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

IN RE: MOTION TO DECLARE RONALD L. VAN HOOK A VEXATIOUS LITIGANT	**CASE NO. CV-2017-3444-C**
RONALD L. VAN HOOK, **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.

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.
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> (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.