

LAW

Court Won't Name Judge in Vexing Suits

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A federal appeals court has taken an unusual approach to handling lawsuits by people accused of abusing the court system: assigning an unidentified judge to decide whether the court will hear the matter.

Frustrated with increasing court dockets, judges around the country have taken special steps to deter suits by so-called vexatious litigants and to protect court officials. But the policy adopted by the Second U.S. Circuit Court of Appeals in New York has raised concern among some civil libertarians, who question whether anonymous judges should have any role in the judicial system.

"It is a bad precedent for a free society," said Harvey Silverglate of the Boston law firm Silverglate & Good. "Once you breach the principle, even in the case of a

guy who really is a paranoid, vexatious litigant, the exception will grow and grow."

The Second Circuit's policy came to light earlier this month in a decision rejecting two requests to identify the judges deciding such matters. The requests were made by two men considered vexatious litigants by the court.

The appeals court said in its ruling that the policy was a "reasonable response to the harassing abuse of the litigation process."

The ruling, written by Second Circuit Chief Judge Jon Newman, said, "Maintaining confidentiality concerning the identity of the judge is 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."

The requests to identify the judges were made by Anthony R. Martin of Palm Beach, Fla., and George Sassower, of White Plains, N.Y. The court said in its ruling that the two men, who represent themselves in court, had shown "an ex-

traordinary pattern of vexatious and harassing litigation pursued over several years."

Although courts can sanction people for filing frivolous lawsuits, such sanctions aren't always enough, the appeals court said. The court said that for some people it is necessary to craft special arrangements "that impose severe limitations on the opportunity of such individuals to pursue their penchant for vexatious litigation."

The ruling explained how the policy works. An unidentified judge is assigned to each vexatious litigant, who has been sanctioned previously by the court. To file any motion with the appeals court, the person must get permission from that judge. If the judge denies the request, no appeal of that decision can be made, because it is treated as an unappealable procedural matter.

The court also declined to explain how a judge is assigned to a particular litigant. Several people currently are considered vexatious litigants by the appeals court and each has an assigned judge. The court said that sending all of one person's requests to a particular judge makes it easier

to rule on the validity of the motions. If the judge permits the motion to be filed, it then would go before a three-judge panel just as other matters are handled.

Many courts require similar pre-approval for motions filed by vexatious litigants. But the use of unidentified judges is unusual, lawyers said. Although the court said it is concerned about protecting judges from harassing litigation, those worries are exaggerated, some lawyers said.

"Judges have absolute judicial immunity in cases like that," Mr. Silverglate said. "In exchange for immunity, the least judges could do is use their real names."

The judges' concerns "are understandable," said Alan Dershowitz, Harvard law school professor, "but it is totally antagonistic to the American justice system to have an anonymous judge." Mr. Dershowitz said the use of unidentified judges raises the possibility that conflicts of interest or other biases could go undetected.

To illustrate the need to protect the identity of the judges, the appeals court cited what it called an "outrageous action" taken by Mr. Martin to get back at a federal judge whose rulings displeased him. The court said Mr. Martin had sought to intervene in the judge's divorce case and



to have himself appointed the guardian of the judge's minor children.

Mr. Martin, in a telephone interview, said the ruling's description of the divorce-case action was misleading, and that Judge Newman, who wrote the opinion, has a personal vendetta against him because of previous actions he has taken. Mr. Martin said he is preparing to ask the full appeals court to review the three-judge panel's decision. "It is the first time anyone in history has tried to create a secret court," he said.

(In re Martin-Trigona, No. 93-5008, In re Sassower, No. 93-3041, Second U.S. Circuit Court of Appeals)