

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

IN THE MATTER OF PROHIBITING)	SECOND AMENDED
<u>ROBERT EARL KRONCKE</u> FROM)	ADMINISTRATIVE ORDER
FILING ANY LAWSUIT IN)	No. 2008-134
MARICOPA COUNTY WITHOUT)	
OBTAINING PRIOR PERMISSION)	
FROM THE COURT)	
_____)	

Inmates have a right of access to the courts. However, some have seized on the Court's openness and perverted it for purposes that have little to do with obtaining justice. *Acker v. C.S.O. Chevira*, 188 Ariz. 252, 254 (App. 1997).

A review of litigation in this and other courts discloses certain patterns. Some plaintiffs are obsessive. An obsessive plaintiff concentrates on a particular set of events or set of individuals. Obsessive plaintiffs often use lawsuits as vehicles to vex and harass. Rulings against an obsessive plaintiff are repeatedly followed by motions for reconsideration, appeals, or new lawsuits asserting similar claims against the same or related defendants. *See Jones v. Warden of Stateville Correctional Center*, 918 F. Supp. 1142, 1153 (N.D. Ill. 1995).

Some plaintiffs are recreational litigants. A recreational litigant engages in litigation as a pastime and views it as a game or sport. Recreational plaintiffs also often use lawsuits as vehicles to vex and harass. *Id.*

Hallmarks of vexatious litigants are identified in § 391 of the California Code of Civil Procedure. Although not controlling here, this statute is instructive. It defines a "vexatious litigant" as a person who does any of the following: (1) Has commenced or maintained within a seven-year period at least five litigations that have been finally determined adversely to the person; (2) repeatedly attempts to re-litigate an issue after litigation has been finally determined against the person; or (3) repeatedly files unmeritorious motions or pleadings.

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 at 252.* Filing abuses are normally controlled by rules of professional responsibility applicable to attorneys and by imposition of attorney fees or other monetary sanctions. Unfortunately, these tools are ineffective when dealing with an indigent, pro per plaintiff.

As noted above, inmates have a right of access to the courts; however, this right is not without limits. Courts have inherent authority to curb abuse of the Court's openness. Inherent authority is "defined as such powers as are necessary to the ordinary and efficient exercise of jurisdiction." *Acker at 254*.

Some courts sua sponte dismiss frivolous lawsuits. During the past decade, this court has declined to do so. Rather, on rare occasions, the Court has issued orders prohibiting litigants who have proven themselves to be vexatious from pursuing additional litigation without prior leave of the Court's presiding judge or her designee. In this context, in keeping with *Franklin v. Oregon State Welfare Division*, 662 F. 2d. 1337 (9th Cir. 1981), the Court always notifies the litigant of the proposed action and gives him an opportunity to submit argument in opposition.

Robert Earl Kroncke is a state prison inmate. After his incarceration in 1994, he began filing civil and special action complaints. Kroncke is currently litigating multiple lawsuits in this court. In CV2008-003352, defense counsel filed a motion seeking a declaration that Kroncke is a vexatious litigant. The Court declined to issue such a declaration in the context of that case. Rather, the Court embarked on an independent review of Kroncke's litigation history in this court. An overview of that litigation history is set out in the attached appendix.

The Court makes the following findings:

- Kroncke has filed no less than 24 civil or special-action-type complaints in this court.
- Kroncke has prevailed in only one of these lawsuits – in CV2001-011973, Kroncke obtained a default judgment against his brother.
- Apart from two name change petitions and three complaints against his brother, the relief sought by Kroncke falls into two categories: (1) money damages and (2) orders that certain action be taken in the context of his criminal/PCR cases.
- Apart from his brother, all defendants sued by Kroncke were government agents. In fact, apart from a contract attorney retained by the County to represent Kroncke in PCR proceedings, all defendants were government employees. All defendants fall into the following categories: Law enforcement personnel involved in Kroncke's criminal cases; attorneys who represented Kroncke in his criminal cases; DOC officials who allegedly did not adequately assist Kroncke's litigation efforts; attorneys who successfully represented defendants sued by Kroncke; and judges who ruled against Kroncke in prior litigation,
- Kroncke has consistently and repeatedly filed frivolous lawsuits and motions.
- In the context of individual cases, Kroncke has repeatedly attempted to re-urge arguments already decided against him with finality.

- After dismissal of lawsuits, Kroncke has repeatedly filed new lawsuits wherein he asserted claims barred by the doctrine of res judicata, i.e., claims already decided against him or claims that could have been asserted in earlier lawsuits.
- With full knowledge that such claims were meritless, Kroncke repeatedly asserted in serial lawsuits claims barred by *Heck v. Humphrey*, 512 U.S. 477 (1984).
- With full knowledge that one superior court judge lacks the power to overrule another and that a superior court judge in another case cannot appropriately issue orders regarding Kroncke's criminal cases, Kroncke repeatedly sought such orders through serial special action/mandamus complaints.
- With the clear intent to vex and harass, Kroncke has vindictively sued for money damages attorneys who successfully represented defendants Kroncke had sued in earlier lawsuits.
- With the clear intent to vex and harass, Kroncke has vindictively sued for money damages judges who ruled against him.
- Kroncke has engaged in game-playing behavior. For example, on multiple occasions after adverse rulings, he has embarked on calculated campaigns to flood the Court with essentially identical motions.
- In numerous filings, Kroncke has engaged in a game of seeing how far he can go in making disparaging and disrespectful comments about the Court as an institution and about individual judges.

The Court finds Kroncke to be a vexatious litigant.¹ 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 Kroncke's established pattern of abuse.

Given all of the circumstances, it is ordered as follows:

1. Kroncke may not file, and the Clerk of Court may not accept, any new causes of action after the date of this order without leave of the civil presiding judge or his designee.
2. Kroncke may not file, and the Clerk of Court may not accept, any new pleading, motion, or any other document in any non-criminal case in which judgment

¹ As noted above, a California statute provides definitions for the term "vexatious litigant". The California statute does not apply in this Arizona case; however, if it did, the Court would find Kroncke to be a vexatious litigant under all three alternative definitions discussed on page 1 of this order.

concluding the case has been entered without leave of the civil presiding judge or his designee.²

Any motion for leave to file shall be captioned “Application Pursuant to Court Order Seeking Leave to File.” Kroncke 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 is granted, the Clerk of Court may accept subsequent filings in that cause number from Kroncke.

It is ordered that Kroncke may petition this court for a hearing on this order, no later than November 6, 2008, and may present information at that hearing to dispute the findings herein.

Dated this 6th day of April, 2009.

Barbara Rodriguez Mundell
Presiding Judge

Original: Clerk of the Superior Court

Copies: Hon. Michael K. Jeanes, Clerk of Court
Hon. Norman Davis, Associate Presiding Judge
Hon. Mark Aceto, Civil Presiding Judge
Hon. Gary Donohoe, Criminal Presiding Judge
Hon. Colleen McNally, Family Presiding Judge
Hon. Eileen Willett, Juvenile Presiding Judge
Hon. Eddward Ballinger, Northeast Presiding Judge
Hon. Harriett Chavez, Northwest Presiding Judge
Hon. David Talamante, Southeast Presiding Judge
Hon. John Ore, Presiding Justice of the Peace
All Municipal Presiding Judges
Marcus Reinkensmeyer, Judicial Branch Administrator
Karen Westover, Deputy Court Administrator
Mitch Mitchkowski, Civil Court Administrator
Robert Earl Kroncke

² Mr. Kroncke is not required to seek leave of Court before filing a “Notice of Appeal”. Additionally, the Court does not intend to abuse its discretion. For example, after judgment is first entered in a case, if Mr. Kroncke submits to the Court an “Application Pursuant to Court Order Seeking Leave to File” along with a proper proposed post-judgment motion within the time limits for filing such a motion, the Court fully expects to issue the proper ruling.