

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CURTIS LUNDY DOWNING,  
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK; THE HONORABLE MICHAEL  
VILLANI, DISTRICT JUDGE; AND THE  
HONORABLE ELISSA F. CADISH,  
DISTRICT JUDGE,

Respondents,

and

CLARK COUNTY DISTRICT  
ATTORNEY,

Real Party in Interest.

No. 72240

**FILED**

JUN 15 2017

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

*ORDER DENYING IN PART AND GRANTING IN PART PETITION  
FOR A WRIT OF MANDAMUS*

This petition for a writ of mandamus challenges vexatious-litigant determinations and pre-filing injunction orders entered in district court case numbers 93-C-114390 and 94-C-119521.

In 2014, the district court found in case number 93-C-114390<sup>1</sup> Curtis Lundy Downing's "continued filing of duplicative and baseless pleadings, motions, and other documents with [the] Court can only be construed as a bad-faith litigation strategy designed to vex and harass [the] Court and the Clark County District Attorney's Office." The court further stated Downing had "repeatedly filed pleadings alleging frivolous issues without any support in fact or law since the time of his conviction."

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<sup>1</sup>The Honorable Joseph T. Bonaventure conducted the vexatious-litigant proceedings in this case.

The court declared Downing to be a vexatious litigant and entered a pre-filing injunction.

Also in 2014, the district court found in case number 94-C-119521<sup>2</sup> Downing's "filings and actions in [the] case are of a frivolous and harassing nature because they are duplicative and meritless and aim to vex and harass the court system; furthermore, his most recent series of filings including the 'Bear' and 'Light Bulb' Motions are nonsensical and meritless." The court declared Downing to be a vexatious litigant and entered a pre-filing injunction.

A challenge to a vexatious-litigant determination and the pre-filing injunction may be raised in an original petition for a writ of mandamus. *See Jones v. Eighth Judicial Dist. Ct.*, 130 Nev. \_\_\_, \_\_\_, 330 P.3d 475, 478 (2014). Because the vexatious-litigant determination is discretionary, this court must determine whether the district court arbitrarily or capriciously exercised its discretion. *Id.* at 480. In evaluating the district court's exercise of discretion, this court considers: (1) whether the petitioner received reasonable notice of and an opportunity to oppose the vexatious-litigant determination and pre-filing injunction; (2) whether the district court has created an adequate record for review of the vexatious finding and whether there were less onerous sanctions than a pre-filing injunction to curb repetitive and abusive activities; (3) whether the actions identified by the district court at step 2 show the petitioner to be vexatious, which requires a finding the filings were without arguable factual or legal basis or filed with the intent to harass; and (4) whether the restrictive order is narrowly tailored to


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<sup>2</sup>The Honorable Michael Villani conducted the vexatious-litigant proceedings in this case.

address the specific problem and sets forth an appropriate standard by which any future filings will be measured. *Id.* at 479-80.

We conclude the district court's orders largely complied with the requirements of *Jones* with one exception—the provision that a petition for leave to file is deemed rejected if no action is taken on a proposed filing within 30 days (identified as a “paperless review” provision in the order entered in 93-C-114390). In both orders, the district court's injunction provides “[a]ny ‘Petition for Leave of Court to Permit Filing of Court Papers’ will be deemed rejected, without the need for judicial action, on the 30th day after the date of each filing, unless the Court otherwise orders.” This is problematic in that a litigant, or a reviewing court, would have no means of ascertaining whether the district court received the document, considered it, or exercised its discretion regarding the filing of a proposed document. The court must provide some matter of informing the litigant and creating a record that a document was rejected for filing. Therefore, we

ORDER the petition DENIED IN PART AND GRANTED IN PART AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to strike those portions of the April 28, 2014, orders in district court case numbers 93-C-114390 and 94-C-119521 that impose a paperless review provision.

  
\_\_\_\_\_, C.J.  
Silver

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Michael Villani, District Judge  
Hon. Elissa F. Cadish, District Judge  
Hon. Joseph T. Bonaventure, Senior Judge  
Curtis Lundy Downing  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk