

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

IN THE MATTER OF PROHIBITING LAY  
ALLEN GERDES FROM FILING ANY  
LAWSUIT IN MARICOPA COUNTY  
WITHOUT OBTAINING PRIOR  
PERMISSION FROM THE COURT

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ADMINISTRATIVE ORDER  
No. 2022-054

This matter was referred by the Honorable John Hannah to consider issuing an administrative order declaring Lay Allen Gerdes 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 Hannah’s referral is a result of a motion to designate Mr. Gerdes a vexatious litigant filed by the defendant on December 10, 2021 in the case of *Lay Allen Gerdes v. AT&T Mobility, L.L.C.*, CV2021-018446. The motion also sought to dismiss the lawsuit because the issues had previously been adjudicated in an earlier lawsuit filed by Mr. Gerdes against AT&T (*Lay Allen Gerdes v. AT&T Mobility, L.L.C.*, CV2020-006585). The first lawsuit was dismissed on December 4, 2020, and the second lawsuit was filed the day before, on December 3, 2020. The dismissal of Mr. Gerdes first lawsuit was upheld on appeal.

Mr. Gerdes filed a response to the motion on December 20, 2021. On March 1, 2022, Judge Hannah issued findings of fact and conclusions of law that are adopted and incorporated herein in this Administrative Order. (See minute entry dated March 1, 2022 in *Lay Allen Gerdes v. AT&T Mobility, L.L.C.*, which is attached to this Administrative

Order as “Attachment A”.) Judge Hannah also dismissed Mr. Gerdes’ second lawsuit against AT&T because it was an attempt to litigate the same cause of action as in the first lawsuit and was therefor barred by the doctrine of res judicata. The second lawsuit against AT&T was brought without substantial justification and for the harassment of the defendant.

Mr. Gerdes has also filed numerous other lawsuits against various companies doing business in Maricopa County, including:

- *Gerdes v. Founders Healthcare, L.L.C.*, CV2015-000187 (dismissed for lack of service)
- *Gerdes v. Caldwell and Ober Law Office*, CV2013-015596 (dismissed by stipulation of the parties)
- *Gerdes v. Camelback Self Storage*, CV2016-015202 (dismissed by stipulation of the parties)
- *Gerdes v. Dunlap and Magee, et. al.*, CV2018-007511 (dismissed pursuant to Rule 12(b)(6))
- *Gerdes v. Theofore Horowitz, et.al.*, CV2018-013127 (dismissed pursuant to Rule 12(b)(6))
- *Gerdes v. Valley Wise Health Foundation*, CV2020-010771 (dismissed pursuant to Rule 12(b)(6))
- *Gerdes v. Gorman Property Management*, CV2020-010769 (still active)
- *Gerdes v. Dunlap & Magee Property Management*, CV2020-009870 (still active)
- *Gerdes v. La Porte Chrysler*, CV2020-004996 (dismissed pursuant to Rule 12(b)(6))
- *Gerdes v. Rally Sport Classics*, CV2020-004997 (dismissed for lack of prosecution)
- *Gerdes v. The Chevy Store*, CV2020-004974 (dismissed pursuant to Rule 12(b)(6))
- *Gerdes v. Dunlap & Magee, et. al.* CV2020-002031 (dismissed pursuant to Rule 12(b)(6))

In another case that was ordered dismissed by an arbitrator, the arbitrator found that Mr. Gerdes had “engaged in a pattern of willfully filing improper, dishonest and frivolous motions and filings” and had engaged in a “severe pattern of misconduct.” “Ruling on Defendants’ Motion for Rule 11 Sanctions” filed March 27, 2019 in *Gerdes v. Abdiel and Courtney Sotelo*, CV2018-007405.

The Court finds that Mr. Gerdes has engaged in vexatious conduct by filing claims or requests for relief that have been subject to previous rulings in previous litigation; has unreasonably expanded court proceedings; and has brought court actions without “substantial justification” as defined in A.R.S. §12-349.

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. Gerdes established pattern of abuse.

**IT IS THEREFORE ORDERED** as follows:

1. Mr. Gerdes may not file any new causes of action as a pro se litigant after the date of this order without leave of the Civil Presiding Judge or his/her designee.
2. Mr. Gerdes may not file any further pleading or motion in any of his current lawsuits as a pro se litigant 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. Gerdes 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. Gerdes is granted, the Clerk of Court may accept subsequent filings in that cause number from Mr. Gerdes. This Administrative Order does not preclude Mr. Gerdes 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).

Dated this 3<sup>rd</sup> day of May, 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. John Hannah, Superior Court Judge  
Raymond L. Billotte, Judicial Branch Administrator  
Luke Emerson, Civil Department Administrator  
Lay Allen Gerdes  
Richard L. Cobb, Lake & Cobb, P.L.C.



# Attachment A

Hon. John R. Hannah Jr.  
March 1, 2022 - Minute Entry

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2021-018446

03/01/2022

HONORABLE JOHN R. HANNAH JR

CLERK OF THE COURT  
A. Walker  
Deputy

LAY ALLEN GERDES

LAY ALLEN GERDES  
1001 E 8TH ST # 3003  
TEMPE AZ 85281

v.

A T & T MOBILITY L L C

RICHARD L COBB

COURT ADMIN-CIVIL-ARB DESK  
JUDGE HANNAH  
JUDGE WELTY

MINUTE ENTRY

The Court has read and considered the request of defendant AT&T Mobility, LLC to have *pro se* plaintiff Lay Allen Gerdes declared a vexatious litigant pursuant to A.R.S. section 12-3201. The power to declare a vexatious litigant rests with the Presiding Judge or designee. A.R.S. section 12-3201(A). The Court will refer this matter accordingly, for consideration of whether Mr. Gerdes should be designated a vexatious litigant.

A *pro se* litigant is a vexatious litigant if the court finds the *pro se* litigant engaged in vexatious conduct. A.R.S. section 12-3201(C). For this purpose, "vexatious conduct" includes any of the following:

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- Repeated filing of court actions solely or primarily for the purpose of harassment.
- Unreasonably expanding or delaying court proceedings.
- Court actions brought or defended without substantial justification.
- Engaging in abuse of discovery or conduct in discovery that has resulted in the imposition of sanctions against the pro se litigant.
- A pattern of making unreasonable, repetitive and excessive requests for information.
- Repeated filing of documents or requests for relief that have been the subject of previous rulings by the court in the same litigation.

A.R.S. section 12-3201(E).

The present case was dismissed on *res judicata* grounds because the plaintiff *pro se* unsuccessfully litigated the same cause of action in Maricopa County Superior Court No. CV2020-006585. The plaintiff lost in the prior case on a motion for summary judgment. The plaintiff changed his theory here, from breach of contract to fraud in the inducement of the contract, but the underlying facts are the same. The Court finds the present case was brought without substantial justification and for harassment of the defendant.

Mr. Gerdes has filed a total of 16 civil cases as plaintiff in Maricopa County Superior Court since 2013, nine of which (including this case and its predecessor) were filed in 2020 or 2021. Only one case is still being litigated. Maricopa County Superior Court No. CV2020-009870, consolidated with CV2020-010769. One was removed to United States District Court by the defendant. Maricopa County Superior Court CV2021-017893.

The rest of Mr. Gerdes' cases have failed at the earliest stages. Two cases were administratively dismissed for lack of service or lack of prosecution. Maricopa County Superior Court Nos. CV2015-000187, CV2020-004997. Three were dismissed by stipulation or unopposed motion after minimal litigation or no litigation at all. Maricopa County Superior Court Nos. CV2013-015596, CV2016-015202, CV2018-007511. Five in addition to the present case were dismissed on Rule 12(b) motions for various reasons including lack of personal jurisdiction and failure to state a claim. Maricopa County Superior Court Nos. CV2018-013127, CV2020-002031, CV2020-004974, CV2020-004996, CV2020-010771. The Court finds that these cases demonstrate a pattern of initiating litigation without substantial justification or for an improper purpose such as harassment.

A twelfth dismissed case was ordered dismissed by an arbitrator based on a "severe pattern of misconduct by the plaintiff." "Ruling on Defendants' Motion for Rule 11 Sanctions" filed March 27, 2019 in Maricopa County Superior Court No. CV2018-007405. The arbitrator found that the plaintiff had "engaged in a pattern of willfully filing improper, dishonest and frivolous motions and filings" even after having been "cautioned by the . . . arbitrator on numerous occasions

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to comply with the rules.” *Id.* The case was subsequently “settled” and dismissed with prejudice. The Court finds that Mr. Gerdes engaged in abuse of discovery or conduct in discovery that resulted in the imposition of sanctions.

Several other cases show signs of abusive litigation conduct. In CV2018-013127, for example, Mr. Gerdes sued the lawyers who had represented the defendant in one of the prior cases. In CV2020-004996, the plaintiff filed multiple memoranda opposing the same dismissal motion and asking for reconsideration after the motion had been granted.

For all these reasons,

IT IS ORDERED referring this matter to Presiding Judge Joseph Welty for his consideration of whether Lay Allen Gerdes should be designated a vexatious litigant. It is recommended that the defendant’s request for such designation should be granted.