STATE OF NEW YORK

6843

2019-2020 Regular Sessions

IN ASSEMBLY

March 21, 2019

Introduced by M. of A. SOLAGES -- read once and referred to the Committee on Judiciary

AN ACT to amend the civil practice law and rules, in relation to authorizing a court, on its own motion or the motion of a party, to enter a prefiling order that prohibits a vexatious litigant from filing any new litigation propria persona without first obtaining permission to do so from the presiding judge or justice of the court where the filing is proposed

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The civil practice law and rules is amended by adding a new section 1005 to read as follows:

§ 1005. Vexatious litigant. 1. As used in this section, the following terms have the following meanings:

(a) "Litigation" means any civil action or proceeding, commenced, maintained or pending in any state or federal court.

(b) "Vexatious litigant" means a person who does any of the following:

(1) In the immediately preceding seven-year period has commenced, prosecuted, or maintained in propria 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.

(2) After a litigation has been finally determined against the person, repeatedly relitigates or attempts to relitigate, in propria persona, either: (i) the validity of the determination against the same defendant or defendants as to whom the litigation was finally determined; or (ii) 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.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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(3) In any litigation while acting in propria persona, 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 based upon the same or substantially similar facts, transaction, or occurrence.

(c) "Security" means an undertaking to assure payment, to the party for whose benefit the undertaking is required to be furnished, of the party's reasonable expenses, including attorney's fees and not limited to taxable costs, incurred in or in connection with a litigation instituted, caused to be instituted, or maintained or caused to be maintained by a vexatious litigant.

(d) "Plaintiff" means the person who commences, institutes or maintains a litigation or causes it to be commenced, instituted or maintained, including an attorney at law acting in propria persona.

(e) "Defendant" means a person (including corporation, association, partnership and firm or governmental entity) against whom a litigation is brought or maintained or sought to be brought or maintained.

2. In any litigation pending in any court of this state, at any time until final judgment is entered, a defendant may move the court, upon notice and hearing, for an order requiring the plaintiff to furnish security or for an order dismissing the litigation pursuant to paragraph (b) of subdivision four of this section. The motion for an order requiring the plaintiff to furnish security shall be based upon the ground, and supported by a showing, that the plaintiff is a vexatious litigant and that there is not a reasonable probability that he or she will prevail in the litigation against the moving defendant.

3. At the hearing upon the motion the court shall consider any evidence, written or oral, by witnesses or affidavit, as may be material to the ground of the motion. Except for an order dismissing the litigation pursuant to paragraph (b) of subdivision four of this section, no determination made by the court in determining or ruling upon the motion shall be or be deemed to be a determination of any issue in the litigation or of the merits thereof.

4. (a) Except as provided in paragraph (b) of this subdivision, if, after hearing the evidence upon the motion, the court determines that the plaintiff is a vexatious litigant and that there is no reasonable probability that the plaintiff will prevail in the litigation against the moving defendant, the court shall order the plaintiff to furnish, for the benefit of the moving defendant, security in such amount and within such time as the court shall fix.

(b) If, after hearing evidence on the motion, the court determines that the litigation has no merit and has been filed for the purposes of harassment or delay, the court shall order the litigation dismissed. This paragraph shall only apply to litigation filed in a court of this state by a vexatious litigant subject to a prefiling order pursuant to subdivision seven of this section who was represented by counsel at the time the litigation was filed and who became in propria persona after the withdrawal of his or her attorney.

(c) A defendant may make a motion for relief in the alternative under either paragraph (a) or (b) of this subdivision and shall combine all grounds for relief in one motion.

5. When security that has been ordered furnished is not furnished as ordered, the litigation shall be dismissed as to the defendant for whose benefit it was ordered furnished.

6. Except as provided in subdivision four of this section, when a motion pursuant to subdivision two of this section is filed prior to trial the litigation is stayed, and the moving defendant need not plead, until ten days after the motion shall have been denied, or if granted, until ten days after the required security has been furnished and the moving defendant given written notice thereof. When a motion pursuant to subdivision two of this section is made at any time thereafter, the litigation shall be stayed for such period after the denial of the motion or the furnishing of the required security as the court shall determine.

7. (a) In addition to any other relief provided in this chapter or in 22 NYCRR Part 130, the court may, on its own motion or the motion of any party, enter a prefiling order which prohibits a vexatious litigant from filing any new litigation in the courts of this state in propria persona without first obtaining leave of the presiding justice or presiding judge of the court where the litigation is proposed to be filed. Disobedience of the order by a vexatious litigant may be punished as a contempt of court.

(b) The presiding justice or presiding judge shall permit the filing of that litigation only if it appears that the litigation has merit and has not been filed for the purposes of harassment or delay. The presiding justice or presiding judge may condition the filing of the litigation upon the furnishing of security for the benefit of the defendants as provided in subdivision four of this section.

(c) The clerk may not file any litigation presented by a vexatious litigant subject to a prefiling order unless the vexatious litigant first obtains an order from the presiding justice or presiding judge permitting the filing. If the clerk mistakenly files the litigation without the order, any party may file with the clerk and serve, or the presiding justice or presiding judge may direct the clerk to file and serve, on the plaintiff and other parties a notice stating that the plaintiff is a vexatious litigant subject to a prefiling order as set forth in paragraph (a) of this subdivision. The filing of the notice shall automatically stay the litigation. The litigation shall be automatically dismissed unless the plaintiff within ten days of the filing of that notice obtains an order from the presiding justice or presiding judge permitting the filing of the litigation as set forth in paragraph (b) of this subdivision. If the presiding justice or presiding judge issues an order permitting the filing, the stay of the litigation shall remain in effect, and the defendants need not plead, until ten days after the defendants are served with a copy of the order.

(d) For purposes of this subdivision, "litigation" includes any petition, application, or motion other than a discovery motion, in a proceeding in family court or surrogate's court, for any order.

(e) The presiding justice or presiding judge of a court may designate a justice or judge of the same court to act on his or her behalf in exercising the authority and responsibilities provided under paragraphs (a), (b) and/or (c) of this subdivision.

(f) The clerk of the court shall provide the administrative board of the courts a copy of any prefiling orders issued pursuant to paragraph (a) of this subdivision. The administrative board of the courts shall maintain a record of vexatious litigants subject to those prefiling orders and shall annually disseminate a list of those persons to the clerks of the courts of this state.

8. (a) A vexatious litigant subject to a prefiling order under subdivision seven of this section may file an application to vacate the

prefiling order and remove his or her name from the administrative board of the courts' list of vexatious litigants subject to prefiling orders. The application shall be filed in the court that entered the prefiling order, either in the action in which the prefiling order was entered or in conjunction with a request to the presiding justice or presiding judge to file new litigation under subdivision seven of this section. The application shall be made before the justice or judge who entered the order, if that justice or judge is available. If that justice or judge who entered the order is not available, the application shall be made before the presiding justice or presiding judge, or his or her designee.

(b) A vexatious litigant whose application under paragraph (a) of this subdivision was denied shall not be permitted to file another application on or before twelve months has elapsed after the date of the denial of the previous application.

(c) A court may vacate a prefiling order and order removal of a vexatious litigant's name from the administrative board of the courts' list of vexatious litigants subject to prefiling orders upon a showing of a material change in the facts upon which the order was granted and that the ends of justice would be served by vacating the order.

§ 2. This act shall take effect on the sixtieth day after it shall become a law and shall apply to all claims filed on and after such effective date. Effective immediately the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such date.