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'Vexatious Litigants' Procedure Held Lawful

A PROCEDURE, established by the Second Circuit, that requires about two dozen "vexatious litigants" to obtain permission from an unidentified judge to file any motions with the court, has been declared reasonable and necessary by a federal appeals panel.

The procedure was called a "reasonable response to the harassing abuse of the litigation process" perpetrated by these litigants in a ruling by Second Circuit Chief Judge Jon O. Newman, *In Re Anthony R. Martin-Trigona*, 93-5008, filed Friday.



Judge Newman

Litigants "who abuse the judicial system forfeit their right to the full panoply of procedures available in the conduct of normal litigation," Judge Newman added.

His opinion, joined in by Circuit Judges Ralph K. Winter and Frank X. Altamari, came in response to unrelated letters from two sanctioned pro se litigants, Anthony R. Martin (formerly known as Anthony R. Martin-Trigona) and George Sassower, who sought disclosure of the identity of judges who had denied them permission to file particular motions in the past year.

Mr. Martin, who has a Palm Beach, Fla. address, is described in court opinions as a law school graduate denied admission to the Illinois bar. He has filed hundreds of lawsuits around the country "against federal and state judges, bar examiners, public officials, public agencies, lawyers and individuals who in one way or another had any relationship, directly or indirectly, to any matter concerning him," according to one opinion.

In one instance, he even reportedly "sought to intervene in the state court divorce action of a federal judge and moved to have himself appointed as guardian ad litem of the judge's minor children."

Mr. Sassower, who has a White Plains, N.Y., address, is described in court opinions as a disbarred lawyer who has been "an abusive litigant for years" filing an "avalanche of litigation" against public and private figures.

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Both men have been prohibited from filing any papers in the Second Circuit unless leave of court has first been obtained. That leave must come from one Second Circuit judge who is assigned through a process which is not publicly disclosed but is reportedly "related to the seniority of the judges." The same judge, who is not identified, handles all applications from a particular litigant.

In their letters, Messrs. Martin and Sassower sought to learn the identity of the judges who denied them leave to appeal in the past year. In response, Judge Newman treated the letter requests as motions to be considered by a three-judge panel because they raised issues the Second Circuit had not addressed in previous opinions.

Exceeding the Bounds

Judge Newman first noted the ways in which the courts and public can be protected from the harassing tactics of vexatious litigants through rules of general application. Among them, he cited Rule 11 of the Federal Rules of Civil Procedure, which authorizes sanctions for groundless lawsuits, and Rule 38 of the Federal Rules of Appellate Procedure, which authorizes damages for filing a frivolous appeal.

But these techniques are insufficient when "certain individuals so far exceed the bounds of tolerable litigation conduct," he wrote.

He then noted that the U.S. Supreme Court and numerous courts of appeals "have recognized that courts may resort to restrictive measures that except from normally available

procedures, litigants who have abused their litigation opportunities."

Several circuits, he noted, have barred vexatious litigants from the normal availability of the in forma pauperis status in civil cases that allows waiver of fees, while others have completely prohibited such litigants from filing designated categories of cases. At least five other circuits have adopted less drastic remedies, like the Second Circuit's, of requiring that vexatious litigants seek permission to file papers, Judge Newman wrote.

The Second Circuit's particular leave-to-file system which assigns that decision to one judge per litigant is a "sensible allocation of judicial resources," Judge Newman added. It also enables that one judge to have a "frame of reference" to assess new applications from the litigant.

Judge Newman also said that concealing the identity of the judge was a "reasonable precaution, necessitated by the unfortunate tendency of some vexatious litigants to direct their harassing tactics personally at the judges whose rulings displease them."

And he defended the tactic of not disclosing the procedure for choosing the judge, which is related to seniority, because it assures that judges are picked "without regard to the identity of the litigant."

Judge Newman concluded, "The procedures adopted in response to the demonstrated abuse that has occurred are necessary for the courts, the judges and ultimately for the public, many of whom are victimized when vexatious litigants are permitted unrestricted opportunities to pursue their tactics of harassment."

Messrs. Martin and Sassower represented themselves.

11/9/93

Monday, March 14, 1994

Second Circuit Imposes Limits On Frequent Complaint Filers

A CRACKDOWN on vexatious litigants in the Second Circuit, which began in the 1980s with the imposition of "leave to file" requirements for additional lawsuits and appeals, continued last week with the announcement of similar requirements for those who frequently file judicial misconduct complaints.

Those deemed frequent filers must get permission to initiate new complaints from the Second Circuit Chief Judge as an appropriate sanction against them and as a means to protect the system's integrity, according to an opinion from the Second Circuit Judicial Council in *In re George Sassower*, 94-8509, filed Thursday. The Council is the 13-judge body which reviews misconduct complaints against federal judges in the Second Circuit which covers New York, Vermont and Connecticut.

The opinion, signed by Second Circuit Chief Judge Jon O. Newman, imposed the new requirements on George Sassower, a disbarred attorney from White Plains, N.Y., who has filed 16 judicial misconduct complaints in the Second Circuit since 1987, 15 of them since 1990 and eight in 1993. Each complaint was dismissed as frivolous, or related to the merits of litigation, the ruling said,



PHOTOGRAPH BY FAYE ELLMAN

Judge Jon O. Newman

noting some complaints were filed against judges for dismissing prior complaints.

The opinion noted steps by numerous circuits to limit lawsuits and appeals initiated by litigants who abuse the system, and steps by a few, including the First, Third and Fifth Circuits, to limit repetitive and frivolous judicial misconduct complaints. It rejected claims by Mr. Sassower that no special restrictions should be im-

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posed because his complaints have not put an undue burden on the court.

Restriction Warranted

"Just as those who abuse the normal processes of litigation may be restricted in their opportunity to initiate new lawsuits, those who abuse the judicial misconduct complaint procedure may also be restricted in their opportunity to initiate new misconduct complaints," Judge Newman wrote.

"The integrity of the misconduct complaint procedure, a matter of importance to all persons with a legitimate basis for making a complaint within the scope of 28 USC §372(c), will be maintained by imposing a 'leave to file' restriction on those who abuse this procedure."

Second Circuit Executive Steven Flanders estimated there are only a handful of people at any time who may be called vexatious repeat filers of judicial misconduct complaints. He said there are far fewer than the two dozen litigants on a special court list who need permission from an unidentified Circuit Judge to file additional motions in the Second Circuit.

In November, the Second Circuit defended its leave to file process for vexatious litigants in a ruling also concerning Mr. Sassower, who was described in court opinions as having been "an abusive litigant for years" who has filed an "avalanche of litigation" against public and private figures.

In November, the Second Circuit defended its leave to file process for vexatious litigants in a ruling also concerning Mr. Sassower and a second

man, Anthony R. Martin (formerly known as Anthony R. Martin-Trigona) (NYLJ, Nov. 9, 1993). Mr. Sassower was described in court opinions as having been "an abusive litigant for years" who has filed an "avalanche of litigation" against public and private figures.

The Judicial Council includes the Circuit's chief judge, the six most senior active appellate court members, and the Circuit's six chief district judges. Currently, its members are: Judge Newman, Circuit Judges Amalya Kearse, Ralph Winter, Roger Miner, Frank Altimari, J. Daniel Mahoney, and John Walker and Chief District Judges Thomas Griesa of the Southern District, Thomas Platt of the Eastern District, Michael Telesca of the Western District, Thomas McAvoy of the Northern District, Jose Cabranes of Connecticut and Fred Parker of Vermont.