ACCEPTED
05-19-00607-CV
FIFTH COURT OF APPEALS
DALLAS, TEXAS
10/17/2019 10:11 AM
LISA MATZ
CLERK

NO. 05-19-00607-CV

PETER BEASLEY,	§	**IN THE 5th DISTRICT**
	§	
Appellant,	§	
	§	
v.	§	**COURT OF APPEALS**
	§	
SOCIETY OF INFORMATION MANAGEMENT, ET. AL,	§	
	§	
	§	**DALLAS, TEXAS**
Appellees.	§	

FILED IN
5th COURT OF APPEALS
DALLAS, TEXAS
10/17/2019 10:11:45 AM
LISA MATZ
Clerk

APPELLANT'S 1ST SUPPLEMENTAL SECOND MOTION FOR REHEARING

TO THE HONORABLE JUSTICES OF SAID COURT

COMES NOW, Appellant, Peter Beasley, who files Appellant's 1st Supplemental Second Motion for Rehearing, and states the following:

1. October 10, 2019, appellees' counsel Soña Garcia filed Appellee's Brief, Exhibit A, which flagrantly violates the Supreme Court rules, which Appellant has moved to strike.

2. Appellant asks that this court to now consider appellee's first filing in this court.

3. Appellant contends attorney Garcia, along with the other listed appellees' counsel are appearing before this court without authority, and based on their year-after-year refusal to follow the rules of court and to honor their professional responsibilities of the Bar should be disqualified.

4. Given appellees' counsel now flagrantly dishonoring her professional responsibilities in this court, Appellant renews his request for Temporary Orders to allow the Rule 12 challenge against the attorneys and for a contest to finally be heard to seek their disqualification.

Wherefore, Appellant seeks a rehearing to correct the facts to show this appeal is only of the Prefiling Order, and to obtain a hearing to challenge the authority of the attorneys defending this appeal.

Respectfully submitted,
/s/ Peter Beasley
Peter Beasley
P.O. Box 831359
Richardson, Texas 75083
972-365-1170

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of October 2019, a true copy of the foregoing instrument was served on opposing counsel through the court's electronic filing system.

/s/ Peter Beasley
Peter Beasley

ACCEPTED
05-19-00607-CV
FIFTH COURT OF APPEALS
DALLAS, TEXAS
10/16/2019 2:17 PM
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NO. 05-19-00607-CV

PETER BEASLEY,	§	**IN THE 5th DISTRICT**
	§	
Appellant,	§	
	§	
v.	§	**COURT OF APPEALS**
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SOCIETY OF INFORMATION MANAGEMENT, ET. AL,	§	
	§	
	§	**DALLAS, TEXAS**
Appellees.	§	

MOTION TO STRIKE APPELLEE'S NUMEROUS BRIEFING VIOLATIONS, TO STRIKE UNSUPPORTED FALSE STATEMENTS AND TO STRIKE BRIEF

TO THE HONORABLE JUSTICES OF SAID COURT

COMES NOW, Appellant, Peter Beasley, pursuant to Rule 38.1, 38.2, and 38.9, who files Appellant's Motion to Strike Numerous Briefing Violations, to Strike Unsupported, False Statements and to Strike Brief, and states the following:

Table of Contents

Violation of Statement of the Case Requirements .....p. 2

Violation of the Statement of Facts Requirements.....p. 3

False Legal Argument, Misstated Law, and False Facts in Argument .....p. 9

Argument & Authorities.....p. 17

Request for Sanctions .....p. 18

1. Appellees owe to provide candor to this court and are obliged to follow the Supreme Court rules. They have failed at both.

EXHIBIT A

APPELLEE'S VIOLATION OF THE STATEMENT OF THE CASE REQUIREMENTS

2. *Statement of the Case*. The brief must state concisely the nature of the case (e.g., whether it is a suit for damages, on a note, or involving a murder prosecution), the course of proceedings, and the trial court's disposition of the case. The statement should be supported by record references, should seldom exceed one-half page, and should not discuss the facts. Tex. R. App. P. 38.1(d). This rule applies to both the appellant's and appellee's brief. Tex. R. App. P. 38.2(a)(1).

3. Irrespective of and in direct violation of the rule, appellee's state:

[Appellee's] STATEMENT OF THE CASE

> Appellant Peter Beasley originally filed his claims against SIM-DFW on March 17, 2016 as Cause No. DC-16-03141 in the 162nd Judicial District Court of Dallas County, Texas ("Original Case"). The parties litigated the Original Case for 18 months when, on the eve of Defendant SIM-DFW's Motion for Summary Judgment, and the due date for his response, Beasley nonsuited without prejudice his claims and those of his company, Netwatch Solutions, on October 5, 2016.
>
> The case on appeal was filed November 30, 2017 ("2017 Case") in Collin County, Texas, alleging claims that all arose out of the same circumstances alleged by Beasley's Original Case. The 2017 Case was transferred to Dallas County following Appellees' Motion to Transfer Venue.
>
> Appellees moved to declare Beasley a vexatious litigant on April 19, 2018. The trial court heard Appellees' motion on September 20, 2018 and on December 11, 2018 issued an order finding that Beasley is a vexatious litigant within the meaning of TEX. CIV. PRAC. & REM. CODE § 11.054. The December 11, 2018 order included the language pursuant to § 11.101 prohibiting Beasley from *pro se* filing new litigation without permission from the appropriate local administrative judge. Beasley is listed on the Texas Office of Court Administration List of Vexatious Litigants Subject to Prefiling Orders.

EXHIBIT A

> While Beasley has filed multiple notices of appeal, his initial notice was a notice of *interlocutory* appeal, filed May 21, 2019. The *second* notice of appeal was filed May 27, 2019. An *amended* notice of appeal was also filed July 16, 2019 and a *final amended notice of partial appeal* filed on August 22, 2019. Beasley refers to the December 11, 2018 order as the "prefiling order" which he claims is the sole basis of this appeal. However, the December 11, 2018 was an interlocutory order and this appeal is untimely.

Appellee's Brief pg. 1 -2. Exhibit A.

4. One-hundred percent (100%) of appellee's 'statement of the case' is in violation of Rule 38.1, as it discusses the facts, adds facts not supported by the record and it makes legal arguments. Tex. R. App. P. 38.1(d).

5. Appellee's 'statement of the case' should be stricken in its entirety.

APPELLEE'S VIOLATION OF THE STATEMENT OF THE FACTS REQUIREMENTS

6. Within briefs on appeal, all statements of fact must be supported by references to the record. Tex. R. App. P. 38.1(d). This rule applies to both the appellant's and appellee's brief. Tex. R. P. App. 38.2(a)(1). Further, a court of appeals is obliged to accept unchallenged "facts" from the appellant as being true, where the appellee has the opportunity in their brief to contradict any erroneous or unsupported facts of the appellant.

7. However, the appellant has no such assurance to challenge false facts and briefing violations of an appellee in a Reply Brief, as the court may ignore this optional brief and rule without considering it. Tex. R. App. P. 38.3 (the appellant

may file a reply brief addressing any matter in the appellee's brief. However, the appellate court may consider and decide the case before a reply brief is filed.).

8. Therefore, appellant brings this motion to strike all statements purported as "facts" by appellee which are not supported by the record.

9. Irrespective of and in direct violation of the rule, appellee's state:

[Appellee's] STATEMENT OF FACTS

A. Beasley Sues SIM-DFW, Nonsuits on the Eve of Summary Judgment, and Then Sues SIM-DFW Again.

The Society for Information Management is a national, professional society of Information Technology ("IT") leaders whose goal is to connect senior level IT leaders with peers in their communities, to provide opportunities for collaboration to share knowledge, provide networks, give back to local communities, and provide its members with opportunities for professional development. Locally, Appellee is known as SIM-DFW and is one of the largest chapters in the organization, with more than 300 members. SIM-DFW meets most months to network and discuss important managerial and technical issues facing IT practitioners. Beasley was a member of SIM-DFW until April 2016 when he was expelled from the Chapter by vote of the Board of the Directors.

1. The Original Case and Award of $211,032.02 in Attorneys' Fees to SIM-DFW.

Before expelling Beasley, the Executive Committee planned to seek his resignation. However, before the Executive Committee was able to seek his resignation, Beasley sued both his own organization and the volunteers who donate their time to sit on its Board of Directors.

During the Original Case, Beasley amended his claims multiple times. In the Sixth Amended Petition, Beasley added several declaratory judgment act claims alleging that (1) the April 19, 2016 expulsion meeting was void because it violated the Texas Business Organizations Code; (2) the actions taken by the SIM-DFW Board following the April 19, 2016 meeting were

EXHIBIT A

invalid absent Beasley's ratification; and, (3) SIM-DFW was prohibited from using member funds to benefit non-members. Beasley also alleged that his due process rights were violated because SIM-DFW did not provide him with due process related to his expulsion.

SIM-DFW filed a motion for summary judgment arguing that the doctrine of judicial non-intervention required dismissal of all of Beasley's claims, with the hearing set for October 12, 2017. Beasley nonsuited all of his claims on October 5, 2017, the date his response to SIM-DFW's motion for summary judgment was due.

After the nonsuit, SIM-DFW moved for, and was declared, the prevailing party on Beasley's declaratory judgment act claims.[12] SIM-DFW was awarded $211,032.02 in attorneys' fees for the defense of the declaratory judgment act claims.[13] Beasley filed multiple post-judgment motions, seeking recusal of the judge,[14] mandamus in both the Fifth Court of Appeals and the Texas Supreme Court,[15] and all manner of post-judgment relief.[16] Eventually, Beasley appealed the award of attorneys' fees.[17] The Fifth Court of Appeals affirmed the award.[18] Beasley then petitioned the Texas Supreme Court for review.

2. Beasley's 2017 Case, Appellee's Motion to Transfer Venue, and Return to Dallas County.

At the same time he was seeking review of the attorneys' fees award, Beasley filed a nearly identical case against SIM-DFW and Appellees Janis O'Bryan and Nellson Burns in Collin County, i.e., the 2017 Case.[19] Appellees first moved to transfer venue, arguing that Beasley was engaging in forum-shopping and that proper venue for the 2017 Case was Dallas County.[20] Thereafter, on January 22, 2018, Appellees filed their Original Answer, General Denial, and Affirmative Defenses subject to the Motion to Transfer Venue.[21]

B. The Timely Filed Vexatious Litigant Motion Stays Litigation and Beasley is Found Vexatious.

The Collin County District Court transferred the 2017 Case back to Dallas County in April 2018.[22] On April 19, 2018, when the 2017 Case was in the process of being transferred to Dallas County, Appellees filed a Motion to

Declare Peter Beasley a Vexatious Litigant.[23] The Vexatious Litigant Motion was filed three (3) days before the expiration of the filing deadline contained in TEX.CIV. PRAC. &REM. CODE § 11.051.[24] In error, Beasley disputes the timeliness of the filing.

By statute, the filing of the vexatious litigant motion **stayed all litigation activity**. TEX. CIV. PRAC. & REM. CODE § 11.052. Appellees' Vexatious Motion was heard on September 20, 2018.[25] Beasley was represented by counsel at this hearing.[26] Beasley's counsel even requested an opportunity to provide post-hearing briefing, which was granted.[27] Counsel did not request that Beasley testify in his own defense, did not demand rulings on his objections, and did not present any witnesses on behalf of Beasley.[28] Appellees' counsel provided evidence and argument establishing that Beasley had no reasonable probability to prevail on his claims against Appellees. Appellees also provided the trial court with evidence proving that Beasley's vexatious behavior more than meets the numerosity requirements of TEX. CIV. PRAC. & REM. CODE § 11.054(1)(A) and (B). Following the hearing, the Court accepted letter briefs from both parties regarding (1) the timeliness of Appellants' Vexatious Litigant Motion and (2) Beasley's Reasonable Probability of Success on the Merits.[29]

12 CR 22-26.
13 CR 214-216.
14 CR 23-26; 217-523.
15 CR 23-26; 217-523.
16 *Id.*
17 CR 769-886.
18 *Beasley v. Society of Information Management et al*., 2018 Tex.App. LEXIS 8993 (Tex.App.—Dallas Nov. 1, 2018).
19 2019 10 07 Supp. CR Vol. 1 4-19.
20 CR 22-628.
21 2019 10 07 Supp. CR Vol. 1 20-23; *see also* CR 7 (docket sheet noting filing on January 22,
2018); *see also* CR 991 (Collin County docket sheet).
22 CR 661-662.
23 CR 663-989.
24 CR 663-664.
25 RR Vol. 1.
26 RR Vol. 1 at p. 2.
27 RR Vol 1, 11:23-12:12; 79:18-88:9.
28 Beasley's assertion that Appellee's Janis O'Bryan and Nellson Burns were subpoenaed to testify at the vexatious litigant hearing is false. Brief at 13-14. O'Bryan and Nellson were subpoenaed to appear as witnesses in Beasley's Rule 12 Motion

hearing, which did not take place. RR Vol 1 78:20-79:17. This clarification of the subpoenas was unchallenged by Beasley's counsel.
29 CR 1089-1258.

Appellee's Brief pg. 4 - 8. (Exhibit A)

10. Appellee's 'statement of the facts' highlighted above in yellow are completely without any reference to this record, and should be stricken in their entirety. Tex. R. App. P. 38.1(g).

11. Appellee's 'statement of the facts' highlighted above in aqua are argument, and should be stricken in their entirety. Tex. R. App. P. 38.1(g). For instance, the vexatious litigant statute imposes a stay – which does not state that it stays ***all litigation***, as the record evidences a recusal motion of the judge hearing the vexatious litigant motion was heard and sustained.[1] Furthermore, during the stay appellees moved for and were granted a transfer of the lawsuit from one court to another. [2] Clearly, all litigation is not stayed.

12. Appellee's 'statement of the facts' highlighted above and below in pink are false, and should be stricken in their entirety. Tex. R. App. P. 38.1(g).

a. "O'Bryan and Nellson were subpoenaed to appear as witnesses in Beasley's Rule 12 Motion hearing, which did not take place."[3]

[1] C.R. 1086
[2] 2nd Supp. C.R. 91
[3] Appellees' brief pg. 7, footnote 28

i. Nothing in the record indicates for what purpose that O'Bryan and Burns were being called as witnesses, nor would appellees know appellant's litigation strategy.

b. "Counsel did not request that Beasley testify in his own defense, did not demand rulings on his objections, and did not present any witnesses on behalf of Beasley."[4]

i. In reality, Beasley's counsel attempted to present witnesses defendants O'Bryan and Burns[5] – who each did not appear for the vexatious litigant hearing although they had been subpoenaed.

c. "After the nonsuit, SIM-DFW moved for, and was declared, the prevailing party on Beasley's declaratory judgment act claims."[6] "SIM-DFW also prevailed on Beasley's other declaratory judgment act claims, including those seeking a declaration that (1) acts of the SIM-DFW Executive Committee since April 19, 2016 are void and (2) SIM-DFW's charitable giving and

[4] Appellees' brief, pg. 7.
[5] R.R. 09-20-2018 Hearing, 78:20 – 25 (By Beasley's Attorney: "The only evidence that we would propose to present is the testimony of Mr. Burns and Ms. O'Bryan who are not here, who were subpoenaed to be here and who they filed a motion for protective order to prevent from being here.")
[6] Appellees' brief pg. 5

philanthropy violate SIM-DFW's bylaws and articles of incorporation."[7]

i. However, the referenced judgment (Exhibit B) only awards attorney fees, and does not specifically FIND or ORDER that SIM-DFW was declared a prevailing party on any specific declaratory judgment act claims.

APPELLEE'S IMPROPER, FALSE LEGAL ARGUMENTS

13. Appellant specifically contradicts some false facts, false legal arguments, and misstated law provided by appellee in their Argument.

14. Appellees state:

a. "Rule 202(b)(2) addresses the admissibility of the law of other states and does not apply to the admissibility of court documents."[8]

i. This assertion by appellees is false, as evidence Rule 202 specifically includes "court decisions" of other states. Tex. R. Civ. E 202(a).

b. "The defamation and tortuous (sic) interference claims were based ***exclusively*** on communications written by and transmitted

[7] Appellees' brief pg. 33
[8] Appellees' brief pg. 21

by Appellees defense attorneys during the course of the litigation."[9]

i. In reality, appellant's defamation claim **DOES NOT** rely *exclusively* on communications written and transmitted by appellee's defense counsel. Appellant's claim states:

> "Rather than resolve the dispute, SIM Dallas embarked on a campaign to defame and disparage Beasley and his software company, Netwatch Solutions, and to tortuously interfere with business and contractual arrangements. Specific acts of defamation to 3rd parties, without privilege, occurred on April 19, 2016; May 8, 2016; October 25, 2016; December 29, 2016; December 31, 2016; February 1, 2017, February 6, 2017; April 6, 2017; August 29, 2017, December 15, 2017, February 5, 2018, **and at other times in meetings and publications to 3rd parties**."[10] "On December 31, 2016, **and at other times**, SIM Dallas published a statement, and that statement was defamatory concerning Beasley. SIM Dallas acted with malice, and was negligent in determining the truth of the statement. Beasley suffered damages."[11]

c. "Eventually, Beasley judicially admitted that the Hartford did provide coverage, which mooted his claim."[12]

i. In reality, Beasley DID NOT judicially admit that his claim was moot, as the overwhelming evidence is that the

[9] Appellees' brief pg. 38
[10] C.R. 637, ¶ 46
[11] C.R. 641, ¶ 68
[12] Appellees' brief pg. 36

entire Original 2016 litigation and its appeal to this court in 2017 was conducted primarily by Beasley *pro se*, why? —because he was not provided insurance defense coverage. Appellees cannot claim Beasley had insurance defense coverage and also claim Beasley proceeded *pro se*.

d. "Beasley erroneously argues that TEX. R. CIV. P. 85 — which speaks only to the contents of original answers — provides that a venue motion is an "answer" within the meaning of CPRC § 11.051."[13]" Beasley's attorneys' advanced this same argument in the trial court and lost."[14]

i. To the contrary, Beasley argues in his brief that appellees added a ground for defense in their Motion to Transfer Venue – thus per Rule 85, makes that pleading an answer.[15] Beasley does not argue that a Motion to Transfer Venue is by itself an "answer".

[13] Appellees' brief pg. 13
[14] Appellees' brief pg. 14
[15] Appellant's brief pg. 15 ("Defendants added a defense to the lawsuit in their Motion to Transfer Venue, making that pleading an answer, and therefore defendants' April 19, 2018, vexatious litigant motion was 3 days too late.")

ii. None of Beasley's attorneys advanced the theory that the inclusion of a ground for defense in the Motion to Transfer Venue converted that pleading into an "answer". Appellee's false statement that Beasley's attorney advanced the same argument are without reference to the record and should be stricken.

e. "Appellees also argued that a ***seventh case***, *Peter Beasley v. Society for Information Management*, Cause No. DC-16-03141 in the 162nd Judicial District Court of Dallas County, met the requirements of § 11.054(1)(B), not § 11.054(1)(A). This case should also be counted for numerosity purposes."[16] Appelles went further, "But as argued in the trial court, Appellees presented this case to the court because Beasley's failure to bring this case to trial within two years is the reason that this one counts and meets the requirements of TEX. CIV. PRAC.& REM. CODE § 11.054(1)(B)."[17] Appellees went even further, "Beasley's 2016 lawsuit against SIM-DFW, a.k.a. the Original Case counts for purposes of the vexatious litigant numerosity requirement under

[16] Appellees' brief pg. 19
[17] Appellees' brief pg. 27

TEX. CIV. PRAC. & REM. CODE § 11.054(1)(B). It is undisputed that the claims filed by Beasley in March 2016 had not been brought to trial or hearing before March 2018. Under § 11.054(1)(B), a claim commenced, prosecuted, or maintained by a pro se plaintiff that has not been brought to trial or hearing counts for purposes of the numerosity requirement."[18]

i. Appellees falsely state that Cause No. DC-16-03141 which was nonsuited within 2 years counts because Cause No. DC-18-05278 did not come to trial within 2 years after DC-16-03141 was commenced. The argument is false, where the two causes are different lawsuits and nothing in § 11.054(1)(B) allows for such overlapping-counting. Every lawsuit nonsuited within two years would never come to trial after two years, as the nonsuit immediately extinguishes the controversy.

f. In keeping with their false Statement of Facts, Appellees argued, "However, the trial court's November 3, 2017 Dallas County Judgment in the Original Case declared SIM-DFW a prevailing

[18] Appellees' brief pg. 30

party on Peter Beasley's declaratory judgment act claims …"[19] "SIM-DFW also prevailed on Beasley's other declaratory judgment act claims, including those seeking a declaration that (1) acts of the SIM-DFW Executive Committee since April 19, 2016 are void and (2) SIM-DFW's charitable giving and philanthropy violate SIM-DFW's bylaws and articles of incorporation."[20] Appellees went further, "Because the trial court in the Original Case previously declared that SIM-DFW prevailed on Beasley's claim that his expulsion was void and improper, it is axiomatic that the expulsion would deprive him of his membership benefits. That is what expulsion is — removing a member from the organization and the benefits of membership."[21] "There is no basis for this claim and given the resolution of the Original Case, no reasonable probability that Beasley would have prevailed on this claim."[22]

i. In reality, the "Original Case" is not resolved – it remaining on appeal in the Texas Supreme Court. SIM-

[19] Appellees' brief pg. 33
[20] Appellees' brief pg. 33
[21] Appellees' brief pg. 37
[22] Appellees' brief pg. 37

DFW has prevailed on nothing as the "Original Case" was nonsuited, restoring the parties to their original positions, except that Beasley was ordered to pay attorney fees.

g. "In rather surprising disregard for the judicial process, Beasley argues, for the first time on appeal and some 16 months after Appellees first filed the Motion to Declare Beasley Vexatious, that there is "no evidence" that he commenced, prosecuted, or maintained some of these litigations pro se."[23] "In re: Peter Beasley, Cause No. 05-17-01365-CV, Texas Fifth Court of Appeals. Beasley concedes that he was pro se at various times during the pendency of the Original Case to which this mandamus relates."[24] "In re: Peter Beasley, Cause No. 05-17-1032, Texas Supreme Court. Beasley concedes that he was pro se at various times during the pendency of the Original Case to which this mandamus relates."[25] "The record evidence establishes that in each of the litigations presented in the Motion,

[23] Appellees' brief pg. 30
[24] Appellees' brief pg. 31
[25] Appellees' brief pg. 31

Beasley commenced, prosecuted, and/or maintained the litigations pro se."[26]

i. In reality, there is nothing in the record that indicates these referenced lawsuits were commenced, prosecuted or maintained *pro se*, and **nowhere did appellant concede he was *pro se***. Appellant's argument was not made for the first time on appeal, as appellant's written response to the vexatious litigant motion[27] clearly dispute that appellant commenced, prosecuted or maintained sufficient adverse litigations *pro se*.

h. And as falsely stated in their Summary of the Argument, appellees falsely argue, "Beasley's lawsuit focused heavily on his attempts to judicially overturn the decision of the Executive Committee to expel him."[28] "The crux of Beasley's claims against Appellees relate to his expulsion from SIM-DFW in April 2016."[29]

[26] Appellees' brief pg. 31
[27] C.R. 1064 ¶ 46
[28] Appellees' brief pg. 33
[29] Appellees' brief pg. 32

EXHIBIT A

i. In reality, the 2017 lawsuit core claims are for **monetary damages** for torts committed by appellees against appellant[30] and is a different lawsuit than the Original 2016 Lawsuit.

ARGUMENT AND AUTHORITIES

15. It is without question that the appellate rules of procedure should be followed – especially by licensed attorneys from two different law firms. Only when appellate courts are provided with proper briefing may they discharge their responsibility to review the appeal and make a decision that disposes of the appeal one way or the other. *Boiling v. Farmers Branch Ind. Sch. Dist.*, 315 S.W.3d 893. 895 (Tex. App.-Dallas 2010, no pet.). The axiom that *pro se* litigants are required to follow the rules the same as licensed attorneys cuts both ways—licensed attorneys are required to follow the rules too, the same way *pro se* litigants must.

16. The duty for licensed attorneys to follow the appellate rules incorporates their responsibilities under the Texas Rules of Professional Conduct to provide candor to the court, to tell the truth, and to not make false legal arguments and to act fairly in court proceedings. *See* Tex. Disciplinary Rules of Prof. Conduct, Rule 3.03 Candor Toward the Tribunal; Rule 3.04 Fairness in Adjudicatory Proceedings.

[30] C.R. 629

EXHIBIT A

17. It is without question, Rules 38.1 and 38.2 were flagrantly violated with a blatant disregard of the rule to reference facts to the record, with a brazen pattern of making false legal arguments and to present false facts, and unambiguous attempts to misstate the law. The briefing violations, which include outright falsehoods, are serious and are made in contempt of the dignity of this court and in violation of a citizen's rights.

REQUESTED SANCTIONS

18. Appellees' briefing failures are flagrant and their entire brief should be stricken. Appellees' brief has both formal and substantial defects and submission of the case should be postponed until appellees' brief is refiled, Tex. R. App. P. 38.9, or due to the flagrant, intentional disregard of the rules and their pattern of obvious lying, strike the brief and prohibit these particular attorneys **who have never answered the Rule 12 challenge against them** from filing another brief.

SUMMARY

Wherefore, appellant seeks requests appellees' brief be stricken and resubmitted within 5 days, or for other appropriate orders of this court.

Respectfully submitted,
/s/ Peter Beasley
Peter Beasley
P.O. Box 831359
Richardson, Texas 75083
972-365-1170

EXHIBIT A

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of October 2019, a true copy of the foregoing instrument was served on opposing counsel through the court's electronic filing system.

/s/ Peter Beasley
Peter Beasley

EXHIBIT A

ACCEPTED
05-19-00607-CV
FIFTH COURT OF APPEALS
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10/10/2019 2:02 PM
LISA MATZ
CLERK

In The

Court of Appeals
Fifth District of Texas at Dallas

NO. 05-19-00607-CV

PETER BEASLEY, Appellant
v.
SOCIETY OF INFORMATION MANAGEMENT, DALLAS AREA CHAPTER, JANIS O'BRYAN AND NELLSON BURNS, Appellees

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On Appeal from the 191st Judicial District Court,
Dallas County, Texas
Trial Court Cause No. DC-18-05278

APPELLEES' BRIEF

EXHIBIT A

Respectfully submitted,

GORDON & REES

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Society for Information Management, Dallas Area Chapter ("SIM-DFW"), a Texas non-profit corporation, Janis O'Bryan, an individual, and Nellson Burns, an individual.

In the trial court the appellees/defendants were represented by the following attorneys:

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Appellees/Defendants are represented by the same attorneys in this appeal.[1]

Peter Beasley

In the trial court, the appellant/plaintiff was represented at various times by the following persons. At the time the trial court dismissed appellant/plaintiff's

[1] Appellees were also represented by the same counsel in *Beasley v. Society of Information Management, et al.,* Cause No. DC-16-03141, in the 162nd Judicial District Court of Dallas County, Texas appealed in *Beasley v. Society of Information Management et al.,* 2018 Tex.App. LEXIS 8993 (Tex.App.—Dallas Nov. 1, 2018), petition for review pending, Cause No. 19-0041.

EXHIBIT A

claims he was represented by Ms. Daena Ramsey and Mr. Andrew Gardner. Appellant/Plaintiff is unrepresented on appeal and proceeds *pro se*.

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EXHIBIT A

TABLE OF CONTENTS

I. STATEMENT OF THE CASE 1

II. STATEMENT REGARDING ORAL ARGUMENT 2

III. STATEMENT OF ISSUES PRESENTED 3

IV. STATEMENT OF FACTS 4

A. Beasley Sues SIM-DFW, Nonsuits on the Eve of Summary Judgment, and Then Sues SIM-DFW Again. 4

1. The Original Case and Award of $211,032.02 in Attorneys' Fees to SIM-DFW.....4

2. Beasley's 2017 Case, Appellee's Motion to Transfer Venue, and Return to Dallas County. 6

B. The Timely Filed Vexatious Litigant Motion Stays Litigation and Beasley is Found Vexatious. 7

V. SUMMARY OF ARGUMENT.....8

VI. ARGUMENT & AUTHORITIES 11

A. Beasley's Interlocutory Appeal Should be Summarily Dismissed As Untimely.....11

B. Appellees' Vexatious Litigant Motion was Timely Filed.....12

C. Appellee's Right to Invoke the Vexatious Litigant Statute is Not Altered by the Transfer of the 2017 Case from Collin to Dallas County or Appellee's Counterclaims.....14

D. The Trial Court's Order Declaring Beasley Vexatious is Proper in All Respects.....16

1. The Vexatious Litigant Statute's Numerosity Requirement is Easily Established by the Record Evidence.....18

2. Six of the Seven Adjudications Accepted by the Trial Court as Evidence of Beasley's Vexatious Nature were

EXHIBIT A

Determined Adversely, and the Seventh Counts for Numerosity Purposes Under a Different Part of the Statute.....23

3. Beasley Argues For the First Time On Appeal That He Was Not a Pro Se Litigant. 30

4. Beasley's Had No Reasonable Probability of Prevailing on His Claims Against Appellees in the Trial Court. 32

(a) Beasley's Core Claims Were Adjudicated by the Original Case Declaration that SIM-DFW was the Prevailing Party. 33

(b) Beasley's Remaining Claims in the 2017 Case Also Were Subject to Summary Disposition and the Trial Court Correctly Determined that There was No Reasonable Probability of That Beasley Would Prevail on his Claims. 35

E. Appellees Nonsuit of their Counterclaims is Wholly Irrelevant to the Determination of the Vexatious Litigant Motion.....40

F. The Vexatious Litigant Statute is Constitutional. 41

G. The Automatic Stay Imposed by the Vexatious Litigant Statute Precluded Hearings on any of Beasley's Ancillary Motions Until Beasley Paid the Required Security. 42

H. Beasley's Remarkable Attack on the Dallas County Judiciary is Nothing More than Unsupported and Offensive Rhetoric that Should Be Ignored by this Court. 44

VII. CONCLUSION & PRAYER.....45

EXHIBIT A

TABLE OF AUTHORITIES

Cases

Beasley v. Society of Information Management et al.,
2018 Tex.App. LEXIS 8993 (Tex.App.—Dallas Nov. 1, 2018).....1, 6

Bird v. W.C.W.,
868 S.W.2d 767 (Tex. 1994).....38

Bridgewater v. Double Diamond-Delaware, Inc.,
2011 U.S. Dist. LEXIS 47248 (N.D. Tex. April 29, 2011).....35

Cooper v. McNulty,
2016 Tex.App. LEXIS 11333 (Tex.App.—Dallas,
October 19, 2016, r'hrg. denied, r'hrg. en banc denied)..... 25, 29

Drake v. Andrews,
294 S.W.3d 370 (Tex. App.—Dallas 2009, no pet.).....20

Drum v. Calhoun,
299 S.W.3d 360 (Tex.App. –Dallas 2009).....43

Forist v. Vanguard Underwriters Ins. Co.,
141 S.W.3d 668 (Tex. App. –San Antonio 2004, no pet.).....9

Gant v. Grand Prairie Ford, L.P.,
No. 02-06-00386-CV, 2007 Tex.App. LEXIS 5727, 2007 WL 2067753
(Tex.App. –Fort Worth July 19, 2007).....44

Gardner v. Martin,
354 S.W.2d 274 (Tex.1961).....22

Garner v. Garner,
200 S.W.3d 303 (Tex. App. –Dallas 2006, no pet.).....45

Goad v. Zuehl,
2012 Tex.App. LEXIS 4066 (Tex.App.—San Antonio,
May 23, 2012, no pet. h).....29

Harris v. Rose,
204 S.W.3d 903 (Tex.App. –Dallas 2006, no pet.).....9

EXHIBIT A

Hernandez v. Hayes,
931 S.W.2d 648 (Tex. App. –San Antonio 1996, writ denied) 38

In re Florance,
377 S.W.3d 837 (Tex.App.—Dallas 2012, no pet. h.).....29

In re Prudential,
148 S.W.3d 124 (Tex.2004).....28

James v. Brown,
637 S.W.2d 914 (Tex. 1982).....38

Lane v. Port Terminal R.R. Ass'n,
821 S.W.2d 623 (Tex. App. –Houston [14th Dist.] 1991, writ denied) 38

Leonard v. Abbot,
171 S.W.3d 451 (Tex.App. –Austin 2005, pet. denied) 42

Pinnacle Premier Props., Inc., v. Breton,
447 S.W.3d 558 (Tex.App.—Houston [14th Dist.] 2014, no pet. 17

Reagan v. Guardian Life Ins. Co.,
140 Tex. 105, 166 S.W.2d 909 (1942).....38

Retzlaff v. GoAmerica Commc'ns Corp.,
356 S.W.3d 689 (Tex.App. –El Paso 2011, no pet.).....42

Seagraves v. Green,
288 S.W. 417 (Tex.1926).....28

Soefje v. Jones,
270 S.W.3d 617 (Tex.App.—San Antonio 2008, no pet.)..... 22, 23

Southern Cnt'y Mut. Ins. v. Ochoa,
19 S.W.3d 452 (Tex.App—Corpus Christi 2000, no pet) 21

Sparkman v. Microsoft Corp.,
2015 Tex.App. LEXIS 2510 (Tex.App. –Tyler,
March 18, 2015, pet. denied) 42

Sweed v. Nye,
319 S.W.3d 791 (Tex.App. –El Paso 2010, pet. denied).....42

EXHIBIT A

Williams Farms Produce Sales, Inc. v. R&G Produce Co.,
443 S.W.3d 250 (Tex.App—Corpus Christi 2014, no pet. h.) 22

Willms v. Ams. Tire Co.,
190 S.W.3d 796 (Tex. App. –Dallas 2006).....43

Statutes

TEX. CIV. PRAC. & REM. CODE § 11.001(1) 15

TEX. CIV. PRAC. & REM. CODE § 11.001(2) 29

TEX. CIV. PRAC. & REM. CODE § 11.051 ..... 7, 12, 13

TEX. CIV. PRAC. & REM. CODE § 11.052.....7

TEX. CIV. PRAC. & REM. CODE § 11.052(a)(2) 42

TEX. CIV. PRAC. & REM. CODE § 11.054..... 2, 3, 9, 32

TEX. CIV. PRAC. & REM. CODE § 11.054(1)(A) 8, 17, 19, 24, 26

TEX. CIV. PRAC. & REM. CODE § 11.054(1)(B)..... 8, 17, 19, 20, 27, 30

TEX. CIV. PRAC. & REM. CODE § 11.054(1)(C)..... 18, 24

TEX. CIV. PRAC. & REM. CODE § 11.056.....43

TEX. CIV. PRAC. & REM. CODE § 11.101 ..... 2, 3, 41

TEX. CIV. PRAC. & REM. CODE § 11.101(a) 11

TEX. CIV. PRAC. & REM. CODE § 11.101(c) 11

Rules

FED. R. CIV. P. 12 (b)(1).....26

FED. R. CIV. P. 12(2) 26

FED. R. CIV. P. 12(3) 26

FED. R. CIV. P. 12(6) 26

Rule 86(1).....14

EXHIBIT A

TEX. R. APP. P 33.1(a)(2) 22

TEX. R. APP. P. 10.5(b) 12

TEX. R. APP. P. 26.1(b) 12

TEX. R. APP. P. 26.3 12

TEX. R. APP. P. 28.1(b) 12

TEX. R. APP. P. 28.1(c) 17

TEX. R. APP. P. 33.1(a)(2) 45

TEX. R. CIV. P. 296 17

TEX. R. CIV. P. 85 13

TEX. R. EVID. 202(b)(2) 21

TEX. R. EVID. 901(b)(4) 22

TEX. R. EVID. 902(5) 22

EXHIBIT A

I.
STATEMENT OF THE CASE

Appellant Peter Beasley originally filed his claims against SIM-DFW on March 17, 2016 as Cause No. DC-16-03141 in the 162nd Judicial District Court of Dallas County, Texas ("Original Case").[2] The parties litigated the Original Case for 18 months when, on the eve of Defendant SIM-DFW's Motion for Summary Judgment, and the due date for his response, Beasley nonsuited without prejudice his claims and those of his company, Netwatch Solutions, on October 5, 2016.[3]

The case on appeal was filed November 30, 2017 ("2017 Case") in Collin County, Texas, alleging claims that all arose out of the same circumstances alleged by Beasley's Original Case. The 2017 Case was transferred to Dallas County following Appellees' Motion to Transfer Venue.[4]

Appellees moved to declare Beasley a vexatious litigant on April 19, 2018.[5] The trial court heard Appellees' motion on September 20, 2018 and on December 11, 2018 issued an order finding that Beasley is a vexatious litigant within

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[2] This Court may take judicial notice of the proceedings styled *Beasley v. Society of Information Management, et al.,* Cause No. DC-16-03141, in the 162nd Judicial District Court of Dallas County, Texas appealed in *Beasley v. Society of Information Management et al.,* 2018 Tex.App. LEXIS 8993 (Tex.App.—Dallas Nov. 1, 2018), petition for review pending, Cause No. 19-0041.

[3] *Id.*

[4] CR 661-662.

[5] CR 663-989; 1001-1056.

EXHIBIT A

the meaning of TEX. CIV. PRAC. & REM. CODE § 11.054.[6] The December 11, 2018 order included the language pursuant to § 11.101 prohibiting Beasley from *pro se* filing new litigation without permission from the appropriate local administrative judge.[7] Beasley is listed on the Texas Office of Court Administration List of Vexatious Litigants Subject to Prefiling Orders.

While Beasley has filed multiple notices of appeal, his initial notice was a notice of *interlocutory* appeal, filed May 21, 2019.[8] The *second* notice of appeal was filed May 27, 2019.[9] An *amended* notice of appeal was also filed July 16, 2019[10] and a *final amended notice of partial appeal* filed on August 22, 2019.[11] Beasley refers to the December 11, 2018 order as the "prefiling order" which he claims is the sole basis of this appeal. However, the December 11, 2018 was an interlocutory order and this appeal is untimely.

II.
STATEMENT REGARDING ORAL ARGUMENT

The issues in this appeal are neither novel nor complex. First, the interlocutory appeal is untimely and mooted by the trial court's final judgment.

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[6] CR 1259-1260.

[7] *Id.*

[8] CR 1342-1344.

[9] CR 1345.

[10] 2019 10 07 Supp CR Vol 1 155-159; *see also* 2nd Supp CR 23 (docket entry)

[11] 2nd Supp CR 307-309.

EXHIBIT A

If this Court is inclined to construe this appeal as an appeal of the final judgment, the law and the record clearly support the trial court's determination that Appellant is a vexatious litigant as that term is defined by TEX. CIV. PRAC. & REM. CODE § 11.054, and is the appropriate subject of a prefiling order pursuant to TEX. CIV. PRAC. & REM. CODE § 11.101. As a result, Appellee does not request oral argument.

III.
STATEMENT OF ISSUES PRESENTED

- The *pro se* Appellant's failure to timely file a notice of interlocutory appeal requires this Court to dismiss this appeal.
- If this Court allows Appellant's untimely appeal to move forward, the Appellant has failed to establish that the trial court abused its discretion in granting Appellees' motion to declare Appellant vexatious.
- Appellee's motion to declare appellant vexatious was timely.
- Appellant is vexatious. There was no reasonable probability that Appellant would prevail on any of his claims against Appellees. Appellees easily established that Appellant's litigation history met Chapter 11's numerosity requirement.
- The Vexatious Litigant Statute is constitutional.
- Appellant's incredible attack on the judiciary of Dallas County is wholly unsupported and demonstrates well his vexatious behavior.
- Chapter 11 imposes a mandatory stay of trial proceedings when a vexatious litigant motion is filed. Only *after* a motion is denied or, if granted, the vexatious litigant has paid the court-ordered security, may the trial court resume proceedings.

EXHIBIT A

IV.
STATEMENT OF FACTS

A. Beasley Sues SIM-DFW, Nonsuits on the Eve of Summary Judgment, and Then Sues SIM-DFW Again.

The Society for Information Management is a national, professional society of Information Technology ("IT") leaders whose goal is to connect senior level IT leaders with peers in their communities, to provide opportunities for collaboration to share knowledge, provide networks, give back to local communities, and provide its members with opportunities for professional development. Locally, Appellee is known as SIM-DFW and is one of the largest chapters in the organization, with more than 300 members. SIM-DFW meets most months to network and discuss important managerial and technical issues facing IT practitioners. Beasley was a member of SIM-DFW until April 2016 when he was expelled from the Chapter by vote of the Board of the Directors.

1. The Original Case and Award of $211,032.02 in Attorneys' Fees to SIM-DFW.

Before expelling Beasley, the Executive Committee planned to seek his resignation. However, before the Executive Committee was able to seek his resignation, Beasley sued both his own organization and the volunteers who donate their time to sit on its Board of Directors.

During the Original Case, Beasley amended his claims multiple times. In the Sixth Amended Petition, Beasley added several declaratory judgment act claims

EXHIBIT A

alleging that (1) the April 19, 2016 expulsion meeting was void because it violated the Texas Business Organizations Code; (2) the actions taken by the SIM-DFW Board following the April 19, 2016 meeting were invalid absent Beasley's ratification; and, (3) SIM-DFW was prohibited from using member funds to benefit non-members. Beasley also alleged that his due process rights were violated because SIM-DFW did not provide him with due process related to his expulsion.

SIM-DFW filed a motion for summary judgment arguing that the doctrine of judicial non-intervention required dismissal of all of Beasley's claims, with the hearing set for October 12, 2017. Beasley nonsuited all of his claims on October 5, 2017, the date his response to SIM-DFW's motion for summary judgment was due.

After the nonsuit, SIM-DFW moved for, and was declared, the prevailing party on Beasley's declaratory judgment act claims.[12] SIM-DFW was awarded $211,032.02 in attorneys' fees for the defense of the declaratory judgment act claims.[13] Beasley filed multiple post-judgment motions, seeking recusal of the judge,[14] mandamus in both the Fifth Court of Appeals and the Texas Supreme

[12] CR 22-26.

[13] CR 214-216.

[14] CR 23-26; 217-523.

EXHIBIT A

Court,[15] and all manner of post-judgment relief.[16] Eventually, Beasley appealed the award of attorneys' fees.[17] The Fifth Court of Appeals affirmed the award.[18] Beasley then petitioned the Texas Supreme Court for review.

2. Beasley's 2017 Case, Appellee's Motion to Transfer Venue, and Return to Dallas County.

At the same time he was seeking review of the attorneys' fees award, Beasley filed a nearly identical case against SIM-DFW and Appellees Janis O'Bryan and Nellson Burns in Collin County, i.e., the 2017 Case.[19] Appellees first moved to transfer venue, arguing that Beasley was engaging in forum-shopping and that proper venue for the 2017 Case was Dallas County.[20] Thereafter, on January 22, 2018, Appellees filed their Original Answer, General Denial, and Affirmative Defenses subject to the Motion to Transfer Venue.[21]

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[15] CR 23-26; 217-523.

[16] *Id.*

[17] CR 769-886.

[18] *Beasley v. Society of Information Management et al.*, 2018 Tex.App. LEXIS 8993 (Tex.App.—Dallas Nov. 1, 2018).

[19] 2019 10 07 Supp. CR Vol. 1 4-19.

[20] CR 22-628.

[21] 2019 10 07 Supp. CR Vol. 1 20-23; *see also* CR 7 (docket sheet noting filing on January 22, 2018); *see also* CR 991 (Collin County docket sheet).

EXHIBIT A

B. The Timely Filed Vexatious Litigant Motion Stays Litigation and Beasley is Found Vexatious.

The Collin County District Court transferred the 2017 Case back to Dallas County in April 2018.[22] On April 19, 2018, when the 2017 Case was in the process of being transferred to Dallas County, Appellees filed a Motion to Declare Peter Beasley a Vexatious Litigant.[23] The Vexatious Litigant Motion was filed three (3) days before the expiration of the filing deadline contained in TEX. CIV. PRAC. & REM. CODE § 11.051.[24] In error, Beasley disputes the timeliness of the filing.

By statute, the filing of the vexatious litigant motion **stayed all litigation activity**. TEX. CIV. PRAC. & REM. CODE § 11.052. Appellees' Vexatious Motion was heard on September 20, 2018.[25] Beasley was represented by counsel at this hearing.[26] Beasley's counsel even requested an opportunity to provide post-hearing briefing, which was granted.[27] Counsel did not request that Beasley testify in his own defense, did not demand rulings on his objections, and did not present any witnesses on behalf of Beasley.[28] Appellees' counsel provided evidence and

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[22] CR 661-662.

[23] CR 663-989.

[24] CR 663-664.

[25] RR Vol. 1.

[26] RR Vol. 1 at p. 2.

[27] RR Vol 1, 11:23-12:12; 79:18-88:9.

[28] Beasley's assertion that Appellee's Janis O'Bryan and Nellson Burns were subpoenaed to testify at the vexatious litigant hearing is false. Brief at 13-14. O'Bryan and Nellson were subpoenaed

EXHIBIT A

argument establishing that Beasley had no reasonable probability to prevail on his claims against Appellees. Appellees also provided the trial court with evidence proving that Beasley's vexatious behavior more than meets the numerosity requirements of TEX. CIV. PRAC. & REM. CODE § 11.054(1)(A) and (B). Following the hearing, the Court accepted letter briefs from both parties regarding (1) the timeliness of Appellants' Vexatious Litigant Motion and (2) Beasley's Reasonable Probability of Success on the Merits.[29]

V.
SUMMARY OF ARGUMENT

Appellant's own brief confirms that Peter Beasley is a vexatious litigant. Beasley, an experienced *pro se* litigant who is no stranger to the Courts of Dallas County and the Fifth Court of Appeals, has repeatedly proven that the vexatious litigant statute absolutely applies to him.

Beasley's failure to timely appeal the December 11, 2018 interlocutory order should result in an immediate dismissal of this appeal. Moreover, Beasley has already filed another appeal that is also pending in the Fifth Court of Appeals[30] that he claims is the appeal of the trial court's final dismissal of his claims against

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to appear as witnesses in Beasley's Rule 12 Motion hearing, which did not take place. RR Vol 1 78:20-79:17. This clarification of the subpoenas was unchallenged by Beasley's counsel.

[29] CR 1089-1258.

[30] Cause No. 05-19-01111-CV.

EXHIBIT A

Appellees for his for failure to pay the security required by the December 11, 2018 order. Not surprisingly, Beasley has created a mess of his appeal(s) and continues to waste judicial resources.

If this Court allows this appeal to move forward at all, it must affirm the trial court. As this Court is well aware, a vexatious litigant declaration is reviewed on an abuse of discretion standard. *Harris v. Rose*, 204 S.W.3d 903, 905 (Tex.App. – Dallas 2006, no pet.); *see also Forist v. Vanguard Underwriters Ins. Co.*, 141 S.W.3d 668, 670 (Tex. App. –San Antonio 2004, no pet.) (noting that while no other Texas courts has addressed the appropriate standard of review for CPRC Chapter 11 claims, "abuse of discretion" was the appropriate standard under Chapter 13 which is an analogous chapter in the Civil Practice and Remedies Code). Appellees' motion complied in *all respects* with the vexatious litigant statute. The vexatious litigant motion, filed less than 90 days after Appellee filed their original answer, was timely. Additionally, despite Beasley's attempts to argue to the contrary, neither Appellees' counterclaims nor their efforts to have this case timely transferred to the correct venue, prohibited them from availing themselves of the vexatious litigant statute.

All statutory requirements of TEX. CIV. PRAC. & REM. CODE § 11.054 are met.[31] The trial court found that Beasley had no reasonable probability of prevailing

[31] Appx. 3-4.

EXHIBIT A

on his claims. The core claims were all subject to the doctrine of judicial non-intervention. The remaining claims all suffered from fatal flaws including lack of contract (or unilateral contract) for the breach of contract-based claims, judicial immunity for the defamation claims, and/or evidence that the claims as pled did not belong to Beasley at all but were instead claims that, if they were meritorious at all, belonged to Beasley's company, not Beasley himself. But of course, those claims were not meritorious, which was clearly understood by the trial court.

The remainder of Beasley's arguments on appeal do not merit a response, but Appellees most decidedly did **not** nonsuit their vexatious litigant motion by nonsuiting their counterclaims. That assertion is preposterous and exactly the type of argument that Beasley has made frequently and repeatedly in this four-year litigation. Additionally, as Beasley should know, the vexatious litigant statute's automatic stay, not some vast conspiracy between judges and lawyers in Dallas County, is what prevented Beasley from having any of his post-declaration motions heard.

This appeal represents a virtual "greatest hits" of the types of arguments Beasley has lodged over the years in his crusade against SIM-DFW. His statutory interpretation is unsupported by case law and prior rulings in the trial court. His reimagining of facts, even those established by clear records and evidence, is unparalleled nonsense. And his waste of resources of his opponents is the perfect

EXHIBIT A

example of why Texas has the vexatious litigant designation. There is no basis to reverse the trial court's determination that Beasley is a vexatious litigant. This Court must affirm.

VI.
ARGUMENT & AUTHORITIES

> Some litigants abuse the Texas court system by systematically filing lawsuits with little or no merit. This practice clogs the courts with repetitious or groundless cases, delays the hearing of legitimate disputes, wastes taxpayer dollars, and requires defendants to spend money on legal fees to defend against groundless lawsuits.

House Committee on Civil Practices, Bill Analysis, Tex. H.B. 3087, 75th Leg., R.S. (1997).

Peter Beasley is the epitome of a vexatious litigant. The trial court easily recognized this fact and this Court should affirm the trial court's order finding Beasley vexatious and placing him on the Office of Court Administration's prefiling list.

A. Beasley's Interlocutory Appeal Should be Summarily Dismissed As Untimely.

TEX. CIV. PRAC. & REM. CODE § 11.101(c) states that a litigant may appeal from a prefiling order entered under TEX. CIV. PRAC. & REM. CODE § 11.101(a).[32] Notwithstanding the permission for interlocutory appeal granted by the Texas Civil

[32] Appx. 5.

EXHIBIT A

Practices & Remedies Code for a prefiling order, a litigant must comply with the Texas Rules of Appellate Procedure to perfect the accelerated appeal. TEX. R. APP. P. 28.1(b). Beasley's initial notice of appeal of the prefiling order was filed May 21, 2019 — 161 days *after* the order was signed.

Beasley's deadline to perfect the appeal of the prefiling order was 20 days after the order was signed. TEX. R. APP. P. 26.1(b). The prefiling order was signed December 11, 2018.[33] Of course, the appellate court *may* extend the time to file a notice of appeal if, within 15 days after the deadline to file such a notice, the party seeking appeal files a notice of appeal in the trial court and motion to extend time in the appellate court. TEX. R. APP. P. 26.3; TEX. R. APP. P. 10.5(b). Beasley failed to do so. He did not file a notice of appeal of the prefiling order within 20 days of December 11, 2018. Nor did he file a notice and motion to extend within the 15 additional days that might have been available to him pursuant to TEX. R. APP. P. 26.3. Accordingly, his appeal is untimely and should be dismissed and the trial court's order affirmed on this basis alone.

B. Appellees' Vexatious Litigant Motion was Timely Filed.

TEXAS CIVIL PRACTICE & REMEDIES CODE § 11.051 provides:

> 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

[33] CR 1259-1260.

EXHIBIT A

> the plaintiff is a vexatious litigant; and (2) requiring the plaintiff to furnish security.

(Emphasis added).[34]

Appellees filed the Motion to Transfer Venue on January 16, 2018 and, on January 22, 2018, answered subject to the venue motion.[35] The Motion to Declare Peter Beasley a Vexatious litigant was filed **87 days** after the Answer, on April 19, 2018, in Collin County due to the pending transfer of the case from Collin County to Dallas County.[36] The deadline was met with **three** days to spare.

Beasley erroneously argues that TEX. R. CIV. P. 85 — which speaks only to the ***contents*** of original answers — provides that a venue motion is an "answer" within the meaning of CPRC § 11.051. Once again, Beasley is wrong. The plain language of Rule 85 states only that "[t]he original answer ***may consist of*** motions to transfer venue, pleas to the jurisdiction, in abatement, or any other dilatory pleas; of special exceptions, of general denial, and any defense by way of avoidance or estoppel, and it may present a cross-action…." (Emphasis added). The Rule says nothing that even possibly could be construed as declaring that a motion to transfer venue is the same thing as an original answer for purposes of the vexatious statute. While a venue motion may be part of an answer, it is not tantamount to an answer

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[34] Appx. 2.

[35] CR 7 (docket sheet noting filing date of Appellees' Motion to Transfer Venue and Answer).

[36] CR 10.

EXHIBIT A

for purposes of starting the 90-day period running in which to file a vexatious motion.

Moreover, Rule 86(1) includes a "due order of pleading" requirement that states explicitly that a motion to transfer venue is waived unless it is filed "**prior to or concurrently with** any other plea, pleading or motion ***except*** a special appearance motion provided for in Rule 120a." (Emphasis added). A plain reading of the Rule confirms that a motion to transfer venue must be filed before or with an answer, **not that filing a motion to transfer venue *is* an answer**.

Beasley's attorneys' advanced this same argument in the trial court and lost. The court rejected his tortured reading of Rule 85 and determined that the Appellee's Motion was timely filed. This Court should do likewise.

C. Appellee's Right to Invoke the Vexatious Litigant Statute is Not Altered by the Transfer of the 2017 Case from Collin to Dallas County or Appellee's Counterclaims.

One of Beasley's more unusually frivolous arguments is that by moving to transfer the 2017 Case from Collin County to Dallas County, Appellees became "plaintiffs" within the meaning of Chapter 11 and therefore were ineligible to seek a declaration that Beasley was vexatious. Beasley makes the same argument with regard to Appellees status in the trial court as counter-claimants. Not surprisingly there is no authority whatsoever for this position.

EXHIBIT A

The statute defines "defendant" as "a person or governmental entity against whom a plaintiff commences or maintains or seeks to commence or maintain a litigation." TEX. CIV. PRAC. & REM. CODE § 11.001(1).[37] Beasley acknowledges in his Statement of the Case that he filed "Breach of Contract, Fraudulent Inducement, Defamation, Tortuous (sic) Interference, Declaratory Judgment, Due Process, and Injunctive causes of action" against Appellees.[38] There is no question that Appellees are "defendants" within the meaning of Chapter 11.

Missing from Beasley's argument is the candor regarding the interplay between Appellees' Motion to Transfer Venue, the Collin County court's order on the Motion, and the timing of the transfer vis-a-vis the deadline to file the vexatious litigant motion. Simply put, in the midst of chaos that Beasley was busy creating by filing the 2017 Case in Collin County, Appellees did what was necessary to expedite the transfer of the 2017 Case to allow them to timely file the vexatious litigant motion.

The hearing on Defendants' Motion to Transfer Venue was held on April 3, 2018 and granted the same day.[39] The Collin County court then signed an Amended Order on the Motion to Transfer Venue on April 18, 2018 expediting the

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[37] Appx. 1.

[38] Brief at 1; *see also* CR 629-648.

[39] CR 661.

EXHIBIT A

transfer to Dallas County.[40] On receipt of that Amended Order, and confirmation that the case transfer was imminent, Defendants filed the Motion to Declare Peter Beasley a Vexatious Litigant (in both Collin and Dallas County) and caused to be paid the transfer fees associated with the transfer to ensure that the vexatious litigant motion was duly filed.[41] While perhaps unconventional, time was of the essence, and Beasley's attempt to run out the clock on Appellees ability to file a vexatious litigant motion was not going to be rewarded. After what was then two long years of litigating with Beasley, and traversing state and federal courts in Dallas and Collin Counties, Appellees were ready to, and were entitled to, avail themselves of the protections offered by Chapter 11.

D. The Trial Court's Order Declaring Beasley Vexatious is Proper in All Respects.

Beasley complains that the Court's December 11, 2018 order fails to state the specific findings of the trial court in declaring Beasley vexatious. Beasley claims that this failure renders the vexatious order "insufficient". There is no required form of order for an order declaring a *pro se* party to be vexatious.

Simply put, the trial court finds that the statutory elements of Chapter 11 are met, as the trial court did here.[42] Beasley provides this Court with no authority,

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[40] CR 662.

[41] CR 1354-1355.

[42] CR 1259.

EXHIBIT A

because there is none, that holds that a trial court is required to exhaustively restate, either on the record or in the order, the grounds for granting a vexatious litigant motion. Moreover, Beasley's argument that he was entitled to findings of fact and conclusions of law is also incorrect. In fact, TEX. R. CIV. P. 296 only requires the trial court to issue findings of fact and conclusions of law after a bench trial. Requiring the trial court to issue findings of fact and conclusions of law after every hearing, as requested by Beasley, would unnecessarily burden the courts — a request that, tragically, is par for the course for this particular vexatious litigant.[43]

What Beasley must show, which he cannot, is that the trial court was not presented with any evidence by the Appellees that was sufficient to meet the statutory burden of Chapter 11. As well demonstrated during the hearing on September 20, 2018, and in the post-hearing briefing allowed by the trial court, Appellees provided this Court with ample evidence of Beasley's vexatious litigant behavior, including:

- Evidence of **seven** (not just the five required) cases filed in the 7 years immediately preceding the filing of Appellee's motion that were either determined adversely to Beasley, TEX. CIV. PRAC. & REM. CODE § 11.054(1)(A) or "permitted to remain pending at least two years without having been brought to trial or hearing", TEX. CIV. PRAC. & REM. CODE § 11.054(1)(B);

[43] Significantly, a trial court is not required to prepare and file findings of fact and conclusions of law in an appeal from an interlocutory order. Tex. R. App. P. 28.1(c); *Pinnacle Premier Props., Inc., v. Breton*, 447 S.W.3d 558, 562, n6 (Tex.App.—Houston [14th Dist.] 2014, no pet.).

EXHIBIT A

- Evidence and legal argument confirming the frivolous and unmeritorious nature of Beasley's pending claims sufficient to support the trial court's finding that Plaintiff had no reasonable probability of success of prevailing; and,

- Argument and legal authority confirming that Appellees' motion to declare Beasley vexatious was timely filed.

The Order declaring Beasley vexatious is not void for any of the reasons argued by Beasley.

1. The Vexatious Litigant Statute's Numerosity Requirement is Easily Established by the Record Evidence.

This Court is well familiar with the requirements of Chapter 11. They require the movant to prove that the plaintiff had, in the seven-year (7) period immediately preceding the date the defendant makes the motion under Section 11.051, commenced, prosecuted or maintained **at least five litigations** as a *pro se* litigant other than in small claims court that have been (A) finally adversely determined to the plaintiff, **or** (B) permitted to remain pending at least two years without having been brought to trial or hearing.[44]

At the September 20, 2018 hearing Appellees introduced into evidence the **six (6) litigations** commenced, prosecuted or maintained by Plaintiff Beasley that had been finally adversely determined against him:

[44] Section 11.054(1)(C) provides an additional grounds for determining a plaintiff is vexatious. It is not necessarily an issue here, though at least one court confirmed that Beasley's claims were frivolous. September 3, 2019 RR Exhibits, Defendants' Exhibit 1 and p.2. *See also*, Appx. 3.

EXHIBIT A

1. ***Peter Beasley v. Susan M. Coleman; Randall C. Romei,*** Case No. 1:13cv1718 in the USDC Northern District of Illinois;[45]

2. ***Peter Beasley v. John Krafcisin, John Bransfield, Anna-Maria Downs, and Hanover Insurance Co.***, Case No. 3:13-CV-4972-M-BF, USDC Northern District of Texas;[46]

3. ***Peter Beasley v. Seabrum Richardson and Lamont Aldridge***, No. 05-15001156-CV, Texas Fifth Court of Appeals;[47]

4. ***In re: Peter Beasley***, Cause No. 05-15-00276, Texas Fifth Court of Appeals;[48]

5. ***In re: Peter Beasley***, Cause No. 05-17-01365-CV, Texas Fifth Court of Appeals;[49]

6. ***In re: Peter Beasley***, Cause No. 05-17-1032, Texas Supreme Court.[50]

Appellees also argued that a ***seventh case***, *Peter Beasley v. Society for Information Management*, Cause No. DC-16-03141 in the 162nd Judicial District Court of Dallas County, met the requirements of § 11.054(1)(B), not § 11.054(1)(A). This case should also be counted for numerosity purposes.[51] Beasley argues that this case cannot count against the numerosity requirement because (1) it is still on appeal

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[45] September 3, 2019 RR Exhibits, Defendants' Exhibit 1.

[46] *Id.*, Defendants' Exhibit 2.

[47] *Id.*, Defendants' Exhibit 3.

[48] *Id.*, Defendants' Exhibit 4.

[49] *Id.*, Defendants' Exhibit 5.

[50] *Id.*, Defendants' Exhibit 6.

[51] RR Vol. 1 33:18-35:15.

EXHIBIT A

and (2) he was represented when the case was dismissed at the trial court level. Beasley incorrectly argues that either of those things makes this seventh case ineligible to be counted when applying the numerosity standard. First, § 11.054(1)(B) is a different means of determining whether a case counts for numerosity purposes and does not require a final adverse determination, only that the case has not come to trial or hearing within two years.[52] Second, the statute clearly contemplates that a *pro se* party may eventually become represented or be represented and lose counsel by using the "commenced, prosecuted or maintained" language to describe the litigation at issue for the numerosity requirement. *See, Drake v. Andrews,* 294 S.W.3d 370, 374-75 (Tex. App.—Dallas 2009, no pet.) (holding that the vexatious litigant statute is not limited to just pro se litigants, "[t]o interpret the statute in such a way as to immunize Drake from its effect, simply because Drake was briefly represented by counsel, would be to thwart the statute's purpose."). Beasley cannot credibly dispute that he commenced, prosecuted, and maintained this seventh litigation as a *pro se.*

At the September 20, 2018 hearing, and in the post-hearing briefing, Beasley's counsel did not object to the accuracy of *any* of the evidence provided to the Court proving the adjudication of the six litigations determined adversely against Peter Beasley. Moreover, Beasley's counsel at the September 20, 2018 hearing went so

[52] Appx. 3.

EXHIBIT A

far as to **concede** that mandamus or original proceedings counted as "litigations" for purposes of the statute separate from the underlying case upon which mandamus was sought.

On appeal, Beasley now challenges the authenticity of the court records provided by the Appellees in the trial court. His reliance on Texas Rule of Evidence 202(b)(2) to support his argument is misplaced. Rule 202(b)(2) addresses the admissibility of the law of other states and does not apply to the admissibility of court documents.

Beasley's citation to *Southern Cnt'y Mut. Ins. v. Ochoa* has some relevance, though in fact *Ochoa* supports Appellees here. 19 S.W.3d 452 (Tex.App—Corpus Christi 2000, no pet). *Ochoa* stands for the unremarkable proposition that a court cannot take a lawyer's word about the existence of orders from another court; rather, the party seeking judicial notice of the orders of another court need provide the trial court with proof of the orders. *Id.* at 463. The appellate court in *Ochoa* went on to note that the party urging judicial notice of another court's order failed to direct the court of appeals to a copy of the order in the appellate record and failed to describe the orders in any detail at the hearing. *Id.*

Here, in stark contrast, the Appellees supplied the Court with copies of all of the orders finally adjudicating Beasley's prior litigations, described each in great

EXHIBIT A

detail on the record[53] and, the orders themselves were admitted as evidence by the trial court as self-authenticating documents under Tex. R. Evid. 902(5). *See Williams Farms Produce Sales, Inc. v. R&G Produce Co.*, 443 S.W.3d 250, 259 (Tex.App—Corpus Christi 2014, no pet. h.) (holding that documents from government websites are self-authenticating under Tex. R. Evid. 902(5), and further, that documents that originate from document websites can also be authenticated under Tex. R. Evid. 901(b)(4)). Moreover, while Beasley's attorney did object to the authenticity of the documents establishing Beasley's prior litigation history,[54] counsel failed to secure or even request a ruling on his objection and therefore failed to preserve error. Tex. R. App. P 33.1(a)(2).

Last, Beasley's reliance on *Gardner v. Martin*, 354 S.W.2d 274 (Tex.1961), and *Soefje v. Jones*, 270 S.W.3d 617 (Tex.App.—San Antonio 2008, no pet.) is easily rebutted. The court in *Gardner* merely held that a party moving for traditional summary judgment and relying on records of a prior case to establish *res judicata* must provide those records of the prior case to the trial court and could not incorporate court records by reference. 354 S.W.2d at 276. In *Soefje*, the court did not exclusively hold, as Beasley claims, that only certified or sworn documents from other cases are admissible. Instead, the *Soefje* court noted the general rule that a trial

[53] RR Vol 1, 28:16-36:12.

[54] RR Vol. 1, 56:22-57:1.

EXHIBIT A

court may not take judicial notice of documents from another case unless they are properly authenticated. 270 S.W.3d 617, 625 ("It is also generally true that pleadings are not summary judgment evidence and that simply attaching a document to a pleading does not make the document admissible as evidence or dispense with proper foundational requirements."). Here, as demonstrated in the record, the court orders of Beasley's prior cases all were authenticated.

It is notable that Beasley's counsel did not raise the issue of the authenticity of the evidence submitted in the post-trial briefing. Presumably, this is because Beasley's counsel knew that the records were, in fact, authentic and accurately represented Beasley's notorious *pro se* history.

2. Six of the Seven Adjudications Accepted by the Trial Court as Evidence of Beasley's Vexatious Nature were Determined Adversely, and the Seventh Counts for Numerosity Purposes Under a Different Part of the Statute.

Beasley continues to argue that Appellees' evidence failed to prove the clear adverse determinations that are visible on the very face of each document.

Inexplicably, he argued that *Peter Beasley v. Susan M. Coleman; Randall C. Romei,* Case No. 1:13cv1718 in the USDC Northern District of Illinois [55] and *Peter Beasley v. John Krafcisin, John Bransfield, Anna-Maria Downs, and Hanover Insurance Co.,* Case No. 3:13-CV-4972-M-BF, USDC Northern District of Texas[56]

[55] September 3, 2019 RR Exhibits, Defendants' Exhibit 1

[56] September 3, 2019 RR Exhibits, Defendants' Exhibit 2

EXHIBIT A

should not count for purposes of TEX. CIV. PRAC. & REM. CODE § 11.054(1)(A) because, while the cases brought *pro se* by Peter Beasley were dismissed, they were dismissed on jurisdictional grounds.[57] Beasley's argument is that a dismissal for improper venue or lack of jurisdiction does not meet the statute's requirement that a litigation be "finally determined adversely." As an initial matter, Beasley's argument misstates the facts. As demonstrated by the records contained in Defendants' Exhibit 1, Defendant Romei's Motion to Dismiss was granted because the Court did not believe supplemental jurisdiction existed. But Peter Beasley's claim against Defendant Susan Coleman was dismissed on the grounds that it was filed frivolously, which is one of the specific numerosity grounds under TEX. CIV. PRAC. & REM. CODE § 11.054(1)(C).[58]

Beyond Beasley's misrepresentation of the Illinois case, he cites no case law for the proposition that "adverse determinations" must mean only merits-based adjudications. He provides the Court with no guidance from either legislative history or analogous statutes to argue that dismissals for improper venue and lack of jurisdiction do not count for purposes of the vexatious litigant statute. But this Court need only consider the *purpose* of the vexatious litigant statute to know that Beasley's argument is utter nonsense.

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[57] Brief at p.36.

[58] Appx. 3.

EXHIBIT A

In *Cooper v. McNulty*, the Dallas Court of Appeals stated "Chapter 11 of the Texas Civil Practice and Remedies Code addresses vexatious litigants — persons who abuse the legal system by filing numerous, frivolous lawsuits." 2016 Tex.App. LEXIS 11333, *6 (Tex.App.—Dallas, October 19, 2016, r'hrg. denied, r'hrg. en banc denied). The Court went further, clarifying that the statute is meant to "strike a balance between Texans' right of access to their courts and the public interest in protecting defendants form those who abuse the Texas court system by systematically filing lawsuits with little or no merit." *Id.* at *11. **The clear intent of the statute is to operate as a check and balance on *pro se* litigants who would file frivolous, meritless, or simply improper claims that waste judicial resources.** Given that backdrop, it is inconceivable that the statute would find that lawsuits filed in improper venues or in forums that lack jurisdiction are not a significant waste of judicial resources.

As both Defendants' Exhibits 1 and 2 show, significant judicial resources were expended in both cases. In the *Coleman* matter, (Defendants' Exhibit 1), a hearing on Defendant Romei's Motion to Dismiss was held and then after the Motion to Dismiss was granted (and the claims against Coleman were dismissed because they were frivolous), Peter Beasley then ***appealed that decision to the United States Seventh Circuit Court of Appeals*!** The appeal was decided in February 2014, but, at or around the same time Beasley presumably was briefing his

Seventh Circuit appeal, he filed a case involving the same facts and circumstances in the United States District Court for the Northern District of Texas –the *Krafcisin* case (Defendants' Exhibit 2).

The *Krafcisin* defendants filed motions to dismiss under Fed. R. Civ. P. 12 (b)(1), (2), (3), and (6) in early January 2014 and Magistrate Judge Stickney provided his Findings, Conclusions, and Recommendations for dismissal on August 25, 2014. (Defendants' Exhibit 2). Beasley next filed **objections** to the Magistrate's Findings, Conclusions, and Recommendations and then filed amended objections. Further amendments to the objections were prevented by Judge Lynn's September 17, 2014 Order accepting the Magistrate Judge's findings.[59] Not surprisingly, the docket indicates that Beasley attempted an appeal to the Fifth Circuit Court of Appeals.[60]

It is absurd to suggest, as Beasley does, that this colossal waste of judicial resources that involved two United States District Courts and one United States Court of Appeals would not count for purposes of § 11.054(1)(a). Both cases clearly count and Beasley's objections are without merit.

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[59] This Court may take judicial notice of the docket sheet of the Federal Court case in *Beasley v. Krafcisin et al.,* Cause No. 3:13-cv-04972-M-BF.

[60] *Id.*

EXHIBIT A

Next, Beasley argues that *Peter Beasley v. Seabrum Richardson and Lamont Aldridge*, No. 05-15001156-CV, (5th Court of Appeals) should not count because it was a voluntary nonsuit. Here, he again misstates the facts. It was a dismissal with prejudice that was entered at the request of Beasley that was then appealed ***by Beasley*** and affirmed by the Fifth Court of Appeals.[61]

Beasley similarly complains that *Peter Beasley v. Society for Information Management*,[62] i.e., the Original Case, cannot count against him because he voluntarily nonsuited this case as well. But as argued in the trial court, Appellees presented this case to the court because Beasley's failure to bring this case to trial within two years is the reason that this one counts and meets the requirements of TEX. CIV. PRAC. & REM. CODE § 11.054(1)(B).

Finally, Beasley complains that the remainder of the cases presented to the trial court do not count as adverse determinations because they were original proceedings which did not finally determine any issue in the underlying proceeding.[63] This argument is absurd on its face. Mandamus is a petition for extraordinary relief seeking to have a higher court command a lower court to do or refrain from doing some act. *See Seagraves v. Green*, 288 S.W. 417, 424-25

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[61] September 3, 2019 RR Exhibits, Defendants' Exhibit 3.

[62] September 3, 2019 RR Exhibits, Defendants' Exhibit 5.

[63] Brief at 37.

EXHIBIT A

(Tex.1926). In order for mandamus to issue, the relator must show that there is no adequate remedy by appeal. *In re Prudential*, 148 S.W.3d 124, 135-36 (Tex.2004). To suggest, as Beasley does, that only mandamuses related to underlying litigation that also is determined adversely to the plaintiff count for purposes of Chapter 11 suggests that mandamuses create no additional burden on the judicial system and are merely an option for all litigants to use and abuse subject to the adverse determination of the underlying case. Not surprisingly, Beasley provides no case law supporting this irrational proposition.

Moreover, Beasley simply sidesteps the nature of the three mandamus actions that count for purposes of numerosity. *In re: Peter Beasley*, Cause No. 05-15-00276[64] involved an issue related to deemed admissions. However, this mandamus was taken in the very same case discussed above where Beasley voluntarily dismissed his case with prejudice and then, incredibly, appealed his own voluntary dismissal. *Peter Beasley v. Seabrum Richardson and Lamon Aldridge*, No. 05-15001156-CV (5th District).

In the two mandamuses taken from the Original Case, *In re Peter Beasley,* Cause No. 05-17-01365[65] and 05-17-1032[66], Beasley sought mandamus to have the

[64] September 3, 2019 RR Exhibits, Defendants' Exhibit 4.

[65] September 3, 2019 RR Exhibits, Defendants' Exhibit 6.

[66] September 3, 2019 RR Exhibits, Defendants' Exhibit 7.

EXHIBIT A

Fifth Court of Appeals and the Texas Supreme Court reverse the November 3, 2017 award of attorneys' fees and the November 22, 2017 order denying Plaintiff's motion to disqualify and recuse the trial judge. Both mandamuses were denied and Beasley continues to pursue reversal of the attorney's fees award by appeal. In both instances, his mandamus appeals represent the very type of waste of judicial resources that the vexatious litigant statute is designed to prevent.

"Litigation" is defined by the vexatious litigant statue as "a civil action commenced, maintained, or pending in any state or federal court." TEX. CIV. PRAC. & REM. CODE § 11.001(2).[67] The language of the statute plainly encompasses appeals. *Cooper v. McNulty*, 2016 Tex.App. LEXIS 11333, * 10 (Tex.App.—Dallas, October 19, 2016, r'hrg. denied, r'hrg. en banc denied) (holding that an original proceeding for writ of mandamus is a civil action within the meaning of the vexatious litigant statute). Beasley's argument that mandamuses do not count for purposes of the vexatious litigant statute is inconsistent with the language of the statute and current case law.[68]

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[67] Appx. 1.

[68] Beasley's citation to *Goad v. Zuehl*, 2012 Tex.App. LEXIS 4066 (Tex.App.—San Antonio, May 23, 2012, no pet. h) is unpersuasive. In *Goad,* the court merely noted that an appeal cannot be counted separate from the underlying case for numerosity purposes. In *In re Florance*, 377 S.W.3d 837, 839 (Tex.App.—Dallas 2012, no pet. h.) the Dallas Court of Appeals clarified that the trial court lacks jurisdiction to hear and grant a post-judgment motion to declare a litigant vexatious.

EXHIBIT A

Beasley's 2016 lawsuit against SIM-DFW, a.k.a. the Original Case counts for purposes of the vexatious litigant numerosity requirement under TEX. CIV. PRAC. & REM. CODE § 11.054(1)(B). It is undisputed that the claims filed by Beasley in March 2016 had not been brought to trial or hearing before March 2018. Under § 11.054(1)(B), a claim commenced, prosecuted, or maintained by a *pro se* plaintiff that has not been brought to trial or hearing counts for purposes of the numerosity requirement.

3. Beasley Argues For the First Time On Appeal That He Was Not a *Pro Se* Litigant.

In rather surprising disregard for the judicial process, Beasley argues, for the first time on appeal and some 16 months after Appellees first filed the Motion to Declare Beasley Vexatious, that there is "no evidence" that he commenced, prosecuted, or maintained some of these litigations *pro se*.

1. ***Peter Beasley v. Susan M. Coleman; Randall C. Romei,*** Case No. 1:13cv1718 in the USDC Northern District of Illinois. The Seventh Circuit Order dismissing Beasley's appeal states in relevant part: "Peter Beasley, the former representative of an estate in ongoing probate proceeding, filed a civil-rights action on his own behalf against the Cook County Judge and his previous attorney." [69]

2. ***Peter Beasley v. John Krafcisin, John Bransfield, Anna-Maria Downs, and Hanover Insurance Co.***, Case No. 3:13-CV-4972-M-BF, USDC Northern District of Texas. The Findings, Conclusions, and Recommendation of the United States Magistrate Judge for the United States District Court of the Northern District of Texas, Dallas Division

[69] September 3, 2019 RR Exhibits, Defendants' Exhibit 1.

EXHIBIT A

state in relevant part: "The District Court referred this *pro se* civil action to the U.S. Magistrate Judge for pretrial management."[70]

3. ***Peter Beasley v. Seabrum Richardson and Lamont Aldridge***, No. 05-15001156-CV, Trial Court Cause No. DC-13-13433, Texas Fifth Court of Appeals. The Memorandum Opinion from Justices Lang, Myers, and Evans states in relevant part: "Although we construe pro se pleadings and brief liberaly, we hold pro se litigants to the same standards as licensed attorneys and require them to comply with the applicable laws and rules of procedure."[71]

4. ***In re: Peter Beasley***, Cause No. 05-15-00276, Texas Fifth Court of Appeals.[72] This mandamus relates to the above-referenced case, *Beasley v. Richardson*. The vexatious litigant statute does not require that the pro se litigant remain pro se for the entirety of the proceedings.

5. ***In re: Peter Beasley*,** Cause No. 05-17-01365-CV, Texas Fifth Court of Appeals.[73] Beasley concedes that he was pro se at various times during the pendency of the Original Case to which this mandamus relates.

6. ***In re: Peter Beasley***, Cause No. 05-17-1032, Texas Supreme Court. Beasley concedes that he was pro se at various times during the pendency of the Original Case to which this mandamus relates.[74]

Beasley clearly is a vexatious litigant. The record evidence establishes that in each of the litigations presented in the Motion, Beasley commenced, prosecuted, and/or maintained the litigations *pro se*.

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[70] *Id.*, Defendants' Exhibit 2.

[71] *Id.*, Defendants' Exhibit 3.

[72] *Id.*, Defendants' Exhibit 4.

[73] *Id.*, Defendants' Exhibit 5.

[74] *Id.*, Defendants' Exhibit 6.

EXHIBIT A

4. Beasley's Had No Reasonable Probability of Prevailing on His Claims Against Appellees in the Trial Court.

The crux of Beasley's claims against Appellees relate to his expulsion from SIM-DFW in April 2016. Beasley complained in the 2017 Case, as he did in the Original Case, that his removal from SIM-DFW was done without due process and in contravention of the Bylaws of the chapter. However, all of his claims that relate to his expulsion were subject to application of the doctrine of judicial nonintervention.[75]

The trial court received extensive briefing on this matter[76] and also heard extensive arguments at the vexatious motion hearing.[77] TEX. CIV. PRAC. & REM. CODE § 11.054[78] requires that the movant show there is no reasonable probability that the plaintiff will prevail in the litigation. The statute itself does not require any specific way that defendant must make that showing. The trial court may evaluate evidence, the record, and the procedural history to determine if there is a reasonable probability that Beasley would prevail.

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[75] RR Vol. 1 36:14-38:19.

[76] CR 663-989.

[77] RR Vol. 1.

[78] Appx. 3.

EXHIBIT A

(a) Beasley's Core Claims Were Adjudicated by the Original Case Declaration that SIM-DFW was the Prevailing Party.

Beasley's lawsuit focused heavily on his attempts to judicially overturn the decision of the Executive Committee to expel him. However, the trial court's November 3, 2017 Dallas County Judgment in the Original Case[79] declared SIM-DFW a prevailing party on Peter Beasley's declaratory judgment act claims, including the following claim:

> **Declaratory Relief – Expulsion of Beasley Void**. …Beasley seeks a declaratory judgment that the April 19, 2016, meeting of the Executive Committee of the SIM violated SIM's bylaws, violated due process protections under the Texas Constitution and violated applicable provisions of the Texas Business Organizations Code, such that Beasley's purported expulsion was void and of no effect and that his status as both a Board member and a member of SIM were and are unaffected.[80]

SIM-DFW also prevailed on Beasley's other declaratory judgment act claims, including those seeking a declaration that (1) acts of the SIM-DFW Executive Committee since April 19, 2016 are void and (2) SIM-DFW's charitable giving and philanthropy violate SIM-DFW's bylaws and articles of incorporation.[81]

Beasley's claims as pled in the Collin County 2017 Case include the *same three* declaratory judgment act claims plus two more. He sought a declaration that both boards were illegally constituted and a declaration that, despite his expulsion,

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[79] CR 214-216.

[80] CR 36-46, Plaintiff's Sixth Amended Petition at ¶ 20.

[81] *Id.* at ¶¶ 21-22.

EXHIBIT A

he remains a duly-elected board member.[82] Both of the "new" declaratory judgment act claims are naturally subsumed by the Dallas County Judgment declaring SIM-DFW a prevailing party.

The Dallas County Judgment also mooted other portions of Beasley's 2017 Case, including the claims for:

- injunctive relief requesting the appointment of a receiver to manage SIM-DFW's operations (Count 4); [83]
- injunctive relief requesting reinstatement as a Board Member (Count 4);[84] and,
- violation of due process rights with regard to the April 2016 expulsion meeting (Count 7)[85]

Additionally, given the Dallas County Judgment's effect on the core issues raised in the 2017 Case, and the conclusive determination that the expulsion did not violate SIM-DFW's bylaws or due process concerns, Beasley's status as a non-member of SIM-DFW since April 2016 resolves his pending "Breach of Duties/Ultra Vires Acts" claim against Defendants O'Bryan and Burns as well. (Count 13).[86] Beasley asserted that he was presently a "member of SIM with

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[82] CR 629-648, at ¶¶ 71(b) and 71(d).

[83] *Id.* at ¶¶ 64-67.

[84] *Id.*

[85] *Id.* at ¶¶ 73-77.

[86] *Id*.

EXHIBIT A

standing" to assert a derivative claim against Defendants O'Bryan and Burns.[87] As a matter of law, there is no derivative claim for non-profit corporations. *Bridgewater v. Double Diamond-Delaware, Inc.* 2011 U.S. Dist. LEXIS 47248, *25 (N.D. Tex. April 29, 2011) (holding that the Texas Non-Profit Corporations Act does not provide a derivative suit mechanism against a non-profit by a non-profit's members). But even if there were such a claim, Beasley ***is not a member of SIM-DFW*** and has not been a member since April 2016, meaning he lacked standing to assert that claim.

(b) Beasley's Remaining Claims in the 2017 Case Also Were Subject to Summary Disposition and the Trial Court Correctly Determined that There was No Reasonable Probability of That Beasley Would Prevail on his Claims.

Beasley's remaining claims fall into three categories: (1) Breach of contract claims against SIM-DFW (Counts 1, 2, and 3); (2) Defamation and tortuous (sic) interference claims against SIM-DFW and its defense counsel (Counts 5, 8, 9, 10); and (3) claims of tortuous (sic) interference with contracts and business disparagement related to Peter Beasley's company, Netwatch (Counts 11 and 12). There was no reasonable probability Beasley would have prevailed on any of those claims.

The breach of contract type claims were based on Beasley's argument that a "Board Agreement", the bylaws, and unspecified oral representations from

[87] *Id.*, Count 13, at ¶¶ 102-106.

EXHIBIT A

SIM-DFW established contractual obligations between SIM-DFW and Beasley to (1) allow him to resign if SIM-DFW believed he was not meeting his board duties and, (2) in the event Beasley became engaged in a legal dispute like the current one with SIM-DFW, allow him to rely on the SIM-DFW Officers & Director's Liability Insurance policy to cover his legal expenses. Testimony provided by Nellson Burns (and accepted as evidence by the trial court)[88] established that the Executive Committee considered seeking Peter Beasley's resignation from the Board both *prior* to and after the original lawsuit was filed. Even after its filing, the Board hoped that a compromise could be reached that would result in his resignation.[89] Ultimately, Beasley's unreasonable demands prevented any request for resignation and the Executive Committee was forced to seek expulsion.[90]

Next, his claims that SIM-DFW breached its contractual obligations and/or fraudulently induced Beasley to serve as a board member were preposterous. There is no reasonable probability that Beasley would have prevailed on that claim. Eventually, Beasley judicially admitted that the Hartford did provide coverage, which mooted his claim.[91]

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[88] September 3, 2019 RR Exhibit, Defendants' Exhibit 22.

[89] *Id.* at 184:22-186:15.

[90] *Id.* at 184:22 -188:13.

[91] 2nd Supp. CR 140.

EXHIBIT A

Beasley also claims that he paid membership dues in 2016 and was, as a result of his expulsion, unable to realize the benefits of membership.[92] Expulsion can be understood as the act of depriving someone of membership in an organization. Because the trial court in the Original Case previously declared that SIM-DFW prevailed on Beasley's claim that his expulsion was void and improper, it is axiomatic that the expulsion would deprive him of his membership benefits. That is what expulsion is — removing a member from the organization and the benefits of membership. There is no basis for this claim and given the resolution of the Original Case, no reasonable probability that Beasley would have prevailed on this claim.

It did not help that the very contract he claims was breached was unsigned.[93]

> Bragalone: "So that's his breach of contract claim, it's not signed, it's not a contract. If it's been breached, it's breached by him, because he didn't resign."
>
> **The Court: "Okay. It's unilateral. I mean, in Texas you don't allow unilateral contracts –** "
>
> Bragalone: And there's no proximate cause, because this pertains to him as a board member. He was expelled as a member."
>
> **The Court: "Ok".**[94]

Beasley had no reasonable probability of success on his breach of contract claims.

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[92] CR 639 at ¶ 62.

[93] RR Vol. 1 39:7-14.

[94] RR Vol. 1 40:19-41:2.

The defamation and tortuous (sic) interference claims were based *exclusively* on communications written by and transmitted by Appellees defense attorneys during the course of the litigation. First, as presented at the hearing on the vexatious litigant motion,[95] at least two of the claimed defamatory statements were determined by Judge Moore to be attorney-client communications. Secondly, the communications were made by the attorneys in the course of the litigation, and therefore were entitled to judicial immunity. Texas courts have recognized that an absolute privilege extends to publications made in the course of judicial and quasi-judicial proceedings — "meaning that any statement made in the trial of any case, by anyone, cannot constitute the basis for a defamation action, or any other action." *Hernandez v. Hayes*, 931 S.W.2d 648, 650 (Tex. App. –San Antonio 1996, writ denied) (*citing James v. Brown*, 637 S.W.2d 914, 916 (Tex. 1982) (per curiam); *Reagan v. Guardian Life Ins. Co.*, 140 Tex. 105, 166 S.W.2d 909, 912 (1942*)); Lane v. Port Terminal R.R. Ass'n*, 821 S.W.2d 623, 625 (Tex. App. –Houston [14th Dist.] 1991, writ denied) (same); *see Bird v. W.C.W.*, 868 S.W.2d 767, 771-72 (Tex. 1994). The statements made by Appellees lawyers are *per se* not defamatory and cannot support a claim for defamation. Beasley has no reasonable probability of success on this claim.

[95] RR Vol. 1 43:4-44:11.

With regard to the tortuous (sic) interference claim, Beasley believes that Appellee's counsel's communications with Beasley's attorneys over the course of the litigation — putting them on notice of SIM-DFW's intent to seek sanctions — was actionable tortious interference![96] This claim is entirely without merit. As argued extensively in the hearing on the vexatious motion,[97] the record is clear that on at least three instances Beasley terminated his attorneys.[98] There is no reasonable probability that Beasley would have prevailed on this claim and the trial court was correct to recognize it.

Beasley's only remaining claims are not his. They are those that properly belong to his company, Netwatch Solutions. In a clear and obvious attempt to avoid having to retain counsel, Beasley claimed he had standing to sue on behalf of his company because he is the sole owner. A corporation must sue on its own behalf for damages owed to it. Beasley conceded, under oath, that at least a portion of his claimed damages in the ongoing litigation were "really Netwatch's damages"[99] which proved he lacked both standing and capacity to sue on Netwatch's behalf.

Moreover, to the extent Beasley believes he still has a basis to assert that Appellee Nellson Burns tortiously interfered with his prior employer's contract with

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[96] CR 644-645 at ¶78-89.

[97] RR Vol. 1 47:7-48:14.

[98] CR 942-967.

[99] September 3, 2019 RR Exhibits, Defendants' Exhibit 23 at 204:10-23.

EXHIBIT A

Netwatch Solutions, this allegation was **completely defeated** by HollyFrontier's affidavit[100] which confirmed that the Netwatch contract with HollyFrontier was not cancelled in 2016 when the litigation arose, was paid in full for both 2016 and 2017, and HollyFrontier's determination to "wind down" its business relationship with Netwatch actually was due to Peter Beasley's vexatious litigation behavior. [101]

As demonstrated above, and presented at the hearing on September 20, 2018, none of Beasley's claims against Appellees was meritorious. Most were frankly matters that could be disposed of as a matter of law, either by application of the doctrine of judicial non-intervention or by other relevant Texas jurisprudence. Beasley's argument that Appellees presented no evidence is simply wrong.

E. Appellees Nonsuit of their Counterclaims is Wholly Irrelevant to the Determination of the Vexatious Litigant Motion.

Beasley argues that Appellees' nonsuit of their own counterclaims on April 5, 2019 is somehow evidence of Appellees' withdrawal of the vexatious litigant determination that had been made nearly four months prior. This is another nonsense argument. Appellees nonsuit of their counterclaims had no effect whatsoever on the determination that Beasley is a vexatious litigant. Beasley incorrectly argues that the Vexatious motion was a counterclaim. It was not.

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[100] September 3, 2019 RR Exhibits, Defendants' Exhibit 24.

[101] *Id.*

EXHIBIT A

And the transcript from the hearing makes it abundantly clear that the counterclaims were being nonsuited to permit the Vexatious Judgment to become final.

F. The Vexatious Litigant Statute is Constitutional.

Beasley appears to raise several arguments regarding the constitutionality of the vexatious litigant statute, but importantly, Texas courts have repeatedly held that the vexatious litigant statute is constitutional. Beasley's argument that the prefiling order prevents him from accessing the *ex parte* protections afforded to parties seeking protective orders and injunctive relief is nothing more than a last-ditch effort to try to avoid the inevitable. Beasley is well aware that the Office of Court Administration of the Supreme Court ("OCA") maintains the list of vexatious litigants in the state of Texas without regard to whether the Order declaring the party vexatious is final or not, on appeal or not. Section 11.104 of the Texas Civil Practices & Remedies code **requires** that the clerk of court provide the OCA a copy of any prefiling order issued under Section 11.101 not later than the 30th day after the prefiling order is signed. The OCA is charged, by statute, with posting the name of the vexatious litigant on the OCA website.

Beasley is not prevented from access to the Courts by being on the OCA list, he is only prevented from *pro se* litigation without the approval of the local administrative judge. Alternatively, Beasley may retain an attorney, something that

his litigation history reveals he is more than comfortable doing when his needs require it.

The vexatious litigant statute is a means to "attempt to strike a balance between Texans' right of access to their courts and the public interest in protecting defendants from those who abuse the Texas court system by systematically filing lawsuits with little or no merit." *Retzlaff v. GoAmerica Commc'ns Corp.*, 356 S.W.3d 689, 697 (Tex.App. –El Paso 2011, no pet.) (*quoting Sweed v. Nye*, 319 S.W.3d 791, 793 (Tex.App. –El Paso 2010, pet. denied)). As such, no equal protection challenge against the statute has ever been successful. *See e.g., Leonard v. Abbott*, 171 S.W.3d 451, 458 (Tex.App. –Austin 2005, pet. denied); *Sparkman v. Microsoft Corp.*, 2015 Tex.App. LEXIS 2510, *11-12 (Tex.App. –Tyler, March 18, 2015, pet. denied).

G. The Automatic Stay Imposed by the Vexatious Litigant Statute Precluded Hearings on any of Beasley's Ancillary Motions Until Beasley Paid the Required Security.

TEX. CIV. PRAC. & REM. CODE § 11.052(a)(2) states: "On the filing of a motion under § 11.051, <u>the litigation is stayed and the moving defendant is not required to plead</u> if the motion is granted, <u>before the 10th day after the date the moving defendant receives written notice that the plaintiff has furnished the required security</u>."[102] *See also, Drum v. Calhoun*, 299 S.W.3d 360, 369 (Tex.App. –Dallas

[102] Appx. 2.

EXHIBIT A

2009) (pet. denied) (when a vexatious litigant motion is granted, the litigation remains stayed as a matter of statutory law until the vexatious litigant posts the required security); *Willms v. Ams. Tire Co.*, 190 S.W.3d 796, 804 (Tex. App. –Dallas 2006) (pet. denied) ("When a defendant files a motion pursuant to section 11.051, the litigation is stayed until the tenth day after the motion is denied or the tenth day after the defendant receives notice that the plaintiff has furnished the required security.").

The stay went into effect the moment Appellees filed the motion to declare Beasley vexatious. Thus, the trial court's determination that the 2018 Rule 12 and attorney disqualification motions were stayed was correct. Moreover, after Beasley was declared vexatious, Beasley **never paid the security required** by the trial court's December 11, 2018 Order. Accordingly, the case remained stayed and the trial court was powerless to hear Beasley's 2019 Rule 12 Motions, Motions to Disqualify and Recuse, and various other frivolous ancillary motions filed by Beasley between December 11, 2018 and the date the case was finally dismissed on June 11, 2019.

In fact, Beasley's failure to pay the required security was dispositive and the trial court was required to dismiss Beasley's claims with prejudice per TEX. CIV. PRAC. & REM. CODE § 11.056.[103] *See also, Gant v. Grand Prairie Ford, L.P.,*

[103] Appx. 4.

EXHIBIT A

No. 02-06-00386-CV, 2007 Tex.App. LEXIS 5727, 2007 WL 2067753, *9 (Tex.App. –Fort Worth July 19, 2007) (pet. denied) (after trial court declared plaintiff a vexatious litigant, trial court had a duty as a matter of statutory law to dismiss plaintiff's lawsuit after plaintiff failed to furnish required security within time ordered). Beasley's complaints on appeal that the trial court was engaged in some vast Dallas County judicial conspiracy to deny Beasley access to the courts is par for the course for this vexatious litigant.

H. Beasley's Remarkable Attack on the Dallas County Judiciary is Nothing More than Unsupported and Offensive Rhetoric that Should Be Ignored by this Court.

Beasley saves his most offensive arguments for the closing pages of his brief. The conspiracy and disqualification allegations he levels against Judges Slaughter, Purdy, Goldstein and Moore, and the character attacks on Appellees' defense counsel reveal just how vexatious he is. His casual references invoking the TimesUp! and Black Lives Matter movements diminish the significance of both movements and the real issues both seek to address. Beasley's comparison of his vexatious litigant status to being falsely accused of rape is offensive to sexual assault victims everywhere. And the allegations of discrimination by members of the Texas bar and Dallas County Judiciary are unsupported and equally absurd. In typical vexatious fashion, Beasley levels blame at everyone but himself.

EXHIBIT A

There is no conspiracy outside of his mind. For purposes of this appeal, the record does not include any motion to disqualify or motion to recuse any of the judges Beasley claims conspired against him. Moreover, there is also no record of any judge refusing to rule on a motion to recuse or disqualify. Thus, Beasley has failed to preserve any error on this issue. TEX. R. APP. P. 33.1(a)(2).

VII.
CONCLUSION & PRAYER

An appellate court reviews a vexatious litigant determination under an abuse of discretion standard. Under this standard, the court of appeals will view the evidence in the light most favorable to the trial court's order and indulge every presumption in the judge's favor. *Garner v. Garner*, 200 S.W.3d 303, 306, 308 (Tex. App. –Dallas 2006, no pet.) (clarifying the abuse of discretion standard).

Appellees established at the hearing on the vexatious litigant motion that Appellant Peter Beasley meets the definition of a vexatious litigant pursuant to Chapter 11 of the TEXAS CIVIL PRACTICE & REMEDIES CODE. Appellees request that this Court affirm the trial court's determination.

EXHIBIT A

CERTIFICATE OF COMPLIANCE

I certify that the foregoing instrument was prepared using Microsoft Word 2010, and that, according to its word-count function, the sections of the foregoing reply brief covered by TRAP 9.4(i)(1) contain 10,018 words.

/s/ Soña J. Garcia
Soña J. Garcia

EXHIBIT A

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was served via the electronic noticing system on October 10, 2019.

/s/ Soña J. Garcia
Soña J. Garcia

EXHIBIT A

APPENDIX

EXHIBIT A

voluntary dismissal or settlement of the claims made by or against the party or the party's attorney who is to be sanctioned.

(f) The filing of a general denial under Rule 92, Texas Rules of Civil Procedure, shall not be deemed a violation of this chapter.

Added by Acts 1995, 74th Leg., ch. 137, Sec. 1, eff. Sept. 1, 1995.

Sec. 10.005. ORDER. A court shall describe in an order imposing a sanction under this chapter the conduct the court has determined violated Section 10.001 and explain the basis for the sanction imposed.

Added by Acts 1995, 74th Leg., ch. 137, Sec. 1, eff. Sept. 1, 1995.

Sec. 10.006. CONFLICT. Notwithstanding Section 22.004, Government Code, the supreme court may not amend or adopt rules in conflict with this chapter.

Added by Acts 1995, 74th Leg., ch. 137, Sec. 1, eff. Sept. 1, 1995.

CHAPTER 11. VEXATIOUS LITIGANTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 11.001. DEFINITIONS. In this chapter:

(1) "Defendant" means a person or governmental entity against whom a plaintiff commences or maintains or seeks to commence or maintain a litigation.

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

(3) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1224, Sec. 10, eff. September 1, 2013.

(4) "Moving defendant" means a defendant who moves for an order under Section 11.051 determining that a plaintiff is a vexatious litigant and requesting security.

(5) "Plaintiff" means an individual who commences or maintains a litigation pro se.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 3 (H.B. 79), Sec. 9.01, eff. January 1, 2012.

Acts 2013, 83rd Leg., R.S., Ch. 1224 (S.B. 1630), Sec. 1, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1224 (S.B. 1630), Sec. 10, eff. September 1, 2013.

Sec. 11.002. APPLICABILITY. (a) This chapter does not apply to an attorney licensed to practice law in this state unless the attorney proceeds pro se.

(b) This chapter does not apply to a municipal court.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1224 (S.B. 1630), Sec. 2, eff. September 1, 2013.

SUBCHAPTER B. VEXATIOUS LITIGANTS

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.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.

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.

(b) On the filing of a motion under Section 11.051 on or after the date the trial starts, the litigation is stayed for a period the court determines.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.

Sec. 11.053. HEARING. (a) On receipt of a motion under Section 11.051, the court shall, after notice to all parties, conduct a hearing to determine whether to grant the motion.

(b) The court may consider any evidence material to the ground of the motion, including:

(1) written or oral evidence; and

(2) evidence presented by witnesses or by affidavit.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.

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;

(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.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1224 (S.B. 1630), Sec. 3, eff. September 1, 2013.

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.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.

Sec. 11.056. DISMISSAL FOR FAILURE TO FURNISH SECURITY. The court shall dismiss a litigation as to a moving defendant if a plaintiff ordered to furnish security does not furnish the security within the time set by the order.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.

Sec. 11.057. DISMISSAL ON THE MERITS. If the litigation is dismissed on its merits, the moving defendant has recourse to the security furnished by the plaintiff in an amount determined by the court.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER C. PROHIBITING FILING OF NEW LITIGATION

Sec. 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.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 3 (H.B. 79), Sec. 9.02, eff. January 1, 2012.

Acts 2013, 83rd Leg., R.S., Ch. 1224 (S.B. 1630), Sec. 4, eff. September 1, 2013.

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.

(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.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 3 (H.B. 79), Sec. 9.03, eff. January 1, 2012.

Acts 2013, 83rd Leg., R.S., Ch. 1224 (S.B. 1630), Sec. 5, eff. September 1, 2013.

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.

(b) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1224, Sec. 10, eff. September 1, 2013.

(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.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 3 (H.B. 79), Sec. 9.04, eff. January 1, 2012.

Acts 2013, 83rd Leg., R.S., Ch. 1224 (S.B. 1630), Sec. 6, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1224 (S.B. 1630), Sec. 7, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1224 (S.B. 1630), Sec. 10, eff. September 1, 2013.

Sec. 11.1035. MISTAKEN FILING. (a) If the clerk mistakenly files litigation presented, pro se, by a vexatious litigant subject to a prefiling order under Section 11.101 without an order from the appropriate local administrative judge described by Section 11.102(a), any party may file with the clerk and serve on the plaintiff and the other parties to the litigation a notice stating that the plaintiff is a vexatious litigant required to obtain permission under Section 11.102 to file litigation.

(b) Not later than the next business day after the date the clerk receives notice that a vexatious litigant subject to a prefiling order under Section 11.101 has filed, pro se, litigation without obtaining an order from the appropriate local administrative judge described by Section 11.102(a), the clerk shall notify the

court that the litigation was mistakenly filed. On receiving notice from the clerk, the court shall immediately stay the litigation and shall dismiss the litigation unless the plaintiff, not later than the 10th day after the date the notice is filed, obtains an order from the appropriate local administrative judge described by Section 11.102(a) permitting the filing of the litigation.

(c) An order dismissing litigation that was mistakenly filed by a clerk may not be appealed.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1224 (S.B. 1630), Sec. 8, eff. September 1, 2013.

Sec. 11.104. NOTICE TO OFFICE OF COURT ADMINISTRATION; DISSEMINATION OF LIST. (a) A clerk of a court shall provide the Office of Court Administration of the Texas Judicial System a copy of any prefiling order issued under Section 11.101 not later than the 30th day after the date the prefiling order is signed.

(b) The Office of Court Administration of the Texas Judicial System shall post on the agency's Internet website a list of vexatious litigants subject to prefiling orders under Section 11.101. On request of a person designated a vexatious litigant, the list shall indicate whether the person designated a vexatious litigant has filed an appeal of that designation.

(c) The Office of Court Administration of the Texas Judicial System may not remove the name of a vexatious litigant subject to a prefiling order under Section 11.101 from the agency's Internet website unless the office receives a written order from the court that entered the prefiling order or from an appellate court. An order of removal affects only a prefiling order entered under Section 11.101 by the same court. A court of appeals decision reversing a prefiling order entered under Section 11.101 affects only the validity of an order entered by the reversed court.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 3 (H.B. 79), Sec. 9.05, eff. January 1, 2012.

Acts 2013, 83rd Leg., R.S., Ch. 1224 (S.B. 1630), Sec. 9, eff. September 1, 2013.

CAUSE NO. DC-16-03141

PETER BEASLEY,	§	**IN THE DISTRICT COURT**
	§	
Plaintiff,	§	
	§	
v.	§	
	§	**DALLAS COUNTY, TEXAS**
SOCIETY OF INFORMATION MANAGEMENT, DALLAS AREA CHAPTER,	§	
	§	
Defendant	§	**162ND JUDICIAL DISTRICT**

ORDER GRANTING ATTORNEY'S FEES TO DEFENDANT AS PREVAILING PARTY ON DECLARATORY JUDGMENT CLAIMS

On November 3, 2017, Defendant's Supplemental Motion for Sanctions seeking to have Defendant declared a prevailing party and request for attorneys' fees came on for hearing. The Court, having considered the pleadings, evidence, and arguments of counsel, is of the opinion that the Defendant's Motion should be **GRANTED**.

Based on the evidence presented and the procedural history of this lawsuit, the Court makes the following findings and conclusions:

1. Plaintiff filed certain declaratory judgment claims on April 15, 2016.
2. Defendant moved for summary judgment on those claims.
3. The hearing on the motion for summary judgment was scheduled for October 12, 2017, making Plaintiff's response due on October 5, 2017.
4. On October 5, 2017, in lieu of filing a response to the motion for summary judgment, Plaintiff nonsuited his entire case.

EXHIBIT A

5. The following factors support a finding that the nonsuit was filed to avoid an unfavorable ruling on the merits:

   (a) the timing of the nonsuit;

   (b) the strength of the motion for summary judgment;

   (c) the failure to respond to the motion;

   (d) the Plaintiff's prior litigation history, including a dismissal of all claims after resting his case during trial, which dismissal he then appealed to the Dallas Court of Appeals[1]; and

   (e) Plaintiff's conduct during this very contentious litigation, including his conduct as a *pro se* party and as a Plaintiff in conjunction with five different appearances by lawyers, involving the resources of eight (8) different judges in six (6) different courts.

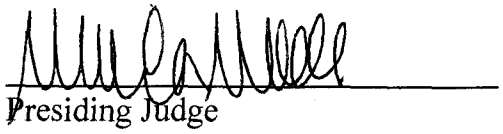
6. The reasonable and necessary attorney's fees and costs incurred by Defendant in defense of the declaratory judgment claims is $ 211,032.02

IT IS THEREFORE ORDERED that Defendant is declared the prevailing party on Plaintiff's declaratory judgment claims and that, pursuant to TEX. CIV. PRAC. & REM. CODE ANN. § 37.009, Plaintiff Peter Beasley is hereby **ORDERED** to pay Defendant's reasonable and necessary attorney's fees and costs in the amount of $ 211,032.02

[1] *Peter Beasley v. Seabrum Richardson and Lamont Aldridge*, in the Court of Appeals for the Fifth District of Texas at Dallas, No. 05-15-00156-CV (September 20, 2016)

EXHIBIT A

SIGNED this 3 day of ~~October~~ November, 2017.



Presiding Judge

EXHIBIT A