

DEAR READERS: Do you have a legal question that has been burning in your mind (but are afraid to ask an attorney...ching...ching)? If so, please send your questions to Debra A. Newby via email (contact information below). Your name will remain confidential. Although every inquiry may not be published, we will publish as many as possible. Finally, this Q & A Legal Column is intended as a community service to discuss general legal principles and does not create an attorney-client relationship.

Q: Is there anything that can be done about a “Serial Litigant” Someone who just loves to sue anyone and everyone over the stupidest stuff? **TOSHP** (Tired-of-Sue-Happy-People)

A: Dear TOSHP:

Yes, the headlines do surprise even me sometimes...the gambler who sued the casino for getting him drunk and taking his money, the father who sued the volunteer coach of his son’s little league team for the “perfect” season—0 wins, 15 losses; and the woman who sued Delta because she was embarrassed when the flight attendants asked her to turn off the batteries in her vibrating sex toy.

The law does have a name for a “sue-happy” individual...he or she is called a “vexatious litigant”. (Sounds like a medieval hex placed on a trouble, confused person, eh?) Serial litigants, as you phrase it, do dilute the judicial process and cause backlogs in the courts, frustration to all involved, and most importantly, create a drain on the most valuable resource any of us have---time. What can be done? Plenty.

First, California has a law (CA. Code of Civil Procedure Section 391 et. seq.) that defines a “vexatious litigant”. If the Plaintiff (person filing the lawsuit) is determined by the court of being “sue-happy”, the court has several options, including: 1) barring the Plaintiff from instituting new litigation; 2) requiring the Plaintiff to post a bond, even if the person is poor; and/or; 3) ordering the Plaintiff to pay the attorney fees for the person being sued (the Defendant). In essence, the Plaintiff can be required to put their money where their mouth is!

So how does the court determine if a person is sue-happy? First, the Defendant must file a Motion and Notice of a Hearing. Oral arguments and evidence can be presented at the hearing (this is where the parade of witnesses talk about how the Serial Litigant sued the neighbor for barking dogs, sued the restaurant for not having ramps at **every** entrance, including the “walk-in” refrigerator, etc).

The court will also look at the surrounding factors, and will likely determine the Plaintiff is a “vexatious litigant” if: 1) they have sued someone/anyone five times or more over a seven year period; 2) they have sued someone on the same issue more than two times; 3) they have repeatedly filed “unmeritorious” pleadings or papers with the court that are

“frivolous” or intended to cause unnecessary delay; or 4) the person has been previously declared a “vexatious litigant” in any state or federal court (Tip: You can check with the Sonoma County Court Clerk as to how many times a person has filed a lawsuit. You can also check with the California Judicial Council, which is required to maintain records of filings in state court).

One of our previous Supreme Court justices, William J. Brennan, Jr., observed, “The law is not an end in itself, nor does it provide ends. It is preeminently a means to serve what we think is right”. Seems to me that if one is driven to file a lawsuit against someone, they should be driven by what is “right”, not by a crazed curiosity of how much havoc they can reap.... but then again, each of us have our own view of what we think is true and right. Right?

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