

Cause No. D-1-GN-18-000445

JOSEPH E. McCLAIN, III
Plaintiff,

v.

JUDGE AMY MEACHUM,
Defendant.

§
§
§
§
§
§
§

IN THE DISTRICT COURT OF

345TH JUDICIAL DISTRICT

TRAVIS COUNTY, TEXAS

ORDER DECLARING JOSEPH E. McCLAIN, III A VEXATIOUS LITIGANT

Before this Court came to be considered Defendant's Motion to Declare Joseph E. McClain a vexatious litigant pursuant to Tex. Civ. Prac. & Rem. Code, 11.054 . The Court has reviewed the submissions of the parties, the pleadings and applicable authority and concludes that this motion should be and is GRANTED.

The Court finds that in the seven-year period immediately preceding the date the defendant made his motion under Section 11.051, Plaintiff had commenced, prosecuted, or maintained at least five litigations as a pro se litigant other than in a small claims court that have been finally determined adversely to the plaintiff as required by Tex. Civ. Prac. & Rem. Code 11.054(1):

I. Joseph E. McClain, III's litigation history decided adversely to him

- 1: *Joseph E. McClain, III v. Dell Inc., Seaton Corp. d/b/a Staff Management*, Travis County Cause No. D-1-GN-14-005063 (February. 3, 2015)(dismissing McClain's fourth suit against Dell under Tex. R. Civ. Proc. 91a and declaring McClain to be a Vexatious Litigant).¹

¹ The Court may take judicial notice of orders and opinions of other Court pursuant to Tex. R. Evid., Rule 201(b-d):

- (b) Kinds of Facts That May Be Judicially Noticed. The court may judicially notice a fact that is not subject to reasonable dispute because it:
 - (1) is generally known within the trial court's territorial jurisdiction; or
 - (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.
- (c) Taking Notice. The court:
 - (1) may take judicial notice on its own; or
 - (2) must take judicial notice if a party requests it and the court is supplied with the necessary information.
- (d) Timing. The court may take judicial notice at any stage of the proceeding.

2. *McClain v. Dell, Inc.*, No. 13-13-00398-CV, 2013 Tex. App. LEXIS 14445, at *2, 2013 WL 6211460 (Tex. App.—Corpus Christi Nov. 26, 2013, pet. dismissed w.o.j.)
3. The Texas Supreme Court dismissed McClain's petition for review of Exhibit 2. *McClain v. Dell, Inc.*, TC#: D-1-GN-13-000356. COA No. 13-13-00398-CV, Sup. Ct. Case No. Case No. 14-0247, April 4, 2014.
4. *In re McClain*, No. 13-13-00648-CV, 2013 Tex. App. LEXIS 14446, at *3, 2013 WL 6211510 (Tex. App.—Corpus Christi Nov. 26, 2013, orig. proceeding) (mem. op.).
- 4A: *In re McClain*, Supreme Court Case No. 14-0246, Travis County Cause No. No. 13-13-00648-CV, Court of Appeals Case No. 13-13-00648-CV 2013, Tex. App. LEXIS 14446, at *3, 2013 WL 6211510 (Tex. App.—Corpus Christi Nov. 26, 2013, orig. proceeding, Petition for Writ of Mandamus Denied May 2, 2014).
- 4B: McClain initiates his 3rd lawsuit against Dell in small claims court resulting in dismissal.
5. *McClain v. Dell Inc., Seaton Corp. d/b/a/ Staff Management*, Travis County Cause No. No. 07-15-00141-CV, 2015 WL 2400218 *1 (Tex. App.—Amarillo, May 19, 2015, rev. den.). According to page 1 of the opinion, this was McClain's 4th lawsuit against Dell "over the same dispute. The first suit resulted in summary judgment in favor of Dell on August 1, 2012." Counting the first suit, filed on July 28, 2010 resulting in summary judgment against McClain on August 12, 2012, this would total 10 litigations adverse to McClain in the seven year preceding the filing of the present motion in February 2018. See Exhibit 10
6. *McClain v. Dell Inc., Seaton Corp. d/b/a/ Staff Management*, Travis County Cause No. 07-15-00141-CV 2015, WL 3877685 *1 (Tex. App.—Amarillo, June 23, 2015, rev. den.)
7. *McClain v. Dell Inc., Seaton Corp. d/b/a/ Staff Management*, 2015 WL 5674885 *1-4 (Tex. App.—Amarillo, September 24, 2015, Rehearing Overruled October 22, 2015 review denied Jan 15, 2016)
8. *McClain v. Judge Darlene Byrne, Judge Orlinda Naranjo, and Judge Amy Meachum*, NO. 03-16-00216-CV (Tex. App.—Austin, August 24, 2016 ("Because McClain has not adequately briefed any issue on appeal, we affirm the trial court's judgment.")²)
9. *McClain v. Judge Darlene Byrne, Judge Orlinda Naranjo, and Judge Amy Meachum* COA #: 03-16-00216-CV; TC#: D-1-GN-16-000552; Supreme Court Case No. 17-

² <http://www.search.txcourts.gov/SearchMedia.aspx?MediaVersionID=f2610d08-a0f3-4503-ad2b-896b181b9f5b&coa=coa03&DT=Opinion&MediaID=d59aa905-54c2-422a-b959-1a5338e35473>

0999 (12/22/2017) (The Supreme Court of Texas dismissed McClain's petition for view.³

10. *McClain v. Dell Inc., Seaton Corp. d/b/a/ Staff Management*, Travis County Cause No. D-1-GN-11-002276, filed July 28, 2011. Judge Gisella D. Triana grants summary judgment against McClain on August 1, 2012 in this suit against Dell for defamation.

II. **Tex. Civ. Prac. & Rem. Code Chapter 11**

Tex. Civ. Prac. & Rem Code, Chapter 11 states:

Sec. 11.051. MOTION FOR ORDER DETERMINING PLAINTIFF A VEXATIOUS LITIGANT AND REQUESTING SECURITY.

In a litigation in this state, the defendant may, on or before the 90th day after the date the defendant files the original answer or makes a special appearance, move the court for an order:

- (1) determining that the plaintiff is a vexatious litigant; and
- (2) requiring the plaintiff to furnish security.

Sec. 11.052. STAY OF PROCEEDINGS ON FILING OF MOTION. (a) On the filing of a motion under Section 11.051, the litigation is stayed and the moving defendant is not required to plead:

- (1) if the motion is denied, before the 10th day after the date it is denied; or
- (2) if the motion is granted, before the 10th day after the date the moving defendant receives written notice that the plaintiff has furnished the required security.

Sec. 11.054. CRITERIA FOR FINDING PLAINTIFF A VEXATIOUS LITIGANT.

A court may find a plaintiff a vexatious litigant if the defendant shows that there is not a reasonable probability that the plaintiff will prevail in the litigation against the defendant and that:

- (1) the plaintiff, in the seven-year period immediately preceding the date the defendant makes the motion under Section 11.051, has commenced, prosecuted, or maintained at least five litigations as a pro se litigant other than in a small claims court that have been:

- (A) finally determined adversely to the plaintiff;

³ <http://www.search.txcourts.gov/SearchMedia.aspx?MediaVersionID=dbe59ad0-9178-4280-ac75-05b4b1afa330&coa=cossup&DT=PET%20FOR%20REVIEW%20DISP&MediaID=41ced9e-beeb-479d-991d-952ed9bf76a2>

- (B) permitted to remain pending at least two years without having been brought to trial or hearing; or
 - (C) determined by a trial or appellate court to be frivolous or groundless under state or federal laws or rules of procedure;
- (2) after a litigation has been finally determined against the plaintiff, the plaintiff repeatedly relitigates or attempts to relitigate, pro se, either:
- (A) the validity of the determination against the same defendant 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 as to whom the litigation was finally determined; or
- (3) the plaintiff has previously been declared to be a vexatious litigant by a state or federal court in an action or proceeding based on the same or substantially similar facts, transition, or occurrence.

The Court finds that McClain has, in the seven year period preceding this motion, been declared to be a vexatious litigant by a state court and has, after a litigation has been finally determined against him, re-litigated or attempted to re-litigate, pro se,

- (A) the validity of the determination against the same defendant 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 as to whom the litigation was finally determined;⁴

The Court finds that McClain has commenced or maintained nine litigations as a pro se litigant other than in a small claims court that have been finally determined adversely to the plaintiff;⁵

III. Five (5) Litigations decided adversely to McClain

⁴ Tex. Civ. Prac. & Rem. Code 11.054(2) (A), (B). See **Exhibit 1**, Order dated February 3, 2015 declaring McClain to be a Vexatious Litigant.

⁵ Tex. Civ. Prac. & Rem. Code, Sec. 11.054(1)(A)

In McClain v. Dell Inc., Seaton Corp. d/b/a/ Staff Management, 2015 WL 2400218 *1 (Tex. App.—Amarillo, May 19, 2015, rev. den.), the Court of Appeals found that four suits had been determined adversely to him as of the date of that opinion. The Amarillo Court ruled against him on appeal, totaling 5 prior adversely determined litigations as of May 19, 2015:

...Joseph E. McClain III, proceeding pro se and in forma pauperis, has filed suit against Appellee, Dell Inc. four times over the same dispute. The first suit resulted in summary judgment in favor of Dell on August 1, 2012. Litigation in a second lawsuit resulted in the trial court granting Dell's motion to dismiss with prejudice on May 8, 2013, and after an appeal of the order was likewise dismissed, the Texas Supreme Court dismissed McClain's petition for review in 2014. A petition for writ of mandamus was resolved against McClain in 2013.

In 2013, a Travis County Justice Court judge dismissed McClain's third suit against Dell. On December 4, 2014, McClain filed his fourth suit against Dell which resulted in the trial court granting an Order on Dell's Motion for Sanctions, Motion to Dismiss, and Motion for Declaration that Plaintiff is a Vexatious Litigant on February 3, 2015. McClain filed his pro se notice of appeal expressing "intent to appeal the trial court's judgment rendered on February 03, 2015."

...

Included in McClain's filings is a proposed order that the justices of this Court issue a Stay of Judgment, a declaration that he is a victim of identity theft committed by Dell, damages in the amount of \$837,000.00 plus a 5% employer contribution under his benefits plan, and attorney's fees of \$6,000.00.

...

McClain has not directed this Court to any constitutional provision, statute, or procedural rule demonstrating this Court's authority to grant the relief being requested. After a careful review of the documents, we conclude McClain's pending motions and objection should be denied.

IV. Adversely determined litigation number six (6)

The Amarillo Court of Appeals rejected McClain's challenge to the finding of the district court that he is a vexatious litigant in McClain v. Dell Inc., Seaton Corp. d/b/a/ Staff Management, 2015 WL 3877685 *1 (Tex. App.—Amarillo, June 23, 2015, rev. den.):

By Order dated May 19, 2015, this court denied a myriad of motions and objections filed by Joseph E. McClain III in his appeal from the trial court's order granting Dell Inc., Seaton Corp. d/b/a Staff Management's motion declaring him a vexatious litigant. Now pending before this court are two separate series of motions and objections purportedly related to this appeal and that earlier order.... McClain seeks, among other relief, a default judgment, injunctive relief, a stay of judgment, and a declaration that he is the victim of

identity theft. He has also filed an objection to this court's Order of May 19, 2015, as well as multiple copies of a motion for rehearing challenging the court's previous order.

With all due candor, McClain's objection to this court's earlier order is incomprehensible. His motion for rehearing is confusing....After consideration of the multiple documents pending, we conclude McClain's motions should be denied and his objections overruled.

The Amarillo Court of Appeals denied his motion for rehearing and his motion for review making the finding that he is a vexatious litigant final.⁶ The Court found McClain to have commenced these litigations all of which were finally determined adversely to him within the meaning of Tex. Civ. Prac. & Rem. Code 11.054(1)(A).

V. The Court finds that in the seven-year period immediately preceding the date of defendant's February 21, 2018 motion, Joseph E. McClain, III has commenced, prosecuted, or maintained nine (9) litigations as a pro se litigant other than in a small claims court that have been finally determined adversely to him

The Court makes a findings of fact that in the seven-year period immediately preceding the date of this defendant's February 21, 2018 motion, McClain has commenced, prosecuted, or maintained ten (10) litigations as a pro se litigant other than in a small claims court that have been finally determined adversely to him:

1. *Joseph E. McClain, III v. Dell Inc., Seaton Corp. d/b/a Staff Management*, Travis County Cause No. D-1-GN-14-005063 (February. 3, 2015) (dismissing McClain's suit against Dell under Tex. R. Civ. Proc. 91a and declaring McClain to be a Vexatious Litigant).
2. *McClain v. Dell, Inc.*, No. 13-13-00398-CV, 2013 Tex. App. LEXIS 14445, at *2, 2013 WL 6211460 (Tex. App.—Corpus Christi Nov. 26, 2013, pet. dismiss'd w.o.j.). An Appeal of the dismissal of his 2nd lawsuit was decided adversely to McClain when the Court of Appeals dismissed the appeal for failure to file a brief. *McClain v. Dell, Inc.*, No. 13-13-00398-CV, 2013 Tex. App. LEXIS 14445, at *2, 2013 WL 6211460 (Tex. App.—Corpus Christi Nov. 26, 2013, pet. dismiss'd w.o.j.).
2. *McClain v. Dell, Inc.*, TC#: D-1-GN-13-000356. COA No. 13-13-00398-CV, Sup. Ct. Case. No. Case No. 14-0247, April 4, 2014. The Texas Supreme Court dismissed McClain's petition for review of Exhibit 2.

⁶ *McClain v. Dell, Inc., Seaton Corp. d/b/a Staff Management*, 2015 WL 5674885 *1-4 (Tex. App.-Amarillo, September 24, 2015, Rehearing Overruled October 22, 2015 review denied Jan 15, 2016).

4. *In re McClain*, No. 13-13-00648-CV, 2013 Tex. App. LEXIS 14446, at *3, 2013 WL 6211510 (Tex. App.—Corpus Christi Nov. 26, 2013, orig. proceeding). The Thirteenth Court of Appeals denied a petition for writ of mandamus filed by McClain stating, “[i]n fact, at the present time, the court is unable to discern the precise nature of the relief sought by relator.”
- 4A. Exhibit 4A: *In re McClain*, Supreme Court Case No. 14-0246, Travis County Cause No. No. 13-13-00648-CV, Court of Appeals Case No. 13-13-00648-CV 2013, Tex. App. LEXIS 14446, at *3, 2013 WL 6211510 (Tex. App.—Corpus Christi Nov. 26, 2013, orig. proceeding, Petition for Writ of Mandamus Denied May 2, 2014).
- 4B. 2013: McClain initiated his 3rd lawsuit against Dell in small claims court resulting in dismissal. (Small Claims suits do not count toward the minimum five required)
5. *McClain v. Dell Inc., Seaton Corp. d/b/a/ Staff Management*, Travis County Cause No. 07-15-00141-CV, 2015 WL 2400218 *1 (Tex. App.—Amarillo, May 19, 2015, rev. den.). According to page 1 of the opinion, this was McClain’s 4th lawsuit against Dell “over the same dispute. The first suit resulted in summary judgment in favor of Dell on August 1, 2012.” Counting the first suit, filed on July 28, 2100 resulting in summary judgment against McClain on August 12, 2012, this would total 10 litigations adverse to McClain in the seven year preceding the filing of the present motion in February 2018. See Exhibit 10
6. *McClain v. Dell Inc., Seaton Corp. d/b/a/ Staff Management*, Travis County Cause No. 07-15-00141-CV 2015, WL 3877685 *1 (Tex. App.—Amarillo, June 23, 2015, rev. den.).
7. 2015: McClain unsuccessfully appealed dismissal of his 4th lawsuit and its declaration that he was a vexatious litigant within the meaning of Tex. Civ. Prac. & Rem. Code 11.054. The appeal was determined adversely to him in McClain v. Dell Inc., Seaton Corp. d/b/a/ Staff Management, 2015 WL 5674885 *1-4 (Tex. App.-Amarillo, September 24, 2015, Rehearing Overruled October 22, 2015 review denied Jan 15, 2016):

Joseph E. McClain III, proceeding pro se and in forma pauperis, filed this appeal from the trial court's order granting the motion of Dell, Inc., Seaton Corp. d/b/a Staff Management (hereafter Dell) for sanctions, a declaration that McClain is a vexatious litigant, dismissing McClain's fourth suit against Dell, and ordering him to pay Dell \$4,000 in attorney's fees...

We affirm the trial court's order.

According to the record, in 2011, McClain ... filed his original suit against Dell in 2011 asserting breach of an implied contract, wrongful termination, and defamation. His pleading was also peppered with negligence claims. That suit resulted in a summary

judgment in Dell's favor on August 1, 2012. McClain next filed suit for declaratory judgment against Dell in April 2013 arising from the same circumstances as the first suit. Litigation ended when the trial court granted Dell's motion to dismiss with prejudice on May 8, 2013.

An appeal of that order was dismissed for failure to file a brief. *McClain v. Dell, Inc.*, No. 13-13-00398-CV, 2013 Tex. App. LEXIS 14445, at *2, 2013 WL 6211460 (Tex. App.—Corpus Christi Nov. 26, 2013, pet. dismiss'd w.o.j.) (mem. op.).² The Thirteenth Court of Appeals also denied a petition for writ of mandamus filed by McClain in conjunction with that appeal wherein it stated, “[i]n fact, at the present time, the court is unable to discern the precise nature of the relief sought by relator.” *In re McClain*, No. 13-13-00648-CV, 2013 Tex. App. LEXIS 14446, at *3, 2013 WL 6211510 (Tex. App.—Corpus Christi Nov. 26, 2013, orig. proceeding) (mem. op.). In 2013, McClain initiated a third lawsuit against Dell in a small claims court in Travis County, Texas. Again, the suit was dismissed. On December 4, 2014, McClain filed the underlying suit, his fourth claim against Dell arising from the same circumstances. Via his original petition, he alleged, among other claims, that Dell violated the Deceptive Trade Practices—Consumer Protection Act and the Theft Liability Act. He then amended his petition which reads like a laundry list of statutes and rules. He also asserts a conspiracy against him.

*2 Dell answered the suit and asserted affirmative defenses of res judicata, collateral estoppel, and judicial privilege. The suit was resolved when the trial court granted Dell's Motion for Sanctions, Motion to Dismiss, and Motion for Declaration that Plaintiff is a Vexatious Litigant. McClain filed his pro se notice of appeal expressing “intent to appeal the trial court's judgment rendered on February 03, 2015.”

...

DECLARATION AS A VEXATIOUS LITIGANT

Under chapter 11 of the Texas Civil Practice and Remedies Code, a trial court “may find a plaintiff a vexatious litigant,” if certain statutory elements are met. Tex. Civ. Prac. & Rem. code Ann. § 11.054 (West Supp.2014). One of the ways to declare a plaintiff a vexatious litigant is for a defendant to show that there is not a reasonable probability the plaintiff will prevail in the litigation against the defendant and that after the litigation has been finally determined against the plaintiff, the plaintiff repeatedly relitigates or attempts to relitigate, pro se, either: (A) the validity of the determination against the same defendant 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 as to whom the litigation was finally determined. *Id.* at § 11.054(2).

...

*3 According to the record, McClain, proceeding pro se, first sued Dell in 2011. The suit ended in summary judgment in Dell's favor. A second suit filed by McClain was dismissed in Dell's favor at the trial court level and at the appellate level. A petition for

writ of mandamus was also decided against McClain, after which he pursued another suit against Dell based on the same underlying facts as the previous suits. After that claim was dismissed, McClain filed a fourth suit. McClain proceeded pro se in all four suits, the appeal, and the mandamus proceeding. Based upon this record, we conclude the trial court did not abuse its discretion in declaring McClain a vexatious litigant against Dell after his repeated attempts to litigate the same claims which had previously been resolved against him.

...

*4 McClain's fourth suit is barred by res judicata. The doctrine of res judicata seeks to bring an end to litigation, prevent vexatious litigation, maintain stability of court decisions, promote judicial economy, and prevent double recovery. Citizens Ins. Co. of Am. v. Daccach, 217 S.W.3d 430, 449 (Tex.2007). For the doctrine to apply there must be: (1) a prior final judgment on the merits by a court of competent jurisdiction; (2) identity of parties or those in privity with them; and (3) a second action based on the same claims that were raised or could have been raised in the first action. *Id.* A final judgment on an action extinguishes the right to bring suit on the transaction, or series of connected transactions, out of which the action arose. Barr v. Resolution Trust Corp. ex rel. Sumbelt Fed. Sav., 837 S.W.2d 627, 631 (Tex.1992).

Since 2011, McClain has filed four suits against Dell, each arising from the same set of circumstances and each suit resolved in Dell's favor. The merits of his claim were resolved in 2012 and the doctrine of res judicata applies. McClain is not entitled to any relief from this court. His additional undesignated issue is overruled.

MOTIONS AND OBJECTIONS

By orders dated May 19, 2015, and June 23, 2015, this court considered numerous motions and objections filed by McClain and ruled that they were either beyond the authority granted to this court by the Texas Constitution or statute, or they were simply incomprehensible and confusing. Notwithstanding our prior rulings, McClain has again filed a plethora of motions and objections. Upon reviewing those filings, we again find they are either beyond the relief this court may grant or are incomprehensible. Consequently, all pending motions are denied and all pending objections are overruled.

CONCLUSION

The trial court's order is affirmed and all other relief requested is denied.

8. *McClain v. Judge Darlene Byrne, Judge Orlinda Naranjo, and Judge Amy Meachum*, NO. 03-16-00216-CV (Tex. App.-Austin, August 24, 2016("Because McClain has not adequately briefed any issue on appeal, we affirm the trial court's judgment.")).

9. *McClain v. Judge Darlene Byrne, Judge Orlinda Naranjo, and Judge Amy Meachum*, COA #: 03-16-00216-CV; TC#: D-1-GN-16-000552; Supreme Court Case No. 17-0999 (12/22/2017) (The Supreme Court of Texas dismissed McClain's petition for review.).
10. *McClain v. Dell Inc., Seaton Corp. d/b/a/ Staff Management*, Travis County Cause No. D-1-GN-11-002276, filed July 28, 2011. Judge Gisella D. Triana grants summary judgment against McClain on August 1, 2012 in this suit against Dell for defamation.

The Court finds as a matter of law, that writs of mandamus and appeals are considered civil proceedings under Tex. Civ. Prac. & Rem. Code 11.054(1)(A). *Retzlaff v. GoAmerica Commc'ns Corp.*, 356 S.W 3d 699-799 (Tex. App.–El Paso, no pet); *Cooper v. McNulty*, No. 05-15-00801-CV, 2016 Tex. App. LEXIS 11333, 2016 WL 6093999 *2 (Tex. App.–Dallas Oct. 19, 2016, no pet.); *Aubrey v. Aubrey*, No. 05-16-00506-CV, 2017 Tex. App. LEXIS 5213, 2017 WL 2464678, 523 S.W.3d 299 (Tex. App.–Dallas June 7, 2017, no pet.). Because McClain has had (9) litigations decided against him in the seven (7) years preceding the February 2018 filing of this present motion, and has previously been declared to be a vexatious litigant by a state court in an action, the Court declares Joseph E. McClain, III, a vexatious litigant. The Court orders Plaintiff to provide security in the amount of \$10,000 on or before April 1, 2018 before he may proceed further in this suit, as provided by Tex. Civ. Prac. & Rem. Code. 11.055:

Sec. 11.055. SECURITY.

- (a) A court shall order the plaintiff to furnish security for the benefit of the moving defendant if the court, after hearing the evidence on the motion, determines that the plaintiff is a vexatious litigant.
- (b) The court in its discretion shall determine the date by which the security must be furnished.
- (c) The court shall provide that the security is an undertaking by the plaintiff to assure payment to the moving defendant of the moving defendant's reasonable expenses incurred in or in connection with a litigation commenced, caused to be commenced, maintained, or caused to be maintained by the plaintiff, including costs and attorney's fees.

VI. Prefiling Order Issued

The Court finds that Joseph E. McClain, III, should be and is subject to a prefiling order and is prohibited from filing, prose, new litigation in any state district or statutory county court in Texas, as provided in Sec. 11.102:

PERMISSION BY LOCAL ADMINISTRATIVE JUDGE. (a) A vexatious litigant subject to a prefiling order under Section 11.101 is prohibited from filing, pro se, new litigation in a court to which the order applies without seeking the permission of:

- (1) the local administrative judge of the type of court in which the vexatious litigant intends to file, except as provided by Subdivision (2); or
 - (2) the local administrative district judge of the county in which the vexatious litigant intends to file if the litigant intends to file in a justice or constitutional county court.
- (b) A vexatious litigant subject to a prefiling order under Section 11.101 who files a request seeking permission to file a litigation shall provide a copy of the request to all defendants named in the proposed litigation.

VII. Contempt of Court Warning

The Court finds that Joseph E. McClain, III should be and is subject to being held in contempt of court if he violates this order as provided by Sec. 11.101:

11.101. PREFILING ORDER; CONTEMPT. (a) A court may, on its own motion or the motion of any party, enter an order prohibiting a person from filing, pro se, a new litigation in a court to which the order applies under this section without permission of the appropriate local administrative judge described by Section 11.102(a) to file the litigation if the court finds, after notice and hearing as provided by Subchapter B, that the person is a vexatious litigant.

- (b) A person who disobeys an order under Subsection (a) is subject to contempt of court.
- (c) A litigant may appeal from a prefiling order entered under Subsection (a) designating the person a vexatious litigant.
- (d) A prefiling order entered under Subsection (a) by a justice or constitutional county court applies only to the court that entered the order.

(e) A prefiling order entered under Subsection (a) by a district or statutory county court applies to each court in this state.

The Court further directs the Clerk of this Court to not file any new litigation by Joseph E. McClain, III, and informs Mr. McClain of his duty to seek permission from the appropriate administrative judge, after giving notice to potential defendants, before commencing new litigation, as provided by Tex. Civ. Prac. & Rem. Code 11.102 and 11.103:

11.102. PERMISSION BY LOCAL ADMINISTRATIVE JUDGE. (a) A vexatious litigant subject to a prefiling order under Section 11.101 is prohibited from filing, pro se, new litigation in a court to which the order applies without seeking the permission of:

(1) the local administrative judge of the type of court in which the vexatious litigant intends to file, except as provided by Subdivision (2); or

(2) the local administrative district judge of the county in which the vexatious litigant intends to file if the litigant intends to file in a justice or constitutional county court.

(b) A vexatious litigant subject to a prefiling order under Section 11.101 who files a request seeking permission to file a litigation shall provide a copy of the request to all defendants named in the proposed litigation.

(c) The appropriate local administrative judge described by Subsection (a) may make a determination on the request with or without a hearing. If the judge determines that a hearing is necessary, the judge may require that the vexatious litigant filing a request under Subsection (b) provide notice of the hearing to all defendants named in the proposed litigation.

(d) The appropriate local administrative judge described by Subsection (a) may grant permission to a vexatious litigant subject to a prefiling order under Section 11.101 to file a litigation only if it appears to the judge that the litigation:

(1) has merit; and

(2) has not been filed for the purposes of harassment or delay.

(e) The appropriate local administrative judge described by Subsection (a) may condition permission on the furnishing of security for the benefit of the defendant as provided in Subchapter B.

(f) A decision of the appropriate local administrative judge described by Subsection (a) denying a litigant permission to file a litigation under Subsection (d), or conditioning

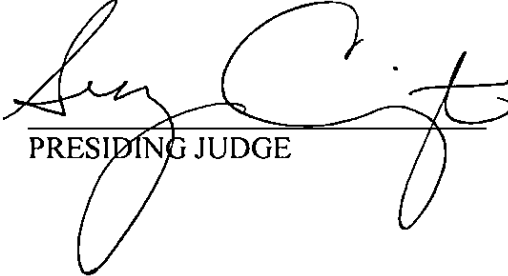
permission to file a litigation on the furnishing of security under Subsection (e), is not grounds for appeal, except that the litigant may apply for a writ of mandamus with the court of appeals not later than the 30th day after the date of the decision. The denial of a writ of mandamus by the court of appeals is not grounds for appeal to the supreme court or court of criminal appeals.

Sec. 11.103. DUTIES OF CLERK. (a) Except as provided by Subsection (d), a clerk of a court may not file a litigation, original proceeding, appeal, or other claim presented, pro se, by a vexatious litigant subject to a prefiling order under Section 11.101 unless the litigant obtains an order from the appropriate local administrative judge described by Section 11.102(a) permitting the filing.

(c) If the appropriate local administrative judge described by Section 11.102(a) issues an order permitting the filing of the litigation, the litigation remains stayed and the defendant need not plead until the 10th day after the date the defendant is served with a copy of the order.

(d) A clerk of a court of appeals may file an appeal from a prefiling order entered under Section 11.101 designating a person a vexatious litigant or a timely filed writ of mandamus under Section 11.102.

It is so ORDERED this 28th day of April 2018.


PRESIDING JUDGE