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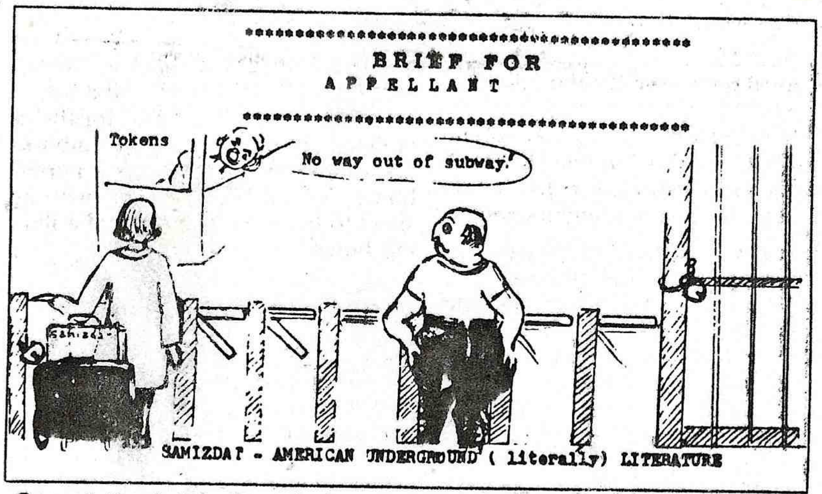
■ IN THE COURTS ■

U.S. Courts Escalate Tactics To Halt Persistent Litigants



One of the briefs filed by a pro se litigant in the Second Circuit.

BY DEBORAH SQUIERS

CLERKS IN THE U.S. Courthouse on Foley Square have grown accustomed to an elderly woman who routinely pushes through a line of people trying to reopen one of her many lawsuits that have been thrown out over the years.

Short, slender and weighing about 100 pounds, she drags a volume of papers to the counter muttering angry racial slurs and pronouncing her aim to get back at those who she says have wronged her. Her accusations are met with patient responses by clerks who have had to deal with her almost on a daily basis for the past nine years.

The woman, Margie Brissette, nicknamed "The Brownie" because of her brown dress, stockings and shoes and initialled beanie-type cap, has become a regular in a circle of persistent would-be litigants who appear regularly in Manhattan federal court.

Ms. Brissette's years of persistent attempts to sue an

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U.S. Court's Persistent Pro Se Litigants

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electric utility for allegedly overcharging her and for having once been locked out of her apartment in the Bronx, finally came to an end earlier this year when the U.S. Court of Appeals for the Second Circuit barred her from filing any more papers without permission from the court.

Such harsh sanctions have been used increasingly in the past few years by the Second Circuit to put a stop to persistent, sometimes obsessive, persons who are considered to be abusing the judicial system.

At least 14 persons have been sanctioned for such activity in the past four years by the Circuit Court. A consolidated record of those who have been litigants is not kept by the Southern District of New York, according to its pro se office.

Of those sanctioned, some have been ordered to pay monetary fines for "frivolous" appeals but have not yet complied. Others have displayed such vexatious behavior that the Circuit Court has extended a ban on such attempts at litigation to any federal or state forum in the country without first seeking the court's permission.

Tops on the List

The most notorious on the Circuit Court's list of those sanctioned would have to be Anthony R. Martin-Trigona, a law school graduate, who filed so many actions in the court that his appeals alone at one time took up the full time of one pro se clerk.

Mr. Martin-Trigona was, in effect, silenced by the Circuit Court four years ago in a harshly worded written decision that barred him from suing anyone in any federal court in the country without first contacting the court for permission. It also ordered that he attach a copy of the decision to any actions he files in state courts.

Many of Mr. Martin-Trigona's complaints involved his former radio station in New Haven, Conn., which is still in bankruptcy proceedings in Hartford, Conn., and center around claims of a conspiracy among Jews to dominate bankruptcy litigation.

Mr. Martin-Trigona, who still has some lawsuits and a personal bankruptcy pending before Judge Peter C. Dorsey in the U.S. District Court for Connecticut, has been the subject of frequent media attention with his candidacies for Mayor of Chicago, Congressional seats in Connecticut and even President of the United States.

According to the Circuit Court's 1984 decision sanctioning Mr. Martin-Trigona, he resorts to legal processes to "harass persons who have unluckily crossed his path." At one point, he even filed a motion to get custody of a district judge's children in a divorce proceeding.

District Court Record

If the Southern District kept a list of sanctioned litigants, it would probably be much longer than the Circuit Court's, according to persons in the district's pro se office.

The District Court regularly checks to determine if a plaintiff has any outstanding sanctions at the outset of a proceeding, according to Lois Bloom, senior staff attorney in the district's pro se office. "We will advise members of the court especially if someone has brought duplicative or continuous frivolous actions," she said.

The Southern District Court's Chief Judge, Charles L. Brieant, said district judges rarely sanction litigants so harshly that they can no longer file actions without permission. The judge said that abusive litigation is a problem but one that "has to be dealt with very carefully," keeping in mind a pro se litigant's right of access to the courts.

In the Second Circuit, the court generally takes the first step of threatening a litigant with sanctions. But if abuse persists, the court may order payment of legal costs and damages to the other side.

In the case of Richard Becker, a 51-year-old man who filed numerous age discrimination suits against fast-food restaurants and drug store chains, the court has ordered him to pay double legal costs to opposing parties more than once.

Mr. Becker made it a practice of suing store chains, such as Red Lobster, Record World, Taco Bell, Burger King and Adams Drugs, after they refused to employ him. Between 1980 and 1987, he filed 30 appeals with the Second Circuit Court but last year was permanently barred from filing any further appeals until he can prove that he has paid his fines.

Sanctioning methods used by the Circuit Court appear to be successful against the majority of abusers. Most litigants who are harshly sanctioned give up their legal pursuits, according to Eileen Shapiro, Senior Staff Attorney for the Second Circuit.

Since Nonna Osipova, a Russian emigre, was sanctioned three years ago for double costs plus $200 to be paid to the opposing party, her numerous appeals over dissatisfaction with the city's transit system have quieted down.

In the case that led to sanctions against Ms. Osipova, she was apparently blocked from exiting a subway Osipova being told by a token clerk, "No way out of subway!"

Her brief describes alleged political oppression by the New York City Transit Authority. "The government attempts to block my exit from Harlem to 5th Avenue just like Sakharov is not allowed to come to Moscow from Gorky," it said.

Disbarred Lawyer

A common thread running through the list of sanctioned litigants is relentless behavior like that exhibited by a disbarred attorney, George Sassower. After being repeatedly cited for contempt of court and heavily sanctioned in the downstate federal courts, he recently took his litigation to Albany.

Mr. Sassower recently made an application to Governor Cuomo to remove Manhattan District Attorney Robert M. Morgenthau from office for failing to prosecute Attorney General Robert Abrams for alleged failure to take action in an apparel firm's bankruptcy proceedings, according to Lawrence Doolittle, an Assistant State Attorney General. The application was denied.

A barrage of lawsuits have been filed by Mr. Sassower, who was disbarred in February 1987 on seven charges of professional misconduct, in state and federal courts against shareholders of the now-dissolved Puccini Clothes Ltd., its attorneys and court-appointed receiver.

Mr. Sassower was sanctioned with filing restrictions by the Second Circuit Court in July 1987 and ordered to pay $250 to the clerk of the court.

One possible reason why the court seems to be increasing its use of sanctions for abusive litigants, Ms. Shapiro said, is that judges may be concerned about the burden of such cases on the judicial process. She said "the court's tolerance has decreased in the last few years."

Steven Flanders, Circuit Executive for the Second Circuit, said he has seen an increase in the number of abusive litigants since the days of Mr. Martin-Trigona. "This kind of activity has increased with not just curious characters but persistent ones," he said.

Tax Protester

With his seemingly endless protest against income taxes, Irwin Schiff, recently declared that he would get a reversal of a 1985 conviction for failure to pay $49,000.

Mr. Schiff, who wrote a best-selling book "How Anyone Can Stop Paying Income Tax," was the target of a sanction for more than $2,500 by the Second Circuit Court when he appealed an unfavorable U.S. Tax Court decision involving the Internal Revenue Service.

His name is on the list of sanctioned litigants because of a 1985 decision by the Court of Appeals that ordered him to pay the fines or not file any more appeals.

Mr. Schiff, who asserts that payment of income taxes should be voluntary under the Constitution, recently contacted the Second Circuit's office to let them know he was out of prison after serving 20 months and back in business.