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In re Prefiling Order Declaring Vexatious Litigant Respondent's Brief 2 Dckt. 45554

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IN THE SUPREME COURT OF IDAHO

STATE OF IDAHO, IN THE MATTER OF

IN RE: PREFILING ORDER DECLARING VEXATIOUS LITIGANT, PURSUANT TO I.C.A.R. 59	)	Supreme Court Docket No. 45554 Valley County Case No. CV-2017-115
MARK D. COLAFRANCESHI,	)	
Vexatious Litigant-Appellant,	)	
v.	)	
MELISSA MOODY, Administrative District Judge,		
Fourth Judicial District,		
Respondent.		

Appeal from the District Court of the Fourth Judicial District

of the State of Idaho, in and for the County of Valley

Case No. CV-2017-115

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Delew V. Wagner, 143 F.3d 1219, 1222 (9th Cir. 1998).
De Long, 912 F.2d At 1147
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First Western Development Co. V. Superior Court, (1989) 212 Cal.App.3d 860, 864, 261 Cal.Rptr. 116.
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Molski, 500 F.3d At 1058
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Sun Valley Shopping Ctr., Inc. V. Idaho Power Co., 119 Idaho 87, 94, 803 P.2d 993, 1000 (1991)

STATUTES

Idaho Court Administrative Rule 59

CONFLICT OF INTEREST

The Idaho Attorney General office has been included in these matters, being cc'd Motions to Augment the Record, Motions to take Judicial Notice etc. The Idaho AG office provided Mark D. Colafranceschi (MDC) ex-parte communication regarding a criminal investigation on the Vexatious order – NOT including the Supreme Court or Judge Moody of the Administrative Court.

The issues pertaining to the acts of Judge Williamson referring this case, the actions of Ms. Lee Wallace, Judge Boomer, Todd Wilcox and of Scot Ludwig (Claims of close ties and Judge Gerald Schroeder being his old college booster and pall). Along Mr. Peterman and his use of this Vexatious Order in another case - and Mr. Peterman's ties to Gerald Schroeder should also be noted. Along with Judge Moody's ties to Judge Schroeder.

Testimony by MDC in the August 7th 2017 hearing – The Mention of the collusion with Todd Wilcox (33:2, 42:8, 42:16,17, 49:8) Judge Boomer (11:1, 13:8, 16:19, 25 etc) and Ms. Lee Wallace (41:17, 42:15, 16, 19) starting @ in the year 2012. The messy triangles and claims made by Todd Wilcox and Scot Ludwig. Judge Moody does not address these facts s in her final order.

As indicated by testimony: Todd Wilcox has openly retaliated upon MDC for the Finding's of Judge Boomer to be guilty of Judicial Misconduct by the Idaho Judicial Council, and Todd Wilcox's admitted ex-parte communication with Judge Schroeder. Scot Ludwig has openly retaliated against MDC and worked with Mr. Peterman (Judge Schroeder's former clerk). Todd Wilcox has claimed that the Idaho AG office is out to get MDC Dating back to the year 2012 or 2013). In summary the evidence supports MDC claims that Scot Ludwig and Mr. Wilcox are abusing the system to dupe the Administrative court and attempt to do the same with the Supreme Court. .

Judge Moody takes note of Ms. Lee Wallace during the August 7th 2017 hearing and fails to address this in future written orders, or findings.

GUARANTEE OF SCOT LUDWIG NOT ADDRESSED

Judge Moody in this case does not address the reason why Scot Ludwig's (August 8th 2017) guaranteed on how Judge Moody would rule. If an officer of the court insinuated that he or she had knowledge of how a judge was going to rule a reasonable Judge would take action. If an officer of the Court (Mr. Ludwig) guarantees the outcome of any Judge it should sound alarm bells. If Judge Moody has ties to Judge Schroeder and Mr. Ludwig himself one would consider this grounds for recusal. It is noted that MDC's attempt to have this statement made by Scot Ludwig have judicial notice taken in this case – was DENIED. MDC did file a sworn affidavit in this case that is on the Appeal Record see below.

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

Judge Moody did not respond to the above listed MDC"s affidavit outlining Scot Ludwig guarantee. Both Judge Moody and Scot Ludwig both had the opportunity to respond to MDC's allegation of Ludwig's statement indicating he had control over Judge Moody or the final order (made on August 8th 2017 CV 2017-140). Nor does the Idaho AG reply brief address or reply to these allegations and concerns that point towards the necessity of recusal or violation of Judicial Canons and or simply imply bias or abuse of discretion.

IDAHO AG BRIEF IGNORING RICK TUHA ASKING THE SAME QUESTIONS

The Idaho AG reply brief does not address facts pertaining to the appeal record page 116, and page 273 that MDC argues in his Appeal brief. In these pages Rick Tuha a licensed attorney in Idaho lists the egregious acts of violence by Neustadt that any reasonable Judge would consider and as evidence that the Discovery upon Neustadt was warranted.

In The pre-filing order Judge Moody stated:

> **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").**

Concern that this record shows NO denied Motion to Compel in its record. Nor does the Idaho AG reply brief address the inconsistencies that MDC provided the court with facts stating otherwise.

Nor does the Idaho AG response address that:

> **On March 29th 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".**

The Idaho AG does not respond to the fact that Discovery related to infidelity was established as acceptable and undisputed that

> **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."**

SUSPICIOUS COMMENT NOT ADDRESSED:

The Idaho AG reply brief does not address Judge Moody making an unusual statement regarding the meeting of Neustadt and the peculiarity of it, in light of addressing MDC and Schoonover differently. If that was the only irregularity, ignoring this may be warranted. In light the Ludwig guarantee and the Exhibit being misplaced, the comment should be noted.

MOTIVES AND PERJURY NOT ADDRESSED:

The Idaho AG reply brief does not address to the fact that Judge Moody stated (August 7th 2017) in this case the she did not care about motives of Julie Neustadt. The Idaho AG reply brief wants to claim that Judge Moody did not abuse her discretion without addressing the Judge's own statements.

> **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".***

Safe to conclude that Judge Moody does not look at motives, it would also be safe to conclude Judge Moody does not look at or consider perjury. Judge Moody's own words are clear. If Judge Moody does not care that Neustadt and Scot Ludwig both are fully aware that the discovery request are and where relevant in the CV 2016-125 case. And this motion for vex order are intentionally filed to misled the court or colluded with the court. Judge Moody not caring that Ludwig and Neustadt motive of using the vex order to fraudulently obtain a protection order should also alarm this court. Neustadt's motives are ignored by Judge Moody – The exhibit of Neustadt's bad acts NOT BEING objected to by Ludwig, Moody, or Neustadt prove concern. Judge Moody claims not to be concerned with motive then considers an unsworn statement of Carl Miller that completely contradicts the aspect of motive.

A reasonable person may conclude that Judge Moody would allow perjury of Neustadt and Ludwig along with the abuse of process. The fact that Judge Moody protected Neustadt from testifying to these facts is more than alarming. MDC subpoenaed Neustadt, and argued the relevance of her testimony. A reasonable person would conclude that Judge Moody did not want to hear evidence that would prove Neustadt brought this action through perjury and abuse of process and to influence a protection order and a civil claim for battery. Neustadt was aware that the discovery questions where in fact relevant – based upon the premarital agreement, Neustadt's bad acts and Neustadt's own discovery questions.

(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

MOTIVES OF JUDGE MOODY PROTECTING SCOT LUDWIG FROM TESTIMONY:

Judge Moody protected Scot Ludwig from testimony as outlined in MDC's appeal brief. The Court transcripts are clear. MDC moved to call Scot Ludwig to the stand. Judge moody would not allow for testimony of the present witness- Nor does the AG response explain why many of Ludwig's affidavits submitted are not included in appeal record.

MOTIVES OF JUDGE MOODY RE: CARL MILLER

The Idaho AG reply brief does not address or reply the hypocritical, contradicting statements Judge Moody made about Carl Miller that prove Judge Moody's bias and abuse. While Judge Moody and Mr. Warden both ignore that SWORN statement (Carl Miller's statement unsworn) of Carol Griffith and Fredrick Reamer.

Judge Moody statement quoting Carl Millers unsworn statement that MDC was using the court system in an abusive way to harass witness etc. This is simply a projection. As stated in Appeal brief any rich person could pay unethical people like Carl Miller to make such ridiculous claims. For a Judge to give it weight proves abuse and bias.

The Idaho AG reply brief does not address or reply the facts surrounding the sworn statements of Carol Griffith and Fredrick Reamer. It would appear to a reasonable person that Judge Moody statements are a complete contradiction to the record that shows Rick Tuha wrote and signed a Verified Claim for battery.

JUDGE MOODY'S FAILURE TO CONSIDER EVIDENCE:

The Idaho AG reply brief does not address or reply to the fact that MDC provided ample evidence to Judge Moody. It is obvious to any reasonable person that the Idaho AG response simply repeats and lists the appeal aspects of Dr. Colafranceschi's appeal and does not respond to the factual allegations with the exception of weak frivolous time wasting responses.

The Idaho AG reply brief acknowledges that almost the entirety of the hastily written prefiling order of Judge Moody was DISMISSED. MDC should not be thankful or appreciative of these warrantless, meritless and vexatious claims being dismissed. It is concerning that the Administrative Court did not admonish Scot Ludwig and Todd Wilcox for their abuse of process for bringing these claims while they both are and where fully aware that MDC had consulted attorneys in these cases. Part of the purpose of the Subpoena of Schoonover and Neustadt (for the August 7th 2017 hearing) was to show the court that same. Instead Judge moody forced MDC to involve attorneys to recall consultation from 4- 5 years prior. The amount of work that Judge Moody created for MDC to involve these professional/attorneys to write affidavits is alarming in light of the fact that Neustadt and Schoonover would have testified to the same and avoided this protracted case. Julie Neustadt who paid the fees to Ludwig to file this claim also paid for the attorneys that responded in this case. Instead Judge Moody shows bias to Schoonover and Neustadt – The Idaho AG reply does not address the clear bias shown

Nowhere does Judge Moody articulate the regret of inconvenience that this caused upon Dr. Colafranceschi by the actions of Scot Ludwig, Todd Wilcox and Judge Darla Williamson and herself.

The fact that Idaho AG reply brief SPINS Judge Moody's egregious reckless error of filing a premature pre-filing order – then correcting the errors as an indication to this court that

she is not bias – Judge Moody's malicious prosecution attempt in tossing a lot of mud against the wall then correcting 75% is prejudicial to Judge Moody not honorable.

The vexatious orders are serious matters and Judge Moody acted hastily both in the prefiling order and again in her final order. A vexatious order should never be used to retaliate upon a sound upstanding citizen that has successfully called out the criminal and ethical and Canon breaches made by Judges.

To repeat MDC should not be thankful that Judge moody dismissed 75% of the prefiling matter that was fraudulently obtained. Judge Moody should be apologetic and act responsibly instead Judge Moody fulfills the guarantee made by Scot Ludwig (August 8th 2017) and does not address the corruption allegations.

With Scot Ludwig committing perjury in his affidavits filing the motion to refer are not addressed by Judge Moody.

The listed false allegations and bad acts (Exhibit A) listed on page 11 and 12 of Appeal Brief are not addressed by the Idaho AG reply brief. MDC asks the simple questions how can the reply ignore these bad acts and claim at the same time that MDC asking question in discovery are vexatious. Furthermore how Judge Moody was okay with the appeal record not including the discovery records or findings from Judge Williamson in the case she refers to and MDCs successful motion to compel.

The fact that the appeal record has no record of the Discovery questions that Judge Moody refer to in her order is being highly suspect. The fact that Todd Wilcox's affidavits are not included is also highly suspect. The Idaho AG response brief is aware of these facts yet ignores these obvious omissions.

The Idaho AG reply brief fails to respond to Appeal record page 457,

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."***

MDC's appeal addresses and points out that the evidence that Judge Moody ignores include: those listed on page 13- 14 of Appeal Brief: Again Listed in this reply brief.

- Affidavits of Nate Peterson AR pg. 388-389
- Affidavits of MDC (AR -431 -432) September -7th 2017 – Re- PTSD RE- Ludwig guarantee
- Affidavits of Carol Griffith (AR- 436-437) October 12th 2017 Re #10– PTSD Re- #4 Characterlogical disorders
- Affidavits of MDC (AR -446 -449) October 16th 2017 Re- #5 Ludwig Guarantee Re # 9 Julie telling people I was already declared.
- Affidavit of Scot Ludwig dated September 6th 2017 –making claims of PTSD
- Sworn testimony of MDC on August 7th 2017 hearing
- Argument made by MDC on August 7th 2017 hearing
- Case law submitted by MDC
- Exhibit entered about bad acts of Neustadt on August 7th 2017
- **** Objection filed by MDC Feb 27th 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 7th 2018 not had listened to the CD provided in same exhibit list.

***** emphasis added. The Idaho AG office cannot ethically or without considering wasting tax payers money on maliciously perusing this case without address the above evidence.

If none of these above facts along with the testimony from the entire August 7th 2017 hearing in this case alters the opinion of Judge Moody, a reasonable person would conclude that Judge Moody abused her discretion .

The Idaho AG brief does not address the following new evidence, testimony argued in MDC's brief:

- **On (Tr. pg. 32 L. 5-25 – Pg. 33. L1-8).**
- **(Tr. pg. 33 L. 9-25 –Pg. 34 L. 1-12**
- **(Tr. pg. 34 L. 13-25 –Pg. 35**
- **(Tr. Pg. 36. L. 19-18 Pg 37-Pg40 L.23**

The final order of Judge Moody does in no way reflect the new evidence. Even if an unreasonable person would claim that MDC discovery questions where without merit and that these discovery questions were found by a non bias judge to be harassing or meritless – No sound Judge would take the extreme, hypocritical measure of declaring a person vexatious based upon the following: (On this appeal record):

> **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." BE & K Const. Co. v. NLRB, 536 U.S. 516, 524–25 (2002) (internal quotation marks omitted, alteration in original); see also Christopher v. Harbury, 536 U.S. 403, 415 n.12 (2002) (noting that the Supreme Court has located the court access right in the Privileges and Immunities clause, the First Amendment petition clause, the Fifth Amendment due process clause, and the Fourteenth Amendment equal protection clause). Profligate use of pre-filing orders could infringe this important right, Molski v. Evergreen Dynasty Corp., 500 F.3d 1047, 1057 (9th Cir. 2007) (per curiam), as the pre-clearance requirement imposes a substantial burden on the free-access guarantee. "Among all other citizens, [the vexatious litigant] is to be restricted in his right of access to the courts. . . . We cannot predict what harm might come to him as a result, and he should not be forced to predict it either. What he does know is that a Sword of Damocles hangs over his hopes for federal access for the foreseeable future." Moy v. United States, 906 F.2d 467, 470 (9th Cir. 1990). 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. In "applying the two substantive factors," we have held that a separate set of considerations employed by the Second Circuit Court of Appeals "provides a helpful framework." Id. The Second Circuit considers the following five substantive factors to determine "whether a party is a vexatious litigant and whether a pre-filing order will stop the vexatious litigation or if other sanctions are adequate": (1) the litigant's history of litigation and in particular whether it entailed vexatious, harassing or duplicative lawsuits; (2) the litigant's motive in pursuing the litigation, e.g., does the litigant have an objective

good faith expectation of prevailing?; (3) whether the litigant is represented by counsel; (4) whether the litigant has caused needless expense to other parties or has posed an unnecessary burden on the courts and their personnel; and (5) whether other sanctions would be adequate to protect the courts and other parties. Id. (quoting Safir v. U.S. Lines, Inc., 792 F.2d 19, 24 (2d Cir. 1986)). The final consideration — whether other remedies "would be adequate to protect the courts and other parties" is particularly important. See Cromer v. Kraft Foods N. Am., Inc., 390 F.3d 812, 818 (4th Cir. 2004). In light of the seriousness of restricting litigants' access to the courts, prefiling orders should be a remedy of last resort. We review the district court's compliance with these procedural and substantive standards for an abuse of discretion.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).

As an alternative to frivolousness, the district court may make an alternative finding that the litigant's filings "show a pattern of harassment." De Long, 912 F.3d at 1148. However, courts must "be careful not to conclude that particular types of actions filed repetitiously are harassing," and must "[i]nstead . . . 'discern whether the filing of several similar types of actions constitutes an intent to harass the defendant or the court.'" Id. at 1148 n.3 (quoting Powell, 851 F.2d at 431). Finally, courts should consider whether other, less restrictive options, are adequate to protect the court and parties. See Molski, 500 F.3d at 1058; Cromer, 390 F.3d at 818; Safir, 792 F.2d at 24.

Whether a litigant's motions practice in two cases could ever be so vexatious as to justify imposing a pre-filing order against a person, we do not now decide. Such a situation would at least be extremely unusual, in light of the alternative remedies available to district judges to control a

litigant's behavior in individual cases. The district court, however, failed to consider whether other remedies were adequate to curb what it viewed as the Ringgolds' frivolous motions practice. The Federal Rules of Civil Procedure provide courts with a means to address frivolous or abusive filings: Rule 11 sanctions. Indeed, "Rule 11's express goal is deterrence." Warren v. Guelker, 29 F.3d 1386, 1390 (9th Cir. 1994). "[W]hen there is . . . conduct in the course of litigation that could be adequately sanctioned under the Rules, the court ordinarily should rely on the Rules rather than the inherent power." Chambers v. NASCO, Inc., 501 U.S. 32, 50 (1991); see also Fed. R. Civ. P. 11 advisory committee's note to 1993 Amendments, subdivision (d). Similar to the limitation courts have imposed on vexatious litigant orders, Rule 11 requires that "[a] sanction imposed under this rule must be limited to what suffices to deter repetition of the conduct." Fed. R. Civ. P. 11(c)(4). Rule 11 provides a list of sanctions of varying severity that courts may, in their discretion, impose: "nonmonetary directives; an order to pay a penalty into court; or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of part or all of the reasonable attorney's fees and other expenses directly resulting from the violation." Id. Before entering this broad pre-filing order, applicable to other cases than this one, the district court assuredly should have considered whether imposing sanctions such as costs or fees on the Ringgolds would have been an adequate deterrent. See Cromer, 390 F.3d at 818.

The testimony that MDC gave directly to Judge Moody on August 7th 2017 in this case regarding Idaho Law Group asking the same discovery questions Page 38 of transcript line 5 - 25 page 39 –Page 40 . Explaining fully the need for the discovery and second that a Licensee Idaho lawyer can ask the questions and MDC cannot. This anomaly is not at all addressed by the AG reply brief. Nor does Judge Moody address the anomaly.

The contradiction is that Judge Moody prematurely filed pre-filing order and later dismissed all those aspects where MDC had consulted or acted under the direction of a licensed lawyer. However Judge Moody either inadvertently or maliciously refused to accept the

fact that the discovery questions fall exactly in the same circumstance. To explain how and why is curcuil so this court cannot ignore the same:

1. MDC testified in court August 7th 2017 – That Idaho Law Group asked the same questions
2. In MDC response and Affidavit he explained the same.
3. MDC provided the affidavit of Scot Ludwig that he filed in the CV 2017-098 case – sworn and complaining that Rick Tuha asked the same discovery questions.
4. The appeal record does not even provide the evidence that supports Judge Moody's findings. This in and by itself is highly suspicions.

The Idaho AG reply brief does not respond to the following:

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

The Idaho AG response does not address the PTSD as it related to the Appeal record and MDC's argument.

(**AR page 348) Julie claiming "Dr. Miller diagnosis me with PTSD caused by this relationship."**

IDAHO AG RESPONSE BRIEF ARGUMENTS.

1. Mr. Wardens is selective regarding the facts in this first argument. According to Scot Ludwig, Judge Moody's hand was forced as witnessed by Scot Ludwig's own guarantee and Mr. Warden ignoring this.

   Judge Moody nor Scot Ludwig responded to the allegation that Scot Ludwig forced Judge Moody's hand. Further proof is Judge Moody using a shotgun approach in her frivolous dismissed prefiling order, one would conclude that her hand was forced in some way not yet determined.

2. Mr. Warden Claims Judge Moody acted with discretion. While at the same time this claims fails to address the competence associated with discretion that requires a Judge to review and consider relevant material. Judge Moody not viewing the alleged denied motion to compel regarding the request for admissions is alarming.

   Judge Moody order requiring Dr. Colafranceschi to seek permission to file court action has nothing to do with the allegations of discovery. The appeal record does not show the magistrates order dismissing the discovery requests, nor does the court record show the list of discovery request. – If Judge Moody was acting within the boundaries of discretion she would have known that Neustadt was ordered to answer the questions on discovery only if she made the statements under oath. Judge Moody refused to take judicial notice.

Mr. Warden repeats the order of Judge Moody that is not backed by any documentation. Any reasonable person would consider the facts pertaining the prenuptial agreement, the grounds for divorce, which Judge Moody ignored – including habitable intemperance, Adultery, Extreme Cruelty all lead to the abuse of discretion.

Judge Moody not being concerned about motives of Neustadt also show an abuse.

3. Mr. Warden's third argument is another he most time wasting and without merit – by the appeal record of MDC showing that Judge Moody did not exercise reason – Mr. Warden claiming Judge Moody used "careful consideration' – Judge Moody's prefiling mudslinging order signed BEFORE A HEARING – of which was almost all dismissed. The portion that remained was section 3 (three) regarding discovery. Most shocking is the fact that Judge Moody did not change one word from the first prefiling order to her final order. The reason this is important to point out is that after she filed the prefiling Order Judge Moody became aware that Rick Tuha asked the same questions of Julie Neustadt, etc . Judge Moody did not mention or refer to any of the NEW evidence provided.

Claiming Judge Moody used careful consideration is an insult to this higher court. In reading Mr. Wardens arguments he offers no reasoning after repeating (partially, incompletely or inaccurately) Dr. Colafranceschi arguments on appeal –

CONCLUSION

This appeal record includes on page 486 – The discovery questions that Rick Tuha asked that are the same as those Judge Moody calls vexatious for a pro se litigant.

Obviously concluding that if a licensed lawyer asks the question it is okay. Judge Moody nor Mr. Warden did not object to this being on the record.

There an objection that the court minutes (March 2018) indicated the alarming fact that Judge Moody claimed she did not have the Exhibit A, and can only conclude that if she did not have the Exhibit A she could not possibly have reviewed it. Objection filed by MDC Feb 27th 2018 (AR page 480) outlines Exhibit A not on record. The Court Minutes (AR page 526-532) outline proof that Judge Moody abused her discretion and made statements on her order that cannot possibly be true.

Judge Moody cites in her order documents and facts not included on the record. MDC pointed out this fact both to Judge Moody and Mr. Warden. MDC pointed it out to Judge Moody before the appeal record was settled.

After the granted MOTION TO AUGMENT the record was to include all affidavits, motions and memorandums - Page 534 of the appeal record is Judge Moody's order – MDC requested the following items 1) Neustadt's motion from March 2017, 2) MDC response March 20th, March 29th, and April 12 2017 – Alarming is that Todd Wilcox, Neustadt, and some Scot Ludwig's affidavits and memorandum are not included. – A careful review of the court minutes of the motion to augment clearly requested all the documents, of which Judge Moody agreed she would not have a case if they are not included.

Let it be known that MDC was provided 3(THREE) separate appeal records. All of which failed to accurately include relevant documents. Again MDC repeats after the third appeal record was provided to him he emailed Judge Moody to inform her of the concerns. The record speaks for itself that she did nothing.

This Court may draw it'w own conclusion as to why the affidiviats of Ludwig and Wilcox are not included.

In Judge Moody's final order she claims: MDC propounded 380 discovery responses and 337 requests for admission and refers to a Oder Den Mot. To Compel. Oct 6, 2016. YET Judge Moody's appeal record does not support such facts outlined in the order. This Court may draw it's own conclusion why these documents are not included.

In Scot Ludwig's affidavit he submitted in the CV 2017-098 case moving for protective orders because Rick Tuha asked the same questions Judge Moody declared MDC to be vexing. Was included in the record and ignored by Judge Moody and the appeal response.

The Idaho AG does not reply to the following:

> **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 7th 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.**

<u>Mr. Ludwig did not provide this information to Judge Moody</u> as verified by the appeal record. It was MDC that provided this court document to Judge Moody as an attached exhibit. (See Appeal Record page 122-pg 145) the last page is Judge Scott's order denying both motions.

Again: Judge Moody does not refer or have concern that Rick Tuha (even according to Scot Ludwig) asks the identical questions. This higher courts or a criminal court must consider the fact that Scot Ludwig is fully aware that his motion to refer MDC was a retaliation and illegal defense for civil and divorce proceedings

Nor does Judge Moody acknowledge that Judge Williamson's case was under appeal because Judge Williamson would not allow MDC to claim extreme cruelty.

Nor does the Judge consider that her claim that the October 6th 2016 on motion to compel WAS NOT DENIED. The Idaho Ag response fails to respond to Appeal Brief outlying . AR page 264-267.

MDC prays that this case is dismissed and action taken upon Mr. Ludwig and Mr. Wilcox

Respectfully submitted this 16th day of July 2018

CERTIFICATE OF SERVICE

I, Mark D. Colafranceschi, hereby certify that a true and correct copy of this document: "APPELLANT'S BRIEF" was sent to the following individuals by mail hand delivered:
Court of Appeals - emailed onSctbriefs@idcourts.net supremecourtdocuments@idcourts.net
Nicholas Warden nicholas.warden@ag.idaho.gov
Respectfully submitted this 16th day of July 2018