1 through 31

Page 4, line 7, after the underscored semicolon insert "and"

Page 4, line 10, replace "; and" with an underscored period

Page 4, remove lines 11 through 13 and 18-31

Page 5, remove lines 1 through 31

Page 6, remove lines 1 through 4

Renumber accordingly

Supreme Court shall adopt rules to implement this Chapter

23.0308.02001

Sixty-eighth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1533

Introduced by

Representatives Boschee, Hanson, Ista, Klemin, Pyle, Roers Jones, Schneider

Senator Braunberger

A BILL for an Act to create and enact a new chapter to title 14 of the North Dakota Century Code, relating to protecting survivors of domestic abuse from abusive litigation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to title 14 of the North Dakota Century Code is created and enacted as follows:

Definitions.

1. "Abusive litigation" means litigation in which:
   a. The parties have or had an intimate partner relationship or any other person with a sufficient relationship to the abusing person as determined by the court under section 14-07.1-02;
   b. The filing party has been found by a court to have committed an act of domestic violence or disorderly conduct against the opposing party pursuant to a court order entered under chapter 14-07.1, 14-09, or 12.1-32.2, or an equivalent ordinance from another state, provided the issuing court made a specific finding of domestic violence or disorderly conduct, or the filing party has a prior conviction relating to domestic violence against the opposing party under chapter 12.1-17;
   c. There is intent on the part of the filing party to harass, intimidate, maintain contact with, or retaliate against the opposing party; and
   d. At least one of the following is true:
      (1) Claims, allegations, and other legal contentions made in the litigation are not warranted by existing law or by a reasonable argument for the extension, modification, or reversal of existing law, or the establishment of new law;

(2) Allegations and other factual contentions made in the litigation lack evidentiary support;

(3) The actions comprising the basis of the litigation previously have been filed or litigated in one or more other courts or jurisdictions and have been disposed of unfavorably against the party filing, initiating, advancing, or continuing the litigation; or

(4) The filing party has been sanctioned previously for filing, initiating, advancing, or continuing litigation found to be frivolous, vexatious, intransigent, or brought in bad faith.

2. "Filing party" means the party who has filed, initiated, advanced, or continued litigation.

3. "Intimate partner" means a spouse ~~or domestic partner~~, former spouse ~~or domestic partner~~, an individual who has a child with a filing party regardless of whether the individual has been married to the filing party or lived with the filing party, or an individual who has or had a dating relationship with the filing party.

4. "Litigation" means any motion, pleading, petition, or other court filing.

5. "Opposing party" means the party against whom the filing party has filed, initiated, advanced, or continued litigation.

~~6. "Restricted individual" means an individual subject to an order restricting abusive litigation.~~

~~**Order restricting abusive litigation - Who may request.**~~

~~1. A party to a case may request from the court an order restricting abusive litigation if the parties are current or former intimate partners and the party against whom the request is being made has been found by the court to have committed domestic violence or disorderly conduct against the other party. A request may be made:~~

~~a. In an answer or response to the litigation being filed, initiated, advanced, or continued;~~

~~b. By motion made at any time during any opening or ongoing case; or~~

~~c. By a separate motion made under this chapter within five years of the entry of an order for protection even if the order has expired.~~

2. Any court of competent jurisdiction by its own motion may determine that a hearing pursuant to this Act is necessary to determine if a party is engaging in abusive litigation.

Instructions, brochures, and forms - Fees.

1. The administrative office of the supreme court shall provide the instructions, brochures, standard petition, and order for protection forms necessary to implement this chapter.

2. A court may not charge a filing fee to a party filing a petition for an order restricting abusive litigation regardless of whether the petition is filed under this chapter or another chapter in this title.

3. This chapter does not preclude an individual from seeking any other remedy available under the law.

Hearing - Procedure - Rebuttable presumption.

1. If an opposing party asserts the party is subject to abusive litigation, the court shall set the matter for hearing on the next available court date.

2. At the hearing to determine the presence of abusive litigation, evidence of any of the following creates a rebuttable presumption that litigation is being filed, initiated, advanced, or continued for the purpose of harassing, intimidating, maintaining contact with, or retaliating against the opposing party:

   a. The same or substantially similar issues between the same or substantially similar parties have been litigated within the past five years in the same court or any other court of competent jurisdiction;

   b. The same or substantially similar issues between the same or substantially similar parties have been raised, pled, or alleged in the past five years and were dismissed on the merits or with prejudice;

   c. Within the last ten years, the filing party has been sanctioned for filing, initiating, advancing, or continuing litigation found to be frivolous, vexatious, intransigent, or brought in bad faith involving the same opposing party; or

   d. A court of record in another judicial district has determined the filing party engaged in abusive litigation or similar conduct and has been subject to a court order imposing prefiling restrictions.

Burden of proof - Dismissal - Entry of order restricting abusive litigation.

1. If a court finds by a preponderance of the evidence any of the litigation pending before the court constitutes abusive litigation, the court shall dispose of the litigation with prejudice.
2. If the court finds abusive litigation, the court shall enter an order restricting abusive litigation. The order must:
   a. Impose all costs of the abusive litigation against the filing party; and
   b. Award the opposing party reasonable attorney's fees and costs associated with responding to the abusive litigation, including the cost of seeking the order restricting abusive litigation~~; and~~.
   ~~c. Identify the protected party and impose prefiling restrictions upon the restricted individual for a period of at least forty-eight months and no more than seventy-two months.~~

~~**Proceeding when abusive litigation is not present.**~~

~~If the court finds by a preponderance of the evidence any of the litigation pending before the court does not constitute abusive litigation, the court shall enter written findings to that effect and the portions of the litigation found not to be abusive may proceed.~~

~~**Filing of new case or motion by individual subject to order restricting abusive litigation - Requirements and procedure.**~~

~~1. Except as provided in this section, a restricted individual is prohibited from filing, initiating, advancing, or continuing litigation against the protected party for the period of time the filing restrictions are in effect.~~
~~2. Notwithstanding subsection 1, a restricted individual may seek permission to file litigation using the procedure set forth in this section.~~
~~3. A restricted individual against whom prefiling restrictions have been imposed under this chapter may request permission of the court to engage in litigation against a protected party. The judicial official who imposed the prefiling restrictions shall hear the request.~~
~~4. When considering the restricted party's request for permission to file litigation, the judicial officer may examine witnesses, court records, and any other evidence to determine if the proposed litigation would constitute abusive litigation under this chapter. If, based on a review of the record as well as any evidence presented during~~

~~the hearing, the judicial official concludes the proposed litigation would constitute abusive litigation, the application to file the proposed litigation must be denied, dismissed, or otherwise disposed with prejudice.~~

~~5. If the judicial official concludes the proposed litigation would not constitute abusive litigation, the judicial official shall issue an order permitting the proposed litigation to proceed. A copy of the order allowing the litigation to proceed must be served upon the protected party and attached to the front of any litigation filed by the restricted party with the clerk of court. If a protected individual is served with litigation filed by a restricted individual in violation of any order entered under this chapter, the protected individual sufficiently may respond to the litigation by filing a copy of the order restricting abusive litigation, but is under no obligation to respond to the litigation, appear for depositions in the litigation, or take any responsive action otherwise required by the rules and statutes that govern civil proceedings.~~

~~6. If a restricted individual's application for permission to file proposed litigation is granted under this section, the time beginning with the filing of the application and ending with the issuance of an order permitting the litigation to proceed may not be computed as a part of any applicable period of limitation within which the matter must be instituted.~~

~~7. If, after a party subject to prefiling restrictions has applied and been granted permission to file or advance a case under this section, any judicial officer hearing or presiding over the case determines the individual is attempting to add parties, amend the complaint, or otherwise attempting to alter the parties and issues involved in the litigation in a manner the judicial officer reasonably believes would constitute abusive litigation under this chapter, the judicial officer shall stay the proceedings and refer the case to the judicial officer who granted the application to proceed with litigation.~~

~~8. If the court discovers an individual against whom prefiling restrictions have been imposed has filed a new case or is continuing an existing case without having been granted permission under this section, the court shall dismiss, deny, or otherwise dispose of the matter. This action may be taken by the court on the court's own motion or initiative. The court may take any action against the perpetrator of abusive litigation the court deems necessary and appropriate for a violation of the order restricting abusive litigation.~~

~~9. If the judicial officer who imposed the prefiling restrictions is no longer serving in the same capacity in the same judicial district in which the restrictions were placed or is otherwise unavailable for any reason, any other judicial officer in that judicial district may perform the review required under this section.~~

Supreme Court shall adopt rules to implement this chapter.