

West's Annotated California Codes

Code of Civil Procedure (Refs & Annos)

Part 2. Of Civil Actions (Refs & Annos)

Title 3a. Vexatious Litigants (Refs & Annos)

West's Ann.Cal.C.C.P. § 391

§ 391. Definitions

Effective: January 1, 2023

Currentness

As used in this title, the following terms have the following meanings:

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

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

(1) In the immediately preceding seven-year period has commenced, prosecuted, or maintained in propria persona at least five litigations other than in a small claims court that have been (i) finally determined adversely to the person or (ii) unjustifiably permitted to remain pending at least two years without having been brought to trial or hearing.

(2) After a litigation has been finally determined against the person, repeatedly relitigates or attempts to relitigate, in propria persona, either (i) the validity of the determination against the same defendant or defendants as to whom the litigation was finally determined or (ii) the cause of action, claim, controversy, or any of the issues of fact or law, determined or concluded by the final determination against the same defendant or defendants as to whom the litigation was finally determined.

(3) In any litigation while acting in propria persona, repeatedly files unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary delay.

(4) Has previously been declared to be a vexatious litigant by any state or federal court of record in any action or proceeding based upon the same or substantially similar facts, transaction, or occurrence.

(5) After being restrained pursuant to a restraining order issued after a hearing pursuant to Chapter 1 (commencing with [Section 6300](#)) of Part 4 of Division 10 of the Family Code, and while the restraining order is still in place, they commenced, prosecuted, or maintained one or more litigations against a person protected by the restraining order in this or any other court

or jurisdiction that are determined to be meritless and caused the person protected by the order to be harassed or intimidated.

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

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

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

Credits

(Added by Stats.1963, c. 1471, p. 3088, § 1. Amended by Stats.1982, c. 517, p. 2335, § 98; Stats.1990, c. 621 (S.B.2675), § 1; Stats.1994, c. 587 (A.B.3600), § 3.5; Stats.2022, c. 84 (A.B.2391), § 1, eff. Jan. 1, 2023.)

Editors’ Notes

LAW REVISION COMMISSION COMMENTS

1982 Amendment

Section 391 is amended to delete a provision duplicated in the Bond and Undertaking Law. See [Section 995.710](#) (deposit in lieu of undertaking). The other changes in Section 391 are technical. [16 Cal.L.Rev.Comm. Reports 501 (1982)].

[Notes of Decisions \(208\)](#)

West’s Ann. Cal. C.C.P. § 391, CA CIV PRO § 391

Current with Ch. 1 of 2023-24 1st Ex.Sess, and urgency legislation through Ch. 276 of 2023 Reg.Sess. Some statute sections may be more current, see credits for details.

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West's Ann.Cal.C.C.P. § 391.1

§ 391.1. Motion for order requiring security; grounds

Effective: January 1, 2023

Currentness

(a) In any litigation pending in any court of this state, at any time until final judgment is entered, a defendant may move the court, upon notice and hearing, for an order requiring the plaintiff to furnish security or for an order dismissing the litigation pursuant to [subdivision \(b\) of Section 391.3](#). The motion for an order requiring the plaintiff to furnish security shall be based upon the ground, and supported by a showing, that the plaintiff is a vexatious litigant and that there is not a reasonable probability that they will prevail in the litigation against the moving defendant.

(b) A motion pursuant to subdivision (a) on the grounds that plaintiff is a vexatious litigant pursuant to [paragraph \(5\) of subdivision \(b\) of Section 391](#) may be brought only by a person protected by the restraining order. A person filing a motion as described in this subdivision shall not be required to pay a filing fee.

Credits

(Added by Stats.1963, c. 1471, p. 3038, § 1. Amended by Stats.1975, c. 381, p. 855, § 1; Stats.1990, c. 621 (S.B.2675), § 2; Stats.2012, c. 417 (A.B.2274), § 1; Stats.2022, c. 84 (A.B.2391), § 2, eff. Jan. 1, 2023.)

[Notes of Decisions \(43\)](#)

West's Ann. Cal. C.C.P. § 391.1, CA CIV PRO § 391.1

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West's Ann.Cal.C.C.P. § 391.2

§ 391.2. Scope of hearing; ruling not deemed determination of issues

Effective: January 1, 2013

[Currentness](#)

At the hearing upon the motion the court shall consider any evidence, written or oral, by witnesses or affidavit, as may be material to the ground of the motion. Except for an order dismissing the litigation pursuant to [subdivision \(b\) of Section 391.3](#), no determination made by the court in determining or ruling upon the motion shall be or be deemed to be a determination of any issue in the litigation or of the merits thereof.

Credits

(Added by Stats.1963, c. 1471, p. 3038, § 1. Amended by [Stats.2012, c. 417 \(A.B.2274\)](#), § 2.)

[Notes of Decisions \(20\)](#)

West's Ann. Cal. C.C.P. § 391.2, CA CIV PRO § 391.2

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West's Ann.Cal.C.C.P. § 391.3

§ 391.3. Order to furnish security; amount; dismissal of litigation

Effective: January 1, 2013

Currentness

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

(b) If, after hearing evidence on the motion, the court determines that the litigation has no merit and has been filed for the purposes of harassment or delay, the court shall order the litigation dismissed. This subdivision shall only apply to litigation filed in a court of this state by a vexatious litigant subject to a prefiling order pursuant to [Section 391.7](#) who was represented by counsel at the time the litigation was filed and who became in propria persona after the withdrawal of his or her attorney.

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

Credits

(Added by Stats.1963, c. 1471, p. 3038, § 1. Amended by Stats.1982, c. 517, p. 2335, § 99; [Stats.2012, c. 417 \(A.B.2274\)](#), § 3.)

Editors' Notes

LAW REVISION COMMISSION COMMENTS

1982 Amendment

Section 391.3 is amended to delete a provision duplicated in the Bond and Undertaking Law. See [Sections 996.010](#) (undertaking in action or proceeding) and 996.030 (reduced undertaking). [16 Cal.L.Rev.Comm. Reports 501 (1982)].

Notes of Decisions (32)

West's Ann. Cal. C.C.P. § 391.3, CA CIV PRO § 391.3

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West's Ann.Cal.C.C.P. § 391.4

§ 391.4. Dismissal for failure to furnish security

Currentness

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

Credits

(Added by Stats.1963, c. 1471, p. 3038, § 1.)

[Notes of Decisions \(20\)](#)

West's Ann. Cal. C.C.P. § 391.4, CA CIV PRO § 391.4

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West's Ann.Cal.C.C.P. § 391.6

§ 391.6. Stay of proceedings

Effective: January 1, 2013

Currentness

Except as provided in [subdivision \(b\) of Section 391.3](#), when a motion pursuant to [Section 391.1](#) is filed prior to trial the litigation is stayed, and the moving defendant need not plead, until 10 days after the motion shall have been denied, or if granted, until 10 days after the required security has been furnished and the moving defendant given written notice thereof. When a motion pursuant to [Section 391.1](#) is made at any time thereafter, the litigation shall be stayed for such period after the denial of the motion or the furnishing of the required security as the court shall determine.

Credits

(Added by Stats.1963, c. 1471, p. 3038, § 1. Amended by Stats.1975, c. 381, p. 855, § 2; [Stats.2012, c. 417 \(A.B.2274\)](#), § 4.)

[Notes of Decisions \(16\)](#)

West's Ann. Cal. C.C.P. § 391.6, CA CIV PRO § 391.6

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KeyCite Yellow Flag - Negative Treatment

Unconstitutional or Preempted Limited on Constitutional Grounds by *John v. Superior Court*, Cal.App. 2 Dist., Nov. 10, 2014

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West's Ann.Cal.C.C.P. § 391.7

§ 391.7. Prefiling order prohibiting the filing of new litigation; contempt; conditions

Effective: January 1, 2012

[Currentness](#)

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

(b) The presiding justice or presiding judge shall permit the filing of that litigation only if it appears that the litigation has merit and has not been filed for the purposes of harassment or delay. The presiding justice or presiding judge may condition the filing of the litigation upon the furnishing of security for the benefit of the defendants as provided in [Section 391.3](#).

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

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

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

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

Credits

(Added by Stats.1990, c. 621 (S.B.2675), § 3. Amended by Stats.2002, c. 1118 (A.B.1938), § 1; Stats.2011, c. 49 (S.B.731), § 1.)

Editors' Notes

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Notes of Decisions (141)

West's Ann. Cal. C.C.P. § 391.7, CA CIV PRO § 391.7

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West's Ann.Cal.C.C.P. § 391.8

§ 391.8. Filing application to vacate prefiling order and remove name from Judicial Council's list

Effective: January 1, 2012

Currentness

(a) A vexatious litigant subject to a prefiling order under [Section 391.7](#) may file an application to vacate the prefiling order and remove his or her name from the Judicial Council's list of vexatious litigants subject to prefiling orders. The application shall be filed in the court that entered the prefiling order, either in the action in which the prefiling order was entered or in conjunction with a request to the presiding justice or presiding judge to file new litigation under [Section 391.7](#). The application shall be made before the justice or judge who entered the order, if that justice or judge is available. If that justice or judge who entered the order is not available, the application shall be made before the presiding justice or presiding judge, or his or her designee.

(b) A vexatious litigant whose application under subdivision (a) was denied shall not be permitted to file another application on or before 12 months has elapsed after the date of the denial of the previous application.

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

Credits

(Added by [Stats.2011, c. 49 \(S.B.731\)](#), § 2.)

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Notes of Decisions (3)

West's Ann. Cal. C.C.P. § 391.8, CA CIV PRO § 391.8

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