

1 **Rule 40A. Vexatious litigants.**

2 **(a) Grounds.** The appellate court may find a person to be a "vexatious litigant" if:

3 (1) the person, with or without legal representation, including an attorney acting pro  
4 se, does any of the following on more than one occasion:

5 (A) files a frivolous brief, motion, petition, or other document;

6 (B) files a brief, motion, petition, or other document that contains redundant,  
7 immaterial, impertinent, or scandalous material;

8 (C) engages in tactics that are frivolous or done solely for the purpose of  
9 harassment or delay; or

10 (D) purports to represent or to use the procedures of a court other than a court of  
11 the United States, a court created by the Constitution of the United States or by  
12 Congress under the authority of the Constitution of the United States, a tribal court  
13 recognized by the United States, a court created by a state or territory of the United  
14 States, or a court created by a foreign nation recognized by the United States; or

15 (2) Any other court has previously determined the party to be a vexatious litigant in  
16 a related matter.

17 **(b) Vexatious litigant orders.** The court may, on its own motion or on the motion of any  
18 party, after notice and an opportunity to be heard, find the party to be a vexatious litigant  
19 and enter an order requiring a vexatious litigant to:

20 (1) furnish security to assure payment of the moving party's reasonable expenses,  
21 costs, and if authorized, attorney fees incurred in a pending action;

22 (2) obtain legal counsel before proceeding in a pending action;

23 (3) obtain legal counsel before filing any future appeal or petition;

24 (4) abide by a prefiling order requiring the vexatious litigant to obtain the court's  
25 permission before filing any briefs, motions, petitions, or other documents in a  
26 pending action;

27 (5) abide by a prefiling order requiring the vexatious litigant to obtain the court's  
28 permission before filing any future appeal or petition; or

29 (6) take any other action reasonably necessary to curb the vexatious litigant's abusive  
30 conduct.

31 **(c) Necessary findings and security.**

32 (1) Unless the court relies on another court's vexatious litigant determination, the  
33 court must find by clear and convincing evidence that the party is a vexatious litigant.

34 (2) The court will identify the amount of the security, if any, and the time within which  
35 it is to be furnished. If the security is not furnished as ordered, the court may dismiss  
36 the vexatious litigant's appeal or petition.

37 **(d) Orders in a pending action.**

38 (1) If a vexatious litigant is subject to an order requiring the court's permission to file  
39 any briefs, motions, petitions, or other documents, the vexatious litigant must submit  
40 the proposed filing to the court clerk and must:

41 (A) demonstrate that the filing is warranted under existing law or a good faith  
42 argument for the extension, modification, or reversal of existing law; and

43 (B) include an oath, affirmation, or declaration under criminal penalty that the  
44 filing is not filed for the purpose of harassment or delay and contains no  
45 redundant, immaterial, impertinent, or scandalous matter.

46 (2) A prefiling order in a pending action shall be effective until a final determination  
47 of the action unless otherwise ordered by the court.

48 **(e) Contempt sanctions.** Disobedience by a vexatious litigant of an order under this rule  
49 may be punished as contempt of court.

50 **(f) Other authority.** This rule does not affect the authority of the court under other  
51 statutes and rules or the inherent authority of the court.