



Judicial Council of California · Administrative Office of the Courts

455 Golden Gate Avenue · San Francisco, California 94102-3688

www.courtinfo.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on: December 14, 2010

Title	Agenda Item Type
Judicial Council-sponsored Legislation (Civil Cases): Vexatious Litigants	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Code Civ. Proc., § 391.7; add § 391.8	December 14, 2010
Recommended by	Date of Report
Policy Coordination and Liaison Committee	October 28, 2010
Hon. Marvin R. Baxter, Chair	Contact
Trial Court Presiding Judges Advisory Committee	Susan R. McMullan, 415-865-7990
Hon. Mary Ann O'Malley, Chair	susan.mcmullan@jud.ca.gov
Civil and Small Claims Advisory Committee	
Hon. Dennis M. Perluss, Chair	

Executive Summary

The Policy Coordination and Liaison Committee (PCLC), Trial Court Presiding Judges Advisory Committee, and Civil and Small Claims Advisory Committee recommend that the Judicial Council sponsor legislation to amend Code of Civil Procedure section 391.7 and add section 391.8, to improve practice and procedure involving vexatious litigants.

Recommendation

The Policy Coordination and Liaison Committee, Trial Court Presiding Judges Advisory Committee (TCPJAC), and Civil and Small Claims Advisory Committee (CSCAC) recommend that the Judicial Council sponsor legislation to do the following:

1. Amend Code of Civil Procedure section 391.7 to add “presiding justice or” before “presiding judge” and to add “or his or her designee” to clarify that the provision applies to matters in the Court of Appeal and that a presiding justice or judge may delegate authority to make the prefiling determination that an individual is a vexatious litigant or is permitted to file an action;
2. Amend Code of Civil Procedure section 391.7, subdivision (c), to authorize the presiding justice or presiding judge to order that notice be given of a vexatious litigant’s status if the clerk mistakenly files litigation without a prefiling order; and
3. Add Code of Civil Procedure section 391.8 to provide procedures for an application to vacate a prefiling order and remove a litigant’s name from the Judicial Council’s list of vexatious litigants, along with guidance for deciding the application.

The text of the proposed amendments is attached at pages 6–7.

Previous Council Action

The Judicial Council has not previously sponsored or taken positions on legislation addressing these issues.

Rationale for Recommendation

Prefiling order; notification of vexatious litigant status

Code of Civil Procedure section 391.7(a) authorizes a judge to enter a prefiling order that prohibits a vexatious litigant from filing any new litigation as a self-represented litigant without first obtaining leave of the presiding judge. Adding “presiding justice” would recognize that the statute applies in the Courts of Appeal as well. In addition, the TCPJAC recommended that the statute be amended to allow a presiding judge to designate another judge to carry out the presiding judge’s duties under this statute (entering a prefiling order, determining an application for prefiling approval, and giving notice of vexatious litigant’s status if new litigation is mistakenly filed without prefiling approval).

Currently, Code of Civil Procedure section 391.7(c) allows a party to give notice of a vexatious litigant’s status if the clerk mistakenly files new litigation by the vexatious litigant without a prefiling order. The proposed amendment would address the situation in which a defendant may not know that the plaintiff is a vexatious litigant subject to a prefiling order and, on notice of the presiding judge, would allow the action to be stayed and automatically dismissed within ten days unless the vexatious litigant obtains a prefiling order permitting the filing of the litigation.

Removal from vexatious litigant list

On occasion, a vexatious litigant subject to a prefiling order seeks to be removed from the vexatious litigant list. A vexatious litigant need not remain on the list forever if he or she can demonstrate “a mending of the ways.” (*Luckett v. Panos* (2008) 161 Cal.App.4th 77, 83.) The litigant must file an application in the court that entered the prefiling order to vacate the order

and to be removed from the vexatious litigant list. (*Id.* at p. 96.) The criteria for vacating a prefiling order and removing a vexatious litigant from the list are that (1) there has been a material change in the facts upon which the order was entered, or (2) the ends of justice would be served. (See *PBA, LLC v. KPOD, Ltd.* (2003) 112 Cal.App.4th 965, 978.)

The proposed legislation permitting a vexatious litigant subject to a prefiling order to seek to have the order reversed requires the vexatious litigant to demonstrate that his or her application is supported by a change in the facts (i.e., he or she is no longer a vexatious litigant) or necessitated by the ends of justice.

Comments, Alternatives Considered, and Policy Implications

This proposal was circulated for comment as part of the spring 2010 invitation-to-comment cycle. Nine courts, organizations, or individuals submitted comments, including two managing attorneys at the Courts of Appeal, three superior courts, the California Judges Association (CJA), a public interest law firm, a State Bar committee, and a local bar association.¹ All agreed with the proposal or agreed with some modifications suggested. In addition, the Administrative Presiding Justices Advisory Committee (APJAC) was consulted on this proposal. One member of the APJAC raised a concern that each denial of an application for removal would be appealable. Although it is true that an order denying an application for removal from the vexatious litigant list would be appealable, the proposal does not create a new right. Currently, a vexatious litigant has the right to seek removal from the vexatious litigant list and appeal the denial of that request. The proposed legislation would provide procedures and standards for deciding an application and would limit the frequency of a request by a vexatious litigant to once every 12 months.

Most of the comments received concerned whether section 391.7 should be expanded to apply to a vexatious litigant represented by an attorney or how frequently a vexatious litigant should be permitted to seek removal from the vexatious litigant list. The advisory committees, however, decided to defer recommending legislation that would expand the applicability of section 391.7 to a vexatious litigant represented by counsel.

Five commentators specifically noted their agreement with the proposed new statute that would provide procedures for a vexatious litigant to seek removal from the vexatious litigant list and guidance for a judge deciding a removal request. Four of the five suggested that the frequency with which a vexatious litigant could seek removal be decreased from once per 180 days, as set forth in the proposal that circulated for comment, to once a year. One commentator stated, “Ventura Superior Court agrees that it is unlikely that a vexatious litigant will be able to make the necessary showing of a change in the facts or the ends of justice supporting his or her removal from the vexatious litigant list without the passage of a significant amount of time between requests and therefore recommends that the frequency within which a vexatious litigant is permitted to apply [for] removal from the list be once every 365 days.” This change has been made to the text of the proposed legislation.

¹ A chart providing the full text of the comments and the proposed committee responses is attached at pages 8–21.

One commentator, the Superior Court of Los Angeles County, addressed the required showing to be made by a vexatious litigant seeking removal. As circulated for comment, proposed new section 391.8 would authorize a judge to vacate a prefiling order and order removal of a vexatious litigant's name from the Judicial Council's list of vexatious litigants if the litigant demonstrated a material change in the facts on which the order was granted or that the ends of justice would be served by vacating the order. The commentator suggested modifying the proposal to provide that a court may vacate a prefiling order and remove a vexatious litigant from the Judicial Council's vexatious litigant list upon a showing of:

(a) "a propensity for honesty in his or her application"; (b) an accurate confrontation with the facts on which the prior vexatious litigation finding was made; (c) "genuine remorse for the costs of litigation inflicted on the defendants who were the object of previous lawsuits"; (d) that the applicant has given up the "habit of suing people as a way of life"; and (e) if the applicant has proceeded in forma pauperis, "any changed financial circumstances allowing applicant to pay part or all of the filing fees" previously waived, and "some genuine effort of restitution toward the previous victims of his/her litigation." (Quoting *Luckett v. Panos* (2008) 161 Cal.App.4th 77, 93–94.)

In developing this proposal, the advisory committees considered listing the above factors discussed by the court in *Luckett v. Panos, supra*. The committees concluded, however, that simply listing the factors for reversing an injunction set out in Code of Civil Procedure section 533 (material change in facts upon which the injunction was granted or the ends of justice would be served by dissolution of the injunction)² would be more accurate and provide the court with more workable criteria to determine a request to vacate the prefiling order and to be removed from the vexatious litigant list. It likely would be difficult for a judge to determine, on the basis of a vexatious litigant's application and appearance at a hearing, whether he or she, among other conditions, has a propensity for honesty and has experienced genuine remorse for the costs incurred by defendants in his or her earlier litigation. The advisory committees recommend the standard in Code of Civil Procedure section 533 with the following change: Rather than joining the elements with "or" they would be joined with "and" to make the standard more strict. Thus, the statute would require a material change in the facts on which the order was granted *and* that the ends of justice would be served by vacating the order.

The Superior Court of Los Angeles County also suggested modifying proposed section 391.8 to require that an application to vacate the prefiling order and remove the vexatious litigant's name from the Judicial Council's list of vexatious litigants be made before the judge who entered the prefiling order, if available. The advisory committees agree and this change has been made to the text of the proposal.

The changes recommended by this proposal, along with related form revisions to be circulated in 2011, and training on these changes, should improve procedures governing vexatious litigants.

² These two criteria were applied in *PBA, LLC v. KPOD, Ltd., supra*, and *Luckett v. Panos, supra*.

Implementation Requirements, Costs, and Operational Impacts

There are no implementation requirements. If proposed section 391.8 becomes law, the advisory committees will develop and recommend a Judicial Council form for a vexatious litigant to use in seeking removal from the vexatious litigant list. The proposal is expected to improve practices in this area by providing a clear standard for removal from the vexatious litigant list and a limitation on how frequently a vexatious litigant can seek removal from the list. The proposed amendment to section 391.7 may reduce the number of actions by a vexatious litigant that proceed past the filing stage by allowing a presiding justice or presiding judge to give notice of the vexatious litigant's status and stay the action if the clerk mistakenly files the litigation without an order approving the filing.

Relevant Strategic Plan Goals and Operational Plan Objectives

Because this proposal recommends statutory changes to improve trial court practices and procedures, it supports the policies of promoting innovative and effective practices for processing cases and the fair, timely, effective, and efficient processing of cases underlying Goal III: Modernization of Management and Administration.

Attachments

1. Code of Civil Procedure sections 391.7 and 391.8 at pages 6–7
2. Chart of comments, at pages 8–21

Code of Civil Procedure section 391.7 would be amended and section 391.8 would be added to read as follows:

1 § 391.7 Vexatious litigant; Prefiling order prohibiting filing of new litigation

2
3 (a) In addition to any other relief provided in this title, the court may, on its own motion or
4 the motion of any party, enter a prefiling order which prohibits a vexatious litigant from
5 filing any new litigation in the courts of this state in propria persona without first
6 obtaining leave of the presiding justice or presiding judge, or his or her designee, of the
7 court where the litigation is proposed to be filed. Disobedience of the order by a
8 vexatious litigant may be punished as a contempt of court.

9 (b) The presiding justice or presiding judge, or his or her designee, shall permit the filing of
10 that litigation only if it appears that the litigation has merit and has not been filed for the
11 purposes of harassment or delay. The presiding justice or presiding judge, or his or her
12 designee, may condition the filing of the litigation upon the furnishing of security for the
13 benefit of the defendants as provided in Section 391.3.

14 (c) The clerk may not file any litigation presented by a vexatious litigant subject to a
15 prefiling order unless the vexatious litigant first obtains an order from the presiding
16 justice or presiding judge, or his or her designee, permitting the filing. If the clerk
17 mistakenly files the litigation without the order, any party may file with the clerk, or the
18 presiding justice or presiding judge, or his or her designee, may direct the clerk, to file
19 and serve on the plaintiff and other parties a notice stating that the plaintiff is a vexatious
20 litigant subject to a prefiling order as set forth in subdivision (a). The filing of the notice
21 shall automatically stay the litigation. The litigation shall be automatically dismissed
22 unless the plaintiff within 10 days of the filing of that notice obtains an order from the
23 presiding justice or presiding judge, or his or her designee, permitting the filing of the
24 litigation as set forth in subdivision (b). If the presiding justice or presiding judge, or his
25 or her designee, issues an order permitting the filing, the stay of the litigation shall
26 remain in effect, and the defendants need not plead, until 10 days after the defendants are
27 served with a copy of the order.

28 (d) For purposes of this section, "litigation" includes any petition, application, or motion
29 other than a discovery motion, in a proceeding under the Family Code or Probate Code,
30 for any order.

31 (e) The clerk of the court shall provide the Judicial Council a copy of any prefiling orders
32 issued pursuant to subdivision (a). The Judicial Council shall maintain a record of
33 vexatious litigants subject to those prefiling orders and shall annually disseminate a list of
34 those persons to the clerks of the courts of this state.

35
36
37 § 391.8 Order to Vacate Prefiling Order and Remove Name from Statewide Vexatious Litigant
38 List

39
40 (a) A vexatious litigant subject to a prefiling order under section 391.7 may file an

1 application to vacate the prefiling order and remove the vexatious litigant's name from
2 the Judicial Council's list of vexatious litigants subject to prefiling orders. The
3 application must be filed in the court that entered the prefiling order, either in the action
4 in which the prefiling order was entered or in conjunction with a request to the presiding
5 justice or presiding judge to file new litigation under section 391.7. The application must
6 be made before the justice or judge who entered the order, if that justice or judge is
7 available. If the justice or judge who entered the order is not available, the application
8 must be made before the presiding justice or presiding judge, or his or her designee.
9

10 (b) A vexatious litigant who has unsuccessfully made an application under (a) may not file
11 another application sooner than 12 months after denial of the previous application.
12

13 (c) The court may vacate a prefiling order and order removal of a vexatious litigant's name
14 from the Judicial Council's list of vexatious litigants subject to prefiling orders upon a
15 showing that there has been a material change in the facts upon which the order was
16 granted and that the ends of justice would be served by vacating the order.

LEG10-03**Civil Cases: Vexatious Litigants** (Code Civ. Proc., §§ 391.7 and 391.8)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	California Judges Association Jordan O. Posamentier Legislative Counsel San Francisco	A	We support the proposed amendments to Code of Civil Procedure section 391.7 because they would (a) clarify that the statute applies in courts of appeal; (b) allow a presiding judge to delegate authority to make a pre-filing determination; and (c) limit the frequency with which a vexatious litigant can apply for removal from the vexatious litigant list to no more than once every 180 days. In addition, in response to the request for comments, we would support an amendment that would make the prefiling approval requirement apply to a vexatious litigant represented by an attorney. Each of these changes to the Code appears reasonable and would greatly improve court processes in relation to vexatious litigants.	The committees note the support for further amendment that would make the prefiling approval requirement apply to a vexatious litigant represented by an attorney. The committees defer making a recommendation on this part of the proposal.
2.	Court of Appeal, Second Appellate District Katherine Lynn Managing Attorney Los Angeles	A AM	I agree with the proposed changes to Code of Civil Procedure section 391.7. I agree with the proposed addition of Code of Civil Procedure section 391.8 if modified. 1. Proposed Code of Civil Procedure section 391.8 provides for an application by a vexatious litigant to remove a prefiling order. Subdivision (a) provides, in part, "...The application must be filed	The committees agree and have made the change suggested.

LEG10-03

Civil Cases: Vexatious Litigants (Code Civ. Proc., §§ 391.7 and 391.8)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>in the court that entered the prefiling order <i>and</i> in the action in which the prefiling order was entered <i>or</i> in conjunction with a request to the presiding justice or judge to file new litigation under section 391.7.” (Italics added.)</p> <p><i>Lockett v. Panos</i> (2008) 161 Cal.App.4th 77, 96, stated that a plaintiff’s “request to lift the injunction represented by the prefiling order could only be considered by the court that originated that injunction.” In the proposed legislation, the presence of “and” and “or” in the same sentence (italicized above) may not make it clear that “or in conjunction with a request to the presiding justice or judge to file new litigation under section 391.7” is not an alternative to “in the court that entered the prefiling order.”</p> <p>For clarity, it is recommended that the word “and” be deleted, and a comma and the word “either” be inserted before “in the action in which the prefiling order was entered in conjunction with a request to the presiding justice or judge to file new litigation under section 391.7.”</p> <p>The sentence would read “...The application must be filed in the court that entered the prefiling order, and <u>either</u> in the action in which the prefiling order was entered or in conjunction with a request to</p>	<p>This change has been made. A request to be removed from the list must be made in the court in which the prefiling order was entered, either in the case in which the order was entered or in conjunction with a request to file new litigation in the same court.</p>

LEG10-03

Civil Cases: Vexatious Litigants (Code Civ. Proc., §§ 391.7 and 391.8)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>the presiding justice or judge to file new litigation under section 391.7.”</p> <p>2. Proposed Code of Civil Procedure section 391.8, subdivision (b) provides that “An application by a vexatious litigant under (a) may not be made more than once in a 180-day period.” The drafters’ comments state that “[p]residing judges have indicated that some vexatious litigants request removal on a weekly or monthly basis.” It further states that it is unlikely that a vexatious litigant will be able to show a change in facts or that the ends of justice support removal from the list “without the passage of a significant amount of time between requests.”</p> <p>It is suggested that the 180-day limitation of bringing successive applications be changed to “may not be more than once in a 180 <u>365</u>-day period.”</p> <p><i>Lockett v. Panos, supra</i>, 161 Cal.App.4th 77, 94-94, suggested how a vexatious litigant might show a change in circumstances that would merit removal of a prefiling order, including that “the applicant must actually give up the habit of suing people as a way of life.” In particular, the opinion suggested “a decent interval – certainly no less than four years” after which a vexatious litigant could “show that he has stopped his</p>	<p>The committees agree and this change has been made.</p>

LEG10-03

Civil Cases: Vexatious Litigants (Code Civ. Proc., §§ 391.7 and 391.8)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>obsessive litigation and ...that he has genuinely ‘mended his ways’ ...such that the court would “welcome the occasion to vacate the ...prefiling order.” (<i>Id.</i> at p. 96.)</p> <p>It is not suggested that the proposed statute provide for a 4-year limitation on bringing successive applications, but it is unlikely that a vexatious litigant could make the requisite showing 180 days after his previous application was denied.</p> <p>Moreover, the 180-day provision seems to invite this application every six months by individuals already known to have a propensity to come to court. And although the proposed statute does not provide for review of the denial of an application, <i>Luckett v. Panos, supra</i>, 161 Cal.App.4th at pages 89-90 indicates that such denial is appealable under Code of Civil Procedure section 904.1, subdivision (a)(6) as an appeal from an order refusing to dissolve an injunction. If the period for bringing a new application were 180 days, there could well be a steady stream of appeals every six months from thee denials. Presumably the vexatious litigant would have to obtain permission to file each such appeal (see <i>McColm v. Westwood Park Assn.</i> (1998) 62 Cal.App.4th 1211, 1216-1217, 1220),</p>	

LEG10-03

Civil Cases: Vexatious Litigants (Code Civ. Proc., §§ 391.7 and 391.8)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>absent any provision in the proposed new statute that waives the requirement of a prefiling order for such an appeal. Even if the presiding justice or administrative prejudice were to deny the vexatious litigant a prefiling order for such an appeal, there would still be a burden on the presiding justice or administrative presiding justice, who would have to rule on semi-annual requests for prefiling orders.</p> <p>A one-year limitation would better balance the interests of the vexatious litigant in getting his status vacated and the interests of the courts in limiting excessive litigation.</p> <p>3. Requested comment on whether Code of Civil Procedure section 391.7 should be amended to expand its applicability to a vexatious litigant with legal representation:</p> <p>I believe it should be so amended. Code of Civil Procedure section 391.7, subdivision (a) should be amended to read, in pertinent part: "...the court may, on its own motion or on the motion of any party, enter a prefiling order which prohibits a vexatious litigant, <u>whether or not represented by an attorney</u>, from filing any new litigation <u>and which prohibits a vexatious litigant from maintaining or</u></p>	<p>The committees defer making a recommendation on this part of the proposal.</p>

LEG10-03

Civil Cases: Vexatious Litigants (Code Civ. Proc., §§ 391.7 and 391.8)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>continuing to prosecute any litigation in propria persona without first obtaining leave....” If the statute is so amended, Judicial Council Form MC-700 should similarly be amended.</p> <p>Opinions considering the application of the vexatious litigant statutes where a vexatious litigant appeared with counsel suggest that section 391.7 should be amended to permit its application to a vexatious litigant represented by counsel.</p> <p>In <i>In re Shieh</i> (1993) 17 Cal.App.4th 1154, the court held that a prefiling order would be entered preventing a vexatious litigant from filing any new litigation either in propria persona <i>or through counsel</i> because he employed attorneys who acted as “mere puppets.” (<i>Id.</i> at app. 1167-1168.)</p> <p>In <i>Camerado Ins. Agency, Inc. v. Superior Court</i> (1993) 12 Cal.App.4th 838, 842, the court held, based on statutory language, legislative history and case law, that security could be required of an individual represented by counsel in the current matter if the individual was a vexatious litigant based on his conduct when he represented himself in the past. The court stated, “The legislative purpose would be frustrated by a construction of the statute which would permit a vexatious</p>	<p>The committees agree that case law supports a judge, in particular circumstances, entering a prefiling order that applies to a vexatious litigant represented by counsel.</p>

LEG10-03

Civil Cases: Vexatious Litigants (Code Civ. Proc., §§ 391.7 and 391.8)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>litigant to avoid the protection afforded potential targets simply by obtaining counsel.” (<i>Ibid.</i>) The court, however, contrasted the security provisions of the vexatious litigant statute with section 391.7, stating that section 391.7 does not prevent a vexatious litigant from filing new litigation if he is represented by an attorney. (<i>Id.</i> at p. 844.) This case suggests that to further the legislative protection intended by the statutory scheme, section 391.7 should be amended to clearly apply to a vexatious litigant represented by counsel.</p> <p>Whether or not the statute should be amended to require that a vexatious litigant obtain a prefiling order even if he is represented by counsel, a second problem should be addressed by modifying the vexatious litigant statutes. The recent case <i>Shalant v. Girardi</i> (2010) 183 Cal. App.4th 545 (<i>Shalant</i>) (petition for review filed May 13, 2010) and the dissent in <i>Forrest v. Department of Corrections</i> (2007) 150 Cal.App.4th 183 (<i>Forrest</i>) highlight the issue of whether a vexatious litigant must obtain leave to proceed from the presiding judge after his counsel files the complaint but thereafter withdraws, leaving the vexatious litigant to proceed in propria persona.</p>	

LEG10-03

Civil Cases: Vexatious Litigants (Code Civ. Proc., §§ 391.7 and 391.8)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p><i>Shalant</i> held that such a vexatious litigant need not obtain a prefiling order. It reasoned that Code of Civil Procedure section 391.7, subdivision (a) authorizes a prefiling order that “‘prohibits a vexatious litigant from <i>filing</i> any new litigation’ in propria persona without permission of the presiding judge. ... Once that condition is satisfied – that is, once the suit has been filed either with permission of the presiding judge or by counsel representing plaintiff – nothing in the language of the order prohibits [the plaintiff] from prosecuting the action in propria persona ...” (<i>Shalant, supra</i>, 183 Cal.App.4th at pp. 554-555, italics added.)</p> <p><i>Shalant</i> thus disagreed with the majority opinion in <i>Forrest, supra</i>, 150 Cal.App.4th at page 197, which held that “the requirements of a prefiling order ... remain in effect throughout the life of a lawsuit and permit dismissal at any point when a vexatious litigant proceeds without counsel or without the permission of the presiding judge.”</p> <p>If <i>Shalant</i> is correct in interpreting Code of Civil Procedure section 391.7 to require that a vexatious litigant obtain leave to proceed only where he <i>files</i> new litigation in propria persona, the statute should be amended. The <i>Shalant</i></p>	

LEG10-03**Civil Cases: Vexatious Litigants** (Code Civ. Proc., §§ 391.7 and 391.8)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>interpretation gives a vexatious litigant subject to a prefiling order the means to circumvent the requirement of the prefiling order by filing a complaint through an attorney who may not know the individual is a vexatious litigant or who may be acting as a “mere puppet[.]” (<i>In re Shieh, supra</i>, 17 Cal.App.4th at p. 1167.) After counsel has filed the complaint, counsel may be dismissed or may withdraw, leaving the vexatious litigant to maintain the action in propria persona without having obtained permission.</p> <p>Code of Civil Procedure section 391.7 was added to the vexatious litigant statutory scheme as “an additional means to counter misuse of the system by vexatious litigants.” (<i>Bravo v. Ismaj</i> (2002) 99 Cal.App.4th 211, 221.) The purpose of that section will be advanced by a statutory amendment that, in essence, requires a vexatious litigant to show that the action has merit if the attorney who filed the action withdraws or is dismissed and the vexatious litigant intends to maintain the litigation in propria persona.</p>	
3.	Kathleen DeSantis, Managing Attorney Court of Appeal, Fifth Appellate District Fresno	A	I agree that section 391.7 should be amended to apply to a vexatious litigant represented by an attorney, at the discretion of the presiding justice when the vexatious litigant does not engage the	The committees defer making a recommendation on this part of the proposal. The specific proposal suggested by the commentator—leaving it to the discretion of the presiding justice or judge to determine

LEG10-03**Civil Cases: Vexatious Litigants** (Code Civ. Proc., §§ 391.7 and 391.8)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			attorney as a neutral assessor of his/her claims, bound by ethical considerations not to pursue unmeritorious or frivolous matters on behalf of a prospective client, by rather uses the attorneys as a “puppet.” (<i>In re Shieh</i> (1993) 17 Cal.App. 4th 1154, 1167.)	the motives of the litigant and attorney—would be difficult in practice.
4.	Orange County Bar Association Lei Lei Wang Ekvall President Newport Beach	A	No specific comment.	No response required.
5.	Public Counsel Los Angeles	A	The Appellate Self-Help Clinic has seen a number of individuals who have been designated vexatious litigants. Based on our experience, we support the proposal to create a procedure for individuals seeking to be removed from the vexatious litigant list and to create standards for courts to apply to such requests. Establishing procedures and standards for applications for removal from the vexatious litigant list will assist both litigants and the courts.	No response required.
6.	State Bar of California Committee on Administration of Justice Saul Bercovitch Legal Counsel San Francisco	A	CAJ supports this proposal in general. In response to the specific request for comments on the appropriate duration of time between a vexatious litigant’s requests for removal from the vexatious litigant list, CAJ believes that one year would be appropriate.	The committee notes the support. The committees agree that a one year duration between requests to be removed from the vexatious litigant list is appropriate and have made this change.
7.	Superior Court of Los Angeles County	AM	The Los Angeles Superior Court Civil &	

LEG10-03

Civil Cases: Vexatious Litigants (Code Civ. Proc., §§ 391.7 and 391.8)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>Small Claims Committee has the following comments to the proposals:</p> <ol style="list-style-type: none">1. Section 391.7 (a) and (b): The committee agrees that the words “<i>or his or her designee</i>” should be added.2. Section 391.8 (a): An application to vacate a prefiling order is analogous to a motion for reconsideration. The committee strongly believes that “an application to vacate a prefiling order and remove the vexatious litigant’s name from the Judicial Council list of vexatious litigants subject to prefiling orders” should be made before the <i>judge</i> who entered the prefiling order, not merely in the <i>court</i> that entered the prefiling order or by the <i>presiding judge</i>. If the judge who entered the original prefiling order is not available, then the application may be made to the presiding judge or his/her designee. The judge who made the initial order declaring the applicant to be a vexatious litigant is the one most familiar with the litigant, and therefore, if available, should be the one to rule on any application to vacate the prefiling order.3. Section 391.8 (b): Members of the Committee believe that a 180	<p>The agreement is noted.</p> <p>The committees agree and this change has been made.</p>

LEG10-03

Civil Cases: Vexatious Litigants (Code Civ. Proc., §§ 391.7 and 391.8)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>day interval is too short of a period of time for vexatious litigants to be allowed to file applications for prefiling orders. The Committee recommends that an application by a vexatious litigant to vacate a prefiling order and removal of name from vexatious litigant list should not be allowed to made more than once a year.</p> <p>4. Section 391.8 (c): The Committee opposes the language of this subsection as being too vague, lenient, and lessening the burden for a vexatious litigant to obtain a prefiling order and removal of name from vexatious litigant list.</p> <p>The Committee believes that the rule should incorporate the principles of <i>Lockett v. Panos</i> (2008) 161 Cal. App 4th 77, 93-94 and use the following language:</p> <p>The court may vacate a prefiling order and order of removal of a vexatious litigant’s name from the Judicial Council’s list of vexatious litigants subject to prefiling orders upon a showing of: (a) “a propensity for honesty in his or her application”; (b) an accurate confrontation with the facts on which the prior vexatious litigation finding was made; (c) “genuine remorse for the costs of litigation inflicted on the defendants who were the object of previous lawsuits”; (d)</p>	<p>The committees agree and this change has been made.</p> <p>The committees disagree. The commentator’s suggestion would create a standard that would be difficult to apply. The committees prefer the standard used for reversing an injunction set out in Code of Civil Procedure section 533 (material change in facts upon which the injunction was granted or the ends of justice would be served by dissolution of the injunction) with the modification of joining the elements with “and” rather than “or” to make the standard more strict. The committees believe that this standard provides the court with more workable criteria. It likely would be difficult for a judge to determine, on the basis of a vexatious litigant’s application and appearance at a hearing, whether he or she, among other things, has a propensity for honesty and has experienced genuine remorse for the costs incurred by defendants in his or</p>

LEG10-03**Civil Cases: Vexatious Litigants** (Code Civ. Proc., §§ 391.7 and 391.8)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>persona at least five litigations other than in a small claims court that have been (i) finally determined adversely to the person or (ii) unjustifiably permitted to remain pending at least two years without having been brought to trial or hearing.”</p>	<p>consider whether to propose it at another time.</p>
8.	<p>Superior Court of San Diego County Michael Roddy Executive Officer</p>	A	No specific comment.	No response required.
9.	<p>Superior Court of Ventura County Julie Camacho Program Manager</p>	AM	<p>Ventura Superior Court agrees that it is unlikely that a vexatious litigant will be able to make the necessary showing of a change in the facts or the ends of justice supporting his or her removal from the vexatious litigant list without the passage of a significant amount of time between requests and therefore recommends that the frequency within which a vexatious litigant is permitted to apply to removal from the list be once every 365 days.</p>	<p>The committees agree that a one year duration between requests to be removed from the vexatious litigant list is appropriate and have made this change.</p>