

# Vexatious Litigants: The Legal Bully

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Vexatious litigants are those who engage in legal proceedings without having a legitimate claim. These litigants use the judicial process to annoy, embarrass, harass or inflict legal expenses on others.

California enacted the “vexatious litigant statute” to address the problem of the persistent litigant who had a number of groundless actions. The first type of vexatious litigant is any person who, during the seven year period immediately preceding the action, has commenced or maintained in *pro per* at least five litigations (other than in small claims court) which have been finally determined against him or have remained pending at least two years without being brought to trial. (C.C.P. § 391(b)(1).) In *pro per* means any person who files a lawsuit on his or her own behalf, without an attorney’s assistance. The second type of vexatious litigant is a person who, after a litigation has been finally determined against him, repeatedly re-litigates in *pro per* against the same defendant. (C.C.P. § 391(b)(2).)

Under the statute, a court may enter a pre-filing motion prohibiting a vexatious litigant from filing any new litigation in California without first obtaining permission from the presiding judge of the court where the filing is proposed. The court in *John v. Superior Court* 2014 WL 580393 specifically dealt with the vexatious litigant statute and how it applies to a *self-represented defendant*.

In *John*, the landlord initiated an unlawful detainer against his tenant (“John”) in November 2011. John originally represented herself and retained counsel prior to trial. Her defense was based on the contention the landlord improperly attempted to increase her rent after she paid all rent lawfully due. The Superior Court returned a verdict for the landlord. Several days later John’s counsel substituted out of the case, and John resumed representing herself. She filed two notices of appeal from the unlawful detainer action, the first from the underlying judgment on the action, and the second from the attorney fee award.

On March 28, 2012, in a separate action with John as the plaintiff, the appellate division of the superior court issued an order to show cause whether John should be declared a vexatious litigant and a pre-filing order entered against her. In April 2012, the court declared John a vexatious litigant and entered a pre-filing order prohibiting John from

filing any new litigation in California courts. The court found state court records “reflected that in the preceding seven years, John has prosecuted in propria persona at least five litigations which have been finally determined against her.” Based on its ruling, the court dismissed John’s appeals.

On May 6, 2014, John submitted a request to file new litigation by a vexatious litigant and an application for an order to vacate the pre-filing order and to remove her name from the vexatious litigant list. The court denied John’s motion on the ground she failed to demonstrate her appeals had merit and were not filed for the purposes of harassment or delay.

John subsequently petitioned the Court of Appeal. The main issue on appeal was whether the vexatious litigant statute’s requirement for obtaining permission to file from the presiding judge applies to an appeal by a self-represented defendant who was previously declared a vexatious litigant.

The Court of Appeal reversed the lower court’s ruling, holding that a defendant who has been declared a vexatious litigant in a prior proceeding is not obligated to obtain leave of the presiding judge prior to filing an appeal of a judgment against him or her. Although the term “litigation” in the vexatious litigant statutes has generally been held to include

appeals and certain writ proceedings, the court found it could not reasonably be construed to include an appeal filed by the unsuccessful defendant in the underlying case. “A defendant who appeals an adverse ruling is not filing ‘new’ litigation or ‘maintaining’ litigation, but rather, is attempting to ‘undo’ the results of litigation that has been instituted against him or her.”

The Court granted John’s petition and directed the appellate division of the superior court to vacate its order dismissing John’s appeals from the unlawful detainer action. Thus vexatious litigants who represent themselves are not precluded from filing an appeal from an adverse judgment, although such appeals will be highly scrutinized.

#### **ABOUT THE AUTHOR**

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