

A cartoon illustration of a man with a large, open mouth, screaming or shouting. He is wearing a brown suit jacket, a white shirt, and a red bow tie. A tag hanging from his neck reads "VEXATIOUS LITIGANT". The background is dark blue with various colorful symbols like stars, spirals, and lines, suggesting a chaotic or magical environment. The title "Hexing the Vexing Litigant" is written in white, stylized text across the bottom.

Hexing the Vexing Litigant

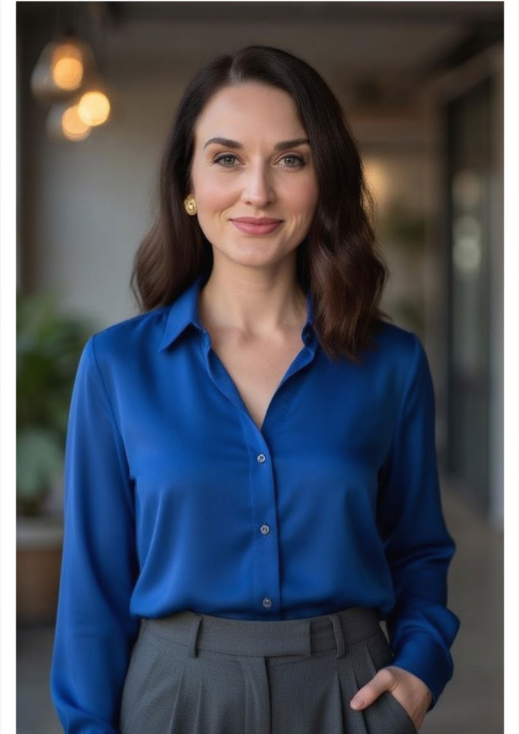
Hexing the Vexing Litigant



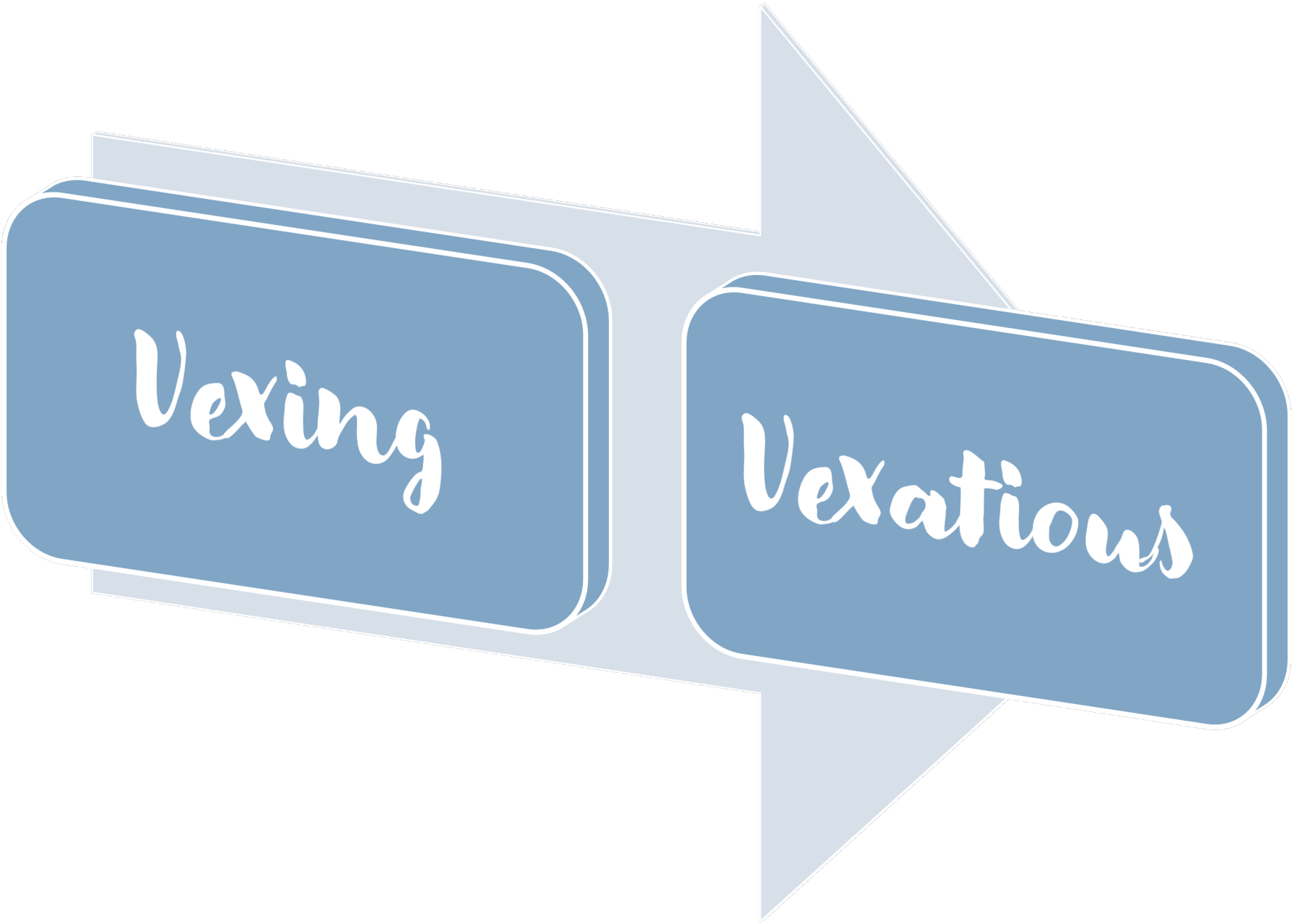
Your Presenters



Lyndsey Siara
General Counsel
Sixth Judicial Circuit



Andrea Holder
Attorney
Dax Nelson, P.A.



Vexing

Vexations

68.093



**I WAS TOLD THERE WOULD BE
CHANGE.**

Previous Criteria & Sanctions (2000)



Criteria for Vexatious Litigant (must meet one)

- | | |
|---|---|
| <p>1. Was the litigant previously found to be a vexatious litigant under §68.093?</p> | <p>2. Has the litigant commenced, prosecuted, or maintained at least five civil actions?</p> <ul style="list-style-type: none"> ○ In the last five years? ○ In the state of Florida? ○ Governed by Florida Rules of Civil Procedure or Florida Probate Rules? ○ All filed pro se? (The terms “pro se” and “self-represented litigant” are used interchangeably throughout this article.) <ul style="list-style-type: none"> ▪ Note: If filed by an attorney, even if withdrawn, case does not count. ○ Finally and adversely determined against the litigant? <ul style="list-style-type: none"> ▪ Note: If an appeal is pending, the action is not final and case does not count. |
|---|---|

Available Sanctions and Relief (one or more)

<u>Security</u>	<u>Pre-filing Order</u>	<u>Cumulative Relief</u>
<ul style="list-style-type: none"> On defendant's motion, can obtain security if: <ul style="list-style-type: none"> ○ Vexatious litigant status is met. ○ Litigant is not reasonably likely to prevail on the merits against the moving defendant. If motion filed before trial, action is automatically stayed until certain conditions are met. Dismissal with prejudice if security is not posted. Once security is posted, the case proceeds. 	<ul style="list-style-type: none"> On any party's or the court's motion, enter a pre-filing order prohibiting future pro se civil actions in that circuit without leave of the administrative judge. If violated, any party can file a notice, leading to automatic dismissal with prejudice unless a motion for leave to file is granted. Disobedience of the pre-filing order may be punished as contempt of court by the administrative judge. Future filings may be conditioned upon furnishing security. 	<ul style="list-style-type: none"> Relief can be cumulative.



New Definition of Vexatious Litigant (2025)



A self-represented person who meets *any* one of these five requirements:

1. Previously deemed a vexatious litigant in Florida, another state court, or federal court.

2. Repeatedly relitigates action, claim, controversy, or any issue after it was finally and adversely determined.

3. In the past seven years:

4. Repeatedly files pleadings, requests for relief, or other documents that have been previously ruled on in that action.

5. Repeatedly files unmeritorious pleadings, requests for relief or other documents;
Conducts unnecessary discovery; or
Engages in frivolous delay tactics.

a. Commenced, prosecuted, or maintained at least five actions (if the case is found to have been commenced, prosecuted, or maintained in good faith, it does not count);

b. Actions are civil, family, small claims, or adversary probate proceedings;

c. In any court (Florida, other state court, or federal court); **and**

d. That were finally and adversely determined against the person (if an appeal is pending, the action is not final).

New Criteria (2025)



Illustration by Barbara Kelley

Criteria for Vexatious Litigant (must meet one)

- | | | |
|--|---|---|
| 1. Was the litigant previously found to be a vexatious litigant under §68.093, by another state court, or federal court? | 2. Has the litigant commenced, prosecuted, or maintained at least five actions? <ul style="list-style-type: none">○ In the last seven years?○ In any court (Florida, other state court, or federal court)?○ Governed by Florida Rules of Civil Procedure, Florida Family Law Rules of Procedure, rule 5.025 of the Florida Probate Rules or the Florida Small Claims Rules; or governed by similar rules in another state or federal court?○ Commenced, prosecuted, or maintained pro se?○ Finally and adversely determined against the litigant?<ul style="list-style-type: none">▪ Note: If an appeal is pending, the action is not final and does not count.○ Not commenced, prosecuted, or maintained in good faith? | |
| 3. Repeatedly relitigates action, claim, controversy, or any issue after it was finally and adversely determined? | 4. Repeatedly files pleadings, requests for relief, or other documents that have been previously ruled on in that action? | 5. Repeatedly files unmeritorious pleadings, requests for relief or other documents; conducts unnecessary discovery; or engages in frivolous delay tactics? |



Criteria 1

Previously found to be a vexatious litigant under 68.093, by another state court, or federal court.



Criteria 2

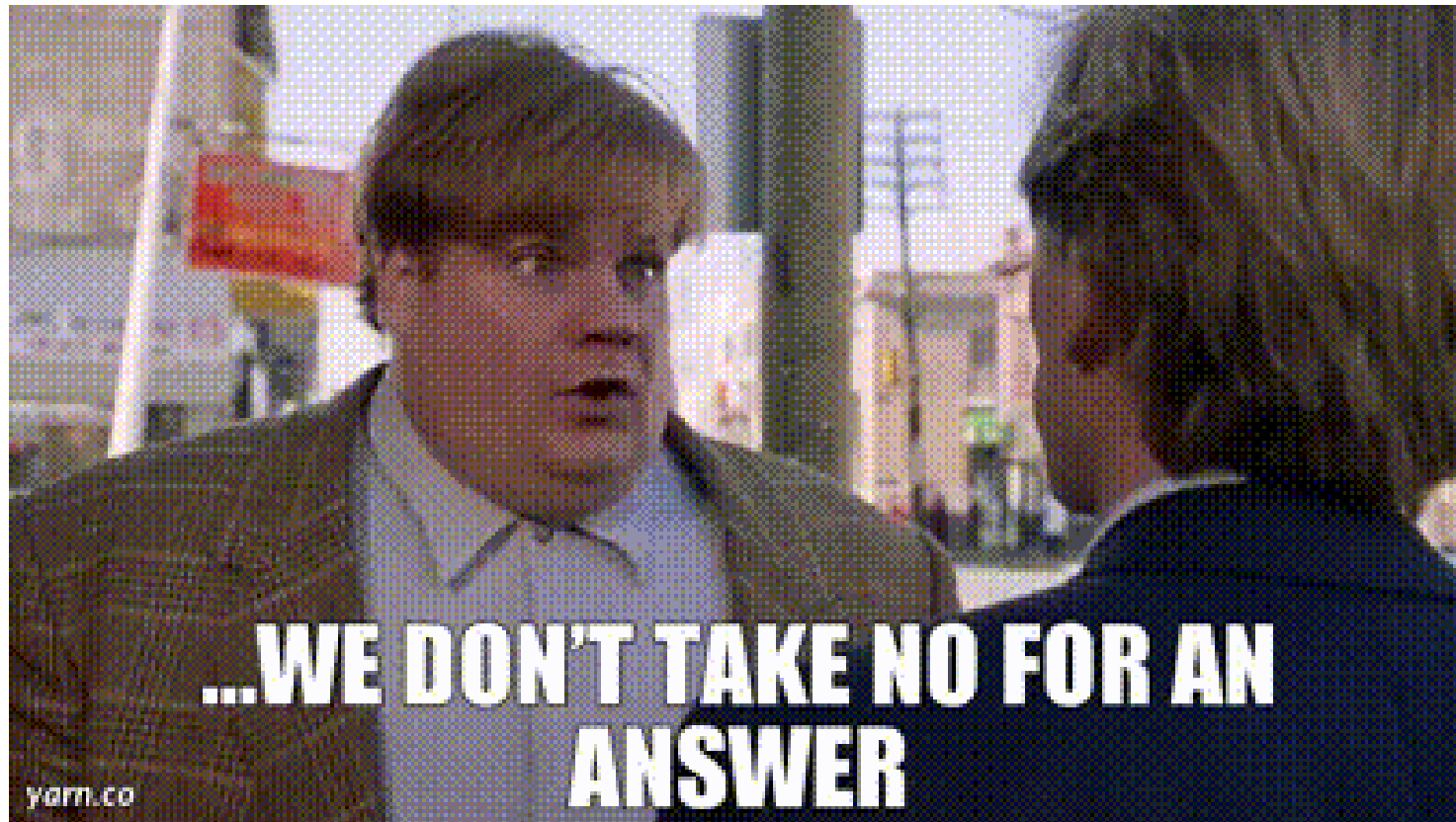
- Commenced, prosecuted, or maintained pro se?
- 5 actions?
- In the last 7 years?
- In any court?
- Finally & adversely determined against the litigant?
- Not commenced, prosecuted, or maintained in good faith?

IM NEW HERE

HELLO

Criteria 3

Repeatedly relitigates action, claim, controversy, or any issue after it was finally and adversely determined.



Criteria 4

Repeatedly files pleadings, requests for relief, or other documents that have been previously ruled on in that action.





Criteria 5

Repeatedly files unmeritorious pleadings, requests for relief or other documents; conducts unnecessary discovery; or engages in frivolous delay tactics.

Case Law Application

Case Law Application: The First Cases Under the New Law

Walters v. State, 2026 WL 1740177 (Fla. 3d DCA
June 17, 2026)

first appellate decision under the 2025 statute

- 45 cases finally/adversely determined in 7 years; not in good faith
- \$10,000 security ordered; suit dismissed if unpaid
- Holding: a security order is in the nature of an injunction and immediately appealable

Steinberg v. Cudak, 429 So.3d 21 (Fla. 4th DCA
2026)

serial HOA suits

- \$50,000 security; clerk directed to reject future pro se filings
- Declared vexatious on the **new** relitigation/repetitive-filing criteria – even without the five-case count

Case Law Application: The Two Remedies in Action

Security – *Smith v. Fisher*, 965 So. 2d 205 (Fla. 4th DCA 2007): inmate's repeat suits; \$600 security "reasonable on its face" as a proxy for defense costs; dismissed when unpaid. Court: designation "does not shut the courthouse door"

Pre-filing order – *Brown v. Miami-Dade Cnty.*, 319 So.3d 81 (Fla. 3d DCA 2021): motion attached exhibits proving each prior case was finally and adversely determined → bar on further pro se filings without leave and security. A clean template

Repeat offender – *Smith v. Hatcher*, 117 So.3d 439 (Fla. 1st DCA 2013): 150+ cases; already declared vexatious in two circuits and barred in federal court; \$6,000 security

Issue	Appellate takeaway	Leading case
Conduct criteria stand alone	Vexatious without 5 cases, on relitigation + frivolous tactics; a filing bar still needs an OSC	Steinberg v. Cudak (4th DCA 2026)
Catchall is enough	Frivolous/delay catchall suffices; no separate OSC if the motion sought it and a hearing was held	Adams v. Adams (3d DCA 2026)
Notice must be in this case	Notice in another case or before another judge is not due process	Johnson v. Sobota (4th DCA 2026)
Hearing for security	Orders entered with no hearing reversed; a hearing is required where security is sought	Siskind (4th DCA 2026); Mistivar (4th DCA 2025)
§ 68.093(4) $\neq$ dismissal	Prefiling bar OK, but dismissal of the pending case reversed	Mistivar (4th DCA 2025)
Security order is appealable	"In the nature of an injunction"; face-of-order review without a transcript	Walters v. State (3d DCA 2026)
Statute $\neq$ inherent authority	2025 statute is "separate and distinct" from Spencer	Wilson v. State (3d DCA 2026)
Inherent authority done right	Chief-judge show-cause order, then a filing restriction	Lau v. Olude (5th DCA 2025)

Case Law Application: Statute vs. Inherent Authority

- *State v. Spencer*, 751 So. 2d 47 (Fla. 1999) – the inherent-authority foundation
 - Restrict pro se filings only on "egregious abuse of judicial process"
 - Must issue an order to show cause first – notice and a chance to respond
- *Clark v. Baney*, 355 So.3d 976 (Fla. 1st DCA 2023) – inherent authority is a duty, not just a power
 - Out-of-state filer; scores of Florida suits, no wins; profane show-cause response
 - Filing bar (signature by a Bar member) affirmed – not a "wholesale" denial of access

Case Law Application: What Gets the Order Reversed

- Issue an order to show cause before any pro se filing bar— notice and an opportunity to be heard (*Steinberg v. Cudak*, 429 So. 3d 21 (Fla. 4th DCA 2026); *Johnson v. Sobota*, 432 So. 3d 54 (Fla. 4th DCA 2026) (notice in a separate case before a different judge is overbroad not enough)).
- Don't over-reach the remedy – *Mistivar v. Broward Sheriff*, 427 So.3d 45 (Fla. 4th DCA 2025): § 68.093(4) bars *future* actions; it does **not** authorize dismissing the pending case (designation affirmed; dismissal reversed)
- Notice must match the sanction – *Jackson v. Parkhouse*, 826 So. 2d 478 (Fla. 1st DCA 2002): responding to a different motion isn't notice of a total bar
- Keep it narrow – *Brinson v. State*, 215 So.3d 1260 (Fla. 5th DCA 2017) & *Harris v. Gattie*, 263 So. 3d 829 (Fla. 2d DCA 2019): a bar broader than the show-cause notice is overbroad; due process applies in civil cases too
- Sanction imposed cannot exceed the sanction noticed. Section 68.093(4) supports a prefiling bar, not dismissal of the pending case (*Mistivar v. Broward Cnty. Sheriff's Office*, 427 So. 3d 45 (Fla. 4th DCA 2025)). Make a record and hold the hearing where security is sought (*Siskind v. Zokaite Properties*, 436 So. 3d 243 (Fla. 4th DCA 2026) (orders entered without a hearing reversed on due process)). The order cannot block the litigant's appeal of that order.— *Thomas v. State*, 1 So.3d 194 (Fla. 4th DCA 2008): the order can't block an appeal *of that order*.

Apply It: Set the Security

You are ruling on a motion to require a designated vexatious plaintiff, unlikely to prevail, to post security. What findings must the record support, and how is the bond sized?

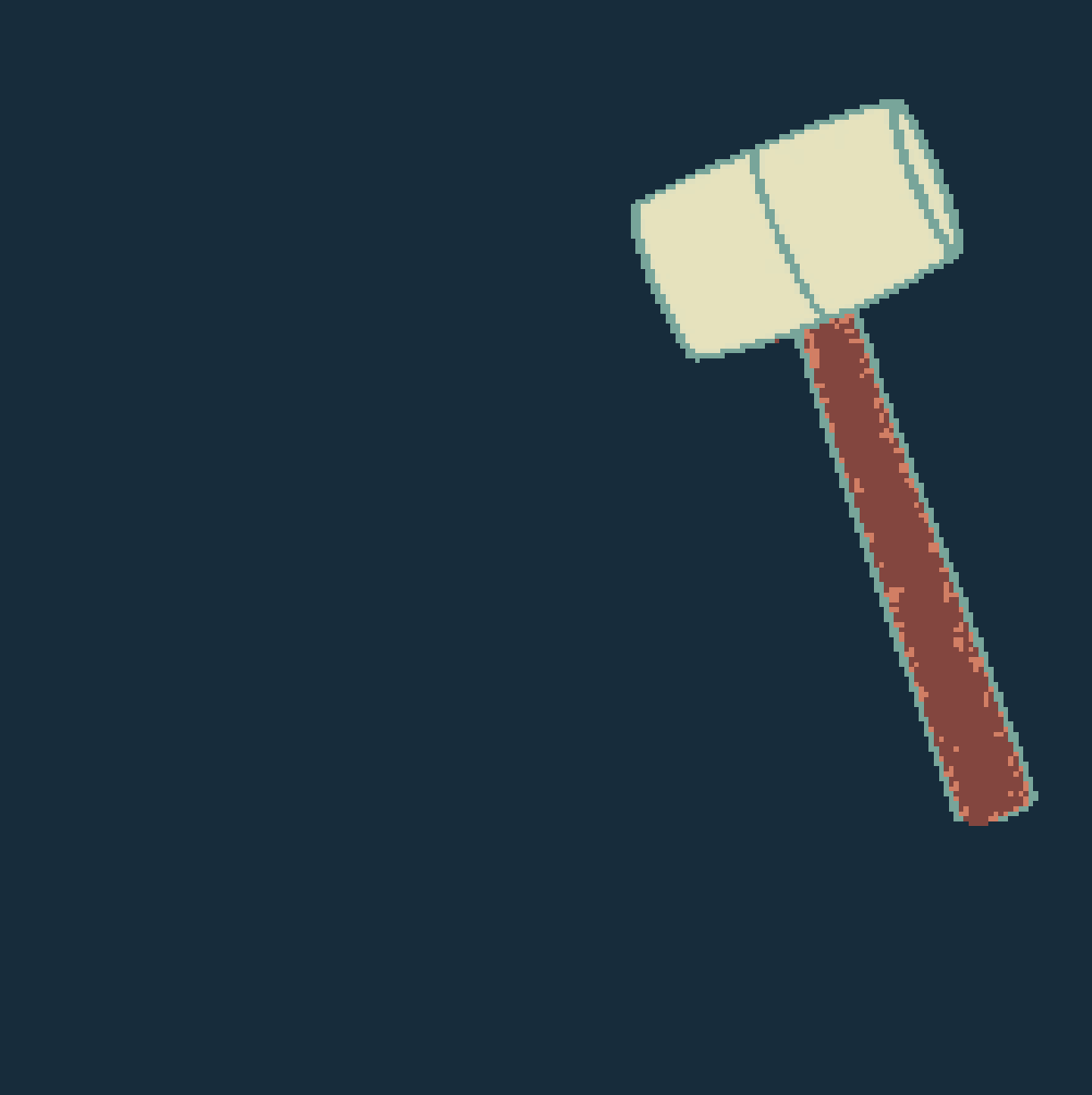




Apply It: Spot the Error

On a party motion, the judge dismisses the pending case *and* bars all future pro se filings – with no separate show-cause order. Two problems?





What the Court May Do on Its Own Motion

- On the court's own motion, after an order to show cause: declare a litigant vexatious and enter a prefiling order barring new pro se actions without leave of court.
- Only on a party's motion: an order requiring security – which also requires a showing that the litigant is not reasonably likely to prevail, plus an evidentiary hearing.

New Sanctions (2025)



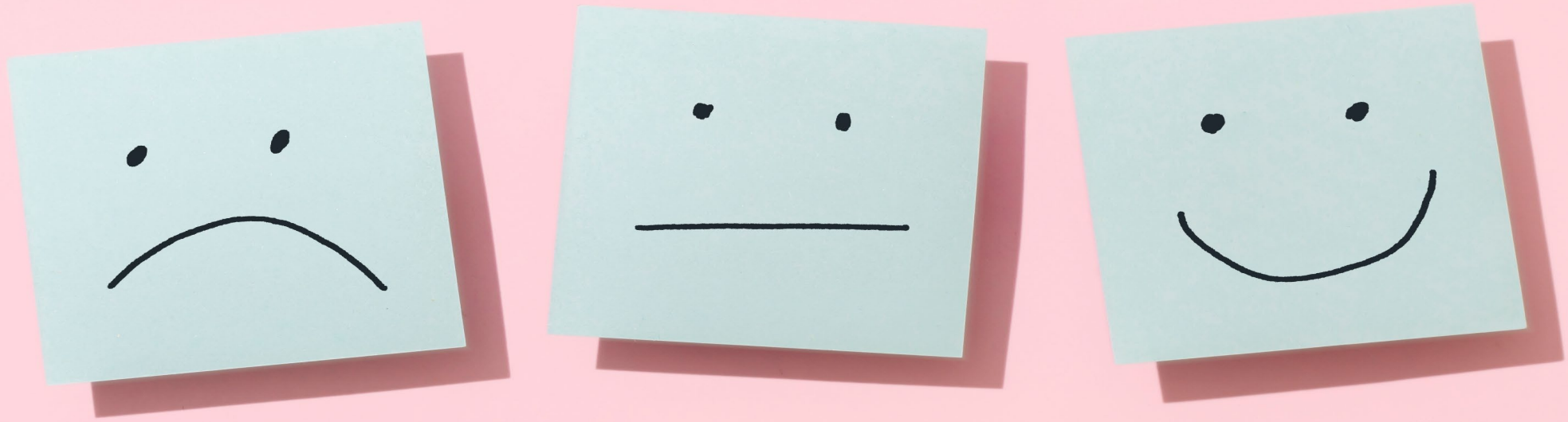
Available Sanctions and Relief (one or more)

- | <u>Security</u> | <u>Pre-filing Order</u> | <u>Cumulative Relief</u> |
|--|---|---|
| <ul style="list-style-type: none">• On any party's motion, can obtain security if:<ul style="list-style-type: none">◦ Vexatious litigant status is met.◦ Litigant is not reasonably likely to prevail on the merits against the moving defendant.• If motion filed before trial, action is automatically stayed until certain conditions are met.• Where security not posted by vexatious litigant:<ul style="list-style-type: none">◦ Dismissal with prejudice as to moving party; or◦ Impose one of these additional sanctions:<ul style="list-style-type: none">▪ Denial of vexatious litigant's request for relief;▪ Strike vexatious litigant's pleading or document, or any part; or▪ Render judgment by default against vexatious litigant.• Once security is posted, the case proceeds. | <ul style="list-style-type: none">• On any party's or the court's motion, enter a pre-filing order prohibiting future pro se actions in that circuit without leave of court.• If violated, any party can file a notice, leading to automatic dismissal with prejudice unless a motion for leave to file is granted.• Disobedience of the pre-filing order may be punished as contempt of court.• Future filings may be conditioned upon furnishing security. | <ul style="list-style-type: none">• Relief can be cumulative. |



What a Sufficient Motion and Record Should Contain

- Identify the qualifying basis: 5-in-7 or relitigation/repetitive/unmeritorious conduct
- Attach the proof: exhibits showing each prior action was finally and adversely determined (no pending appeal)
- For security: be ready to show the litigant is *not reasonably likely to prevail on the merits*
- Ask for the specific remedy in the motion: security, a pre-filing order, or both (relief is cumulative)
- Request an order to show cause and a noticed hearing: make a record (transcript matters on appeal)



What Gets You Reversed

- Skipping the order to show cause
- Sanction broader than the notice
- Using § 68.093(4) to dismiss the *current* case
- No hearing / no record on a security order
- Blocking the appeal of the vexatious-litigant order itself

How to Use the Statutory Hex



Show Cause Order
Template Order

Opportunity to be Heard /
Evidentiary Hearing

Order Finding Vexatious &
Imposing Sanctions
Template Order

How to Use the Inherent Authority Hex



Identify Vexing Conduct

Show Cause Order
Template Order

Opportunity to be
Heard

Enter Injunctive
Sanction Order
Template Order

