

"[CHAPTER 634J]
VEXATIOUS LITIGANTS

Section

- 634J-1 Definitions
- 634J-2 Motion for order requiring plaintiff to post security
- 634J-3 Hearing procedure
- 634J-4 Finding; amount of security
- 634J-5 Dismissal on failure to post security
- 634J-6 Motion as stay of proceedings
- 634J-7 Vexatious litigant; prefiling order prohibiting filing
of new litigation

Cross References

Nonconsensual common law liens, see chapter 507D.

Case Notes

This chapter and §634J-7 are applicable where a party seeks to maintain litigation in an existing case, such as by the filing of a motion, as well as to the filing of an entirely new case. 102 H. 289, 75 P.3d 1180 (2003).

" **[§634J-1] Definitions.** Unless otherwise clear from the context, as used in this chapter:

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

"In propria persona" means on the person's own behalf acting as plaintiff.

"Litigation" means any civil action or proceeding, commenced, maintained, or pending in any state or federal court of record.

"Plaintiff" means the person who commences, institutes or maintains litigation or causes it to be commenced, instituted, or maintained, including an attorney at law acting on the attorney's own behalf.

"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.

"Vexatious litigant" means a plaintiff 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 civil actions other than in a small claims court that have been:
 - (A) Finally determined adversely to the plaintiff; or
 - (B) Unjustifiably permitted to remain pending at least two years without having been brought to trial or hearing;
- (2) After litigation has been finally resolved against the plaintiff, relitigates or attempts to relitigate in propria persona and in bad faith, either:

- (A) The validity of the determination against the same defendant or defendants 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 or defendants as to whom the litigation was finally determined;
- (3) In any litigation while acting in propria persona, files, in bad faith, unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary delay; or
 - (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. [L 1993, c 124, pt of §1]

Case Notes

Trial court's declaration of plaintiff as vexatious litigant not abuse of discretion where plaintiff failed in separate incidents to serve and/or inappropriately served separate documents on defendant, failed to produce documents to defendant's attorney and committed inappropriate service of documents, and filed at least one motion that was without merit. 102 H. 289, 75 P.3d 1180 (2003).

As a vexatious litigant must be a natural person, given plaintiff's corporate status, trial court erred in determining that corporation was a vexatious litigant under this chapter; also, as only a plaintiff may be deemed a vexatious litigant, trial court erred in determining that attorney of record for plaintiffs was a vexatious litigant under this chapter. 98 H. 95 (App.), 43 P.3d 232 (2001).

Where Hawaii supreme court had opined in a previous case that plaintiff had "engaged in a pattern of frivolous and vexatious litigation" and that case and the present case were "based upon the same or substantially similar facts, transaction, or occurrence", trial court correctly determined that plaintiff was a vexatious litigant under this section. 98 H. 95 (App.), 43 P.3d 232 (2001).

" **[§634J-2] Motion for order requiring plaintiff to post security.** 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. The motion must be based upon the ground, and supported by a showing, 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. [L 1993, c 124, pt of §1]

Case Notes

As matters under this section are not exceptional matters, while a family court case (including an independent action) is on appeal, the family court has no jurisdiction to act in the case on appeal pursuant to this chapter absent prior permission by the appellate court having jurisdiction over the appeal. 97 H. 340 (App.), 37 P.3d 589 (2001).

" **[§634J-3] Hearing procedure.** At the hearing upon the motion for security the court shall consider material evidence, written or oral, by witnesses or affidavit. 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 of the litigation. [L 1993, c 124, pt of §1]

" **[§634J-4] Finding; amount of security.** 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 an amount and within a time as the court shall fix. [L 1993, c 124, pt of §1]

Case Notes

Standard for reviewing a vexatious litigant determination is an abuse of discretion standard. 102 H. 289, 75 P.3d 1180 (2003).

" **[§634J-5] Dismissal on failure to post security.** When security that has been ordered is not furnished, the litigation shall be dismissed with prejudice as to the defendant for whose benefit it was ordered. [L 1993, c 124, pt of §1]

" **[§634J-6] Motion as stay of proceedings.** When a motion pursuant to section 634J-2 is filed prior to trial, the litigation is stayed, and the moving defendant need not plead until ten days after the motion shall have been denied, or if

granted, until ten days after the required security has been furnished and the moving defendant has been given written notice. When a motion pursuant to section 634J-2 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. [L 1993, c 124, pt of §1]

" **[\$634J-7] Vexatious litigant; prefiling order prohibiting filing of new litigation.** (a) In addition to any other relief provided in this chapter, the court, on its own motion or the motion of any party, may enter a prefiling order which prohibits a vexatious litigant from filing any new litigation in the courts of this State on the litigant's own behalf without first obtaining leave of the presiding judge of the court where the litigation is proposed to be filed. Disobedience of this order by a vexatious litigant may be punished as a contempt of court.

(b) The presiding judge shall permit the filing of litigation only if it appears, after hearing, that the litigation has merit and has not been filed for the purposes of harassment or delay. The presiding judge may condition the filing of the litigation upon the furnishing of security for the benefit of the defendants as provided in section 634J-4.

(c) The clerk shall 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 judge permitting the filing. If the clerk mistakenly files the litigation without an order, any party may file with the clerk 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 subsection (a). The filing of this notice shall automatically stay the litigation. The litigation shall be automatically dismissed unless the plaintiff within ten days of the filing of such notice obtains an order from the presiding judge permitting the filing of the litigation as set forth in subsection (b). If the presiding judge issues an order permitting the filing, the stay of the litigation shall remain in effect, and the defendants need not plead until ten days after the defendants are served with a copy of any such order.

(d) The clerk of the court shall provide the supreme court clerk's office a copy of any prefiling orders issued pursuant to subsection (a). The supreme court clerk's office shall maintain a record of vexatious litigants subject to prefiling orders and shall annually disseminate a list of vexatious litigants to the clerks of the courts of this State. [L 1993, c 124, pt of §1]

Chapter 634J and this section are applicable where a party seeks to maintain litigation in an existing case, such as by the filing of a motion, as well as to the filing of an entirely new case. 102 H. 289, 75 P.3d 1180 (2003).

Where vexatious litigant was only restrained from bringing unmeritorious litigation, which could be restricted in any event, litigant's due process right not impacted in present or future cases; as trial court held a hearing to review litigant's objections to prefiling order, order imposed on litigant under this section satisfied procedural due process because it afforded litigant notice and an opportunity to be heard. 102 H. 289, 75 P.3d 1180 (2003).

Subsection (a) prefiling order prohibiting a vexatious litigant from filing any new litigation in state courts intended to apply only to pro se litigants. 98 H. 95 (App.), 43 P.3d 232 (2001).