

MAR 19 2013

CHRISTOPHER D. RICH, Clerk
By KARI MAXWELL
DEPUTY

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

IN RE: MOTION TO DECLARE
LACEY SIVAK A VEXATIOUS LITIGANT,

CASE NO. CV-OT-2013-00572

Petitioner,

FINDINGS OF FACT
AND CONCLUSIONS OF LAW

The Court has considered the Motion to Declare Lacey Sivak a Vexatious Litigator Pursuant to Idaho Administrative Rule 59 which was filed on December 14, 2012, in Ada County Case No. CV-OC-2011-02107 and was subsequently filed under new Ada County Case No. CV-OT-2013-00572 pursuant to an Order of Referral to Administrative District Judge entered on January 10, 2013, in the original case. The Court has also considered Lacey's Response to Elias' "Motion to Declare Lacey Sivak a Vexatious Litigator Pursuant to Idaho Administrative Rule 59" filed by Lacey Mark Sivak, Plaintiff in the aforementioned civil case, on December 28, 2012, and a second Lacey's Response to Elias' "Motion to Declare Lacey Sivak a Vexatious Litigator Pursuant to Idaho Administrative Rule 59" which was filed on December 31, 2012. The Court has also considered Lacey's 1. Objection to and 2. Response to Timothy Hansen's 14 February 2013 Proposed Findings and Order which was filed by Mr. Sivak on February 21, 2013, in response to the entry of this Court's Proposed Findings and Order on February 14, 2013.

I.C.A.R. 59(e) provides that if an "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." Appended as exhibits to the Motion to Declare Lacey

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1 Sivak a Vexatious Litigator Pursuant to Idaho Administrative Rule 59 are registers of actions from
2 numerous cases filed by Mr. Sivak as well as written decisions in the following cases: *Lacey Sivak*
3 *v. Tim Wilson, Dave Paskett, and James Barker*, U. S. District Court for the State of Idaho Case No.
4 CV 93-081-S-EJL; *Lacey Sivak v. State of Idaho*, Ada County Case No. HC 9600015D; *In the*
5 *Matter of Applications of Petitioner Lacey Sivak for Habeas Relief*, Ada County Case Nos.
6 SP-HC-9600020-D, SP-HC-96-00023-D, SP-HC-9600025-D, and SP-HC-96-00015-D; and *Sivak v.*
7 *State*, 130 Idaho 885, 950 P.2d 257 (Ct.App. 1997). In making its required findings, the Court found
8 the written decisions very helpful. However, the registers of action were not of as much benefit.
9 Nonetheless, the Court having considered all of the aforementioned information including the
10 documents filed by both sides is satisfied that it does have sufficient information from which it can
11 make the following findings pursuant to I.C.A.R. 59(e) without the need for a hearing.
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13 I.C.A.R. 59(d) provides that an “administrative judge may find a person to be a vexatious
14 litigant based on a finding that a person has done any of the following: (1) In the immediately
15 preceding seven-year period the person has commenced, prosecuted or maintained pro se at least
16 three litigations, other than in the small claims department of the magistrate division, that have been
17 finally determined adversely to that person.” Based upon the exhibits attached to the Motion to
18 Declare Lacey Sivak a Vexatious Litigator Pursuant to Idaho Administrative Rule 59, this Court can
19 find there have been more than three such cases within the last seven years that have been decided
20 adversely to Mr. Sivak, specifically, Ada County Case Nos. CV-OC-2011-11071, CV-OC-2010-
21 18537, CV-OC-2010-11395, and CV-PC-2008-06170. However, with the exception of Case No.
22 CV-OC-2010-11395, this Court is unable to determine whether Lacey Sivak pursued the remaining
23 three cases pro se and, therefore, cannot find he is a vexatious litigant pursuant to I.C.A.R. 59(d)(1).
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1 I.C.A.R. 59(d) also provides that an “administrative judge may find a person to be a
2 vexatious litigant based on a finding that a person ... (3) In any litigation while acting pro se,
3 repeatedly files unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery,
4 or engages in other tactics that are frivolous or solely intended to cause unnecessary delay.” In the
5 Motion to Declare Lacey Sivak a Vexatious Litigator Pursuant to Idaho Administrative Rule 59,
6 counsel argues that such conduct occurred in the case of *Sivak v. State*, CV-OC-2011-02107.
7 However, based upon the exhibits attached to this motion, this Court, although acknowledging that
8 numerous motions or other pleadings may have been filed, is unable to find from the limited
9 information contained in the case history that these motions or pleadings were without merit and,
10 therefore, cannot find that Lacey Sivak is a vexatious litigant pursuant to I.C.A.R. 59(d)(3).
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12 However, I.C.A.R. 59(d) further provides that an “administrative district judge may find a
13 person to be a vexatious litigant based on a finding that a person ... (2) After a litigation has been
14 finally determined against the person, the person has repeatedly relitigated or attempted to relitigate,
15 pro se, either (A) the validity of the determination against the same defendant or defendants as to
16 whom the litigation was finally determined or (B) the cause of action, claim, controversy, or any of
17 the issues of fact or law, determined or concluded by the final determination against the same
18 defendant or defendants as to whom the litigation was finally determined. ... [or] (4) Has previously
19 been declared to be a vexatious litigant by any state or federal court of record in any action or
20 proceeding.” Attached as Exhibit D to the Motion to Declare Lacey Sivak a Vexatious Litigator
21 Pursuant to Idaho Administrative Rule 59 is an Order Adopting Report and Recommendation in the
22 case of *Lacey Sivak v. Tim Wilson, Dave Paskett, and James Barker*, U. S. District Court for the
23 State of Idaho Case No. CV 93-081-S-EJL. In this order, the district court adopted the findings of the
24 magistrate that Mr. Sivak had pursued twenty-six pro se actions in federal court and that in the
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aforementioned case of *Sivak v. Miller, et al.*, all of the issues raised had been previously raised and addressed in one of those other actions. See Exhibit D at 1-2 and 14. Therefore, this Court finds that Mr. Sivak has repeatedly attempted to relitigate pro se claims or issues that had previously been determined against the same defendant or defendants. Therefore, pursuant to I.C.A.R. 59(d)(2)(B), this Court finds that Mr. Sivak is a vexatious litigant. Similarly, Mr. Sivak has been found to be a vexatious litigant in both state and federal court. See Exhibit D at 12-13; also, Exhibit E attached to the Motion to Declare Lacey Sivak a Vexatious Litigator Pursuant to Idaho Administrative Rule 59 and titled Motion (sic) Granting Summary Judgment and Sanctions in the case of *Lacey Sivak v. The State of Idaho*, Ada County Case No. H 9600015D at 7-9. The Court acknowledges that in each one of these orders, the trial court did not specifically use the term “vexatious litigant” in ordering that Mr. Sivak file no further matters without leave of the court. However, in each case the trial court relied on the case of *DeLong v. Hennessey*, 912 F.2d 1144 (9th Cir. 1990), in making any necessary findings and ordering no further filings without leave of the court. And it is clear from a review of the *DeLong* decision that that the findings and order in that case involved a determination that the pro se petitioner was a vexatious litigant. See *DeLong, supra*, 912 F.2d at 1146-1147. Therefore, Mr. Sivak having been found to be a vexatious litigant in both federal and state court, this Court also finds pursuant to I.C.A.R. 59(d)(4) that he is a vexatious litigant.

In consideration of the foregoing findings of fact this Court can conclude that Lacey Sivak is a vexatious litigant and will issue a prefiling order pursuant to I.C.A.R. 59(e).

IT IS SO ORDERED.

Dated this 19th day of March, 2013.


TIMOTHY HANSEN
Administrative District Judge

CERTIFICATE OF MAILING

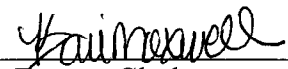
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2 I, Christopher D. Rich, the undersigned authority, do hereby certify that I have mailed, by
3 United States Mail, on this 20th day of March, 2013, one copy of the ORDER as notice pursuant to
4 Rule 77(d) I.C.R. to the following:

4 LACEY MARK SIVAK, #18114
5 IDAHO DEPARTMENT OF CORRECTION
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15 CHRISTOPHER D. RICH
16 Clerk of the District Court
17 Ada County, Idaho

17 By: 
18 Deputy Clerk
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