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IN THE SUPREME COURT OF IDAHO

STATE OF IDAHO, IN THE MATTER OF

VEXATIOUS LITIGANT

Judge Moody

Plaintiff,

vs.

Mark D Colafranceschi,

Defendant.

Appeals Court Docket Number 45554

Case No. CV 2017-115C

Appellants Brief

APPELLANT'S REPLY BRIEF

**Appeal from the Administrative District Court of the  
Fourth Judicial District of the State of Idaho  
In and for the County of Valley**

---

**Judge Moody  
Presiding District Judge**

---

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**STATUTES**

Idaho Court Administrative Rule 59 (d) (3)

## **STATEMENT OF ISSUES FOR REVIEW**

1. Whether the Trail Courts did in fact review all evidence and evidence on the appeal record to support the order.
2. Whether Judge Moody made substantive findings in her order
3. Whether Judge Moody's order is reflective dismissed section A & B.
4. Whether Judge Moody has authority over a case (CV 2016-125) under appeal.
5. Whether one set of discovery request can deem a pro se litigant vexatious and whether the same questions asked by a licenses attorney protect a pro se litigant.
6. Whether Judge Moody failed to consider the motives of Ludwig and Neustadt and weigh them to the facts.

## **STATEMENT OF THE CASE**

Administrative Judge Moody filled an extensive PROPOSED FINDINGS AND NOTICE OF INTENT TO ISSUE A PREFILING ORDER (April 19<sup>th</sup> 2017 - AR page 61-64), based upon claims made by Ludwig and Wilcox to declare Mr. Colafranceschi (MDC) a VEXATOIUS LITIGANT including section A, B, C. This Pre-filing order (AR page 61-64) claims A&B were later dismissed by Judge Moody's final order whereas Judge Moody explains why section A and Section B had no merit (dated November 6<sup>th</sup> 2017, AR 451-458). Then Judge Moody declaring MDC a Vexatious Litigant regarding "Section C" discovery upon Julie Neustadt with no substantive findings.

This appeal is moves to have the higher Idaho Court revise the ORDER dated November 6<sup>th</sup> 2017. (Page 451-457 AR) of Judge Moody.

COURSE OF PROCEEDINGS  
STATEMENTS OF FACTS/ ARGUMENTS

Scot Ludwig attorney for Julie Neustadt fraudulently presented a MOTION TO REFER TO ADMINISTRATIVE COURTS while knowingly omitted facts that prove his claim was meritless, and an abuse of process – As an officer of the court Ludwig filing this Motion that was frivolous, misleading and without merit and solely intended to be used in future litigation to tamper with witnesses in a Civil case. Ludwig declined to testify to what he presented to the courts on August 7<sup>th</sup> 2017 while he was present at hearing. (This a separate issue to this appeal yet relevant because Judge Moody refused to acknowledge the same and appeared bias and abuse of discretion).

This higher court is without sufficient evidence to be persuaded that Judge Williamsons merit to refer to Administrative Court existed. The fact that many affidavits, motions and memorandums are not on this record prejudices MDC. Most important is the fact that the discovery questions claimed to be vexatious are not included in this record. For that reason this case should be dismissed. - On the alternative:

The fact that Judge Moody granted on April 19<sup>th</sup> 2017 (Page 61-64 AR) a PROPOSED FINDINGS AND NOTICE OF INTENT TO ISSUE A PREFILING ORDER – while Mr. Ludwig and Mr. Wilcox being fully aware of lack of merit leads to the abuse of discretion and fraud presented to Judge Moody. The acts of Wilcox and Ludwig cannot explain why Judge

Moody did not allow MDC to call Scot Ludwig as a witness to the hearing on August 7<sup>th</sup> 2017 in this matter. (See Appeal Transcript Volume 1) – or Call Julie Neustadt for the same reasons.

Then on August 8<sup>th</sup> 2017 in case CV 2017-140 Scot Ludwig claimed that the Vexatious Litigant Order was a “*guarantee*” and that he swore his own life upon it. The facts showing that numerous affidavits and documents were provided in this case after the August 8<sup>th</sup> 2017 statement of Scot Ludwig and somehow he knew how Judge Moody was going rule. See two separate affidavits of MDC filed on the Appeal Record:

- Affidavits of MDC (AR -431 -432) September -7<sup>th</sup> 2017 –RE- Ludwig guarantee results of Judge Moody.
- Affidavits of MDC (AR -446 -449) October 16<sup>th</sup> 2017 Re- #5 Ludwig Guarantee again - Re # 9 Julie telling people I was already declared vexatious.

Abuse of discretion being claimed that Judge Moody claimed she reviewed exhibits and evidence while the record clearly shows this false. It appears this falsity of her claim intended to declare MDC at any cost. Consistent with the undisputed statement made by Scot Ludwig while acting as an officer of the court mentioned above in a hearing August 8<sup>th</sup> 2017.

On this record of appeal (3 x AR page 70 AR page 116 page 273) the civil complaint filed by Rick Tuha (attorney for MDC) for battery and defamation show egregious acts of violence and harm upon MDC by Julie Neustadt. Judge Moody never considered that this Vexatious Claim to be retaliation, or an abuse of process, whereas a reasonable expectation would be considered by a neutral Judge. Even while MDC showed Judge Moody that Neustadt and Ludwig made claims of this Vex. Lit claim in two cases CV 2017-140 and CV 2017-098

cases. Judge Moody stated in August 7<sup>th</sup> 2017 hearing that she was not concerned with their motive. This shows an abuse of discretion and not addressing evidence;

Judge Moody (T. P. 20 L. 13-17) ***“I don’t look at her motives. I don’t consider whether she is doing something to hurt you or not. I’m not saying she is. I’m just saying I don’t look at her motives”.***

The preceding statement is prejudicial and shows that Judge Moody reached her decision without an exercise of reason or substantive findings and ultimately a abuse of discretion.

A serious analogy applies for the higher court to consider. If OJ Simpson before or during the civil case (Case No.B200082 Ca, CASE NO. SC036340), retaliated upon Goldman by filing a vexatious litigant claim to hinder Goldman in his civil claim for damages – The District Court would have an interest in such tactics, contrary to Judge Moody’s statement. A court cannot allow for such an abuse on the judicial system when it is clear and obvious.

This is compounded by Judge Moody giving credit and validity to Carl Miller in his letter (Carl Miller AR page - 353 -356) that was submitted by MDC to show abuse of Carl Miller. Carl Miller is not a judge ruling on Vexatious litigant – he is not a lawyer. For this Court to rely as if he is, is simply absurd. Carl Millers letter is not notarized or directed to the court, while Carol Griffith and Fredrick Reamer both notarize their claims about Carl Millers ethics and directed to the courts.

THE COURT: And then on page 4 of that, the conclusion of Carl Miller was that you were using the court system in an abusive way to harass witnesses. And so I'll just share with you that I have that in the back of my mind, so I'm hypersensitive to anything that I might perceive as an abuse of the process. I'm not saying that you're doing that. As I indicated, I have

no concerns thus far, but I just want you to know that's in the back of my mind to be fair with you. She is not my client, but I certainly can with regard to Julie. Thank you.

If this Idaho higher court looks at the claims made by Carl Miller – While referring to Fredrick Reamers affidavit (AR page- 299-304 and Affidavit of Carol Griffith AR page 436-444) the can determine how absurd this claim- Furthermore how and why discovery questions require Neustadt’s claims of previous partners causing PTSD by their bad acts. Alarming is Judge Moody stated these bad acts don’t concern her while she prejudicially takes Carl Millers ridiculous statement as fact while ignoring two other professionals. Then Rick Tuha (attorney at law for MDC) through his discovery questions (AR page 485-493) found it necessary to ask Julie Neustadt about false claims of past relationships regarding Jacob Delarosa and Wolfe Ashcraft. This anomaly cannot be explained by the findings in this ORDER. With all due respect to Judge Moody and this court, it is obvious and clear that Judge Moody was manipulated by Mr. Ludwig.

(T. Pg. 18 L. 1-6)-MDC: testifies that Carl Miller never interviewed him

Regarding the findings that MDC filing a civil claim for her battery involving a gun his ***harming*** Julie Neustadt is also absurd. Any person causing aggravated battery upon another would be stressed having to face the charge and may look uncomfortable or anxious. Judge Moody appearing to feeling sorry for Schoonover and Neustadt being subpoenaed for the August 7<sup>th</sup> 2017 hearing does not add up.

The Carl Miller report is simply absurd. It is similar to MDC paying a lot of money to an unethical “professional” to claim John Doe caused him PTSD – without the “professional”



interviewing John Doe or following any ethical protocols to determine past relationships. Any criminal could use this approach for civil or criminal action upon him.

With regard to Carl Millers paid for - written statement – Would any Judge consider that the Goldman's were **harassing** OJ Simpson by using civil court in an abusive way. Judge Moody to take Carl Miller's one sided corrupt statement is prejudicial. It is unmanageable that any Judge would feel sorry for OJ Simpson as he looks uncomfortable while sitting in a court room while he shows anxiety- as Judge Moody did for Schoonover and Neustadt having to answer to perjury charges, aggravated battery theft etc. (T. Pg. 9 L. 21-25)- (T. Pg. 30 L. 13-25)- (see Exhibit A ).

(T. Pg. 33 L. 9-24)- Judge Moody: Sure. And I hope that I have given you an adequate opportunity to make a record on prejudice, and you're going to have more time to argue that point. What I will share with you is my observations as I've been listening to you, Ms. Schoonover has many, many times shaken her head back in forth in disagreement with what you are saying. Ms. Neustadt has shifted uncomfortably in her chair. Her expression shows visible anxiety. She has put her hands up to her face. She has been moving around. She has been distressed in speaking with her attorney. From where I sit, both of these individuals are suffering just as a result of sitting in this hearing.

The irony in Judge Moody giving to credit or concern to Carl Millers unethical claim is that it is directly linked to Section C of the Vexatious Litigant order regarding the necessity to ask questions to false claims of PTSD, while Judge Moody shows no concern for Neustadt's motives. Judge Mooney refused to allow testimony regarding these claims.

The statement of Judge Moody can only be seen as prejudicial, abuse of discretion. It is undisputed that the judge was not concerned about MDC's anxiety or discomfort having to

defend all the frivolous claims.

Scot Ludwig: (Transcript Page 18 line 12-15) stating: *Your honor I would object to that. The purpose, as he has already stated of having Julie testify is to relieve the divorce case.* The hypocrisy of this statement is clear. It is Ludwig that brought these allegations and when faced with creditability or perjury - objects to testifying to the facts he alleges. Judge Moody agreeing with Ludwig is prejudicial.

(Transcript Page 27-line 24-21- 28 line 3-14) Judge Moody claims MDC is relitigating - again supporting the ridiculous claim made by Ludwig. This would be like saying The Goldman's are relitigating the criminal case that got dismissed and OJ Simpson is the victim by having to testify in a civil claim for damages. The stark difference in this case Neustadt has not been found not guilty of aggravated battery or domestic violence.

MDC : (T. P. 29-L 18-25 – P 31-L. 12) That's what this complaint is saying through discovery, through motions. And I want to provide to the court, because this case isn't final, proof that it's them that is causing this to be ongoing. And without having them testify, I can't do that. And then again with Neustadt, it's the intent, the purpose, and how it has affected her and her children with respect to the Briley claims and this suit with Briley and her supporting it. And there are other things, too, but I think if we're not allowing Neustadt to testify, then I'm prejudiced. There is some force that is not allowing me to say, "Hey, court, I'm here wanting to resolve these things. I'm wanting to move forward. I don't want to go back. I want these things to be done and over with." Why is it that I have a kidnapping clause? Why is it that I have outstanding child support that I paid to Schoonover that she refused to provide satisfaction and judgment on that is going to the Supreme Court? Why? Why is it that Julie continues to claim that I'm physically abusive or mentally abusive when the facts show otherwise? And it hasn't been finalized. And with respect to discovery, too. The discoverable stuff that was brought up in this case were discovery questions that I posed in, I believe, my first or second set of discovery to Ms. Neustadt in the 125 case. Those same questions reworded and edited by

my attorney from Idaho Law Group were reasked to her. So if an attorney asks it, it's okay, and it's not vexatious. And she hasn't filed a vexatious or a harassment claim against Idaho Law Group, but she is filing this against me. I think we need to have that testimony. And then the fact that she is using this and telling people that I've been declared a vexatious litigant. She has put it in the protection order. She stated it to Judge Berez. She stated it to police officers. She stated it to security at Whitetail. She is telling people as a matter of a fact to discredit me

In the same August 7<sup>th</sup> 2017 hearing MDC testifies to the importance of the PTSH questions and pattern of Neustadt making false allegations:

MDC (Transcript Page 38-line 4-25 Pg. 39 pg. 40 L. 1-14) The claims on discovery that they claim are so egregious or harassing or whatever their claim was in their motion aren't. If I can tell this court that every question that I asked Julie Neustadt in that discovery is provable and true, and the fact that she had done these things -- and I talked to my attorney at Idaho Law Group repeatedly and told me during our relationship that she did these to her X's and she is going to do them to me, they become relevant. The judge could deem them relevant. Where she is saying one of the foremost surgeons in Idaho, Jacob Dolorosa in Pocatello, who she dated while she was in California and Arizona, was a sociopath, was physically abusive, was with the Columbian cartel. She has repeated this all through our marriage. And she said she was going to do the same thing, that I was emotionally abusive, that I was this, that, this and the other. And the questions I provided in her civil claim for defamation and for battery by Idaho Law Group, and they said, "Hey, they might not answer them, because they're going to say they're irrelevant. They can be relevant if she stated them to you in your marriage and stated she was going to do the same thing." Again, without having that and then, again, using that as me being vexatious, where I'm a person who gave up six years of my life to live with this wealthy person as far as my income and trusted her. And her intent if I ever left, which I did, was to bankrupt me and do anything that she could possibly do and make things up is evident by the two protection orders, the one that was denied in 2016 where she made a false claim that she was afraid of me. And I think it's important for the courts to look at these false claims, because in the 2016 claim, she said she provided one video of me walking away with a gun after I took it from her when she pointed it at me and said that she was going to kill me. She didn't provide to the court the three other videos where she was pointing it at me. But what is interesting, too, is in that protection order of 2016, she didn't make a claim of me breaking into the house. The 2017 claim she claims they broke into the house in May of 2016, something that was completely false, frivolous, and ridiculous. And then again, the false police reports. If you would look at the totality of what is going on with these bad acts and without -- and there's no need to rehash and to relive these. They're going to the Supreme Court. If these aren't in fact true,

my argument and my claim is either I walk away an abused and battered person bankrupt and don't stand up for myself, or I stand up for myself and I seek a civil remedy to get these things remedied.

Exhibit A from the August 7<sup>th</sup> hearing as admitted by Judge Moody; Below are just the acts of Neustadt that did not want to testify and Judge Moody excused; Let it be known that these facts are undisputed and Julie Neustadt had the opportunity to defend- She didn't. With the seriousness of these false allegations and list of bad acts it is fair to conclude that Ludwig and Neustadt misled the courts in filing the Motion.

#### JULIE NEUSTADT FALSE ALLEGATIONS AND BAD ACTS

- Julie's multiple death threats upon Mr. Colafranceschi
- Julie's assault and battery upon Mr. Colafranceschi
- Julie's verbal abuse on Mr. Colafranceschi
- Julie's financial abuse to include and not limited to illegal eviction.
- Julie's refusal to return Mr. Colafranceschi personal belongings in 2015 and 2016.
- Julie willful destruction of Mr. Colafranceschi's personal property
- Julie's defamatory statements made upon Mr. Colafranceschi
- Julie's perjury in claiming Mr. Colafranceschi punched her twice during the marriage
- Julie's perjury relating to her net worth
- Julie's perjury relating to her direct and indirect knowledge of making death threats.
- Julie's perjury relating to her claim she did not know Mr. Colafranceschi was taping calls and violent incidents
- Julie trying to force Mr. Colafranceschi to claim son [REDACTED] was a pussy
- Julie claiming [REDACTED] is not Mr. Colafranceschi biological child
- Julie repeatedly claiming [REDACTED] is fat and ugly just like Durena
- Julie making false claims on Mr. Colafranceschi for grand theft auto
- Julie making false claims on Mr. Colafranceschi that he vandalized their home. Then testifying that Mr. Colafranceschi spread chocolate in the upstairs room which was not true.
- Julie claiming that Mr. Colafranceschi stole her personal property
- Julie perjuring herself claiming she sought marriage counseling from Mr. Colafranceschi when she didn't.

- Julie intentionally attempting to bankrupt Mr. Colafranceschi for leaving the relationship.
- Julie Making false claims of emotional abuse to Dr. Miller, Tammy Jackson and other people.
- Julie falsely claiming that Mr. Colafranceschi's parents spent so much of her money.
- Julie claiming that Wolfe Ashcraft raped and beat her.
- Julie claiming that Jacob Delarosa was a part of the Columbian Drug Cartel
- Julie claiming that her aunt Jo Weil has ties to the Jewish mafia and will hire a hit man to kill Mr. Colafranceschi.
- Julie becoming violent to Shore Lodge Staff and causing harm upon the family by getting kicked out of Whitetail club for one month.
- Julie violently pinching Mr. Colafranceschi putting a bruise upon him in Sept 2015.
- Julie claiming multiple times that she would fabricate false claims about Mr. Colafranceschi.

It is claimed that Neustadt filed this claim and a protection order to influence her civil case in which she is defendant. Julie in her protection ex-parte affidavit (AR page 347) mentions Vexatious Litigant and Judge Moody. In the same ex-parte affidavit Julie uses the Carl Miller letter (AR page 348) Julie claiming "Dr. Miller diagnosis me with PTSD caused by this relationship."

Judge Moody to not consider the preceding bad acts with the necessarily of MDC filing thorough discovery request is an abuse of discretion and prejudicial. In divorce with a partner committing this many bad acts or making this many false allegations – may require more discovery. The pattern of Julie false claims and Julie reference to Todd Wilcox inciting a retraining order, among other false claims.- See below:

Email exhibit Julie Neustadt to MDC (AR page 44) is an email – Julie Neustadt stating- Re- Wilcox and Schoonover.

*They kept saying how dangerous you are. That you were going to kill me. That you wanted to wait until my dad was gone. It all makes me sad and sick. Just saying u were only with me for \$\$\$. Todd just wanted to basically takes to cascade to get a restraining order from you. His mission is to get u because of the custody case with mark that u basically won. Susie has two more years to make life hell for us. That's what she wants. Durena knows she has us for awhile. They won't stop until they destroy us and we r no longer together. That is their mission. Wilcox has nothing better to do but go after you because basically u made him look like an ass. I can't live my life with them in it though. It's not fair to my girls the stress and unhappiness this causes.*

AR page 50- states the same in a separate affidavit of MDC. Regarding the numerous false claims made by Schoonover, Wilcox and Neustadt – Again ignored by Judge Moody

For this Judge to file this order when reasonable suspicion of fraud existed creates an issue creditability of Judge Moody and or question of abuse of discretion. When the and testimony of MDC provided Judge Moody the undisputed claim of retaliation and false claims and furthermore that Scot Ludwig knew and guaranteed upon his own life the outcome of this case while Judge Moody shows no concern.

On (AR page 457)- Judge Moody states ***“No evidence or argument alters the Court’s conclusion with respect to this finding. Therefore, based on this third proposed finding, the Court declares Mr. Colafranceschi a vexatious litigant under I.C.A.R. 59.”***

This higher court can see that since the April 2017 PREFILING ORDER there is certainly new evidence and argument that should alter Judge Moody’s findings. The list of evidence and argument submitted include and not limited to:

- Affidavits of Nate Peterson AR pg. 388-389
- Affidavits of MDC (AR -431 -432) September -7<sup>th</sup> 2017 – Re- PTSD RE- Ludwig guarantee

- Affidavits of Carol Griffith (AR- 436-437) October 12<sup>th</sup> 2017 Re #10– PTSD Re- #4 Characterological disorders
- Affidavits of MDC (AR -446 -449) October 16<sup>th</sup> 2017 Re- #5 Ludwig Guarantee Re # 9 Julie telling people I was already declared.
- Affidavit of Scot Ludwig dated September 6<sup>th</sup> 2017 –making claims of PTSD
- Sworn testimony of MDC on August 7<sup>th</sup> 2017 hearing
- Argument made by MDC on Auguts 7<sup>th</sup> 2017 hearing
- Case law submitted by MDC
- Exhibit entered about bad acts of Neustadt on August 7<sup>th</sup> 2017
- Objection filed by MDC Feb 27<sup>th</sup> 2018 (AR page 480) Outlines Exhibit A not on record.
- Plaintiffs First Set of Discovery Request (AR page 484-501) Rick Tuha asking discover questions identical to MDC
- Order of Dismissal (AR page 502) Judge Williamson involvement in this case
- Court Minutes (AR page 526-532) – Outlining that Judge Moody did not in fact even have a copy of Exhibit A from August 7<sup>th</sup> 2018 not had listened to the CD provided in same exhibit list.

None of the above new evidence or argument was even referred to by Judge Moody in the November 6<sup>th</sup> 2017 Order. Judge Moody writes:

C. Mr. Colafranceschi Has Engaged in a Pattern of Conducting Frivolous Discovery or Discovery Solely Intended to Cause Unnecessary Delay.

The Court’s third proposed finding, under |A.C.R. 59(d)(3), stands. This finding was:

***Mr. Colafranceschi has engaged in a pattern of conducting frivolous discovery. or discovery solely intended to cause unnecessary delay, in the following cases.***

***1. Neustadt v. Colafranceschi, Valley County case no. CV 2016-125-C. In a divorce case, Mr. Colafranceschi propounded over 380 discovery requests, including 337 requests for admission. These requests included asking the Petitioner to describe the nature and duration of her affairs with other married men in the last ten years and to admit that another man had raped her. Aff. of Scot Ludwig Ex. 8. at 3, 6. The court concluded that many of these requests were irrelevant. Mr. Colafranceschi filed several***

***motions to compel responses to his discovery requests, at least one of which was denied in its entirety. Order Den. Mot. to Compel, Oct. 6. 2016. ORDER - Page 6***  
(AR Page 456”)

It is undisputed that the only case Judge Moody sights in her Order (dated November 6<sup>th</sup> 2017) is CV 2016-125 – Regarding Discovery questions IN ONE SET OF DISCOVERY which is under appeal in the District Court of Valley. Appeals of an existing action do not count as “final determinations”. Appeals and writs that are related to a current action do not count as “final determinations” or additional determinations, because until all avenues of appeal have been exhausted the determinations cannot be construed as “final”. *Childs v. Painwebber, Inc.* (1994), 29 Cal.App.4th 982

A judgment is final for all purposes when all avenues for direct review have been exhausted. *First Western Development Co. v. Superior Court*, (1989) 212 Cal.App.3d 860, 864, 261 Cal.Rptr. 116.

Interlocutory decisions before a judgment cannot be considered “final determinations”. *Holcomb v. U.S. Bank Nat. Ass'n*, (2005), 129 Cal.App.4th 1494, 29 Cal.Rptr.3d 578

On April 12- 2017 MDC filed a RESPONSE; Page 53 AR 54.MDC states “***Mr. Colafranceschi prays this court allow for cross examination testimony of Julie Neustadt and other witness in the event that this court believes this charge has merit.***” ***Let it been know to the supreme court of Idaho***” – MDC was not told he could not subpoena witnesses to the August 7<sup>th</sup> 2017 hearing. In fact he was questioned at the August 7<sup>th</sup> 2017 hearing why he didn’t subpoena all the attorneys he retained.

Any reasonable person would gather form the sworn claims made by MDC that false claims and frivolous claims made by Schoonover, Ericson, Neustadt, Wilcox and Ludwig are the cause



of protracted litigation. And That Judge Moody was not at all concerned about this is concerning testimony.

On March 29<sup>th</sup> 2017 MDC filed a response RULE 59. Page 56 of AR. Page on of this response outlines to Judge Moody that – “ *Mr. Ludwig do not provide include the actual motions and the orders and decisions/opinions of the court, should prove that this court is without sufficient evidence to support the claims made by the Motion*”.

Let this supreme court be aware that the said documents pointed out in the March 29<sup>th</sup> 2017 responses did not get produced for this appeal record. And with that Judge Moody can't make a ruling on the merit of these discovery claims unless there is abuse of discretion or fraud by Judge Moody.

AR page 57 – MDC states: “again Mr. Ludwig not providing these motions and the courts responses should alarm the courts.

May 1<sup>st</sup> 2017 MDC filed RESONSE AND AFFIDVAIT TO Proposed findings and notice of intent to issue a prefilng order. (AR pg 253-262) On page 262 MDC argues and provides agreement and facts that Judge Moody does not consider as an abuse of discretion.

First and foremost MDC argues this case is under appeal and seeking extreme cruelty as a cause of action. MDC also argues that the false allegations are relevant as outlines extensively.

MDC goes on to provide the courts on the reason why infidelity questions were asked by MDC while he sights Neustadt discovery Interrogatory #10 refers to sexual relationships. AR

page 264-267 - Most shocking is Judge Moody refusing to address the factual presentation of errors in Ludwig's affidavits and motions. Of which Ludwig did not provide proof of. The entirety of these pages provided below:

Judge Moody not addressing the abuse of process of Ludwig and Neustadt put a prejudice or jeopardy MDC.

One may conclude that the discovery was unnecessary, but when you factor in the egregious false claims made by Ms. Neustadt about Mr. Colafranceschi from Neustadt claiming MDC hit her, to her claim that Mr. Colafranceschi stole her belongings, vandalized the home along with other disturbing things. Asking Julie Neustadt (in discovery) about her making false claims about her ex-husband raping her is reasonable and necessary based upon her own claim that she would harm MDC by making false allegation of PTSD. Julie Neustadt opened this door by claiming extreme cruelty by Mr. Colafranceschi and providing Affidavits to the court that he physically punched her of which she later admitted was a lie. (See Transcript August 7<sup>th</sup>). There are many other examples Mr. Colafranceschi does not intend to relitigate this matter in Administrative Court yet providing this Court with these examples is necessary to determine that that intention of these questions was to seek discovery based upon Julie Neustadt's actions, and statements.

The audio exhibit B from AR - August 7<sup>th</sup> 2017 hearing shows Julie Neustadt will spend any amount to leave Mr. Colafranceschi with nothing.

**Julie Neustadt: I am not going to give you another cent and I am going to try my best and my attorney is too - not to give him anything**

**Susie Ericson: Good – Good**

**Julie Neustadt: I don't care how much money it costs me to pay my attorney – I don't care how much it cost me – just so I don't have to pay him anything**

Neustadts established bad acts and false claims to mean that she would make false allegations about MDC to claim PTSD to get out of financial obligations or harm MDC- as she did with accusing her ex-husband of rape and physical abuse and stealing money from her.

Appeal Record - Furthermore Mr. Ludwig complains of the harassing nature of Mr. Colafranceschi's discovery questioning infidelity and fails to mention to this court that in. PETITIONERS FIRST SET OF INTERROGATORIES AND REQUESTED FOR PRODUCTION OF DOCUMENTS TO RESPONDENT. Interrogatory #10 (page 5) *"Have you engaged in any sexual relationships with any person other than petitioner from the date of your marriage to the present? If yes, please state the name of the party with whom you engaged in such a relationship, and the date(s) on which relationship took place."*

In this case discovery of facts and conclusions of facts in evidence were not weighed and ignored. In MDC's motion to augment the record it was discovered that it was impossible for Judge Moody to have reviewed the evidence (See MDCs 60b Motion and affidavit) when she admitted to never having the exhibits listed on MDC exhibit list from June 2017 filing. In exhibit a that was entered into evidence it shows cleanly the purpose and discovery that judge moody declares vexatious because she claims MDC acted frivolous in discovery conducted or discovery solely intended to cause unnecessary delay.–

MDC provided Judge Moody many causes and needs for conducting discovery, why it

had merit, and MDC proved that Mr. Ludwig caused delay.

Side note: (Any reasonable person would conclude that Mr. Ludwig as used and abused the judicial system and the very serious claim of Vexatious Litigant to fabricate a defense for his losing cases. Along with his motion for more (AR page 122-145) definitive statement and motion for protective orders, and motion to stay discovery in the CV2017 -098 case. All showing an abuse of process as a pattern by Ludwig and Neustadt. This court may want to take judicial notice that Mr. Ludwig was inappropriately used this vexatious litigant claim in three ongoing cases of MDC to include CV 2017-098 – Cv2017-140 and 17-00607-TLM. (all cited on the Appeal record). Mr. Ludwig during a protection order hearing August 7<sup>th</sup> 2017 also stated as an Officer of the Court that he guaranteed MDC would be declared Vexations – before Judge Moody was able to review new evidence and arguments). AR Page 26, MDC in his affidavit makes claims to Mr. Ludwig's fraud- Judge Moody – through abuse of discretion refused to address this.

Undisputed Facts:

- It is undisputed that Julie Neustadt made false allegations about whom caused her PTSD
- It is undisputed in this case that the CV 2016-125 case is seeking extreme cruelty as a cause of action and is not final.
- Neustadt claims PTSD or Extreme Cruelty – and use of Carl Millers show a need to investigate PTSD.
- It is undisputed that MDC subpoenaed Durena Schoonover and Julie Neustadt for the August 7<sup>th</sup> 2017 hearing in this case.
- It is undisputed that Rick Tuha asked and caused upon Julie Neustadt (in Case CV 2017-098) the same question MDC asked in (Cv 2016-125) of which the CV 2016-125 case has caused a severe anomaly for this court.  
That is MDC asking the questions outlined in the Vex Order as considered

harassing, while Rick Tuha asking these same questions as undisputed by Scot Ludwig's motion for protection order admits the same.

- It is undisputed that Judge Moody did not have a copy of any exhibits from the August 7<sup>th</sup> 2017 hearing.

Judge Moody's pre-filing order (Section C page 3) dated April 19<sup>th</sup> 2017 and in her Order dated Nov 6<sup>th</sup> 2017 (Section C page 6) pg. 456 Appeal Record of which is under appeal states – Are identical – Stating “Mr. Colafranceschi has engaged in a pattern of conducting frivolous discovery, or discovery solely intended to cause unnecessary delay in the following cases.”

First and most obvious is Judge Moody states *cases* in plural – Judge Moody references ONE case – CV 2016-125 (which is under appeal to the district court). Either Judge Moody is findings are erroneous finding MDC a vexatious litigant.

Instead of Judge Moody using the word “repeated” she use the word “pattern”. If Judge Moody states that the pattern of asking Julie Neustadt about her physical abuse, and the pattern of asking Julie Neustadt about making false claims about Jacob Delarosa and Wolfe Ashcraft causing PTSD in one discovery set was to cause unnecessary delay or was frivolous . She does not explain 1. How it was frivolous 2. How it caused delay.

If Judge Moody used the correct language in Rule 59 – it would fall short because there was not multiple cases just one case CV 2016-098 and to meet the unspecified criteria for "repeated" motions or litigations, the number must be much more than two, based on case law this seems to be around 12. "While there is no bright line rule as to what constitutes “repeatedly,” most cases affirming the vexatious litigant designation involve situations where

litigants have filed dozens of motions either during the pendency of an action or relating to the same judgment." *Bravo v. Ismaj*, (2002) 99 Cal.App.4th 211, 120 Cal.Rptr.2d 879).

MDC filed this set of discovery one time. The appeal courts have not determined if either the merits of the discovery constitute either frivolous discovery and or intended to cause delay.

Most concerning to judicial canons is Judge Moody on page 7(AR 457) of her order claiming. "No new evidence or arguments alters the Courts conclusion with respect to the finding". The following and preceding claim that the evidence proves evidence was not weighed.

On (Tr. pg. 32 L. 5-25 – Pg. 33. L1-8). MR. COLAFRANCESCHI: I think the other thing that I was going to ask without question was, Ms. Neustadt's claim that she was going to do -- spend whatever it takes through -- and how she explained it to me while we were married is, "Tie me up in court, chew me up and spit me out until I walk away with my tail between my legs." And she doesn't care how much she spends on attorneys, she'll do whatever it takes to discredit me. If she hasn't said that and if she is not doing that right now and if the courts aren't interested in it, then that speaks for itself. Because those are the facts. And if we could have her testify. Because I have the e-mails. I have the facts that show that she is doing whatever it takes to discredit me by spending I think close to half a million dollars on an attorney in just over a year. That is pretty alarming. And then Durena Schooneover had unlimited resources with her attorney where she worked in the law firm of Todd Wilcox, and they set out to attack Julie's money and my property. And it was clear, they don't have anything to lose, and they're doing and causing an immense amount of defamation and hardship on me by these false claims. My response -- and, again, I just see not having them testify as a prejudice. I can't see it any other way.

On (Tr. pg. 33 L. 9-25 –Pg. 34 L. 1-12) THE COURT: Sure. And I hope that I have given you an adequate opportunity to make a record on prejudice, and you're going to have more time to argue that point. What I will share with you is my observations as I've been listening to you, Ms. Schooneover has many, many times shaken her head back in forth in disagreement with what you are saying. Ms. Neustadt has shifted uncomfortably in her chair. Her expression shows visible anxiety. She has put her hands up to her face. She has been moving around. She has been distressed in speaking with her attorney. From where I sit, both of these individuals are suffering just as a result of sitting in this hearing. And because thus far about 40 minute into our hearing I have yet to make a determination that the offer of proof for their proposed testimony would be relevant to anything the

court is being asked to decide at this point, I'm inclined to release them from their subpoenas so that they don't suffer further distress. Now, hearing that, I want to give you one last shot not to cause you distress, because it feels like, "Judge, you're not listening to me," I think we're just disagreeing. But I do want to give you that last shot before I release them both.

(Tr. pg. 34 L. 13-25 –Pg. 35. MR. COLAFRANCESCHI: And I believe you have a situation, Your Honor, where what I've been up against, and if you look at the battery judgment against Durena Schooneover where Judge Williamson declared that Durena lied. And she stated that she wanted to be with me. She loved me. And if she wasn't going to be with me, she was going to act like I was this abusive person. It's what they're both doing. And if I'm sitting here composed and walking through this, it doesn't mean that I'm torn up inside or that I'm shaking my head or upset or hurt. I think that's an act. If you were to look at the facts of this case involving Neustadt and her pointing a gun and threatening to kill me and forcing, trying to force me to say that at that time seven-year-old son was a pussy and that he was a bastard and that he wasn't mine, and then hitting me, none of that has come out in court. And there's a really scary reason why. And what Ms. Neustadt has repeatedly said is that her family buys off sheriffs' departments and judges. And it sounds ridiculous. She said it to enough people, that she can testify that she hasn't said it. And if I'm taxed with 15 not being able to call witnesses to prove that these bad acts haven't caused me to litigate necessarily, then the court is failing. And what is happening is and what has happened is, if you look at the Schooneover case, there's a lot of unresolved motions. There's this kidnapping allegation. There's the child support where she tried to get me in contempt of court when I paid \$2,000 directly to her, and she files a motion for contempt of court and she refused to do a satisfaction and judgment. All these things have led to protracted litigation, and everybody wants to point the finger at me, and it's just not the case.

(Tr. Pg. 36. L. 3-18) THE COURT: I understand. And by saying I understand, I hope you don't hear my comments that I agree with you. I'm nodding because I'm listening, not because I'm agreeing. Obviously, Ms. Schooneover and Ms. Neustadt, you are welcome to remain. This is a public hearing, but you are officially released from your subpoenas. Mr. Colafranceschi, I understand you have to have made a record of prejudice with respect to the court's decision in this regard. I know that you are under oath, continue to be under oath. If there's any testimony or additional argument you would like to present, you're free to do that.

(Tr. Pg. 36. L. 19-18 Pg 37-Pg40 L.23) MR. COLAFRANCESCHI: I would like to testify under oath that every bad act that I provided in the admitted exhibit, the first exhibit from bad 23 acts of Durena Schooneover, Susie Ericson, and 24 Julie Neustadt are true and

correct and can be proven, and the failure of the courts to allow these issues to be addressed and are requiring them to be brought to the Supreme Court. And in no way -- again, I won't do the argument side of it, but these facts, the abuse that has been inflicted on me by Julie Neustadt, who is worth, according to her, \$40 million, who can have possession of marijuana, have videos of her making death threats to me, claim that she is going to ruin me financially and that she is going to destroy my profession or me professionally, and for these to not be heard. And then the egregiousness of the case and the outcome of the case that is under appeal, I can tell you -- and this is again under oath, and if the courts want to -- because I have all my correspondence with Nate Peterson, who I retained. And I believe I put that, and the record speaks for itself. The opposition complaint that I've wasted the court's time and that I proceeded pro se, we filed a motion to stay and to just move the court hearing two weeks ahead or before to accommodate for Nate Peterson, and he was willing to become attorney on record in this Neustadt case. Mr. Ludwig refused, to gain an upper hand on me, the motion in limine that they provided a few days before court, according to Nate Peterson was so egregious and so ridiculous, it's again why it is under appeal. The claims on discovery that they claim are so egregious or harassing or whatever their claim was in their motion aren't. If I can tell this court that every question that I asked Julie Neustadt in that discovery is provable and true, and the fact that she had done these things -- and I talked to my attorney at Idaho Law Group repeatedly and told me during our relationship that she did these to her X's and she is going to do them to me, they become relevant. The judge could deem them relevant. Where she is saying one of the foremost surgeons in Idaho, Jacob Dolorosa in Pocatello, who she dated while she was in California and Arizona, was a sociopath, was physically abusive, was with the Columbian cartel. She has repeated this all through our marriage. And she said she was going to do the same thing, that I was emotionally abusive, that I was this, that, this and the other. And the questions I provided in her civil claim for defamation and for battery by Idaho Law Group, and they said, "Hey, they might not answer them, because they're going to say they're irrelevant. They can be relevant if she stated them to you in your marriage and stated she was going to do the same thing." Again, without having that and then, again, using that as me being vexatious, where I'm a person who gave up six years of my life to live with this wealthy person as far as my income and trusted her. And her intent if I ever left, which I did, was to bankrupt me and do anything that she could possibly do and make things up is evident by the two protection orders, the one that was denied in 2016 where she made a false claim that she was afraid of me. And I think it's important for the courts to look at these false claims, because in the 2016 claim, she said she provided one video of me walking away with a gun after I took it from her when she pointed it at me and said that she was going to kill me. She didn't provide to the court the three other videos where she was pointing it at me. But what is that protection order of 2016, she didn't make a claim of me breaking into the house. The 2017 claim she claims they broke into the house in May of 2016, something



that was completely false, frivolous, and ridiculous. And then again, the false police reports. If you would look at the totality of what is going on with these bad acts and without -- and there's no need to rehash and to relive these. They're going to the Supreme Court. If these aren't in fact true, my argument and my claim is either I walk away an abused and battered person bankrupt and don't stand up for myself, or I stand up for myself and I seek a civil remedy to get these things remedied. And it happened with my 18-year-old 17 son. I went through -- one, Judge, I can't remember who it was said it's probably the longest repository, and Susie Ericson is not here. The false and the ridiculous claims made, and the un-meritless claims made by Susie Ericson were proven. The home custody evaluation done in that case awarded me custody. That was done by Dr. Mack Stephenson.

## **GROUNDS FOR JURISDICTION**

Idaho Administrative Rule 59

## **LAW AND ANYALSIS**

The question in this appeal is whether the Administrative Court's decision is clearly erroneous. *Hoskinson v. Hoskinson*, 139 Idaho 448, 454, 80 P.3d 1049, 1055 (2003); *Roberts v. Roberts*, 138 Idaho 401,403, 64 P.3d 327, 329 (2003). *Sun Valley Shopping Ctr., Inc. v. Idaho Power Co.*, 119 Idaho 87, 94, 803 P.2d 993, 1000 (1991) In reviewing such decisions, the relevant inquiry is whether the Administrative court (1) correctly perceived the issue as one of discretion; (2) acted within the outer boundaries of its discretion and consistently with the legal standards applicable to the choices before it; and (3) reached its decision by an exercise of reason. *Hoskinson, supra; Roberts, supra*. The Judge must weigh conflicting evidence and testimony and to judge the credibility of evidence. With respect to questions of law, however, this Court exercises free review to determine whether the law was properly construed and

applied.

Disputed facts should be construed in favor of the non-moving party, and all reasonable inferences that can be drawn from the record are to be drawn in favor of the non-moving party. In this appeal record there is no evidence supporting Section “C” of Order declaring MDC vexatious. *Fuller v. Callister*, 150 Idaho 848, 851, 252 P.3d 1266, 1269 (2011) (quoting *Castorena v. Gen. Elec.*, 149 Idaho 609, 613, 238 P.3d 209, 213 (2010)).

The Order at hand does not apply because the CV 2016-125 case has not been resolved. Restricting access to the Courts is, however, a serious matter. “[T]he right of access to the courts is a fundamental right protected by the Constitution.” *Delew v. Wagner*, 143 F.3d 1219, 1222 (9th Cir. 1998). The First Amendment “right of the people . . . to petition the Government for a redress of grievances,” which secures the right to access the courts, has been termed “one of the most precious of the liberties safeguarded by the Bill of Rights.”

The reckless use of pre-filing orders could infringe First, Fifth and Fourteenth Amendment equal protection clause, *Molski v. Evergreen Dynasty Corp.*, 500 F.3d 1047, 1057 (9th Cir. 2007) (per curiam).

Out of regard for the constitutional underpinnings of the right to court access, “pre-filing orders should rarely be filed,” and only if courts comply with certain procedural and substantive requirements. *De Long*, 912 F.2d at 1147.

When district courts seek to impose pre-filing restrictions, they must: (1) give litigants notice

and “an opportunity to oppose the order before it [is] entered”; (2) compile an adequate record for appellate review, including “a listing of all the cases and motions that led the district court to conclude that a vexatious litigant order was needed”; (3) make substantive findings of frivolousness or harassment; and (4) tailor the order narrowly so as “to closely fit the specific vice encountered.” *Id.* at 1147–48. The first and second of these requirements are procedural, while the “latter two factors . . . are substantive considerations . . . [that] help the district court define who is, in fact, a ‘vexatious litigant’ and construct a remedy that will stop the litigant’s abusive behavior while not unduly infringing the litigant’s right to access the courts.” *Molski*, 500 F.3d at 1058.

The administrative Court failed at addressing (3) and (4).

In light of the seriousness of restricting litigants’ access to the courts, pre-filing orders should be a remedy of last resort. Procedurally and substantive standards for an abuse of discretion exists in this case .2 *Molski*, 500 F.3d at 1056.

“[B]efore a district court issues a pre-filing injunction . . . it is incumbent on the court to make ‘substantive findings as to the frivolous or harassing nature of the litigant’s actions.’” *De Long*, 912 F.2d at 1148 (quoting *In re Powell*, 851 F.2d 427, 431 (D.C. Cir. 1988) (per curiam)). To determine whether the litigation is frivolous, district courts must “look at ‘both the number and content of the filings as indicia’ of the frivolousness of the litigant’s claims.” *Id.* (quoting same). While we have not established a numerical definition for frivolousness, we have said that “even if [a litigant’s] petition is frivolous, the court [must] make a finding that the number of complaints was inordinate.” *Id.* Litigiousness alone is not enough, either: “‘The plaintiff’s claims must not only be

numerous, but also be patently without merit.” Molski, 500 F.3d at 1059 (quoting Moy, 906 F.2d at 470).

### **CONCLUSIONS**

Plaintiff moves this court to reverse the decision of the Administrative Court in dismissing the action and award costs to MDC and sanction upon Mr. Wilcox, Mr. Ludwig.

Respectfully submitted this 14<sup>th</sup> day of May 2018

  
Mark D. Colafranceschi D.C.

CERTIFICATE OF SERVICE

I, Mark D. Colafranceschi, hereby certify that a true and correct copy of this document:  
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On behalf of Himself  
Date 14<sup>th</sup> OF May 2018

  
Mark D. Colafranceschi D.C.