

No. 18-8105

IN THE
SUPREME COURT OF THE UNITED STATES

ALICJA HERRIOTT

Petitioner

V.

PAUL B. HERRIOTT

Respondent

On Petition for Writ of Certiorari to
The Court of Appeal Second Appellate District

PETITION FOR REHEARING

ALICJA HERRIOTT

Petitioner, Pro Se

123-24th St

Hermosa Beach, CA 90254

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Statutes And Rules

42 U.S. code 1983

Rule 44.1

Due Process Clause of the Fifth and Fourteenth Amendment

First and Sixth Amendment to US Constitution

Supremacy Clause, the Court found Section 13 of the Judiciary Act of 1789

PETITION FOR REHEARING

Pursuant to Rule 44.1, Petitioner respectfully petitions this Court for rehearing. Petitioner is deprived her right to petition for redress of grievances guaranteed by the *First Amendment* to the United State Constitution. Because, Judicial Officer¹ acting under color of law violates declaratory decree between parties Petitioner seeks relief from the Judgment under *42 U.S. Code 1983*.

The case originates form the prior litigation filed by Respondent when, on May 1,2012, another Judicial Officers violates Petitioners' rights to equal

¹ Honorable Judge Dennis J. Landin, Superior Court of California, County of Los Angeles

protection under *Second Amendment to Constitution and Statutory Common Law*" and sanctions her by proclaiming Respondent in divorce case, name: Herriot vs. Herriott, No BD415-787 as Vexatious Litigant under *Court Civil Procedure, Section 931.7*. This decision of the Judicial Officer of the Los Angeles Superior² Court conflicts with the California Statutory Law of Vexatious Litigant itself that Respondent is not a Plaintiff as it is required under *Court Civil Procedure, Section 391*³ and she has no history of litigations filed against Petitioner. Vexatious Litigant Statue and prefilling order implemented on Defendant has profound effect on Petitioner's life that she loses her right to due process, and equal protection under The *Fourteenth Amendment* to the Constitution.

ARGUMENT

1. Pursuing 42 U.S.C. §1983 Petitioner has a right to relief from the judgment dismissing the civil case for personal injury by the Judicial Officer.

Under 42 U.S. code 1983 "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the

² Honorable Judge Christine Byrd, Superior Court of California, County of Los Angeles

³ Vexatious Litigant is plaintiff who maintained in propria persona files at least five litigations other than in a small claims court. A vexatious litigant is also a person who repeatedly relitigates or attempts to relitigate the same issue or controversy against the same defendant, repeatedly files unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary delay. A vexatious litigant is subjected to a pre-filing order under Section 391.7. Also, a defendant may move the court, upon notice and hearing, for an order requiring the plaintiff to furnish security or for an order dismissing the litigation under Section 391.1.

United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable."

Even though judges have absolute immunity but are not absolutely immune from suits seeking prospective relief (*Imbler v. Pachtman*, 424 U.S. 409, 96 S. Ct. 984, 47 L. Ed. 2d 128 [1976]), Petitioner has a right to injunctive relief when the declaratory decree reached between parties is violated.⁴ Judicial Officer dismissing the case for personal injury omits the declaratory decree, which is the settlement agreement, reached prior the hearing on April 19, 2018⁵. There is no question and Judge has a full knowledge that both parties came to a legal agreement for compensatory damages before the hearing took place. *Chavez v. Schwartz*, 457 Fed. Appx. 752, 754 (10th Cir. 2012); see *Johnson v. McCuskey*, 72 Fed. Appx. 475, 477-78 (7th Cir. 2003). "Declaratory relief" in this case is, the legal rights and obligations of the parties in anticipation of compensation for damages. The Judicial Officer in Superior Court, by dismissing lawsuits under unrelated to the case Vexatious Litigant Statue violates declaratory decree

⁴ Before the complaint for personal injury is filed Respondents takes responsibility for the accident on October 23, 2015 and thereafter he makes a settlement offer at first: 5,500 and later \$14,000.00.

⁵ Judge requests to provide prefilling order from Represented by attorney Petitioner in 10 days

between parties and refuses represented by an attorney Petitioner her right to amend the complaint filed In Pro Per.⁶ Petitioner's plausible claim is consisting more than "allegations that merely parrot the elements of the cause of action. See *Ocasio-Hernández v. Fortuño-Burset*, 640 F.3d 1, 12 (1st Cir. 2011). There is enough facts to raise a reasonable expectation that discovery will reveal evidence" of illegal conduct of Judicial Officer in the Superior Court or Court of Appeal by implementing Vexatious Litigant Statue to dismiss the case. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007). Those allegations and inferences are a plausible cause of action and reasonable for the relief." *Sepúlveda-Villarini v. Dep't of Educ. of P.R.*, 628 F.3d 25, 29 (1st Cir. 2010); see *Twombly*, 550 U.S. at 555. Implementing of a vexatious litigant prefilling order requirement to the attorney who represents Petitioner in the presence of the declaratory decree between parties is in violation of this decree and vexatious litigant statutory law itself.

2. The Court has held that the Sixth Amendment guarantees a defendant the right to represent herself. *McKaskle v. Wiggins*, 465 U.S. 168 (1984)

There are no federal laws that in pro per litigant rights might be infringed by the State laws and be punished by a prefilling order of vexatious litigant. As we see in this case, Petitioner is Defendant in the prior family law case and she is financially sanctions for not having attorney on May 1, 2012 or petition to the

⁶ Prefilling order under CCP391.7 requirements operates only when Petitioner is In Pro Per.

US Supreme Court⁷. Thereafter, the sanctions are carry on to the cases on appeal and to the represented by an attorney Petitioner's case for personal injury. In *Faretta v. California*, 422 U.S. 806 (1975). The Court has held that the *Sixth Amendment*, in addition to guaranteeing the right to retained or appointed counsel, also guarantees a defendant the right to represent himself. The attempt to overrule *Faretta* because it leads to unfair trials for defendants was declined in *Indiana v. Edwards*, 128 S. Ct. 2379, 2388 (2008). Even if the defendant in the family case exercises her right to her detriment, the Constitution ordinarily guarantees her the opportunity to do so.

3. The Supremacy Clause of the United States Constitution (Article VI, Clause 2) the supreme law of the land.

Even though, Congress has the authority to “make all laws which shall be necessary and proper for carrying into execution” the work of the Federal Government, federal law supersedes conflicting law even if that law is part of the state's constitution. In *Martin v. Hunter's Lessee*, 14 U.S. 304 (1816), and *Cohens v. Virginia*, 19 U.S. 264 (1821), the Supreme Court held that the Supremacy Clause and the judicial power granted in Article III give the Supreme Court the ultimate power to review state court decisions involving issues arising under the Constitution and laws of the United States. In *Marbury v. Madison*, 5 U.S. 137 (1803), Even though, this Court doesn't review cases that are might be very wrong and unjust, but it must look at the Vexatious Litigant Statutory Law enforced under *California Court civil Procedure, Section 391*, and

⁷ May 5, 2014 Court Order. Hon. Judge E. Nelson sanctions Defendant in the family case with \$12,500,00 payable to the Petitioner.

how it is implemented in this case. It shows that State and Federal laws are more than conflicting. Vexatious Litigant Statutory Law displays contempt for federal laws and equal protection under the law for the individual who acts In Pro Per in the State Courts. In the case of the Petitioner, Vexatious Litigant Statue is as a very "handy tool" for the judicial officers serve own justice and remove uncomfortable opponent from the court. To put it simply, Judge proclaims In Pro Per Petitioner, and defendant in the family law case as vexatious under very broad and undefined clearly statutory law so the other party prevails and in pro per litigant can't appeal the court order. Consequently, Petitioner loses her right to petition and seek protection under the law. California Vexatious Litigant Statue protects its constitutionality in the case *Taliaferro v. Hoogs* 46 Cal. Rptr. 147 (Ct. App. 1965), but in the practice it is not with compliance with the Federal "State law, which stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.

4. There is no statute of limitations contained within the language of 42 USC §1983

The United States Supreme Court has directed that 42 USC §1988 "require courts to borrow and apply to all §1983 claims the one most analogous state statute of limitations" *Owens v Okure*, 488 US 235, 240 (1989). Indeed, Petitioner loses her right to be compensated for the injury caused by her ex-husband's action addressed in this "Petition for Rehearing" under CCP391.7, but the another Judicial Officer of Los Angeles Superior Court, Hon. Judge Christine Byrd who proclaims Petitioner as vexatious litigant on May 1, 2012 also

terminates her permanent spousal support on January 25, 2012⁸; thereafter, Petitioner's appeal is dismissed under *CCP391.7*.⁹ It is no accident, that the same Judicial Officer abuses its power to terminate permanent spousal support, and with the aim to prevent Petitioner from appealing the order and prevailing, as she prevailed in the prior two cases on appeal of court orders of the same Judicial Officer¹⁰, declares Defendant in the family law case as Vexatious Litigant.

Because there is no statute of limitations, Petitioner to this court seeks relief from the additional order dismissing "Notice on Appeal" case No B243517 that Presiding Judge of the California Court of Appeal, Second District abused its power and dismisses an appeal under *CCP391.7*, knowing that the "Notice on Appeal" is not a new litigation or motion for an order requiring a prefilling order of vexatious litigant under *Court Civil Procedure Section 391.7*.

CONCLUSION

The very purpose of section 1983 is to interpose the federal courts between the states and the people, as guardians of the people's federal rights to protect the people from unconstitutional action, under the color of state law, whether that action is executive, legislative, or judicial. (quoting *Mitchum v. Foster*, 407 U.S. 225, 242, 92 S. Ct. 2151, 32 L. Ed. 2d 705 (1972)). This Court will do

⁸ Case No BD415-787, January 25, 2012 court order terminates permanent spousal support of the custodial parent's only income, without any changes circumstances from the last court order.

⁹ On May 28, 2013 Court of Appeal, Second District, Case No B543517 dismiss the Notice on Appeal by denying prefilling order of Vexatious Litigant after 9 months into court proceedings.

¹⁰ Cases B233061/B243240

precisely that, even though the result may be to enjoin a state court judge, or even to hold her in contempt for continued violations. *Pulliam*, 466 U.S. at 538 n. 19, 104 S. Ct. 1970. Dismissing the case for redress of grievances in the presence of the declaratory decrees by Judicial Officer is contrary to this Court's declaration that such a practices violates the equal protection and due process requirements of the United States Constitution. 42U.S.C.§1983; *Adames v. Fagundo*, 198 Fed. Appx. 20, 22 (1st Cir. 2006). Petitioner seeks Court assistance to reach the proper amount of the settlement when Judge fails to follow parties' agreement and dismisses the complaint for personal injury under CCP391.7. Petitioner and Defendant in the family law case is proclaimed as vexatious litigant, and for that reason she is loses all her rights, privileges, and protection secured by the U. S. Constitution.

Based upon the foregoing, the Court should grant the petition for rehearing, vacate dismissal of: April 30,208 Court Order, Case BC679103/B292886 and Court of Appeal May 8,2013 Order, Case No B243517.

Dated: May 7,2019

Respectfully submitted,



Aligia Herriott
Pro Se

No. 18-8105

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V.

PAUL B. HERRIOTT

Respondent

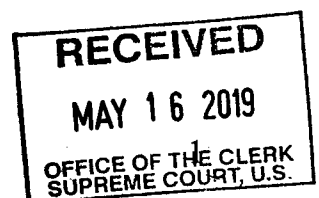
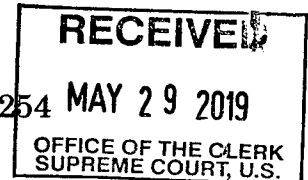
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California Court of Appeal Second Appellate District

PETITION FOR REHEARING

ALICJA HERRIOTT

Petitioner

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Hermosa Beach, CA 90254
(310) 254-5202



Pursuant to Rule 44.1, Petitioner respectfully petitions this Court for rehearing. Petitioner is not allowed to petition for redress of grievances guaranteed by the *First Amendment* to the United State Constitution. When Judicial Officer abuses his position and the power conferred upon him while acting under the “color of law”, therefore, this Officer is subjected to 42 U.S. §1983 actions. *Monroe v Pape*, 365 US 167, 172 (1960). *Gomez v Toledo*, 446 US 635, 638 (1980). Petitioner due process and equal protection under the laws; and its enforcement in this case is violation of the United States Constitution and the State laws for substantial and controlling grounds and reasons that were not included in the original application for writ of certiorari, as shown below:

Substantial and Controlling Grounds

Petitioner states that substantial and controlling grounds exists in this case to justify a rehearing on the petition for writ of certiorari because the Judicial Officer conduct is conscience shocking in a constitutional sense when prefilling order of vexatious litigant¹ requirement is implemented with intention to dismiss the case and disable Petitioner from seeking her constitutional right to petition to the state court again. The Judicial Officer have exercised power possessed by virtue of the state law and made possible to abuse the law of the prefilling order requirement while acting under the “color of law”, is subject to §1983 actions. *Monroe v Pape*, 365 US 167, 172 (1960). 1) Its enforcement of the

¹ Contradictory to the Statue requirements, Petitioner is Defendant in divorce case when Los Angeles Superior Court proclaims her as Vexatious Litigant with intention to stop the case on appeal of Hon. Judge Christine Byrd orders on May 1,2012.

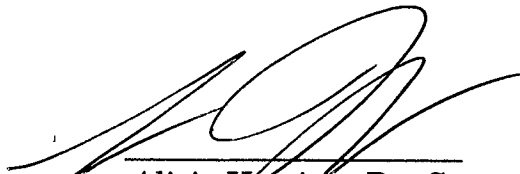
statue under California Civil Court Procedure Section 391 deprives Petitioner of a legal remedy of seeking relief in any court in the State of California. 2) The aggrieved statute enforcement by Judicial Officer in the presence of the legal agreement forecloses the right to seek any compensation for damages. 3) If the Petition of Rehearing is denied Petitioner loses any opportunity to obtain a decision to determine whether the state courts denied due process by imposing sanctions of the prefilling order requirement, in the absence of evidence that Petitioner is Vexatious Litigant as required in the state of jurisdiction under Section 391.7 of California Rules of Civil Procedure.


Alicja Herriott
Pro Se

CERTIFICATE OF PETITIONER

Pursuant to Rule 44(1) of this Court Rule, Petitioner, Alicja Herriott, Pro Se, states the attached Petition for Rehearing is meritorious and hereby certify that it is presented in good faith and not for purpose of delay.

Dated: May 22, 2019


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