

Introduced by Senator Berryhill

February 17, 2011

An act to amend Sections 128.7, 391, 391.3, and 391.7 of, *and to add Section 391.5 to*, the Code of Civil Procedure, relating to frivolous litigation.

LEGISLATIVE COUNSEL'S DIGEST

SB 603, as amended, Berryhill. Frivolous litigation: sanctions.

Existing law requires every pleading, petition, written notice of motion, or other similar paper to be signed by the attorney of record, or if a party is unrepresented, by the party, thereby certifying to the best of the person's knowledge, information, and belief that it is not being presented primarily for an improper purpose, as specified, and that the claims, defenses, and legal and factual contentions are warranted, as specified. Existing law authorizes the court, upon its own motion, or the motion of a party, to impose sanctions on an attorney, law firm, or other party that violates these provisions in a complaint, petition, or other paper filed on or after January 1, 1995.

This bill would require the court to make its decision ~~in writing~~ *on the record* regarding its own motion, or the motion of a party, and to specify the reasons for the decision ~~in writing~~.

Existing law authorizes a court in any litigation, upon motion of the defendant, to require the plaintiff to furnish security, as specified, upon a showing that the plaintiff is a vexatious litigant and has no reasonable probability of prevailing. Existing law also authorizes the court, upon its own motion or that of a party, to enter a prefiling order that prohibits a vexatious litigant from filing any new litigation in the courts of this

state in propria persona without obtaining leave of the presiding judge of the court where the litigation is proposed to be filed, as specified. Existing law defines “vexatious litigant” for these purposes in a manner that limits application of these provisions to proceedings brought in propria persona, including a person who, in any litigation while acting in propria persona, repeatedly files unmeritorious motions, pleadings, or other papers.

This bill would delete certain references to “in propria persona” from these provisions and the definition for “vexatious litigant,” thereby expanding the proceedings to which these provisions apply, in specified instances, to include litigation that is not brought in propria persona. *The bill would provide that these provisions do not apply to litigation involving domestic violence, child custody, or child support, and would require the court’s determination of security in family court proceedings to be based on specified considerations. The bill would provide that a vexatious litigant designation does not attach to an attorney representing a vexatious client.*

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 128.7 of the Code of Civil Procedure is
2 amended to read:

3 128.7. (a) Every pleading, petition, written notice of motion,
4 or other similar paper shall be signed by at least one attorney of
5 record in the attorney’s individual name, or, if the party is not
6 represented by an attorney, shall be signed by the party. Each paper
7 shall state the signer’s address and telephone number, if any.
8 Except as otherwise provided by law, pleadings need not be
9 verified or accompanied by an affidavit. An unsigned paper shall
10 be stricken unless omission of the signature is corrected promptly
11 after being called to the attention of the attorney or party.

12 (b) By presenting to the court, whether by signing, filing,
13 submitting, or later advocating, a pleading, petition, written notice
14 of motion, or other similar paper, an attorney or unrepresented
15 party is certifying that to the best of the person’s knowledge,
16 information, and belief, formed after an inquiry reasonable under
17 the circumstances, all of the following conditions are met:

1 (1) It is not being presented primarily for an improper purpose,
2 such as to harass or to cause unnecessary delay or needless increase
3 in the cost of litigation.

4 (2) The claims, defenses, and other legal contentions therein
5 are warranted by existing law or by a nonfrivolous argument for
6 the extension, modification, or reversal of existing law or the
7 establishment of new law.

8 (3) The allegations and other factual contentions have
9 evidentiary support or, if specifically so identified, are likely to
10 have evidentiary support after a reasonable opportunity for further
11 investigation or discovery.

12 (4) The denials of factual contentions are warranted on the
13 evidence or, if specifically so identified, are reasonably based on
14 a lack of information or belief.

15 (c) If, after notice and a reasonable opportunity to respond, the
16 court determines that subdivision (b) has been violated, the court
17 may, subject to the conditions stated below, impose an appropriate
18 sanction upon the attorneys, law firms, or parties that have violated
19 subdivision (b) or are responsible for the violation. In determining
20 what sanctions, if any, should be ordered, the court shall consider
21 whether a party seeking sanctions has exercised due diligence.

22 (1) A motion for sanctions under this section shall be made
23 separately from other motions or requests and shall describe the
24 specific conduct alleged to violate subdivision (b). Notice of motion
25 shall be served as provided in Section 1010, but shall not be filed
26 with or presented to the court unless, within 21 days after service
27 of the motion, or any other period as the court may prescribe, the
28 challenged paper, claim, defense, contention, allegation, or denial
29 is not withdrawn or appropriately corrected. If warranted, the court
30 may award to the party prevailing on the motion the reasonable
31 expenses and attorney's fees incurred in presenting or opposing
32 the motion. Absent exceptional circumstances, a law firm shall be
33 held jointly responsible for violations committed by its partners,
34 associates, and employees.

35 (2) On its own motion, the court may enter an order describing
36 the specific conduct that appears to violate subdivision (b) and
37 directing an attorney, law firm, or party to show cause why it has
38 not violated subdivision (b), unless, within 21 days of service of
39 the order to show cause, the challenged paper, claim, defense,

1 contention, allegation, or denial is withdrawn or appropriately
2 corrected.

3 (d) The court shall make its decision ~~in writing~~ *on the record*
4 regarding a motion pursuant to paragraph (1) or (2) of subdivision
5 (c), and shall specify the reasons for the decision ~~in writing~~.

6 (e) A sanction imposed for violation of subdivision (b) shall be
7 limited to what is sufficient to deter repetition of this conduct or
8 comparable conduct by others similarly situated. Subject to the
9 limitations in paragraphs (1) and (2), the sanction may consist of,
10 or include, directives of a nonmonetary nature, an order to pay a
11 penalty into court, or, if imposed on motion and warranted for
12 effective deterrence, an order directing payment to the movant of
13 some or all of the reasonable attorney's fees and other expenses
14 incurred as a direct result of the violation.

15 (1) Monetary sanctions may not be awarded against a
16 represented party for a violation of paragraph (2) of subdivision
17 (b).

18 (2) Monetary sanctions may not be awarded on the court's
19 motion unless the court issues its order to show cause before a
20 voluntary dismissal or settlement of the claims made by or against
21 the party that is, or whose attorneys are, to be sanctioned.

22 (f) If imposing sanctions, the court shall describe the conduct
23 determined to constitute a violation of this section and explain the
24 basis for the sanction imposed.

25 (g) In addition to any award pursuant to this section for conduct
26 described in subdivision (b), the court may assess punitive damages
27 against the plaintiff upon a determination by the court that the
28 plaintiff's action was an action maintained by a person convicted
29 of a felony against the person's victim, or the victim's heirs,
30 relatives, estate, or personal representative, for injuries arising
31 from the acts for which the person was convicted of a felony, and
32 that the plaintiff is guilty of fraud, oppression, or malice in
33 maintaining the action.

34 (h) This section shall not apply to disclosures, discovery
35 requests, responses, objections, or motions.

36 (i) A motion for sanctions brought by a party or a party's
37 attorney primarily for an improper purpose, such as to harass or
38 to cause unnecessary delay or needless increase in the cost of
39 litigation, shall itself be subject to a motion for sanctions. It is the
40 intent of the Legislature that courts shall vigorously use its

1 sanctions authority to deter that improper conduct or comparable
2 conduct by others similarly situated.

3 (j) This section shall apply to a complaint or petition filed on
4 or after January 1, 1995, and any other pleading, written notice of
5 motion, or other similar paper filed in that matter.

6 SEC. 2. Section 391 of the Code of Civil Procedure is amended
7 to read:

8 391. As used in this title, the following terms have the
9 following meanings:

10 (a) "Litigation" means any civil action or proceeding,
11 commenced, maintained, or pending in any state or federal court.

12 (b) "Vexatious litigant" means a person who does any of the
13 following:

14 (1) In the immediately preceding seven-year period, has
15 commenced, prosecuted, or maintained in propria persona at least
16 five litigations other than in a small claims court that have been
17 (i) finally determined adversely to the person or (ii) unjustifiably
18 permitted to remain pending at least two years without having been
19 brought to trial or hearing.

20 (2) After a litigation has been finally determined against the
21 person, repeatedly relitigates or attempts to relitigate, either (i) the
22 validity of the determination against the same defendant or
23 defendants as to whom the litigation was finally determined or (ii)
24 the cause of action, claim, controversy, or any of the issues of fact
25 or law, determined or concluded by the final determination against
26 the same defendant or defendants as to whom the litigation was
27 finally determined.

28 (3) In any litigation, repeatedly files unmeritorious motions,
29 pleadings, or other papers, conducts unnecessary discovery, or
30 engages in other tactics that are frivolous or solely intended to
31 cause unnecessary delay or harassment.

32 (4) Has previously been declared to be a vexatious litigant by
33 any state or federal court of record in any action or proceeding
34 based upon the same or substantially similar facts, transaction, or
35 occurrence.

36 (c) "Security" means an undertaking to assure payment, to the
37 party for whose benefit the undertaking is required to be furnished,
38 of the party's reasonable expenses, including attorney's fees and
39 not limited to taxable costs, incurred in or in connection with a

1 litigation instituted, caused to be instituted, or maintained or caused
2 to be maintained by a vexatious litigant.

3 (d) “Plaintiff” means the person who commences, institutes or
4 maintains a litigation or causes it to be commenced, instituted or
5 maintained, including an attorney at law acting in propria persona.
6 *A vexatious litigant designation shall not attach to an attorney*
7 *representing a vexatious client.*

8 (e) “Defendant” means a person, including a corporation,
9 association, partnership, and firm, or governmental entity, against
10 ~~whom~~ *which* a litigation is brought or maintained or sought to be
11 brought or maintained.

12 *SEC. 3. Section 391.3 of the Code of Civil Procedure is*
13 *amended to read:*

14 391.3. (a) If, after hearing the evidence upon the motion, the
15 court determines that the plaintiff is a vexatious litigant and that
16 there is no reasonable probability that the plaintiff will prevail in
17 the litigation against the moving defendant, the court shall order
18 the plaintiff to furnish, for the benefit of the moving defendant,
19 security in ~~such~~ *the* amount and within ~~such~~ *the* time as the court
20 shall fix.

21 (b) *In family court litigation, the court’s determination of*
22 *security shall be based on the same considerations as used in*
23 *Section 271 of the Family Code.*

24 *SEC. 4. Section 391.5 is added to the Code of Civil Procedure,*
25 *to read:*

26 391.5. *This title shall not apply to litigation involving domestic*
27 *violence, child custody, or child support.*

28 ~~SEC. 3.~~

29 *SEC. 5. Section 391.7 of the Code of Civil Procedure is*
30 *amended to read:*

31 391.7. (a) In addition to any other relief provided in this title,
32 the court may, on its own motion or the motion of any party, enter
33 a prefiling order that prohibits a vexatious litigant from filing any
34 new litigation in the courts of this state without first obtaining
35 leave of the presiding judge of the court where the litigation is
36 proposed to be filed. Disobedience of the order by a vexatious
37 litigant may be punished as a contempt of court.

38 (b) The presiding judge shall permit the filing of that litigation
39 only if it appears that the litigation has merit and has not been filed
40 for the purposes of harassment or delay. The presiding judge may

1 condition the filing of the litigation upon the furnishing of security
2 for the benefit of the defendants as provided in Section 391.3.

3 (c) The clerk shall not file any litigation presented by a vexatious
4 litigant subject to a prefiling order unless the vexatious litigant
5 first obtains an order from the presiding judge permitting the filing.
6 If the clerk mistakenly files the litigation without the order, any
7 party may file with the clerk and serve on the plaintiff and other
8 parties a notice stating that the plaintiff is a vexatious litigant
9 subject to a prefiling order as set forth in subdivision (a). The filing
10 of the notice shall automatically stay the litigation. The litigation
11 shall be automatically dismissed unless the plaintiff within 10 days
12 of the filing of that notice obtains an order from the presiding judge
13 permitting the filing of the litigation as set forth in subdivision (b).
14 If the presiding judge issues an order permitting the filing, the stay
15 of the litigation shall remain in effect, and the defendants need not
16 plead, until 10 days after the defendants are served with a copy of
17 the order.

18 (d) For purposes of this section, “litigation” includes any
19 petition, application, or motion other than a discovery motion, in
20 a proceeding under the Family Code or Probate Code, for any
21 order.

22 (e) The clerk of the court shall provide the Judicial Council a
23 copy of any prefiling orders issued pursuant to subdivision (a).
24 The Judicial Council shall maintain a record of vexatious litigants
25 subject to those prefiling orders and shall annually disseminate a
26 list of those persons to the clerks of the courts of this state.