

**SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY**

**IN THE MATTER OF PROHIBITING
DAVID NOVAK FROM FILING ANY
LAWSUIT IN MARICOPA COUNTY
WITHOUT OBTAINING PRIOR
PERMISSION FROM THE COURT**

**ADMINISTRATIVE ORDER
No. 2022-002**

This matter was referred by the Honorable Sara J. Agne to consider issuing an administrative order declaring David Novak a vexatious litigant. Upon review of other matters filed in this Court, and considering all the matters presented, the Court makes the following findings and orders.

Pursuant to A.R.S. § 12-3201, the Presiding Judge of the Superior Court may designate a pro se litigant who engages in vexatious conduct as a vexatious litigant. In addition, courts “possess inherent authority to curtail a vexatious litigant’s ability to initiate additional lawsuits.” *Madison v. Groseth*, 230 Ariz. 8, 15, 279 P.3d 633, 639 (App. 2012). The filing excesses of vexatious litigants interfere with the orderly administration of justice by diverting judicial resources from those cases filed by litigants willing to follow court rules and those meritorious cases that deserve prompt judicial attention. See *Acker v. CSO Chevira*, 188 Ariz. 252, 934 P.2d 816 (App. 1997). A.R.S. § 12-3201(E) defines vexatious conduct to include repeated filing of court actions solely or primarily for the purpose of harassment, filing claims unreasonably expanding or delaying court proceedings, bringing court actions without substantial justification, and filing claims or requests for relief that have been the subject of previous rulings by a court in the same litigation.

Judge Agne’s referral is a result of defendants Ryan B. Novak and Alexandra Novak filing a motion to declare Mr. Novak a vexatious litigant in the case of *David Novak v. Ryan B. Novak, et. al.*, Superior Court case number CV2021-051120. The defendants’ motion comes after David Novak (“Mr. Novak”) filed three separate but identical lawsuits against them (CV2021-094221 and CV2021-051667, now consolidated under CV2021-051120). Defendants properly served the plaintiff with the motion to declare him a vexatious litigant, and plaintiff filed a response. On November 1, 2021, Judge Agne issued findings of fact and conclusions of law that are adopted and incorporated herein in this Administrative Order. (See minute entry dated November 1, 2021 in *David Novak v. Ryan B. Novak, et. al.*, which is attached to this Administrative Order as “Attachment A”.)

As enumerated in Judge Agne’s findings of facts and conclusions of law, not only has Mr. Novak filed three actions against his son Ryan Novak and daughter-in-law Alexandra Novak that are without merit; over the previous ten years Mr. Novak has filed multiple lawsuits in Maricopa County Superior Court against various governmental employees, agencies, and political subdivisions. In *Novak v. Joseph Arpaipo, et. al.*, (CV2014-052767), Mr. Novak alleged various false arrest, unlawful seizure, and

fabricated criminal charges against the Sheriff's Office, Town of Fountain Hills, and Maricopa County Board of Supervisors, stemming from his criminal prosecution. The case was dismissed after removal to federal court.

In *Novak v. Office of Inspector General, et al.*, CV2014-053364, Mr. Novak sued the Arizona Department of Transportation, the ADOT Office of the Inspector General, the Arizona Department of Administration, and numerous state employees alleging false arrest, false oaths to a grand jury, fabrications of crimes, and other allegations. The case was dismissed by this Court in October of 2014.

In *Novak v. MCAO, et. al.*, CV2014-063431, Mr. Novak again alleged numerous false arrest, false prosecution charges, conspiracy, and other charges against Maricopa County, the Maricopa County Attorney's Office, and various county employees. The case was dismissed after removal to federal district court.

In *Novak v. Meritt*, CV2015-052043, Mr. Novak filed a defamation lawsuit against the defendant where he alleged the defendant provided false information to authorities resulting in Mr. Novak's arrest. This was dismissed by this Court.

In *Novak v. Maricopa County*, CV2015-054358, Mr. Novak sued the County for placing a restitution lien against Mr. Novak's vehicles stemming from his failure to pay restitution while serving a sentence of probation. The case was dismissed, as was his appeal to the Court of Appeals. 1 CA-CV 16-0115 (*Novak v. Maricopa County*).

In *Novak v. Paul Penzone, et. al.*, CV2017-055923, Mr. Novak sued Sheriff Penzone, Maricopa County, the Town of Fountain Hills, and various government employees for serving citations on him for various town code violations regarding the parking of his vehicles. The case was dismissed by this Court, as was his appeal to the Court of Appeals. 1 CA-CV 19-0129 (*Novak v. Penzone, et. al.*).

In *Novak v. Town of Fountain Hills*, CV2018-056251, Mr. Novak sued the Town of Fountain Hills for enforcing town code restrictions on parking his vehicles. The case was dismissed by this Court, as was his appeal to the Court of Appeals. 1 CA-CV 19-0412. (*Novak v. Town of Fountain Hills*).

In *Novak v. Mark Iacovino, et. al.*, CV2021-051120, Mr. Novak again sued the Town of Fountain Hills, and the Town Prosecutor regarding a citation for parking violations. The case was dismissed shortly after it was filed.

The Court finds that Mr. Novak has filed multiple lawsuits without substantial justification; that have been adjudicated in previous criminal or civil code violation actions; and are for the purpose of harassment of defendants. For the reasons above, and the reasons enumerated in Judge Agne's findings of fact and conclusions of law, the Court finds that Mr. Novak is engaging in vexatious conduct as defined in A.R.S. § 12-3201.

The Court may issue an order limiting such a litigant's ability to file future lawsuits, motions, and requests for relief to the extent necessary to curtail the improper conduct. The Court finds the orders set out below to be the least restrictive orders that will adequately address Mr. Novak's established pattern of abuse. Therefore,

IT IS ORDERED as follows:

1. Mr. Novak may not file any new causes of action after the date of this order without leave of the Civil Presiding Judge or his/her designee.
2. Mr. Novak may not file any further pleading or motion in any of his current lawsuits without first seeking leave from the judicial officer assigned to that lawsuit.
3. Any motion for leave to file any lawsuit, pleading or motion shall be captioned "Application Pursuant to Court Order Seeking Leave to File." Mr. Novak must either cite this order in his application, or attach as an exhibit a copy of this order.

If approval for filing a new action by Mr. Novak is granted, the Clerk of Court may accept subsequent filings in that cause number from Mr. Novak. This Administrative Order does not preclude Mr. Novak from filing a Notice of Appeal or a Notice of Cross-Appeal in accordance with Arizona Rules of Civil Appellate Procedure Rule 8(a) and (b). This Administrative Order only applies to Mr. Novak in his capacity as a *pro per* litigant, and not to any future legal counsel that might be retained by Mr. Novak.

Dated this 6th day of January, 2022.

/s/ Joseph C. Welty
Honorable Joseph C. Welty
Presiding Judge

Original: Clerk of the Superior Court

Copies: Hon. Jeffrey Fine, Clerk of the Superior Court
Hon. Pamela Gates, Civil Department Presiding Judge
Hon. Sara J. Agne, Superior Court Judge
Raymond L. Billotte, Judicial Branch Administrator
Keith Kaplan, Civil Department Administrator
Shawn C. White, Sternfels & White, P.L.L.C.
Frederick C. Horn, Sternfels & White, P.L.L.C.
David Novak

Attachment A

Hon. Sara Agne's November 1, 2021 Minute Entry

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6 *Attorneys for Defendants*

7 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
8 **IN AND FOR THE COUNTY OF MARICOPA**

9 DAVID NOVAK , an individual

CV 2021-051120

10 Plaintiff,

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

11 RYAN B. NOVAK AND ALEXANDRA
12 NOVAK

(Assigned: Honorable Sara J. Agne)

13 Defendants.

14
15 Defendants, Ryan B. Novak and Alexandra Novak, (“Defendants”), by and through
16 their legal counsel, Sternfels & White P.L.L.C., in accordance with the Minute Entry
17 dated 7/30/2021 submitted Proposed Findings of Fact and Conclusions of Law in support
18 of their Motion to Declare David Novak, Pro Se, a Vexatious Litigant. The Court enters
19 its findings and conclusions below.

20 As an initial matter, the Court **DENIES** Plaintiff’s Motion to Compel filed July 16,
21 2021, for failure to comply with Ariz. R. Civ. P. 26(d) and 26(b)(1).

22 **A. FINDINGS OF FACT:**

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24 1. Since December 2011, Plaintiff, David Novak, has filed at least 13 separate
25 matters as a pro se plaintiff in Maricopa County Superior Court, including,
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the following: **(a)** CV2011-056740 (*Novak v. Office of Inspector General and Aaron Eastin*); **(b)** CV2014-052767 (*Novak v. Joseph Arpaio; Town of Fountain Hills, County of Maricopa, Maricopa County Board of Supervisors, et al*); **(c)** CV2014-053364 (*Novak v. Office of Inspector General, State of Arizona, Arizona Department of Transportation; Aaron Eastin, et al*); **(d)** CV2014-053431 (*Novak v. Scott Wolfram, Kristen Nordeen, Fran McCaroll, et al*); **(e)** CV2015-052043 (*Novak v. Merritt*); **(f)** CV2015-054358 (*Novak v. Maricopa County*); **(g)** CV2017-055923 (*Novak v. Paul Penzone, et al*); **(h)** CV2018-054913 (*Novak v. Neighbor*); **(i)** CV2018-056521 (*Novak v. Town of Fountain Hills*); **(j)** CV2021-051120 (*Novak v. Novak*); **(k)** CV2021-051257 (*Novak v. Mark Iacovino, et al*); **(l)** CV2021-051667 (*Novak v. Novak*); and **(m)** CV2021-094221 (*Novak v. Novak*). Many of these cases were dismissed.

2. Plaintiff has also appealed adverse judgments rendered against him in at least three separate cases since 2016 namely: **(a)** 1 CA-CV 19-0412 (*Novak v. Fountain Hills*); **(b)** 1 CA-CV 19-0129 (*Novak v. Penzone*); and **(c)** 1 CA-CV 16-0115 (*Novak v. Maricopa County*). In all of these cases, Plaintiff, David Novak was the named plaintiff of the underlying matter and acted as a “pro se” litigant in both the lower court matter and the appeals and filed pleadings claiming eligibility for fee waivers and thereby escaping the filing costs. The appellate court affirmed the ruling adverse to Plaintiff each time.

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3. Plaintiff, David Novak, has also been named as a “pro se” litigant in the following matters filed in the U.S. District Court for the District of Arizona as follows: (a) 2:03-cv-01269-SMM—JRI (*Novak v. Pixler, et al*); (b) 2:14-cv-00897-DLR (*Novak v. Arpaio et al*); (c) 2:14-cv-01398-CDLR (*Novak v. Maricopa County Attorney’s Office et al*); and (d) 2:15-cv-02234-JJT (*Novak v. State of Arizona*). All such matters were dismissed.
4. Plaintiff has filed three separate legal actions, two of which are against his son, Ryan Novak and his daughter-in-law, Alexandra Novak. David Novak has filed two Lis Pendens against real property owned in Arizona by Ryan and Alexandra Novak without foundation or merit.
5. Pursuant to A.R.S. § 12-3201 Plaintiff has repeatedly filed court actions over the past 10 years that are solely or primarily for the purpose of harassment. Most, if not all, of these actions were brought without substantial justification and most were dismissed by judgment not in David Novak’s favor.
6. Plaintiff is a vexatious litigant who files actions in a predatory fashion, without legal cause or justification against numerous persons and entities for the purpose of harassment and to delay other proper proceedings
7. Defendants filed a Motion to Declare Plaintiff Vexatious Litigant with good cause and served the Plaintiff in a proper manner pursuant to the laws of the state of Arizona. Plaintiff responded to the Motion and the issues have been fully briefed before this Court.

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8. Plaintiff’s duplicative and harassing litigation in State and Federal Court is pursued by Plaintiff in bad faith and with an improper motive to harass, annoy and make the eviction action against him more costly for Defendants. Plaintiff’s actions have caused Defendants needless expense and have unnecessarily burdened this Court. This Court’s imposition of a pre-filing restriction as a sanction on Plaintiff for being a vexatious litigant is the only sanction available to adequately protect the Court and Defendants.

B. CONCLUSIONS OF LAW

1. The Court has personal jurisdiction over Plaintiff, David Novak, because he is a resident of Maricopa County, Arizona. Plaintiff has acted “Pro Se” in all matters material hereto.
2. The Court has subject matter jurisdiction over the issues pursuant to ARIZ. REV. STAT. § 12-3201 (2021).
3. A court shall take judicial notice if requested by a party and supplied with the necessary information. ARIZ. R. EVID. 201(d) (2021). A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by result to sources whose accuracy cannot reasonably be questioned. ARIZ. R. EVID. 201(b) (2021).
4. The superior court may properly take judicial notice of its own records. *State v. Camino*, 118 Ariz. 89, 90 (1977).

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5. Courts take judicial notice of other actions involving similar parties and issues and of the pleadings therein and in passing upon the pleadings in one action they may and should consider the record in the other. *Regan v. First Nat'l Bank*, 55 Ariz. 320, 326 (1940); *see also Visco v. Universal Refuse Removal Co.*, 11 Ariz. App. 73 (1970).
6. The Court has the right to take “judicial notice” of cases filed by the Plaintiff David Novak “pro se” in the courts in Arizona at the state level and the disposition of those cases.
7. The Court has the inherent power to impose sanctions when a party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons. *Aloe Vera of America, Inc. v. United States*, 376 F.3d 960, 964-965 (9th Cir. 2004). *See also* ARIZ. REV. STAT. § 12-3201, which provides the superior court’s Presiding Judge with the authority to designate a pro se litigant as a vexatious litigant.
8. When a Court seeks to impose pre-filing restrictions as a sanction against a vexatious litigant, it must (1) satisfy due process, the litigant must be afforded notice and an opportunity to oppose the order, (2) the court must create an adequate record for appellate review that includes a listing of all cases and motions leading the court to enter the order, (3) the court must make “substantive findings as to the frivolous or harassing nature of the litigant’s actions,” and (4) the order “must be narrowly tailored to closely fit the specific vice encountered.” *Madison v. Groseth*, 230 Ariz. 8, 14-15,

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(2012) (*citing DeLong v. Hennessey*, 912 F. 2d 1144, 1147-48 (9th Cir. 1990)).

9. The pleadings and the record are complete with respect to the filing of the Motion to Declare Plaintiff a Vexatious Litigant.

10. Plaintiff was provided notice and an opportunity to oppose the Motion, as well as these Findings of Fact and Conclusions of Law.

11. The actions of Plaintiff, David Novak, in filing claims, complaints, appeals, motions, and proceedings without justification or merit waste judicial resources and place an undue financial and legal burden on those litigants that are required to respond and defend without any having any recourse against the vexatious litigant.

12. The actions of Plaintiff, David Novak, in filing claims, complaints, motions, appeals and proceedings interfere with the orderly administration of justice by diverting judicial resources from those matters filed by litigants willing to follow the rules and those meritorious matters that deserve prompt judicial attention.

13. The actions of Plaintiff, David Novak are for the purpose of harassment and intimidation rather than serving a legal objective.

14. The actions of Plaintiff, David Novak, were without substantial justification which means the claims or defense are groundless and not made in good faith.

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15. Plaintiff, David Novak, is a vexatious litigant and should not be permitted to file any new pleadings, motions, or other documents in this Court without prior leave from the presiding judge of Maricopa County Superior Court.

16. With this ruling, then, this Court so refers these consolidated matters (CV2020-051120, CV2021-051667, and CV2021-094221) to the Presiding Judge of the Superior Court of the State of Arizona in and for the County of Maricopa for his consideration of an Order effecting the same.

DATED this 29th day of October, 2021.

/s/ Sara J. Agne
Hon. Sara J. Agne, Judge

eSignature Page 1 of 1

Filing ID: 13549560 Case Number: CV2021-051120
Original Filing ID: 13255791

Granted with Modifications



/S/ Sara Agne Date: 10/29/2021
Judicial Officer of Superior Court

ENDORSEMENT PAGE

CASE NUMBER: CV2021-051120

SIGNATURE DATE: 10/29/2021

E-FILING ID #: 13549560

FILED DATE: 11/1/2021 8:00:00 AM

FREDERICK C HORN

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