**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT**

**OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON**

Supreme Court No. 45459

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| **IN RE: MOTION TO DECLARE RONALD L. VAN HOOK A VEXATIOUS LITIGANT** | **CASE NO. CV-2017-3444-C** |
| **RONALD L. VAN HOOK,**<br><br>**A vexatious litigant.** | **PREFILING ORDER DECLARING VEXATIOUS LITIGANT PURSUANT TO IDAHO COURT ADMINISTRATIVE RULE 59** |



This matter is before the court on a motion pursuant to Idaho Court Administrative Rule ("I.C.A.R.") 59(d), requesting the undersigned Administrative District Judge of the Third Judicial District to determine whether Ronald L. Van Hook (hereafter "Van Hook") is a vexatious litigant as defined by that rule.

## Procedural History

On January 27, 2015 an attorney representing Dawn Renee Cannon (hereafter "Cannon") filed in *Ronald L. Van Hook v. Dawn Renee Cannon*, Canyon County Case CV-2014-7409-C, a motion captioned as a "Motion for Referral to Administrative Judge Re: Vexatious Litigation[,]" along with a supporting affidavit of counsel. The motion requests an evidentiary hearing and

asks that the matter be referred to the undersigned Administrative District Judge (ADJ) for purposes of determining whether Van Hook should be declared a vexatious litigant pursuant to I.C.A.R. 59. Following the filing of the motion no initial written or oral record was made regarding the request for referral by the presiding magistrate judge, but the file in that matter was delivered to the undersigned ADJ for the consideration at the direction of the presiding magistrate judge and/or his staff. This was in essence an informal referral not reflected in the record.

On February 14, 2016 the undersigned ADJ conducted a preliminary status conference and hearing on the motion. Cannon was not present but was represented by Kimberli Stretch. Van Hook appeared *pro se*. After hearing the parties' arguments the court marked two exhibits submitted by Van Hook. The first, marked as Exhibit 1 purports to be a copy of a document filed in Adams County Case CV-2017-3664 while the second, marked as Exhibit 2, is a thumb drive that Van Hook represented to the court contained audio recordings of all hearings conducted, as well as PDF copies of all pleadings filed in the matter to date. The court informed Van Hook that it would consider the pleadings found in the file, and that it would review the audio recordings only if it found it to be necessary. Van Hook also noted during the hearing that he had only received Cannon's moving papers on February 9, 2017, apparently because mail delivery to his home address had been interrupted until then by weather conditions. Van Hook stated that he did not think that this had afforded him enough time to respond to the motion, but he declined the court's offer to consider continuing the hearing, or to otherwise permit him an opportunity to further prepare his response.

The court also informed the parties that if it preliminarily found that Van Hook was a vexatious litigant it would act in accordance with the procedure outlined at I.C.A.R. 59, which

the court understood to require the issuance of a prefiling order, an opportunity for Van Hook to file a response or objection to such an order, and potentially an additional hearing on Van Hook's objections. *See* I.C.A.R. 59(e). Neither party objected to the court's interpretation of that rule or to the proposed course of action that the court had outlined. After hearing the parties' arguments the court announced that it would take the matter under advisement.

Following the hearing, on February 28, 2017 Van Hook filed a pleading captioned as "Response to: Notice Regarding Service of Motion RE Vexatious Litigation [] Request for Hearing – Alternatively – Request for Respondents Voluntary Dismissal with advance notice to Plaintiff." The response includes as an exhibit a printout Van Hook suggests supports the assertion he made during the February 14, 2017 hearing regarding disruptions in regular mail service to his home address. The motion requests a hearing, apparently on the issue of whether those disruptions did or did not cause Van Hook to receive those materials on February 9, 2017 as he claims. The motion also, somewhat confusingly, appears to request that the court order Cannon to voluntarily dismiss her I.C.A.R. 59 motion. Cannon has not filed a response or objection to this filing.

After further review of the file and I.C.A.R. 59, the undersigned ADJ determined that no formal order referring the matter to the ADJ had been entered by the magistrate judge presiding over the case from which this motion had originated (Canyon County Case CV-2014-7409-C), or had otherwise been made a part of the record. The undersigned ADJ thereafter entered an order on March 31, 2017, wherein the court noted that it did not have authority to further address the issue as no formal referral had been made that complied with I.C.A.R. 59(c). On that same date the undersigned ADJ also entered an order directing that the vexatious litigant referral be addressed in a separate proceeding. The court also ordered that all filings and minutes in Canyon

County Case CV-2014-7409-C relating to the vexatious litigant motion be duplicated and placed in the file of the newly opened action, thereafter captioned as IN RE: MOTION TO DECLARE RONALD L. VAN HOOK A VEXATIOUS LITIGANT, Canyon County Case CV-2017-3444-C. This separate file was opened to provide a full record for appellate review outside of the context of the various other proceedings referred to in this order. All subsequent filings that relate to the vexatious litigant motion are to be (and have been) filed in the above titled proceeding.

After those orders had been entered a notice of hearing was filed on April 7, 2017, scheduling the matter back before the presiding magistrate, Judge Gary D. DeMeyer, for a hearing on April 27, 2017. Following that hearing Judge DeMeyer entered a written order referring the motion to this court.

On June 2, 2017 the court filed a proposed prefiling order. Mr. Van Hook filed a response and opposition to the proposed order on June 9, 2017, and a hearing on his objection was held by the court on August 31, 2017. The matter having been briefed and argued the court now finds and orders as follows.

## Findings of Fact

**Canyon County Case CV-2014-7409-C**

1. On July 15, 2014 when Van Hook filed a *pro se* complaint for custody visitation and/or support. On July 18, 2014 Van Hook filed an amended complaint that sought a decree of legal separation from his wife, Dawn R. Van Hook, nee Dawn Renee Cannon, and also sought custody of the parties' three minor children. Van Hook sought permission to serve notice of the proceeding by publication in Canyon County, where the Cannon's last known address was

located. On July 21, 2014 Magistrate Judge Gary D. DeMeyer granted the request and ordered that service would be accomplished by publication of such notice for four consecutive weeks.

2. On August 11, 2014, Van Hook, proceeding *pro se*, filed three self-styled motions to compel. First Van Hook filed a motion seeking to compel the Idaho Department of Health and Welfare to permit Van Hook to access any and all records in their possession that relate to the parties' three children. Second Van Hook filed a motion seeking an order to compel Cricket Wireless to produce materials responsive to a subpoena duces tecum that had previously been served, that sought the records for a cell phone that belonged to Cannon. Third, Van Hook filed a motion seeking to compel staff members of "Hopes Door," a women's shelter located in Caldwell, Idaho, to disclose the whereabouts of the parties' children. All three motions were scheduled for a hearing on August 28, 2014. On August 22, 2014 attorney Dena M. Jaramillo filed a notice of appearance on behalf of Van Hook. On August 28, 2014 Judge DeMeyer called the case, noted that both parties had failed to appear, and apparently denied the three motions. Van Hook thereafter retained a new attorney, Steven Fischer. On September 3, 2014 Attorney Fischer filed a notice of substitution of counsel, and on September 9, 2014 Van Hook, through counsel, filed a motion for entry of default and a separate motion for a writ of assistance. The motions were heard on September 11, 2014. Van Hook appeared and was represented by his attorney. Cannon failed to appear, and at the conclusion of the hearing Judge DeMeyer found for Van Hook and entered a decree of legal separation and custody as sought.

3. On October 24, 2014 Cannon, through her attorney Mary Grant of Idaho Legal Aid Services Inc., moved to set aside the order of default on the basis that she had never been personally served with notice of the action, and had been residing in Adams County when Van Hook had attempted service by publication. The matter was scheduled for a hearing on

November 13, 2014. On October 24, 2014 Cannon also filed a motion in limine that requested that Judge DeMeyer take judicial notice of a Report of Child Protection Investigation that had been prepared in connection with Adams County Case CV-2014-3311. The Adams County case apparently originated as an action brought by Cannon, who at the time was residing in Adams County. Cannon sought a civil protection order against Van Hook, who Cannon alleged had stalked her, made threats to her safety, and had engaged in physical, mental and emotional abuse. A temporary ex parte protection order was entered, and following a hearing at which the aforementioned report was considered, a civil protection order was entered for Cannon for a period of one (1) year.

4. On October 29, 2014 Judge DeMeyer granted Cannon's motion in limine and took judicial notice of the report, a copy of which was filed by Cannon on November 3, 2014. Among other things, the report notes that the parties' children had stated that they are scared of their father and that they wanted to remain with their mother. The report also indicates that Cannon had described Van Hook's behavior as controlling, and that he had struck Cannon on more than one occasion.

5. On November 13, 2014 Judge DeMeyer heard Cannon's motion to set aside default. Cannon was not present but was represented by her attorney. Van Hook was present and was represented by his attorney Steven Fischer. After hearing the parties' arguments the magistrate granted the motion, set aside the default judgment and set the matter for trial in August of 2015. On November 19, 2014 the magistrate also entered an order for mediation or for filing of a stipulated parenting agreement. On November 25, 2014 Cannon filed an answer that included a counterclaim seeking full custody over the parties' children. The parties were apparently unable to reach any sort of agreement regarding the parenting and/or temporary custody of their children

and on December 18, 2014 Judge DeMeyer appointed an assessor to conduct a brief focused assessment pursuant to Idaho Code § 32-1402(8) and Idaho Rule of Evidence 706.

6. On March 9, 2015 Van Hook's attorney moved for leave to withdraw, citing Van Hook's failure to fulfill his financial obligations and failure to follow his attorney's advice. Cannon filed a notice of non-objection to the motion on March 23, 2015.

7. On March 23, 2015 Cannon filed a motion for temporary orders regarding the custody of the parties' other two children, and for payment of child support. Also on March 23, 2015 Cannon filed a motion for an immediate and temporary ex parte restraining order that would prevent Van Hook from having any contact with "RLV," the oldest of the parties' three children. The affidavit filed in support of that motion states that Cannon had learned during the course of the court ordered brief focused assessment that RLV had disclosed to the court appointed assessor that one of Van Hook's friends had committed an actual or attempted sexual battery on her during a period of time when she was under the care and supervision of Van Hook. On March 25, 2015 Judge DeMeyer entered a temporary protection order prohibiting Van Hook from having any contact with RLV during the pendency of any child protection or criminal investigation into the allegations.

8. On April 2, 2015 Cannon filed a motion to consolidate Canyon County Case CV-2014-7409-C and Adams County Case CV-2014-3311. On April 3, 2015 Van Hook filed *pro se* objections to Cannon's motion for temporary orders of custody and support, and to the temporary restraining order entered by the magistrate on March 25, 2015.

9. On April 16, 2015 Judge DeMeyer held a hearing on the various pending motions. Van Hook was present, as was his attorney Steven Fischer. After hearing arguments the court granted

Attorney Fischer's motion for leave to withdraw, granted Cannon's motion for a temporary order of custody and visitation, but denied Cannon's request for child support. Judge DeMeyer declined to rule on Cannon's motion to consolidate at that time.

10. On April 27, 2015 Van Hook, acting *pro se*, filed a motion captioned as a request for a temporary ex parte restraining order and a separate motion seeking to disqualify Judge DeMeyer pursuant to Idaho Rule of Civil Procedure ("I.R.C.P.") 40(d)(1). The court conducted a hearing on the motions on May 7, 2015, at which point it was determined that Van Hook had yet to file a *pro se* appearance. The court directed Van Hook to file an appearance and refile his motions. Van Hook filed a notice of *pro se* appearance on May 22, 2015.

11. On May 18, 2015 Cannon filed a renewed motion to consolidate the Canyon and Adams county cases. Van Hook filed a notice of non-objection on May 22, 2015 and the magistrate entered a written order consolidating those matters on May 26, 2015. The Adams County case was transferred in as Canyon County Case CV-2015-3964-C.

12. On May 28, 2015 Van Hook, acting *pro se*, filed: (1) an objection to the ex parte restraining order entered by Judge DeMeyer on March 25, 2015; (2) a motion seeking to amend the order consolidating the Canyon and Adams county cases; (3) a motion to amend the temporary order of custody and visitation entered by Judge DeMeyer on April 16, 2015; (4) a motion to disqualify Judge DeMeyer pursuant to I.R.C.P. 40(d)(1); and (5) a notice of sanctions seeking an order finding Cannon to be in criminal contempt. Ms. Cannon filed responsive pleadings on June 4, 2015 and a hearing on the motions was held on June 11, 2015. At the conclusion of the hearing Judge DeMeyer orally denied each of Van Hook's motions.

13. Following the hearing Van Hook filed several other *pro se* motions. On July 6, 2015 Van Hook, without leave of the court, filed an amended complaint for legal separation, as well as a pretrial memorandum. On July 7, 2015 Van Hook filed a motion for the appointment of a guardian ad litem and the magistrate conducted a hearing on that motion on July 11, 2015. The motion was denied by oral order. Also, on July 16, 2015 Van Hook filed a motion that purports to request that the magistrate enter an order requiring both parties to undergo a polygraph examination. A hearing was held on that motion on July 20, 2015, after which it was denied by oral order as well.

14. On July 24, 2015 Cannon filed a notice of association of counsel indicating that attorney Kimberli A. Stretch of Idaho Legal Aid Services Inc. would thereafter represent Cannon.

15. On August 3, 2015 Judge DeMeyer conducted a bench trial. Van Hook appeared *pro se.* The court admitted into evidence the brief focused assessment report prepared by the court appointed assessor, as well as several other exhibits. The court also heard testimony from Van Hook, from Ms. Cannon and from five witnesses called by Van Hook. After both sides rested the court informed the parties that it would announce its findings at a hearing scheduled for August 27, 2015. On that date Judge DeMeyer granted Ms. Cannon sole legal custody of the parties' three children, with Van Hook awarded visitation on the second and fourth weekends of each month if the children wanted to attend those visits. Judge DeMeyer also stated that the custody order he was announcing would supersede the temporary ex parte restraining order regarding RLV that had previously been imposed. Cannon was also granted a decree of divorce, and Cannon's attorney was directed to prepare and submit a written order to that effect, which she did. On September 9, 2015 the court filed a written Judgment and Decree of Divorce.

16. On September 23, 2015 attorney Virginia Bond filed a notice of appearance on Van Hook's behalf. On that same date Van Hook, through counsel, filed a motion for a new trial pursuant to Idaho Rule of Family Law Procedure ("I.R.F.L.P.") 807(a), as well as a separate motion for reconsideration pursuant to I.R.F.L.P. 503(b). Cannon filed responsive pleadings on October 7, 2015. On December 24, 2015, before either motion could be called forth for a hearing Van Hook moved to withdraw them. On December 30, 2015 Van Hook filed a motion to change venue, and scheduled the matter for a hearing on January 28, 2016. Ms. Cannon filed an objection to the motion on January 22, 2016. The magistrate conducted a hearing on those motions, at which the parties represented to the court that they were attempting to reach an agreement that would potentially resolve the matter. The court continued the matter and declined to rule on it at that time. The parties were apparently unable to reach an agreement.

17. On March 8, 2016 Van Hook's attorney filed a motion to withdraw. The affidavits submitted in support of the motion indicate that Van Hook had stated that he no longer trusted his attorney because he believed that Attorney Bond was and had been "protecting" Judge DeMeyer. On that date Cannon's attorney also filed a notice of non-objection to Attorney Bond's request for leave to withdraw. Judge DeMeyer also filed a written order denying Van Hook's motion to change venue on that date. On March 17, 2016 the court filed a written order granting Ms. Bond's request for leave to withdraw.

18. On April 4, 2016 Van Hook, proceeding *pro se*, filed a motion to recuse Judge DeMeyer for cause, along with a supporting affidavit. The motion asserts that "Judge DeMeyer has had improper discussions with parties or counsel for one side in a case; treated [Van Hook] in a demonstrably egregious and hostile manner; violated other specific mandatory standards of judicial conduct, such as judicial rules of procedure or evidence[.]" (Motion to Recuse Judge

With Cause, filed April 1, 2016) Cannon filed an objection to the motion on April 12, 2016. The court held a hearing on the motion on April 21, 2016. After the parties had presented argument the court orally denied Van Hook's motion and awarded Cannon costs and attorney's fees incurred in relation to that motion. A written order to that effect was filed on April 26, 2016. On June 1, 2016 Van Hook filed a notice of appeal of that decision. The appeal was assigned to Senior District Judge D. Duff McKee, and the matter was briefed. Oral argument on Van Hook's appeal was heard on October 11, 2016. After hearing argument the court affirmed the magistrate's denial of the Van Hook's motion to recuse, and the magistrate's award of attorney's fees incurred in connection with that motion. Judge McKee also found based on the record before him that the award of attorney's fees was based on the fact that the motion to recuse was frivolous. (Canyon County Case CV-2014-7409-C, Memorandum Decision on Appeal, filed September 18, 2016, at *2) The order also awards Cannon her costs and attorney's fees on appeal, expressly finding that appeal was without foundation and was therefore frivolous. (*Id.* at *3)[1]

19. On October 20, 2016 Van Hook, proceeding *pro se*, filed a series of new motions before Judge DeMeyer. Those include: (1) a motion for order finding Cannon to be in criminal contempt, along with a notice of sanctions and a notice of arraignment on the alleged contempt; and (2) a motion to change venue and/or new orders regarding custody. The motions were scheduled for a hearing on November 3, 2016. The Honorable Howard Smyser filled in for Judge DeMeyer who was temporarily unavailable on the date of the hearing. Judge Smyser permitted Attorney Stretch to enter a plea of not guilty to the charged criminal contempt on

[1] Cannon's attorney filed a memorandum of costs on October 21, 2016 and an order granting an award of attorney's fees in the amount sought ($10,530.00) was filed on December 21, 2016. Van Hook filed a motion to reconsider that award on January 30, 2017, which was denied by written order dated March 1, 2017.

behalf of her client, but otherwise indicated that he had not been able to get a handle on the lengthy and voluminous proceedings in the matter. Judge Smyser indicated to the parties that he was not prepared to rule on any of Van Hook's motions, which would instead need to be reset before Judge DeMeyer.

20. On November 7, 2016 Van Hook filed another motion seeking to disqualify Judge DeMeyer, along with a supporting affidavit. Also on November 7, 2016 Van Hook filed a motion apparently seeking reconsideration of Judge Smyser's decision to continue the hearing and defer ruling on Van Hook's motion to change venue and/or for a new order of custody, along with a supporting affidavit. On November 8, 2016 Cannon filed a motion to dismiss the charge of criminal contempt against her. Judge DeMeyer heard arguments on all of the motions pending before him on December 8, 2016 and after hearing the parties' arguments the court denied all of Van Hook's motions. The court further found that the motions Van Hook had filed were frivolous and without foundation, and awarded Cannon costs and attorney's fees on that basis.[2] A written order memorializing those findings was filed on December 14, 2016.

21. On December 15, 2016 Van Hook filed a notice of appeal of the ruling announced by Judge DeMeyer on December 8, 2016. The appeal was assigned, again, to Judge McKee who, by written order dated March 20, 2017, affirmed the magistrate's denial of Van Hook's motion to disqualify Judge DeMeyer, and dismissed Van Hook's remaining arguments on appeal as waived. (Canyon County Case CV-2014-7409-C, Memorandum Decision on Appeal, filed March 20, 2017, at *6) Judge McKee further found that the appeal had been brought without

[2] Cannon's attorney filed a memorandum of costs on December 28, 2016 and an order granting an award of attorney's fees and costs in the amount sought ($2,180.20) was filed on January 24, 2017.

foundation and is therefore frivolous." (*Id.*) Van Hook thereafter filed a notice of appeal to the Idaho Supreme Court, and that appeal remains pending.

**Other Proceedings Initiated by Van Hook**

22. In addition to the proceedings described above the Defendant has commenced several other proceedings concerning Cannon and/or the parties' three minor children. On June 30, 2014 Van Hook, acting *pro se*, commenced *Ronald Van Hook vs. Dawn R Van Hook*, Canyon County Case CV-2014-6865-C, an action seeking a civil protection order against Cannon. Though a temporary civil protection order was entered by magistrate Judge Kline, and was extended more than once to permit Van Hook to attempt service of notice of this action by publication, the action was ultimately dismissed by order dated August 18, 2014.

23. On August 25, 2014 Van Hook, acting *pro se*, commenced *Ronald Van Hook vs. Dawn R Van Hook*, Canyon County Case CV-2014-8801-C, another action seeking a civil protection order against Cannon. The matter was dismissed by order dated August 25, 2014.

24. On November 14, 2014 Van Hook, acting *pro se*, commenced *Ronald Van Hook vs. Dawn R Van Hook*, Canyon County Case CV-2014-11708-C, another action that sought a civil protection order against Cannon. The matter was dismissed by order entered the same day it was filed.

25. On September 11, 2015 Van Hook, acting *pro se*, commenced *Ronald Van Hook vs. Dawn R Van Hook, et al.*, Owyhee County Case CV-2015-678-M, an action seeking a temporary ex parte restraining order, apparently concerning the safety of the parties' minor children. The motion was assigned to Magistrate Judge Dan Grober, who denied it that same day.

26. On May 27, 2016 Van Hook, acting *pro se*, commenced *Ronald Van Hook v. Dawn R. Cannon (f/k/a Van Hook)*, Canyon County Case CV-2016-5044-C, an action that purportedly seeks writs of habeas corpus and/or mandamus, and requests that Cannon be ordered to deliver the parties' children to the custody of Van Hook. The matter was assigned to the Honorable Davis F. VanderVelde who conducted a hearing on December 1, 2016 on Van Hook's motions for writs of habeas corpus and mandamus. By written order dated December 16, 2016 Judge VanderVelde dismissed the petition for writ of mandamus but granted a motion by Van Hook to change the venue for the action seeking a writ of habeas corpus to Adams County. No notice of appeal has been filed in this matter by either party.

27. On January 1, 2017 Van Hook commenced that action in Adams County, in a matter captioned as *In The Matter Of The Application For A Writ Of Habeas Corpus On Behalf Of Ronald Lynn Van Hook*, Adams County Case CV-2017-3664. The matter was assigned to the Honorable Christopher S. Nye. By memorandum decision and order dated June 15, 2017 Judge Nye dismissed the petition for writ of habeas corpus and on June 21, 2017 judgment was entered for the respondent, Dawn Cannon. No notice of appeal from this decision has been filed in this matter either.

28. On December 1, 2016 Van Hook, acting *pro se*, commenced *Ronald Van Hook v. Dawn R. Cannon (f/k/a Van Hook), Gary DeMeyer, Kimberli Stretch, Mary Grant, Steven Fischer and Virginia Bond*, Canyon County Case CV-2016-11807-C, an action that seeks $35,000,000 in civil damages against all named defendants, as well as a writ of mandamus that would essentially order Judge DeMeyer to grant Van Hook's request to change venue. The case was assigned to Judge Nye. Judge Nye has conducted several hearing in the matter. The only claims that remain pending in this matter are claims against Cannon. Van Hook's claims against the remaining

defendants have been dismissed by orders dated March 9, 2017, May 26, 2017, June 23, 2017 and July 26, 2017. Van Hook has not filed a notice of appeal of any of those orders.

## Conclusions of Law

Proceedings governing vexatious litigants are governed by I.C.A.R. 59. As stated previously, this matter is properly before the court on a reference made by Judge DeMeyer. *See* I.C.A.R. 59(c) ("A district judge or magistrate judge may, on the judge's own motion or the motion of any party, refer the consideration of whether to enter such an order to the administrative judge.") I.C.A.R. 59 further states that:

> [a]n administrative judge may find a person to be a vexatious litigant based on a finding that a person has done any of the following:
>
> (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.
>
> (2) After a litigation has been finally determined against the person, the person has repeatedly relitigated or attempted to relitigate, pro se, either
>
> > (A) the validity of the determination against the same defendant or defendants as to whom the litigation was finally determined or
> >
> > (B) the cause of action, claim, 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.
>
> (3) In any litigation while acting pro se, repeatedly files unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary delay.
>
> (4) Has previously been declared to be a vexatious litigant by any state or federal court of record in any action or proceeding.

I.C.A.R. 59(d). An administrative judge's findings regarding whether a particular litigant is or is not a vexatious litigant is a matter that is within that judge's discretion. *Telford v. Nye*, 154

Idaho 606, 611, 301 P. 3d 264, 269 (Idaho 2013) ("Rule 59 uses discretionary language:. . . Therefore, we hold that an abuse of discretion standard applies on review.").

If this court is satisfied that one or more of those criteria are present, the court is empowered to "enter a prefiling order prohibiting a vexatious litigant 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(c). Additionally, I.C.A.R. 59 provides a set of specific steps that must be followed if the court:

> 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.

I.C.A.R. 59(e). Cannon argues that Van Hook, by his actions, qualifies as a vexatious litigant under any or all of the first three subsections listed in I.C.A.R. 59(d).[3] Van Hook's written objections and the arguments he presented at the hearings conducted by this court primarily address the first of these three subsections. The court addresses each subsection below.

Before considering the merits of these arguments, however, the court must briefly address an argument raised by Van Hook in his objection to the proposed prefiling order concerning this court's jurisdiction. Specifically, Van Hook argues that because he resides in Owyhee County

[3] Cannon does not argue that such a finding can be made pursuant to I.C.A.R. 59(d)(4). The court is not aware of any evidence in the record that would support a finding pursuant to that provision and the court declines to discuss the issue further.

and not Canyon County, this court lacks jurisdiction over him. It isn't clear whether Van Hook believes that this court lacks personal jurisdiction over him, or whether he believes that the court lacks subject matter jurisdiction to hear this proceeding. *See Matter of Hanson*, 121 Idaho 507, 509, 826 P. 2d 468, 470 (Idaho 1992) ("A court's jurisdiction has two components — jurisdiction of the subject matter and jurisdiction of the person."). Either way Van Hook is mistaken.

As for subject matter jurisdiction, the Idaho Supreme Court has long understood that term to refer to:

> (1) the nature of the cause of action and of the relief sought; (2) the class of cases to which the particular one belongs and the nature of the cause of action and of the relief sought; (3) the power of a court to hear and determine cases of the general class to which the particular one belongs; (4) both the class of cases and the particular subject matter involved; and (5) the competency of the court to hear and decide the case. However, subject matter jurisdiction does not depend on the particular parties in the case or on the manner in which they have stated their claims, nor does it depend on the correctness of any decision made by the court.

*State v. Rogers*, 140 Idaho 223, 228, 91 P. 3d 1127, 1132 (Idaho 2004) (citing 20 AM. JUR.2d Courts § 70 (1995)). This court is empowered to hear and determine cases of the sort brought here by virtue of the plain terms of I.C.A.R. 59, which states that proceedings conducted pursuant to that rule are to be presided over by the administrative judge for a given judicial district. The hearings on this matter were conducted in Canyon County but the court presided over the proceeding in its capacity as administrative judge for the Third Judicial District, as is contemplated by I.C.A.R. 59. The fact that Van Hook resides in Owyhee County (which is part of the Third Judicial District) and not Canyon County does not alter this conclusion.

As for personal jurisdiction, "[t]he voluntary appearance of a party or service of any pleading by the party . . . constitutes voluntary submission to the personal jurisdiction of the

court." *Engleman v. Milanez*, 137 Idaho 83, 84, 44 P.3d 1138, 1139 (Idaho 2002) (quoting Idaho Rule of Civil Procedure ("I.R.C.P.") 4(i)). A party named in a suit may take certain specific actions without submitting to the personal jurisdiction of a court, *see* I.R.C.P. 4.1(b) (listing actions a party may take that do not constitute a voluntary appearance), but Van Hook has not taken any of the particular actions listed in that subsection in response to the commencement of this proceeding. Instead, since this proceeding was referred to this court, Van Hook has filed: an objection to the motion; an objection to the service of that motion on him; what appears to be a motion for voluntary dismissal of Cannon's motion pursuant to I.R.C.P. 41; and an objection to the proposed prefiling order issued by the court. Van Hook has also appeared at two hearings conducted by this court in this proceeding. By voluntarily appearing and participating in this proceeding Van Hook has submitted to the jurisdiction of this court and the court finds that it has personal jurisdiction over him for that reason.

Van Hook's objection to the jurisdiction of this court is without merit. The court now addresses the parties' argument as they relate to I.C.A.R. 59(d)(1-3).

**I.C.A.R. 59(d)(1)**

I.C.A.R. 59(d)(1), as recited above, permits this court to find a person to be a vexatious litigant where that person has commenced or maintained three (3) pro se litigations within the past seven (7) years that have been finally determined adversely to that person. Cannon argues that this condition has been met as Van Hook has had adverse final decisions entered against him in the Canyon County Case CV-2014-7409-C (where Judge DeMeyer entered a Judgment and Decree of Divorce on September 9, 2015), in the civil protection order action brought as Adams County Case CV-2014-3311 (which resulted in the imposition of a civil protection order in

Cannon's favor), and in the proceeding brought as Canyon County Case CV-2016-5044-C (which Judge VanderVelde dismissed by order dated December 16, 2016).

When the court entered its proposed prefiling order it was uncertain that these decisions satisfied the criteria set out in this rule. Problematically, it appeared to the court that two of these actions remained, in some sense, pending. First, when the court entered that order an appeal remained pending in Canyon County Case CV-2014-7409-C. Additionally, while the court was aware that Judge VanderVelde had dismissed the mandamus proceeding brought in Canyon County Case CV-2016-5044-C, the court was also aware that Judge VanderVelde had permitted Van Hook to transfer the habeas proceeding brought in that matter to Adams County, where it was commenced as Adams County Case CV-2017-3664. When this court entered its proposed prefiling order the habeas proceeding remained pending in Adams County. As a consequence the court wasn't sure that any of these proceedings could properly be characterized as litigations "that ha[d] been finally determined adversely to [Van Hook]." I.C.A.R. 59(d)(1).[4]

The situation has changed somewhat since the court initially issued its proposed prefiling order. Most significantly the action commenced by Van Hook as Adams County Case CV-2017-3664 has been dismissed in its entirety by Judge Nye. No notice of appeal has been filed from that decision, and as a result the court is satisfied that it is properly characterized as a litigation that has been finally determined adversely to Van Hook. The same is true for the mandamus proceeding commenced in Canyon County Case CV-2014-7409-C; no notice of appeal was filed by Van Hook after that action was dismissed by Judge Vandervelde, meaning that this litigation

[4] It also wasn't clear to the court whether Van Hook acted *pro se* during some, all or none of the proceedings conducted in Adams County Case Adams County Case CV-2014-3311. As a result the court is unable to determine whether Van Hook prosecuted or maintained that action while acting *pro se*, even if that action has ultimately resulted in a final adverse determination.

has also been finally determined adversely to Van Hook. Both of these two decisions were commenced within the past seven years and were prosecuted by Van Hook acting *pro se*, and the court for that reason finds that these proceedings provide two of the three litigations required for a finding pursuant to this subsection.

As for the third qualifying proceeding, there are several matters that potentially fulfil the criteria. Cannon, as mentioned previously, argues that the proceeding presided over by Judge DeMeyer (Canyon County Case CV-2014-7409-C), has been finally decided adverse to Van Hook. The court isn't as convinced as Canon that this case qualifies, as an appeal of that decision remains pending before the Idaho Supreme Court and until that process is completed the court cannot find that the matter has been finally determined adverse to Van Hook. Similarly, the matter commenced by Van Hook as Canyon County Case CV-2016-11807-C has been largely, but not entirely, dismissed. Until that litigation has concluded there is no basis for the court to conclude that this litigation satisfied the conditions set out in I.C.A.R. 59(d)(1).

The cases discussed above are not, however, the only litigations that Van Hook has commenced while acting *pro se*. As recited above, Van Hook filed three separate actions in Canyon County in 2014 (Canyon County Case Nos. CV-2014-6865-C, CV-2014-8801-C and CV-2014-11708-C), and one action in Owyhee County in 2015 (Owyhee County Case CV-2015-678-M). Each of those actions sought a civil protection order against Cannon, and each of those actions resulted in dismissal. I.C.A.R. 59, by its terms, does not exempt or exclude this or any other sort of action from the scope of the rule. The majority of the arguments presented by Van Hook in his written objection and at the hearings held by the court concern these proceedings, and more specifically concern the sequence of events that preceded, surrounded and followed their commencement, prosecution and disposition. Though Van Hook's arguments shed some

light onto the course of those proceedings they do little to contradict the fact that each of these proceedings was commenced within the last seven (7) years, each resulted in a final determination adverse to Van Hook, and each were commenced and prosecuted by Van Hook acting *pro se*. The court therefore finds that any of these three cases satisfy the requirements set out in I.C.A.R. 59(d)(1), and that any one of the three can provide the third predicate litigation required for finding made pursuant to this subsection. The court, in an exercise of discretion, therefore concludes that there exists here a basis to conclude that Van Hook is vexatious litigant pursuant to I.C.A.R. 59(d)(1).

**I.C.A.R. 59(d)(2)**

I.C.A.R. 59(d)(2) permits a court to find a person to be a vexatious litigant where that person has, in effect, sought to repeatedly re-litigate a final determination made against that person. Cannon argues that this is what has occurred here. Specifically, Cannon asserts that Van Hook, having failed to file a timely motion for reconsideration or appeal of the merits of the judgment that was entered against him by Judge DeMeyer on September 9, 2015 in Canyon County Case CV-2014-7409-C, has instead spent the last year and a half launching a series of meritless collateral attacks targeting the validity of that judgment.

The court largely agrees with Cannon that most of what Van Hook has filed and argued over the past year or so can fairly be characterized as collateral attacks on Judge DeMeyer's September 9, 2015 judgment. As mentioned previously, when the court conducted the initial status conference hearing on February 14, 2017 an appeal was pending before Judge McKee that could conceivably have affected the finality of Judge DeMeyer's judgment. Judge McKee has since determined that the appeal brought by Van Hook was without merit, and indeed was frivolous. (*See* Canyon County Case CV-2014-7409-C, Memorandum Decision on Appeal, filed

March 20, 2017, at *6) In light of this decision the court agrees with Cannon that Van Hook's conduct in that case can properly be described as repeated attempts to re-litigate Judge DeMeyer's September 9, 2015 judgment.

The court also agrees with Cannon that in Canyon County Case CV-2016-5044-C and Adams County Case CV-2017-3664 Van Hook has sought to re-litigate Judge DeMeyer's September 9, 2015 judgment. Those actions, as recited previously, sought a writ of mandate and/or a writ of habeas corpus that would essentially order the relief that Van Hook failed to obtain before Judge DeMeyer. Canyon County Case CV-2016-5044-C was heard before Judge VanderVelde, who dismissed the mandamus action, concluding that no existing authority supported the issuance of the writ in the circumstances presented. It is clear to this court from the record before it that Canyon County Case CV-2016-5044-C was and is little more than a collateral attack on the judgment entered by Judge DeMeyer in Canyon County Case CV-2014-7409-C. The same can be said about Adams County Case CV-2017-3664, which sought a writ of habeas corpus that would essentially have ordered Cannon to produce the parties' minor children and deliver them to Van Hook's custody, and which was dismissed by Judge Nye. The court also agrees with Cannon that Canyon County Case CV-2016-11807-C, which names Judge DeMeyer as a defendant and which seeks an order that would essentially direct Judge DeMeyer to disqualify or recuse himself, is another attempt by Van Hook to re-litigate the merits of Judge DeMeyer's September 9, 2015 judgment.

Based on the foregoing the court concludes that the record in these matters support a finding that Van Hook is a vexatious litigant pursuant to I.C.A.R. 59(d)(2) as well.

**I.C.A.R. 59(d)(3)**

I.C.A.R. 59(d)(3) permits a court to make a vexatious litigant finding where a *pro se* litigant has "repeatedly file[d] unmeritorious motions, pleadings, or other papers, conduct[ed] unnecessary discovery, or engage[d] in other tactics that are frivolous or solely intended to cause unnecessary delay." Cannon argues that Van Hook, while acting *pro se* in Canyon County Case CV-2014-7409-C, has engaged in several of the acts listed by the rule. The court largely agrees.

For one thing, the record in that case clearly supports a finding that Van Hook has "repeatedly file[d] unmeritorious motions, pleadings or other papers[.]" I.C.A.R. 59(d)(3). Though Van Hook was represented by counsel at various points during the course of the proceeding conducted in Canyon County Case CV-2014-7409-C, whenever Van Hook has proceeded *pro se* he has filed numerous unmeritorious motions.

First, a short while after Van Hook's second attorney, Steven Fischer, withdrew from the representation Van Hook filed motions seeking to disqualify Judge DeMeyer, a motion for appointment of a guardian ad litem, and for an order requiring both him and Cannon to submit to a polygraph examination. On June 11, 2015 Judge DeMeyer concluded after a hearing that each of those motions was entirely without merit. Second, shortly after Van Hook's third attorney, Virginia Bond, withdrew from the representation, Van Hook filed another motion to recuse Judge DeMeyer, which was found to be without merit in a written order filed April 26, 2016. Third Van Hook brought a *pro se* appeal of that order that was fully briefed and argued before Judge McKee, who concluded after considering the full record in the matter that the motion to recuse was frivolous, (Canyon County Case CV-2014-7409-C, Memorandum Decision on Appeal September 18, 2016, at *2), as was the appeal brought from the order denying that motion. (*Id.* at *3) Fourth, Van Hook moved to reconsider Judge McKee's decision to award

Cannon costs on appeal, which was denied with the court noting specifically that "neither the Idaho Rules of Civil Procedure, Rules of Family Law Procedure, nor the Idaho Appellate Rules allow for a motion to reconsider an appellate decision." (Canyon County Case CV-2014-7409-C, Order Denying Motion to Reconsider, filed March 1, 2017 at *2). Fifth, Van Hook has responded to his loss on appeal by filing a series of additional motions before Judge DeMeyer, including another motion seeking to disqualify Judge DeMeyer and a motion for a finding of criminal contempt against the Respondent. After a hearing Judge DeMeyer dismissed the contempt proceeding and denied Van Hook's remaining motions, specifically finding that they were "frivolous, unreasonable and without foundation[.]" (Canyon County Case CV-2014-7409-C, Order Denying Various Motions, Granting One, and Ordering Attorney's Fees and Costs, filed December 14, 2016, at *2). Judge McKee has since affirmed Judge DeMeyer's decision, specifically finding that Van Hook's appeal of that decision was brought without foundation and was frivolous. (Canyon County Case CV-2014-7409-C, Memorandum Decision on Appeal September 18, 2016, at *2) Based on the foregoing the court concludes that Van Hook has "repeatedly file[d] unmeritorious motions, pleadings or other papers[,]" as is required for a vexatious litigant finding pursuant to I.C.A.R. 59(d)(3).

Additionally, it is evident from the record before the court that by filing a separate *pro se* actions in Canyon County Case CV-2016-5044-C, Adams County Case CV-2017-3664 and in Canyon County Case CV-2016-11807-C that Van Hook has "engage[d] in other tactics that are frivolous or solely intended to cause unnecessary delay." I.C.A.R. 59(d)(3). Those actions were, for reasons discussed above, little more than a collateral attacks on the judgment entered in Canyon County Case CV-2014-7409-C. The court concludes that Van Hook's commencement

and prosecution of those proceedings can properly be characterized as frivolous tactic for purposes of I.C.A.R. 59(d)(3).

In light of the foregoing the court, in an exercise of discretion therefore concludes that Van Hook is a vexatious litigant pursuant to I.C.A.R. 59(d)(3) as well.

**Van Hook's February 28, 2017 Motion**

As noted previously, on February 28, 2017 Van Hook filed a pleading captioned as "Response to: Notice Regarding Service of Motion RE Vexatious Litigation [] Request for Hearing – Alternatively – Request for Respondents Voluntary Dismissal with advance notice to Plaintiff." It isn't clear what relief Van Hook sought to obtain by filing this motion. It was filed after the court had conducted the February 14, 2016 preliminary hearing on the vexatious litigant referral but during the course of that hearing the court addressed issues regarding delays in the service of Cannon's moving papers. The court inquired regarding whether a continuance would be needed to permit Van Hook a full opportunity to prepare his response. Van Hook instead opted to proceed with the hearing and thereby waived any further objection to the timeliness of the service of Cannon's moving papers. Moreover, even if Van Hook was in some way prejudiced by whatever delay occurred in the initial service of Cannon's motion, he had several months to research, investigate and prepare to present his opposition in advance of the hearing conducted by the court on Van Hook's objection to the court's proposed prefiling order. The motion is denied to the extent that it seeks to argue that Van Hook has been incurably prejudiced by whatever delay occurred in the service of Cannon's motion for a vexatious litigant referral to this court.

Van Hook's motion also appears to request that Cannon voluntarily withdraw her motion for a vexatious litigant referral. Cannon has not done so, and at this point the issue appears to be moot; this court is not proceeding on the basis of Cannon's motion, but rather on the basis of Judge DeMeyer's ruling thereon. More to the point however, Cannon has declined Van Hook's request that she voluntarily dismiss that motion, and Van Hook has presented no argument whatsoever that demonstrates why the court should compel her to.[5] The motion is therefore denied to the extent that it seeks voluntary dismissal of Cannon's motion for a vexatious litigant referral.

## Conclusion and Order

The undersigned Administrative District Judge finds that there is a basis to conclude that Ronald L. Van Hook is a vexatious litigant as defined by I.C.A.R. 59 and that a prefiling order should be entered against him pursuant to I.C.A.R. 59(c), (d) and (e). The court also denies the motion filed by Van Hook dated February 28, 2017. This finding is based on the findings of fact, conclusions of law and analysis set forth above.

Pursuant to this court's finding Ronald L. Van Hook is ordered not to file any new litigation in this state *pro se* without first obtaining leave of the court where the litigation is proposed to be filed.

Ronald L. Van Hook is further notified that disobedience of this prefiling order may be punished as a contempt of court and can result in the court dismissing any action filed by Ronald

[5] Moreover it isn't clear that this court enjoys any authority to order a party to withdraw a motion that was filed in what is technically a separate proceeding.

L. Van Hook that is filed without obtaining leave of the court as provided by I.C.A.R. 59(h) and (j).

DATED this 20 day of September, 2017.

JUDGE
BRADLY S. FORD

Bradly S. Ford
Administrative District Judge

State of Idaho } ss.
County of Canyon }
I hereby certify that the foregoing instrument is a true and correct copy of the original as the same appears in this office.
DATED 9.20.17
CHRIS YAMAMOTO, Clerk of the District Court
By _____ Deputy

DISTRICT COURT
STATE OF IDAHO
THIRD JUDICIAL DISTRICT
COUNTY OF CANYON

# CERTIFICATE OF SERVICE

The undersigned certifies that on 20 September 2017 s/he served a true and correct copy of the original of the forgoing **ORDER** on the following individuals in the manner described upon:

- **Ronald Van Hook**
  204 N. Main St.
  Homedale, ID 83628

- **Kimberli A. Stretch**
  Idaho Legal Aid Services, Inc.
  1305 3rd Street South
  Nampa, ID 83651

  *Attorney for Dawn R. Cannon*

- **Sara Thomas**
  Administrative Director of the Courts
  451 W. State St.
  P.O. Box 83720
  Boise, ID 83720-0101

when s/he placed the same into the latter's respective "pick up" box at the Canyon County Clerk's office, Canyon County Courthouse, Caldwell, Idaho, or when s/he deposited the same in U.S. Mail.

State of Idaho
County of Canyon } ss.
I hereby certify that the foregoing instrument is a true and correct copy of the original as the same appears in this office.
DATED
10-10-17
CHRIS YAMAMOTO, Clerk of the District Court
By K Waldemer
Deputy

CHRIS YAMAMOTO, Clerk of the Court

By: T Peterson
Deputy Clerk of the Court

DISTRICT COURT
STATE OF IDAHO
COUNTY OF CANYON
THIRD JUDICIAL DISTRICT