

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF IDAHO
MAY 08 2015

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADAMS
CHRISTOPHER D. RICH, Clerk
By KARI MAXWELL
DEPUTY

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IN RE: PETITIONER'S MOTION TO
DECLARE MARK R. THOMANN A
VEXATIOUS LITIGANT

Case No. CVOT 2014-12555


PREFILING ORDER

The Court having found that Mark R. Thomann is a vexatious litigant and having entered findings to that effect,

IT IS HEREBY ORDERED that Mark R. Thomann is prohibited from filing any new civil actions in the courts of this state where he is proceeding *pro se* without first obtaining leave of a judge of the court where the litigation is proposed to be filed.

IT IS SO ORDERED.

Dated this 7th day of May, 2015.


TIMOTHY HANSEN
Administrative District Judge

KM

CERTIFICATE OF MAILING

1
2 I, Christopher D. Rich, the undersigned authority, do hereby certify that I have mailed, by
3 United States Mail, on this 11th day of May, 2015, one copy of the ORDER as notice pursuant to
4 Rule 77(d) I.C.R. to each of the attorneys of record in this cause in envelopes addressed as follows:

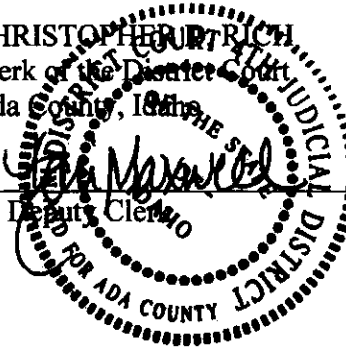
5 PHILIP M. BEVIS
6 BEVIS, THIRY & SCHINDELE, P.A.
7 P.O. BOX 827
8 BOISE, IDAHO 83701

9 BRIAN L. WEBB
10 WEBB AND DUNN LAW
11 839 E. WINDING CREEK DR., STE. 102
12 EAGLE, ID 83616

13 CHRISTOPHER D. RICH
14 Clerk of the District Court
15 Ada County, Idaho

16 By: _____

17 *[Signature]*
18 Deputy Clerk



1 IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
2 THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

NO. _____ FILED 3:16
A.M. P.M.

3 MAY 08 2015

4 CHRISTOPHER D. RICH, Clerk
By KARI MAXWELL
DEPUTY

5 IN RE: PETITIONER'S MOTION TO
6 DECLARE MARK R. THOMANN A
7 VEXATIOUS LITIGANT

Case No. CVOT 2014-12555

8 FINDINGS OF FACT AND
9 CONCLUSIONS OF LAW

10 On April 4, 2014, a Motion for Referral to Administrative Judge Re: Vexatious Litigation
11 was filed in Ada County Case No. CV-DR-2007-20770. An Order of Referral to Administrative
12 District Judge entered on April 24, 2014. However, the order was not filed under new Ada County
13 Case No. CV-OT-2014-12555 until June 24, 2014. Pursuant to an Order Re: Petitioner's Motion to
14 Declare Mark R. Thomann a Vexatious Litigant which entered on July 7, 2014, this Court noted no
15 documentation in support of the motion had been filed in the new case and, therefore, the Court was
16 unable to make the required findings pursuant to I.C.A.R. 59(d). The parties were given twenty-one
17 days to submit any relevant information for the Court's consideration. On July 24, 2014, Petitioner
18 Teresa M. Jorgensen filed the Affidavit of Philip M. Bevis in support of her motion. Respondent
19 Mark R. Thomann filed a series of documents in response including: Motion Re: Petitioner's Motion
20 to Declare Mark R. Thomann a Vexatious Litigant-Opposition filed on July 29, 2014; Memorandum
21 filed on July 29, 2014; Affidavit of Mark R. Thomann Re: Vexatious Litigant filed on July 29, 2014;
22 Affidavit of Mark R. Thomann in Resonse (sic) of Re: Vexatious Litigant Affidavit of Jorgensen and
23 Bevis, July 30 filed on August 22, 2014; and Affidavit of Mark R. Thomann-Complaint filed on
24 August 28, 2014. Although the latter two documents were not timely, the Court has nonetheless
25 considered them along with the other documents submitted by Petitioner and Respondent. The Court
26 has also considered the Affidavit of Mark R. Thomann in Response of RE: Courts (sic) Proposed
Findings and Order which was filed by Mr. Thomann on October 15, 2014, in response to the entry
of this Court's Proposed Findings and Order on October 3, 2014.

1 addressing Respondent's response to its Proposed Findings and Order, can now make the following
2 findings pursuant to I.C.A.R. 59(e).

3 I.C.A.R. 59(d) provides that an "administrative judge may find a person to be a vexatious
4 litigant based on a finding that a person has done any of the following: (1) In the immediately
5 preceding seven-year period the person has commenced, prosecuted or maintained pro se at least
6 three litigations, other than in the small claims department of the magistrate division, that have been
7 finally determined adversely to that person." "Litigation" is defined as "any civil action or
8 proceeding." I.C.A.R. 59(b). Based upon the exhibits attached to the Affidavit of Philip M. Bevis,
9 this Court can find there have been three such cases brought by Mr. Thomann within the last seven
10 years that have been decided adversely to him, specifically, Ada County Case Nos. CV-OC-2012-
11 22996, CV-OC-2013-02738, and CV-OC-2013-08862. See Bevis Affidavit, Exhibits GG, HH, II, JJ,
12 KK, and LL. Furthermore, in each of the orders dismissing these cases, Mr. Thomann is specifically
13 identified as proceeding *pro se*. See Bevis Affidavit, Ex. HH at 1, Ex. JJ at 1, and Ex. LL at 1.
14 Although the Court is satisfied that Ada County Case No. CV-DV-2012-03563 was also decided
15 adversely to Mr. Thomann, the Court cannot make a similar finding that he proceeded *pro se* in that
16 case. See Bevis Affidavit Ex. EE. The Court has not addressed the two small claims cases cited by
17 Petitioner for the Court's consideration as they are expressly excepted from the provisions of
18 I.C.A.R. 59(d)(1). However, given the aforementioned information concerning the first three civil
19 cases specifically cited above, the Court finds pursuant to I.C.A.R. 59(d)(1) that Respondent Mark
20 R. Thomann is a vexatious litigant.

21 I.C.A.R. 59(d) also provides that an "administrative judge may find a person to be a vexatious
22 litigant based on a finding that a person has done any of the following: . . . (2) After a litigation has
23 been finally determined against the person, the person has repeatedly relitigated or attempted to
24 relitigate, pro se, either (A) the validity of the determination against the same defendant or
25 defendants as to whom the litigation was finally determined or (B) the cause of action, claim,
26 controversy, or any of the issues of fact or law, determined or concluded by the final determination
against the same defendant or defendants as to whom the litigation was finally determined." In Ada
County Case Nos. CV-OC-2013-02738 and CV-OC-2013-08862, Mr. Thomann did file complaints
alleging the same causes of action as to two defendants, James Tighe and Heather Booth. See Bevis
Affidavit, Exhibits GG and II. However, the claims in Case No. CV-OC-2013-02738 were dismissed
without prejudice for failure to state a claim pursuant to I.R.C.P. 12(b)(6) and, therefore, although

1 decided adversely to Mr. Thomann as noted above, there was no final determination as to those
2 claims as contemplated by I.C.A.R. 59(d)(2). See Bevis Affidavit, Ex. HH at 4. Consequently,
3 Mr. Thomann did not attempt to relitigate claims that had finally been determined when he filed his
4 complaint in Case No. CV-OC-2013-08862. Petitioner having cited the Court to no other instance
5 when Mr. Thomann either did or attempted to relitigate a civil case that had been finally determined
6 and certainly no instance where he did so repeatedly, the Court cannot find that Mark R. Thomann is
7 a vexatious litigant pursuant to I.C.A.R. 59(d)(2).

8 I.C.A.R. 59(d) further provides that an “administrative judge may find a person to be a
9 vexatious litigant based on a finding that a person has done any of the following: . . . (3) In any
10 litigation while acting pro se, repeatedly files unmeritorious motions, pleadings, or other papers,
11 conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to
12 cause unnecessary delay.” As the Court previously noted, most of the documents submitted both by
13 Petitioner and Respondent in their respective affidavits relate to the divorce action between these
14 parties in Ada County Case No. CV-DR-2007-20770. The Court acknowledges that Mr. Thomann
15 filed numerous motions in that case seeking to modify custody and child support, to modify
16 judgment, for temporary orders, and for contempt. See Bevis Affidavit, Exhibits N, O, P, Q, R, S, T,
17 U, V, X, Y, Z, and AA. Nonetheless, the only document finding that any of these motions was
18 “brought frivolously, unreasonably and without foundation” is the Order and Judgment Granting
19 Summary Judgment and Attorney Fees filed on May 29, 2014, which dismissed Mr. Thomann’s
20 Motion to Modify an Order or Decree which had been filed on November 15, 2013. See Bevis
21 Affidavit, Ex. W at 2. Without more, the Court is unable to find that Mr. Thomann has repeatedly
22 filed unmeritorious motions or other papers and, therefore, cannot find that he is a vexatious litigant
23 pursuant to I.C.A.R. 59(d)(3).

24 Finally, I.C.A.R. 59(d) provides that an “administrative judge may find a person to be a
25 vexatious litigant based on a finding that a person has done any of the following: . . . (4) Has
26 previously been declared to be a vexatious litigant by any state or federal court of record in any
action or proceeding.” Petitioner does not claim nor has she provided any evidence that
Mr. Thomann has previously been found to be a vexatious litigant in either state or federal court.
Therefore, the Court cannot find that Mr. Thomann is a vexatious litigant pursuant to I.C.A.R.
59(d)(4).

1 In consideration of the foregoing findings this Court can conclude that Mark R. Thomann is a
2 vexatious litigant and that a prefiling order may issue pursuant to I.C.A.R. 59(e). In doing so, the
3 Court would note that it has been held that such orders should not be overly broad and “must be
4 narrowly tailored to closely fit the specific vice encountered.” *DeLong v. Hennessey*, 912 F.2d 1144,
5 1148 (9th Cir. 1990) (internal citations omitted). However, I.C.A.R. 59(c) provides that “[a]n
6 administrative judge may enter a prefiling order prohibiting a vexatious litigant from filing any new
7 litigation in the courts of this state pro se without first obtaining leave of a judge of the court where
8 the litigation is proposed to be filed.” (emphasis added). In consideration of the foregoing, the Court
9 would note that given its findings set forth above concerning the number and nature of
10 Mr. Thomann’s prior *pro se* litigations, it finds that an order prohibiting any new filings without
11 leave of the court is not overbroad since Mr. Thomann has filed or participated *pro se* in a wide
12 range of civil cases. Therefore, a prefiling order will issue pursuant to I.C.A.R. 59(c) and (e).

13 IT IS SO ORDERED.

14 Dated this ~~21st~~ day of May, 2015.

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TIMOTHY HANSEN
Administrative District Judge

CERTIFICATE OF MAILING

I, Christopher D. Rich, the undersigned authority, do hereby certify that I have mailed, by United States Mail, on this 11th day of May, 2015, one copy of the ORDER as notice pursuant to Rule 77(d) I.C.R. to each of the attorneys of record in this cause in envelopes addressed as follows:

PHILIP M. BEVIS
BEVIS, THIRY & SCHINDELE, P.A.
P.O. BOX 827
BOISE, IDAHO 83701

BRIAN L. WEBB
WEBB AND DUNN LAW
839 E. WINDING CREEK DR., STE. 102
EAGLE, ID 83616

CHRISTOPHER D. RICH
Clerk of the District Court
Ada County, Idaho

By: 

Deputy Clerk of

