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

Case No. CV01-25-04618

IN RE: REFERRAL TO CONSIDER WHETHER JESSICA ANN TIJERINA SHOULD BE DECLARED A VEXATIOUS LITIGANT PURSUANT TO I.C.A.R. 59

ORDER ADOPTING APRIL 7, 2025 PROPOSED FINDINGS

I. Background - Proposed Findings

On April 7, 2025, Proposed Findings and Notice of Intent to Issue a Prefiling Order (Proposed Findings), along with a Proposed Prefiling Order, were issued by the court in accordance with the terms of Idaho Court Administrative Rule (I.C.A.R.) 59.

As set forth in detail in the Proposed Findings, a review of her litigation history revealed that Jessica Ann Tijerina, while acting pro se in CV01-17-04230, repeatedly filed unmeritorious motions, pleadings, or other papers, or engaged in other tactics that were frivolous or solely intended to cause unnecessary delay. *See* I.C.A.R. 59(d)(3).

Her pro se filings also satisfied the terms of I.C.A.R. 59(d)(1): "In the immediately preceding seven-year period the person has commenced, prosecuted or maintained pro se at least three litigations, other than in the small claims department of the magistrate

division, that have been finally determined adversely to that person": CV14-24-07848; CV14-24-07855; CV01-24-13496; CV01-24-13498; CV01-24-15064; CV01-24-15194; CV01-24-15195; CV01-24-15200; and CV01-24-15207.

I. Response[1]

On April 14, 2025, Ms. Tijerina filed an "Objection" to the Proposed Findings. In her Objection, she asserts the following: (1) "The Proposed Prefiling Order Violates Fundamental Constitutional Rights"; (2) "The Prefiling Order is Overbroad, Unwarranted, and Punitive"; (3) "Judicial Bias and Unlawful Interference with Parental Rights"; (4) "Improper Application of State Law and Procedural Manipulation"; and (5) "Request for Narrow Relief Rather Than a Blanket Prefiling Order". Objection to Proposed Prefiling Order Under I.C.A.R. 59, at 1-3.

A. "The Proposed Prefiling Order Violates Fundamental Constitutional Rights"

Ms. Tijerina first asserts:

> The Proposed Prefiling Order Violates Fundamental Constitutional Rights[.] The right of access to the courts is not a mere procedural right; it is a constitutionally protected right under the First and Fourteenth Amendments. The Supreme Court has long recognized that restrictions on access to the

[1]Ms. Tijerina has not requested a hearing/oral argument and the court exercises its discretion in not sua sponte scheduling oral argument, under the circumstances, where she has not specifically addressed any of the (approximately fifty) pro se filings in CV01-17-04230 and the other nine cases that were referenced in the Proposed Findings. *See* I.C.A.R. 59(e) ("If the administrative district judge finds that there is a basis to conclude that a person is a vexatious litigant and that a prefiling order should be issued, the administrative district judge shall issue a proposed prefiling order along with the proposed findings supporting the issuance of the prefiling order. The person who would be designated as a vexatious litigant in the proposed order shall then have fourteen (14) days to file a written response to the proposed order and findings. **If a response is filed, the administrative district judge may, *in his or her discretion*, grant a hearing on the proposed order**. If no response is filed within fourteen (14) days, or if the administrative district judge concludes following a response and any subsequent hearing that there is a basis for issuing the order, the administrative district judge may issue the prefiling order."). (emphasis added). *See also Greenfield v. Meyer*, ___ Idaho ___, 560 P.3d 517, 527 (2024) ("Notably, although an initial hearing is not required by the rules, the ADJ *exercised her discretion* and opted to give the parties an additional opportunity to present oral argument before she considered the motion."). (emphasis added).

> courts are a severe remedy that must be narrowly tailored to address legitimate concern, without infringing upon an individual's ability to seek redress for grievances. See Bounds v. Smith, 430 U.S. 817, 828 (1977) ('The right of access to the courts is an aspect of the First Amendment right to petition the government for redress of grievances.'). By imposing an indiscriminate pre-filing restriction, the Court seeks to violate the Plaintiff's constitutional rights to petition the government and access the courts. Such an order is disproportionate, as it is based on procedural dismissals that fail to demonstrate any malicious intent or vexatious litigation. The Court's proposal infringes upon due process rights, as it fails to account for the Plaintiff's good-faith efforts to resolve her claims, despite some procedural errors. Moreover, the constitutional right to petition the courts is designed to ensure that individuals can seek redress without undue hindrance. See Bill Johnson's Restaurants, Inc. v. NLRB, 461 U.S. 731 (1983) ('The right of access to the courts ... is part of the very foundation of our system of justice'). Denying that right based on technical errors rather than malicious or frivolous litigation is an unlawful deprivation of fundamental rights. Objection to Proposed Prefiling Order Under I.C.A.R. 59, at 1.

The right of access to the courts does not encompass a right to pursue frivolous litigation or to repeatedly pursue unmeritorious litigation or to repeatedly file unmeritorious or frivolous pleadings, papers, or other materials in a case. *See Eismann v. Miller*, 101 Idaho 692, 697, 619 P.2d 1145, 1150 (1980) ("We do not fail to recognize that every individual in our society has a right of access to the courts. See, e. g., Board of County Comm'rs v. Barday, 594 P.2d 1057, 1059 (Colo.1979); People v. Spencer, supra 524 P.2d at 1086. However, the exercise of that right cannot be allowed to rise to the level of abuse, impeding the normal and essential functioning of the judicial process. To allow one individual, untrained in the law, to incessantly seek a forum for his views both legal and secular by means of pro se litigation against virtually every public official or private citizen who disagrees with him only serves to debilitate the entire system of justice. We emphasize that our order does not, deprive the respondent of access to the courts of this state. What is restricted is the respondent's ability to hamstring the judicial system of this state with unapproved pro se filings and related matter, and with attempted 'enforcement'

of those efforts through certain unacceptable means."). *See also Humphrey v. Secretary Pennsylvania Department of Corrections*, 712 Fed.Appx. 122, 125 (3rd Cir. 2017) ("There is simply no constitutional right to prosecute frivolous litigation. See Brennan, 350 F.3d at 417; see also Herron v. Harrison, 203 F.3d 410, 415 (6th Cir. 2000)."); *In re Price*, 846 Fed.Appx. 276, 277 (5th Cir. 2021) ("Price contends that the filing restrictions infringe on his constitutional rights. We have recognized a constitutional right of access to the courts, *see Ryland v. Shapiro*, 708 F.2d 967, 971-73 (5th Cir. 1983). However, '(t)he right of access to the courts is neither absolute nor unconditional and there is no constitutional right of access to the courts to prosecute an action that is frivolous or malicious.' *Baum v. Blue Moon Ventures, LLC*, 513 F.3d 181, 193 (5th Cir. 2008) (internal quotation marks and citation omitted). Further, we have determined that barring a litigant from filing future complaints without the consent of the court is an appropriate sanction for filing multiple meritless lawsuits. *See Balawajder v. Scott*, 160 F.3d 1066, 1067 (5th Cir. 1998)."); *Jackson v. City of Cleveland*, 64 F.4th 736, 746 (6th Cir. 2023) ("Plaintiffs with nonfrivolous legal claims have a constitutional right to access the courts to bring those claims. *Christopher v. Harbury*, 536 U.S. 403, 414-15 & n.12, 122 S.Ct. 2179, 153 L.Ed.2d 413 (2002)."); *In re Gardner*, 2024 WL 939849, *2 (10th Cir.) ("We would nevertheless remind Gardner that 'the right of access to the courts is neither absolute nor unconditional, and there is no constitutional right of access to the courts to prosecute an action that is frivolous or malicious.' *Tripati v. Beaman*, 878 F.2d 351, 353 (10th Cir. 1989). To that end, a district court has the inherent power under 28 U.S.C. § 1651 to impose filing restrictions when a party has 'engaged in a pattern of litigation activity which is manifestly abusive,' *Johnson v. Cowley*, 872 F.2d 342, 344 (10th Cir. 1989), particularly when such filings

have strained the resources of the court. *See In re McDonald*, 489 U.S. 180, 184 (1989)."); *Pickens v. Buss*, 2024 WL 5360640, *1 (10th Cir.) ("However, '(t)he right of access to the courts is neither absolute nor unconditional, and there is no constitutional right of access to the courts to prosecute an action that is frivolous or malicious.' *Winslow v. Hunter (In re Winslow)*, 17 F.3d 314, 315 (10th Cir. 1994) (internal quotations omitted). Instead, '(f)ederal courts have the inherent power to regulate the activities of abusive litigants by imposing carefully tailored restrictions in appropriate circumstances.' *See Ford v. Pryor*, 552 F.3d 1174, 1180 (10th Cir. 2008) (quotation marks omitted).").

Ms. Tijerina's filings, as set forth in detail in the Proposed Findings, are not, as she asserts, filings with mere "technical" or "procedural" issues. They are unmeritorious, frivolous, and vexatious in nature and volume. A prefiling order also does not prevent Ms. Tijerina from filing pro se litigation in this state, it just prohibits her from doing so without prior leave of court.

As for her "due process" concerns, the requisite procedural due process here is from the review of the litigation history of the person referred,[2] the issuance of the proposed findings and the proposed prefiling order, the response period afforded to the person to the proposed findings, as well as their right to appeal the vexatious litigant determination to the Idaho Supreme Court. *See, e.g., Telford v. Nye*, 154 Idaho 606, 611, 301 P.3d 264, 269 (2013) ("Assuming arguendo that Telford had a protected liberty or

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[2]"The Rule only requires the administrative judge to review the litigant's conduct to determine whether it fits within one [or more than one] of the four categories described in subsection (d). I.C.A.R. 59." *In re Prefiling Order Declaring Vexatious Litigant, Pursuant to I.C.A.R. 59, Mark D. Colafranceschi*, 164 Idaho 771, 779-80, 435 P.3d 1091, 1099-1100 (2019). *See also In re Prefiling Order Declaring Vexatious Litigant, Pursuant to I.C.A.R. 59. [Van Hook]*, 164 Idaho 586, 592, 434 P.3d 190, 196 (2019) ("While the referral initially arose out of the Canyon County divorce case, Rule 59 required the administrative district judge to examine Van Hook's multiple litigations filed across several counties and his conduct as a pro se litigant within those litigations to find Van Hook was a vexatious litigant.").

property interest in filing unmeritorious, pro se litigation papers without leave of court, she was granted reasonable procedural protections ensuring that her interests would not be deprived arbitrarily. She was given notice of the proposed action against her. She was given opportunity to be heard through a right to file a response within fourteen days. Telford, however, failed to adequately challenge the pre-filing order or the bases upon which it was granted within the time allowed."). *See also Greenfield v. Meyer*, ___ Idaho___, 560 P.3d 517, 529 (2024) ("The record shows that Greenfield had sufficient notice of the factual findings contained in the Amended Prefiling Order, and multiple opportunities to address the case in question . . . Greenfield was afforded sufficient notice of the factual findings contained in the Amended Pretrial Order, and as well as an adequate opportunity to be heard on them. Thus, we hold that Greenfield was afforded adequate procedural due process of law.").

B. "The Prefiling Order is Overbroad, Unwarranted, and Punitive"

Ms. Tijerina next asserts:

> The proposed pre-filing order is an overbroad, unwarranted, and punitive response to procedural errors or dismissals based on jurisdictional grounds- not on the merits of the Plaintiff's claims. Frivolity in litigation requires evidence of bad faith, malice, or intent to harass, none of which are present in the Plaintiff's filings.[3] See In re McDonald, 489 U.S. 180, 185 (1989)

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[3]Frivolous conduct has been "defined as conduct that 'obviously serves merely to harass or maliciously injure another party to the civil action' or 'is not supported in fact or warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law.'" *Berkshire Investments, LLC v. Taylor*, 153 Idaho 73, 86, 278 P.3d 943, 956 (2012). (emphasis added). *See also Hymas v. Meridian Police Dept.*, 159 Idaho 594, 602, 364 P.3d 295, 303 (Ct. App. 2015) ("Under a separate title, the Idaho Code defines frivolous as conduct 'not supported in fact or warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law.' I.C. § 12-123(1)(b)(ii); *see also* BLACK'S LAW DICTIONARY 451 (8th ed.2004) (defining a 'frivolous defense' as one that has no basis in law or fact)."). A patently or manifestly frivolous assertion or claim has been defined as "the sort of implausible allegation that is so 'wholly insubstantial or obviously frivolous' or 'so patently without merit as to require no meaningful consideration[.]'" *Goode v. Zavodnick*, 2023 WL 3568126, *8 (D. Colo.) (citing *Coando v. Coastal Oil & Gas. Corp.*, 44 F. App'x 389, 395 (10th Cir. 2002) (citing *Hagans v. Lavine*, 415 U.S. 528, 536-37 (1974)); *Wiley v. Nat'l Collegiate Athletic Ass'n*, 612 F.2d

> (observing that pre-filing restrictions are justified only when there is evidence of vexatious litigation). Many of the Plaintiff's previous filings were dismissed on procedural or jurisdictional grounds, which is not indicative of frivolousness. A dismissal without prejudice, particularly when the Plaintiff is self-represented,[4] should not be held against her, as it is consistent with the right to amend or clarify legal deficiencies. Imposing a blanket pre-filing restriction in response to procedural issues will not address the underlying concerns regarding litigation conduct. Instead, it unduly punishes the Plaintiff for errors that, in the absence of bad faith, should be curable with appropriate guidance.[5] The pre-filing order suggests presumption of bad faith based solely on prior dismissals, thus shifting the burden of proof to the Plaintiff to show cause why she should be allowed to file. This is an unlawful presumption of guilt and directly contradicts the constitutional presumption of innocence. Objection to Proposed Prefiling Order Under I.C.A.R. 59, at 1-2.

Ms. Tijerina has not specified which of her numerous (approximately fifty) pro se filings in CV01-17-04230 set forth in the Proposed Findings were merely "dismissed on procedural or jurisdictional grounds", were merely "curable with appropriate guidance"

473, 477 (10th Cir. 1979) (same); *Best v. Kelly*, 39 F.3d 328, 330 & n.3 (D.C. Cir. 1994) *Tarshik v. Kansas*, No. 08-4058-SAC, 2008 WL 4489789, at *1 to *7 (D. Kan. Sept. 30, 2008)).

[4]*See Re Khurana*, 169 Idaho 120, 122, 492 P.3d 1079, 1081 (2021) ("Finally,('(t)his Court adheres to the rule that persons acting *pro se* are held to the same standards and rules as those represented by attorneys." *Id.* (quoting *Huff v. Singleton*, 143 Idaho 498, 500, 148 P.3d 1244, 1246 (2006)).").

[5]The court cannot provide Ms. Tijerina, or any other litigant, with "appropriate guidance" or legal assistance or advice in a case. *See Contest of Hart v. Shepherd*, 164 Idaho 102, 109 425 P.3d 1245, 1252 (2018) ("[T]his Court does not . . . offer legal advice to prospective litigants."); *Torrence v. McCay*, 2011 WL 11047638, *2 (Id. Ct. App.) ("During trial, the district court . . . properly declined to offer legal advice."); *Vickrey v. State*, 2010 WL 9587719, *4 (Id. Ct. App.) ("Neither Vickrey nor his attorney was entitled to receive legal advice from the court."). *See also United States v. Gibbs*, 2025 WL 560636, *3 (10th Cir) ("A district court, however, cannot give legal advice but can only rule on legal issues presented to it. *See, e.g., Kruskal v. Martinez*, 859 F. App'x 336, 338 (10th Cir. 2021)."); *DaJuan Torrell Williams, Plaintiff, v. Cnty. of Yuma, et al., Defendants*, 2025 WL 1148804, *2 (D.Ariz.) ("As to Plaintiff's second objection, the Magistrate Judge's determination that it cannot give Plaintiff legal advice is not clearly erroneous or contrary to law. Advising Plaintiff as to which appeals are proper and when said appeal should be filed would undoubtedly constitute legal advice from the Court, which the Court cannot and will not provide. *See Jacobsen v. Filler*, 790 F.2d 1362, 1365-66 (9th Cir. 1986) (explaining that providing legal advice to a pro se litigant 'would entail the district court's becoming a player in the adversary process rather than remaining its referee.'); *Rao v. AmerisourceBergen Corp.*, No. CIV S-08-1527 DAD PS, 2011 WL 1464378, at *1 (E.D. Cal. Apr. 15, 2011) ('To the extent that plaintiff is seeking legal advice from the court, plaintiff is informed that the court cannot provide litigants with legal advice or act as an advocate for any litigant.').").

and were not frivolous and vexatious in nature.[6] Moreover, the sheer volume of her frivolous and unmeritorious pro se filings in that case show their vexatious nature and intent, as previously set forth in the Proposed Findings and as recounted again here:[7]

- February 14, 2024 "Order Directing Issuance of Writ of Replevin" (found to be frivolous in the referral order – she cited no applicable Idaho law and asserted the market value of the children was $888,000.00);

- March 11, 2024 "Demand for a Writ of Prohibition" (she cited federal law);

- March 17, 2024 "Motion to Vacate Default Judgment" (found to be frivolous in the referral order – she cited federal law violations);

- March 27, 2024 "Notice of Motion and Motion to Intervene with an Injunction" (found to be frivolous in the referral order – she cited admiralty law);

- April 30, 2024 "Estoppel" (found to be frivolous in the referral order – she cited inapplicable I.R.C.P. and issue previously decided);

- May 3, 2024 "Motion of Estoppel" (found to be frivolous in the referral order – issue previously ruled on);

- May 8, 2024 "Motion of Estoppel" (she frivolously asserted that children are property and can be placed in a trust);

- May 20, 2024 "Notice of Estoppel Recording" (similarly frivolous to her "Estoppel" and "Motion of Estoppel");

- May 31, 2024 "Petitioner's Affidavit of Fact and Exhibits" (158 excessive pages);

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[6]Vexatious conduct has been defined as conduct "without reasonable or probable cause or excuse; harassing; annoying." Black's Law Dictionary (11th ed. 2019).

[7]*See Drain v. Wells Fargo Bank, Minnesota, NA*, 2005 WL 8163798, *5 (D. N.M.) (noting "the filing of voluminous vexatious pleadings and motions designed to harass and delay these proceedings. *See* Doc. 117 and exhibits attached thereto."); *Tafari v. Weinstock*, 2010 WL 3420424, *9 n. 7 (W.D. N.Y.) ("These multiple, baseless motions for reconsideration serve no purpose but to delay the proper resolution of these cases. These filings are vexatious in nature, causing the defendants to perform unnecessary work and burdening the Court's motion calendar.").

- June 14, 2024 "505 Motion for Temporary Custody" (ruled as without merit);

- June 17, 2024 three identical "Motions for Temporary Orders" (she re-asserted previously rejected arguments);

- July 15, 2024 "Bond" (she frivolously asserted bond is required in a custody case);

- July 17, 2024 "Demand for Jury Trial" (found to be frivolous in the referral order – she frivolously asserted a jury trial right in a custody case);

- August 12, 2024 "Notice of Assertion of Right and Assignment of Estate" (found to be frivolous in the referral order – she asserted the state had no rights over her);

- August 12, 2024 "Renunciation" (found to be frivolous in the referral order – she renounced her citizenship and a constructive spendthrift trust);

- August 20, 2024 "Writ of Right" (found to be frivolous in the referral order – asserting previously ruled on claims and asserting children are property and can be conveyed into a trust);

- August 27, 2024 "Recovery of Possession with Damages" (she frivolously asserted dismissal of case due to her birthright and natural rights and asserted that the children were under a foreign jurisdiction and held by a private inter vivos trust);

- August 28, 2024 "Petition for Termination of Guardianship" (found to be frivolous in the referral order - she asserted this was a guardianship case):

- September 4, 2024 "Motion for Amended Visitation" (found to be frivolous in the referral order – she continued to assert the existence of a trust holding the children);

- September 6, 2024 "Motion to Compell" (she cited no Idaho law);

- September 19, 2024 "Motion to Shorten Time Motion to Stay Proceedings and Notice of Correction" (found to be frivolous in the referral order – she sought application of estate law);

- September 27, 2024 "Motion for Contempt Upon Kids Services";

- October 1, 2024 "Demand for Notice" (found to be frivolous in the referral order – she cited application of trust and contract law);

- October 17, 2024 "Requested Emergency Writ of Prohibition" (she frivolously referenced contract and trust law but no applicable Idaho law);

- October 17, 2024 "True Bill Invoice" (she filed this frivolous document in the case and sent it to Judge Fortier and to Trial Court Administration for $30,355,000.00);

- October 17, 2024 "Trust Certification", "Object: Notice to Terminate Tenancy-at-Will Renunciation", "Affidavit of Publication", "Custodial Trust Agreement", "Estoppel Certificate", "Affidavit of Tax-Exempt Foreign Status", and "Affidavit of Ownership" (all frivolous);

- October 17, 2024 "Motion to Disqualify Motion for Order Shortening Time" (found to be without basis);

- October 18, 2024 "Affidavit in Support of Emergency Writ of Prohibition" (she frivolously asserted that Ada County judges had engaged in extortion, racketeering, coercion, slavery, and entrapment);

- October 24, 2024 "Emergency Motion" (she cited no relevant Idaho law but frivolously cited a statute from the United Kingdom);

- October 28, 2024 "Legal Notice Affidavit" (found to be frivolous in the referral order – she asserted that the court's actions were "terrorism");

- October 31, 2024 "Notice of Amended Appeal Magistrate Division to District Expedited Appeal" (she asserted the existence of living estate held in private inter vivos trust);

- November 1, 2024 "Emergency Intervention" (she frivolously asserted judicial lying, extreme bias, "ethical issues");

- November 4, 2024 another "Emergency Intervention" (she frivolously asserted the same);

- November 12, 2024 "Verified Motion for Emergency Relief" (found to be frivolous in the referral order – she asserted bankruptcy law);

- November 12, 2024 "Verified Objection and Rebuttal to the Report of Verified Affidavit" (she asserted intentional fraud on the court and perjury by a Kids Services attorney);

- November 18, 2024 "Motion to Shorten Time Motion for Emergency Hearing";

- January 16, 2025 (frivolous) "Legal Notice Upon Judge Schou Cease and Desist – Violations";

- February 6, 2025 "Judicial Notice and Legal Service" with Attachment One ("In the Matter of the Foreign Ecclesiastical Trust"), Attachment Two, Attachment Three (all purportedly in the Supreme Court of Texas);

- February 19, 2025 "Formal Notice of Rescission Due to Judicial Misconduct and Malpractice";

- February 19, 2025 "Subject: Formal Notice of Rescission Due to Judicial Misconduct and Malpractice";

- February 23, 2025 "Notice of Perfection of UCC-1 Financing Interest and Secured Interest Re: Escalation to Federal Court, Washington, D.C.";

- February 23, 2025 "UCC Financing Statement";

- March 5, 2025 "Verified Complaint" (captioned as in the United States District Court for the District of Columbia, naming "Judge Laurie A. Fortier, Judge Kyle Schou, Attorney Bret W. Shoufler, Roger Dale Stevens II" as defendants – there is no indication that this "Verified Complaint" or any of these related materials have actually been filed in federal court);

- March 5, 2025 "Certificate of Urgency" (another purported federal court filing);

- March 5, 2025 "Memorandum of Law" (another purported federal court filing);

- March 5, 2025 "Petition for Writ of Prohibition" (another purported federal court filing);

- March 5, 2025 "Petition for Immediate Relief, Writ of Habeas Corpus, and Emergency Intervention Due to Constitutional Violation, Fraud, and Child Abuse" (another purported federal court filing);

- March 5, 2025 'Notice of Pending Action in Federal Court (Washington, D.C.) and Related Filings";

- March 5, 2025 "Motion for Temporary Restraining Order" (another purported federal court filing);

- March 5, 2025 "Attachmets/Exhibits for Immediate Relief, Intervention Proof of Fraud Upon Court" (another purported federal court filing). Proposed Findings and Notice of Intent to Issue a Prefiling Order, 13-18.

The "presumption of innocence" is applicable to criminal proceedings but does not apply in this non-criminal I.C.A.R. 59 context. *See Matusick v. Erie Cnty. Water Authority*, 757 F.3d 31, 65-66, n.2 (2nd Cir. 2014) ("In *Kotteakos,* a criminal case, the Supreme Court observed that error is not harmless if 'one cannot say, with fair assurance, after pondering all that happened without stripping the erroneous action from the whole, that the judgment was not substantially swayed by the error.' *Kotteakos v. United States,* 328 U.S. at 765, 66 S.Ct. 1239. To the extent this appears to resolve ambiguities in favor of a defendant, it is noteworthy that a criminal defendant's 'substantial rights' include the presumption of innocence and the right not to be convicted except upon proof beyond a reasonable doubt, which are not applicable in civil cases."); *Olympus Spa v. Armstrong*, 2023 WL 7496382, *5 (W.D. Wash.) ("But Plaintiffs do not cite any legal authority for the novel proposition that the right to substantive due process guarantees a 'presumption of innocence' in a civil proceeding such as the one initiated by HW's complaint to HRC. *Cf.* Defs.' Mot. at 11 (citing *Hamid v. City of Chicago, No. 98 C 3789*, 1999 WL 759423, at *3 (N.D. Ill. Sept. 2, 1999) ('no right to a presumption of innocence in civil proceedings'); *Leyh v. Property Clerk of the City of New York Police Dep't*, 774 F. Supp. 742, 746

(E.D.N.Y. 1991) ('the 'presumption of innocence' is inapplicable to a non-criminal proceeding.'))."); *Caldwell v. State for Zimmerman*, 2024 WL 3906789, *7 (Tex.App.-Austin) ("In his sixth and seventh issues, Caldwell contends that the trial court abused its discretion by 'holding (him) to answer for a felony without indictment' and 'rendering a judgment which treats (him) as guilty of a felony and denies him the presumption of innocence.' As discussed above, the proceeding in this case was civil, and the protective order entered against Caldwell does not amount to a criminal conviction. Because Caldwell was not charged with a criminal offense, his allegations of violations of criminal due process are without merit.").

There is also no alternative, obvious, reasonable, innocent explanation for her numerous frivolous and unmeritorious filings except that they were intended to and did cause delay and undue expense to the litigants and the court in CV01-17-04230. *See, e.g., Tobey v. Jones*, 706 F.3d 379, 404 (4th Cir. 2013) (Wilkinson, C.J., dissenting) ("The majority's approach to this case misses the entire point of *Twombly* and *Iqbal.* American jurisprudence has long been founded on the presumption of innocence. That makes especial sense in the context of criminal justice, when the state bears the burden not only of proving guilt, but of doing so beyond a reasonable doubt. *Twombly* and *Iqbal* make clear, however, that the presumption of innocence retains some meaning even in the different context of a civil action. That is to say, a legal system is not justified in presuming culpability based on the mere 'possibility' of the same if there exists a perfectly 'obvious' and innocent explanation for a defendant's actions. Here, the explanation of innocence is not only obvious but likely, given the potential security threat posed by Tobey's conduct. To reject *Twombly* and *Iqbal* in circumstances such as these is to accord no significance

at all to the signal contribution of those cases, which presumes that Americans, even those in government, act within the strictures of the law and allocates the burden of plausibly showing otherwise to those who charge unlawful conduct.").

As for her "presumption of bad faith" assertions in reference to the many (nine total) pro se cases she has had finally determined adversely to her in the preceding seven years, this is the process set forth by the Idaho Supreme Court in I.C.A.R. 59 and its application shows that she repeatedly filed unmeritorious pro se litigation,[8] whether in "good faith" or "bad faith", thereby wasting scarce judicial resources. *See* I.C.A.R. 59(a) ("The Court finds that the actions of persons who habitually, persistently, and without reasonable grounds engage in conduct that: (1) serves merely to harass or maliciously injure another party in a civil action; (2) is not warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal or existing law; or (3) is imposed solely for delay, hinder the effective administration of justice, impose an unacceptable burden on judicial personnel and resources, and impede the normal and essential functioning of the judicial process. Therefore, to allow courts to address this impediment to the proper functioning of the courts while protecting the constitutional right of all individuals to access to the courts, the Court adopts the procedures set forth in this rule."). *See also In re Price*, 846 Fed.Appx. 276, 277 (5th Cir. 2021) ("Further, we have determined that barring a litigant from filing future complaints without the consent of the court is an appropriate sanction for filing multiple meritless lawsuits. *See Balawajder v. Scott*, 160 F.3d 1066, 1067 (5th Cir. 1998).").

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[8]Including five cases seeking to probate the estates of living persons and four civil protection petitions often naming identical respondents.

C. "Judicial Bias and Unlawful Interference with Parental Rights"

> The Plaintiff further objects on the grounds of judicial bias and the unlawful interference with her constitutional rights. The Court has engaged in improper coordination with another judge in different county, where this collusion led to the wrongful termination of the Plaintiff's parental rights, despite overwhelming evidence of abuse by another party. This conspiracy between judicial officers undermines the Plaintiff's right to a fair trial and violates her due process rights. Additionally, the Plaintiff was denied the right to rely on valid and binding rulings from Texas, a state where the Plaintiff has court orders that were directly relevant to her case. The Court's refusal to consider Texas law, in favor of Idaho law, despite Texas court orders being applicable, constitutes an illegal and selective application of law. This Court's conduct is unconstitutional, as it frustrates and hinders the Plaintiff's right to seek protection and redress under the law. The Plaintiff is entitled to have all relevant legal rulings considered, especially when those rulings protect her constitutional rights and the welfare of her children. It is important to note, on the official record, that the magistrate judge has acknowledged that the father in this case, by his own volition, failed to communicate with or see his children for over a year. This critical fact, however, has been excluded from consideration in the proceedings, despite its relevance under Idaho Code 16-2005, which governs parental abandonment and failure to maintain contact with one's children. Under Idaho Code 16-2005(1)(d), a parent's abandonment of their child, defined by prolonged failure to maintain communication or support, is ground for termination of parental rights. Specifically, the failure to communicate and maintain relationship with one's child for over a year is clear demonstration of abandonment. Idaho law unequivocally recognizes that a parent who intentionally severs or neglects the relationship with their child may forfeit their parental rights. The fact that the father voluntarily and without justification chose to sever ties with his children for over a year should not be disregarded or excluded from consideration. This failure to communicate or engage with the children for an extended period is precisely what Idaho law seeks to address through its abandonment statutes. To exclude this fact, particularly when it directly supports claim of abandonment, constitutes misapplication of Idaho law and undermines the children's best interests. It is imperative that the Court take into account this critical fact in its evaluation of the father's parental rights and his ongoing neglect, as Idaho law clearly supports the notion that parent's voluntary failure to maintain contact with their child for prolonged period constitutes abandonment and should have serious legal consequences. Objection to Proposed Prefiling Order Under I.C.A.R. 59, at 2-3

Ms. Tijerina has had the opportunity to appeal the determinations that were made in CV01-17-04230 and to appeal each of the nine cases that were finally determined

adversely to her. The I.C.A.R. 59 vexatious litigant designation consideration process is not an opportunity to re-litigate the cases and appeals that make up the person's litigation history. *See Re Khurana*, 169 Idaho 120, 125, 492 P.3d 1079, 1084 (2021) ("Although it could not have factored into the ADJ's analysis below, and does not ultimately influence our decision, Khurana's argument on appeal that the Department violated his constitutional rights serves as merely another example of his continued efforts to relitigate the child support issue from below."). *See also In re Prefiling Order Declaring Vexatious Litigant, Pursuant to I.C.A.R. 59. [Van Hook]*, 164 Idaho 586, 590, 434 P.3d 190, 194 (2019) ("Van Hook should have raised his due process and equal protection concerns in the litigations where he alleges the violations occurred. *Telford v. Nye*, 154 Idaho 606, 611-12, 301 P.3d 264, 269-70 (2013) (citation omitted).").

D. "Improper Application of State Law and Procedural Manipulation"

> The Plaintiff has been unduly burdened by Idaho's refusal to recognize or enforce valid judicial rulings from Texas, despite those rulings directly bearing on her rights. The disregard for the full faith and credit of sisterstate judgments is an unlawful act of procedural manipulation that deprives the Plaintiff of her ability to protect her rights and ensure her freedom of movement under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), which mandates that courts give full recognition to out-of-state child custody rulings. This refusal to honor Texas law, especially when the Plaintiff and children were escaping domestic abuse, effectively constrained her ability to seek refuge in Idaho, violating the Plaintiff's right to relocate and seek protection from domestic violence, as afforded by federal law and applicable interstate compacts. Objection to Proposed Prefiling Order Under I.C.A.R. 59, at 3.

To reiterate, Ms. Tijerina has had the opportunity to appeal the determinations that were made in CV01-17-04230 and to appeal each of the nine cases that were finally determined adversely to her. The I.C.A.R. 59 vexatious litigant designation consideration

process is not an opportunity to re-litigate the cases and appeals that make up the person's litigation history.

E. "Request for Narrow Relief Rather Than Blanket Prefiling Order"

Finally, Ms. Tijerina asserts:

> While the Plaintiff acknowledges the need for the Court to ensure that future filings are not frivolous or vexatious, the imposition of an overbroad pre-filing restriction is untenable. The Plaintiff respectfully requests that the Court consider a narrow alternative that preserves access to the courts, ensures compliance with procedural rules, and allows the Plaintiff to continue to seek legal redress. The Plaintiff proposes that any future filings be subject to review by the Court prior to submission, thereby providing oversight and ensuring procedural compliance without violating the Plaintiff's constitutional rights to access the courts and seek redress. Objection to Proposed Prefiling Order Under I.C.A.R. 59, at 3.

The court is bound by the terms of I.C.A.R. 59. That rule provides that if a person is found to be a vexatious litigant, as Ms. Tijerina most certainly is, they are prohibited "from filing any new litigation in the courts of this state pro se without first obtaining leave of a judge of the court where the litigation is proposed to be filed." I.C.A.R. 59(g). Moreover, "[a] presiding judge shall permit the filing of new litigation by a vexatious litigant subject to a prefiling order only if it appears that the litigation has merit and has not been filed for the purpose of harassment or delay." I.C.A.R. 59(i).

IV. Conclusion

In view of the foregoing, the April 7, 2025 Proposed Findings are adopted in their entirety and a Prefiling Order will be issued.

IT IS SO ORDERED.

DATED THIS 1st day of May 2025.

James Cawthon
Deputy Administrative District Judge

CERTIFICATE OF MAILING

I hereby certify that on the 1st day of May 2025, I mailed or emailed a true and correct copy of the foregoing document as notice pursuant to the Idaho Rules to each of the following:

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HONORABLE KYLE SCHOU
MAGISTRATE JUDGE

TRENT TRIPPLE
Clerk of the District Court
Ada County, Idaho

By _____
Deputy Clerk