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OPINIONS AND ORDERS

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REHEARING ORDERS

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ORDER OF THE SUPREME COURT OF TEXAS DENYING PETITION FOR REVIEW (MARCH 26, 2021)

SUPREME COURT OF TEXAS

BEASLEY,

v.

SOCIETY OF INFO. MGMT.

RE: Case No. 20-0960

COA #: 05-19-00607-CV

TC#: DC-1 8-05278

ORDER

Today the Supreme Court of Texas denied the petition for review in the above-referenced case. The Motion for Temporary Stay is dismissed as moot.

MEMORANDUM OPINION OF THE TEXAS COURT OF APPEALS, FIFTH DISTRICT OF TEXAS, AFFIRMING TRIAL COURT JUDGMENT (AUGUST 28, 2020)

IN THE COURT OF APPEALS FIFTH DISTRICT OF TEXAS AT DALLAS

PETER BEASLEY,

Appellant,

v.

SOCIETY OF INFORMATION MANAGEMENT, DALLAS AREA CHAPTER; JANIS O'BRYAN; AND NELLSON BURNS,

Appellees.

No. 05-19-00607-CV

On Appeal from the 191st Judicial District Court Dallas County, Texas Trial Court Cause No. DC-18-05278

Before: WHITEHILL, OSBORNE, and CARLYLE, Justices.

MEMORANDUM OPINION

Appellant Peter Beasley, appearing pro se, appeals from the trial court's orders declaring him a vexatious litigant and dismissing his claims with prejudice for failure to post the required security. We overrule

Beasley's issues and affirm the trial court's orders declaring Beasley a vexatious litigant and dismissing his claims with prejudice.

BACKGROUND

The facts are well-known to the parties, and we do not repeat them here except as necessary to explain the basic reasons for our decision. Tex. R. App. P. 47.4.

Beasley filed this suit in Collin County district court against Society of Information Management, Dallas Area Chapter ("SIM"), Janis O'Bryan, and Nelson Burns[1] on November 30, 2017, alleging claims for breach of contract, fraudulent inducement, defamation, "breach of duties," and due process violations, asserting derivative claims on SIM's behalf, and seeking declaratory and injunctive relief. Beasley had already asserted most of these claims against SIM in a Dallas County lawsuit that he voluntarily dismissed on October 5, 2017.

SIM filed a motion to transfer venue on January 16, 2018, an original answer on January 22, 2018, and a motion to declare Beasley a vexatious litigant on April 19, 2018. The Collin County trial court granted the motion to transfer venue to Dallas County.

The trial court granted SIM's motion to declare Beasley a vexatious litigant by order dated December 11, 2018. *See* Tex. Civ. Prac. & Rem. Code §§ 11.001–11.104 (Vexatious Litigants) ("VLA" or "Chapter 11"). The trial court also ordered Beasley to furnish security

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[1] We refer to appellees collectively as "SIM" except where individual reference is necessary.

in the amount of $422,064.00. When Beasley failed to furnish security by the date set in the court's order, the trial court signed a final order of dismissal and take nothing judgment on June 11, 2019. Beasley now appeals, challenging the trial court's declaration that he is a vexatious litigant and the dismissal of his lawsuit.

STANDARD OF REVIEW

We review the trial court's determination that Beasley was a vexatious litigant under an abuse of discretion standard. *Drum v. Calhoun*, 299 S.W.3d 360, 364 (Tex. App.—Dallas 2009, pet. denied). Under that standard, we are not free to substitute our own judgment for the trial court's judgment. *Id.* A trial court abuses its discretion if it acts in an arbitrary or capricious manner without reference to any guiding rules or principles. *Id.*

DISCUSSION

In Chapter 11, the Texas Legislature "sought to strike a balance between Texans' right of access to their courts and the public interest in protecting defendants from those who abuse the Texas court system by systematically filing lawsuits with little or no merit." *Id.* at 364–65. The purpose behind the statute was to curb vexatious litigation by requiring plaintiffs found by the court to be "vexatious" to post security for costs before proceeding with a lawsuit. *Id.* at 365.

Beasley asserts twenty-five issues challenging the trial court's vexatious litigant order and judgment. He divides the issues into five categories: (1) inapplicable statutory use and legal sufficiency (Issues 1–

5), (2) evidentiary challenges (Issues 6–12), (3) frauds on the court (Issues 13–14), (4) constitutional challenges (Issues 15–23), and (5) summary (Issues 24–25). We address all of Beasley's issues although we group some of them differently.

1. Applicability of Chapter 11 (Issue 2)

In his second issue Beasley argues he did not "commence" or "maintain" a litigation pro se within the meaning of Chapter 11 because he was a "counter-defendant" once SIM (1) moved to transfer venue to Dallas and (2) paid the filing fee in Dallas County. *See* VLA § 11.001(5) (defining "plaintiff" as "an individual who commences or maintains a litigation pro se"). Beasley contends that by taking these actions, SIM "consented to being sued" in a lawsuit that Beasley "did not file, prosecute or maintain." Beasley further argues that because SIM moved to transfer venue and paid the Dallas County filing fee, SIM was not a "defendant" under Chapter 11, defined in section 11.001(1) as "a person . . . against whom a plaintiff commences or maintains or seeks to commence or maintain a litigation." *Id.* § 11.001(1).

Both Beasley's original petition and his operative petition filed after the case was transferred to Dallas County begin with Beasley's assertion that "Plaintiff, Peter Beasley, ("Beasley") files this . . . Petition, complaining of Defendant" SIM. Both petitions state "claim[s] for relief" including "monetary relief over $1,000,000," "non-monetary relief," declaratory and injunctive relief, and "imposition of a receiver to take control over" SIM. SIM is identified in both petitions as "defendant." We conclude that Beasley both initiated the suit and "maintain[ed]" it as "plaintiff" against SIM

as "defendant" within the meaning of section 11.001, subsections (1) and (5). We decide Beasley's second issue against him.

2. Timeliness of SIM's motion (Issue 3)

SIM filed its Chapter 11 motion more than 90 days after filing its motion to transfer venue, but less than 90 days after filing its answer. In his third issue, Beasley contends SIM's motion was untimely under section 11.051, which requires a defendant to file a motion for an order determining the plaintiff is a vexatious litigant "on or before the 90th day after the date the defendant files the original answer or makes a special appearance." VLA § 11.051.

SIM filed a pleading entitled "Defendants' Motion to Transfer Venue" on January 16, 2018. The body of the motion presents SIM's argument that Beasley filed the same claims in a 2016 lawsuit in Dallas County requesting the same relief, and the case should be "transferred back to Dallas County." In the "conclusion and prayer," however, SIM requests that Beasley:

> take nothing by way of his claims, that Defendants recover their attorneys' fees, costs and expenses as allowed by law, that this cause be transferred back to the 162nd Judicial District Court of Dallas County, Texas and for such other and further general relief, at law or in equity, as the ends of justice require and to which the evidence may show it justly entitled.

Six days later, on January 22, 2018, SIM filed a pleading entitled "Subject to Defendants' Motion to

Transfer Venue, Defendants' Original Answer, General Denial and Affirmative Defenses." The substance of this pleading was, in fact, a general denial of Beasley's claims and assertions of affirmative defenses, concluding with a similar prayer.

Relying on civil procedure rule 85, Beasley argues that SIM's motion to transfer venue was an "answer" within the meaning of section 11.051, rendering SIM's vexatious litigant motion untimely. Rule 85 provides that "[t]he original answer may consist of motions to transfer venue, pleas to the jurisdiction, in abatement, or any other dilatory pleas; of special exceptions, of general denial, and any defense by way of avoidance or estoppel. . . . " Tex. R. Civ. P. 85. Beasley also contends that under rule of civil procedure 71 we must construe the motion to transfer venue as an answer. *See* Tex. R. Civ. P. 71 (misnomer of pleading does not render it ineffective, and court will treat pleading as if properly named); *Johnson v. State Farm Lloyds*, 204 S.W.3d 897, 899 n.1 (Tex. App.—Dallas 2006), *aff'd*, 290 S.W.3d 886 (Tex. 2009) (citing rule 71 and construing motion to compel an appraisal as a motion for summary judgment).

Courts have construed rule 85 broadly when determining whether a pleading constitutes an "answer" or "appearance" entitling a defendant to notice of a trial setting as a matter of due process. *See, e.g., Tunad Enters., Inc. v. Palma*, No. 05-17-00208-CV, 2018 WL 3134891, at *5 (Tex. App.—Dallas June 27, 2018, no pet.) (mem. op.) (citing cases for proposition that Texas courts "have been reluctant to uphold default judgments where some response is found in the record"); *In re R.K.P.*, 417 S.W.3d 544, 549 (Tex. App.—El Paso 2013, no pet.) ("If a timely answer has

been filed, or the respondent has otherwise made an appearance in a contested case, she is entitled to notice of the trial setting as a matter of due process."). The question here is different: whether we must construe a document—entitled and in substance a "motion to transfer venue"—as a rule 85 "answer," when the defendant has also timely filed an answer.

Here, SIM's vexatious litigant motion was filed within the time period expressly provided in section 11.051, that is, "on or before the 90th day after the defendant files the original answer or makes a special appearance." Although under civil procedure rules 85 and 86, SIM could have included its motion to transfer venue in its answer, it was not required to do so. *See* Tex. R. Civ. P. 85 (answer "may" consist of motions to transfer venue), Tex. R. Civ. P. 86.1 (objection to venue must be made "prior to or concurrently with any other plea"). The applicable rules and statutory provisions required SIM (1) to file its motion to transfer venue "prior to or concurrently with any other plea, pleading or motion," (2) to timely file its answer, and (3) to file its vexatious litigant motion on or before the 90th day after filing its answer. *See* Tex. R. Civ. P. 86.1 and 99.b.; VLA § 11.051. We conclude SIM met these requirements and timely filed its vexatious litigant motion. We decide Beasley's third issue against him.

3. Effect of SIM's nonsuit (Issue 13)

In his thirteenth issue, Beasley argues that by taking a nonsuit of its counterclaims, SIM necessarily nonsuited its vexatious litigant motion. He contends there was a "fraud on the court" because SIM's nonsuit offer was "conditional" on the trial court's

denial of Beasley's motion to reconsider the order declaring him a vexatious litigant, and there is no authority permitting "conditional" nonsuits.

SIM's counterclaims were for a declaratory judgment regarding the propriety of its board of directors' actions and for defamation per se. At the end of the hearing on Beasley's motion to reconsider the vexatious litigant order, the trial court took the motion under advisement, and SIM's counsel announced:

> MR. BRAGALONE: Yes, Your Honor, I have my client's authority now to nonsuit with prejudice the counterclaims that the defendants filed, so I'm presenting you with what's styled the final order of dismissal and take-nothing judgment—
>
> THE COURT: And that's pending my resolution [of Beasley's motion to reconsider].
>
> MR. BRAGALONE: Yes, Your Honor. So if you were to deny the motion to reconsider with a nonsuit, now it becomes a final judgment.

The record reflects the court's intent to take Beasley's motion under advisement, which it did. Neither the court nor SIM's counsel expressed any intent or understanding that SIM was withdrawing its motion to declare Beasley a vexatious litigant. The comments were made at the end of a two-hour hearing at which SIM opposed Beasley's motion to reconsider the trial court's prior ruling on that same motion. The record reflects that SIM sought denial of Beasley's motion to reconsider, dismissal of Beasley's lawsuit, and a final judgment. No fraud on the court is apparent from the record. *See Odam v. Texans Credit Union*, No. 05-16-00077-CV, 2017 WL 3634274,

at *8 (Tex. App.—Dallas Aug. 24, 2017, no pet.) (mem. op.) (general complaint of "fraud on the court" without citation to legal authority or "specific, lawful objections made in the trial court" presented nothing for appellate review). We decide Beasley's thirteenth issue against him.

Having concluded that SIM's motion to declare Beasley a vexatious litigant was properly before the trial court, we next consider Beasley's issues regarding the motion's substance.

4. Reasonable probability of prevailing on claims in this lawsuit (Issues 4 and 5)

Beasley's claims in this lawsuit arise from his removal from SIM's board of directors in April 2016. SIM is "a national, professional society of information technology (IT) leaders which seeks to connect senior level IT leaders with peers, provide opportunities for collaboration, and provide professional development." *See Beasley v. Soc'y of Info. Mgmt.*, No. 05-17-01286-CV, 2018 WL 5725245, at *1 (Tex. App.—Dallas Nov. 1, 2018, pet. denied) (mem. op.). In his operative petition, Beasley alleges that "[t]his lawsuit stems from Beasley, a board member with legal fiduciary duties, to have SIM Dallas operate within its own bylaws. . . ." In its motion to declare Beasley a vexatious litigant, SIM explained that Beasley's "claims all arise out of the same factual nexus," that SIM "was 'wasting' funds by engaging in philanthropy and support of local STEM education efforts in the Metroplex," "authorizing a 'give away' of member dues in contravention of its Articles of Incorporation." SIM's executive committee decided to seek Beasley's resignation based on this and other disputes, but before

they could do so, Beasley filed suit. After Beasley's initial *ex parte* TRO expired, SIM's executive board met and expelled Beasley from SIM.

Beasley has alleged claims for breach of contract (Counts 1 and 3 of his operative petition), fraudulent inducement (Count 2), defamation (Count 5), violation of his due process rights (Count 7), tortious interference with contractual relationships (Counts 8–11), business disparagement (Count 12), and breach of duties and ultra vires acts by individual defendants Burns and O'Bryan (Count 13). He has also requested an injunction against ultra vires acts of SIM (Count 4) and declaratory relief (Count 6). Counts 4 and 13 are alleged as derivative claims on SIM's behalf. Count 12 is alleged by Beasley on behalf of Netwatch Solutions, Inc. as its sole owner.

On appeal, Beasley argues that SIM did not offer any sworn testimony or other evidence to support its contention that Beasley could not prevail on his suit, citing *Amir-Sharif v. Quick Trip Corp.*, 416 S.W.3d 914, 920–21 (Tex. App.—Dallas 2013, no pet.) (reversing and remanding for further proceedings where defendants offered evidence of litigation history but no evidence showing why Amir-Sharif could not prevail in the litigation). Beasley contends that five of his claims are "unchallenged":

- SIM's board was "illegally constituted,"
- there were "numerous dates and acts of defamation,"
- SIM breached oral contracts to provide insurance and to request Beasley's resignation before instituting expulsion proceedings,

- fraudulent inducement on the same grounds as the breach of contract claims, and
- "derivative suits against O'Bryan and Burns."

Beasley concludes that the evidence is legally insufficient to support the trial court's finding that there is not a reasonable probability he will prevail on his claims. *See* VLA § 11.054.

In support of its motion alleging that "there is not a reasonable probability" that Beasley will prevail on his claims in this litigation, *see id.*, SIM attached exhibits A through S, consisting of pleadings, orders, affidavits, and deposition excerpts in this and related cases, and additional exhibits were admitted into evidence at the hearing. SIM addressed each of Beasley's causes of action pleaded in his operative petition, arguing and citing supporting evidence that:

- SIM had already prevailed on Beasley's "core claims" under the November 3, 2017 judgment rendered in a previous lawsuit Beasley filed in 2016 against SIM (identified below as "LN 7");
- Beasley's claims that SIM breached contracts allowing him to resign from the Board and to pay his legal expenses if he sued SIM were not likely to succeed because (1) Beasley's demands precluded SIM from requesting his resignation and (2) any agreement to pay legal fees did not cover suits by Beasley against SIM;
- Beasley's claims for tortious interference and defamation were based on communications among the lawyers and parties in the

course of the litigations between Beasley and SIM and are not actionable as a result; and

- Beasley's remaining claims belong to his company, Netwatch, but Netwatch is not a party to this suit, and in any event, SIM provided evidence that the contract with which Beasley alleges SIM interfered was paid in full for the two years in question.

SIM also argues that the doctrine of judicial nonintervention applies to all of Beasley's claims relating to his expulsion from SIM's board of directors. *See, e.g.*, *Dickey v. Club Corp. of Am.*, 12 S.W.3d 172, 176 (Tex. App.—Dallas 2000, pet. denied) ("Traditionally, courts are not disposed to interfere with the internal management of a voluntary association.").

In his previous lawsuit against SIM arising out of his expulsion, Beasley nonsuited his claims. *See Beasley*, 2018 WL 5725245, at *1. After he did so, that trial court rendered judgment on November 3, 2017, ruling that SIM prevailed on Beasley's declaratory judgment claims. *See id.* at *5. The claims addressed in that order on which SIM prevailed included Beasley's requests for declarations that:

- the April 19, 2016 meeting of SIM's executive committee that resulted in Beasley's expulsion from SIM violated SIM's bylaws, due process protections under the Texas Constitution, and applicable provisions of the Texas Business Organizations Code, so that Beasley's expulsion was void and of no effect and that his status as a board member and a member of SIM were and are unaffected;

- the acts of SIM's executive committee since April 19, 2016, are void; and
- SIM's charitable giving and philanthropy violate SIM's bylaws and articles of incorporation.[2]

We conclude that the record as a whole supports a finding that "there is not a reasonable probability that [Beasley] will prevail in the litigation against [SIM]." VLA § 11.054. The underlying factual basis for his claims is his expulsion from a voluntary association, a matter in which courts "are not disposed to interfere." *See Dickey*, 12 S.W.3d at 176. Although Beasley correctly argues that there are exceptions to this rule, such as "when the actions of the organization are illegal, against some public policy, arbitrary, or capricious," *see id.*, one trial court has already found that the strength of SIM's motion for summary judgment on Beasley's claims was one of the reasons for Beasley's October 2017 nonsuit in his previous litigation against SIM. *See Beasley*, 2018 WL 5725245, at *2. Further, Beasley attempts to assert claims on behalf of a non-party corporation and seeks to recover damages for statements made in the course of litigation. In *Jenevein v. Friedman*, 114 S.W.3d 743, 745 (Tex. App.—Dallas 2003, no pet.), we explained that any communication in the course of a judicial proceeding is absolutely privileged and cannot constitute a basis of a damages action for defamation. The privilege

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[2] Beasley's operative petition from his 2016 lawsuit against SIM was included in the attachments to SIM's vexatious litigant motion in this case, as well as the November 3, 2107 "Order Granting Attorney's Fees to Defendant as Prevailing Party on Declaratory Judgment Claims" in that case.

extends to "any statement" made by counsel, parties, or witnesses, and attaches to all aspects of the proceedings, including statements made in open court, pre-trial hearings, depositions, affidavits, and pleadings or other papers. *Id.* The trial court did not abuse its discretion by finding that SIM met its burden under section 11.054 to show that there is not a reasonable probability that Beasley will prevail in the litigation. *See Drum*, 299 S.W.3d at 364. We decide Beasley's fourth and fifth issues against him.

5. Criteria for vexatious litigant declaration (Issues 1, 6–11, 20–23)

Under Chapter 11, a party moving for a vexatious litigant declaration may show that a plaintiff has, in the seven-year period prior to filing the motion, "commenced, prosecuted or maintained" at least five "litigations," defined as "a civil action commenced, maintained, or pending in any state or federal court." VLA §§ 11.054(1); 11.001. The litigations must have been finally determined adversely to the plaintiff, or permitted to remain pending at least two years without having been brought to trial or hearing, or determined by a trial or appellate court to be frivolous or groundless under state or federal laws or rules of procedure. *Id.* § 11.054(1)(A)–(C).

SIM relies on nine[3] litigations. Beasley has challenged each litigation for lacking some or all of the statutory requirements. He has also complained of

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[3] In addition to the seven litigations that were the basis for SIM's motion, SIM offered evidence in the trial court of two additional litigations. Beasley challenges all nine of these litigations in his appellate briefing.

the trial court's failure to file fact findings, and he has challenged the admissibility of SIM's evidence of all of the litigations. We consider these latter questions first.

A. Necessity of fact-findings (Issue 1)

In his first issue, Beasley contends the trial court erred by failing to file findings of fact at his request. *See* Tex. R. Civ. P. 296 ("In any case tried in the district or county court without a jury, any party may request the court to state in writing its findings of fact and conclusions of law."). In *Willms v. Americas Tire Co., Inc.*, 190 S.W.3d 796, 802 (Tex. App.—Dallas 2006, pet. denied), an appeal of a vexatious litigant finding, we explained that "[w]hile findings of fact and conclusions of law may have been helpful, they were not required because the vexatious litigant issue was not tried in a conventional bench trial." We cited *IKB Industries (Nigeria) Ltd. v. Pro-Line Corp.*, 938 S.W.2d 440, 442 (Tex. 1997), where the court explained, "[t]he purpose of [civil procedure] Rule 296 is to give a party a right to findings of fact and conclusions of law finally adjudicated after a conventional trial on the merits before the court. In other cases findings and conclusions are proper, but a party is not entitled to them." In *Willms*, we concluded that even if the trial court erred by failing to file findings, the error was harmless because there was "only a single ground for determining the Willmses vexatious litigants before the court"—repeated litigation attempts under VLA section 11.054(2)—"and the Willmses did not have to guess at the reasons for the district court's ruling." *Willms*, 190 S.W.3d at 802–03.

Similarly here, the basis for SIM's motion was VLA section 11.054(1), that Beasley maintained at

least five litigations in the seven-year period preceding the date of the motion. *See* VLA § 11.054(1). As in *Willms*, we conclude that error, if any, was harmless. *See Willms*, 190 S.W.3d at 802–03. We decide Beasley's first issue against him.

B. Admissibility of evidence (Appellant's Brief Part II)

We review a trial court's decision to admit or exclude evidence for an abuse of discretion. *In re J.P.B.*, 180 S.W.3d 570, 575 (Tex. 2005) (per curiam). We will uphold the ruling if there is any legitimate basis in the record to support it. *Ten Hagen Excavating, Inc. v. Castro-Lopez*, 503 S.W.3d 463, 490 (Tex. App.—Dallas 2016, pet. denied). To reverse an erroneous evidentiary ruling, an appellant must both establish error and show that the error probably caused an improper judgment. Tex. R. App. P. 44.1; *Thawer v. Comm'n for Lawyer Discipline*, 523 S.W.3d 177, 183 (Tex. App.—Dallas 2017, no pet.).

Beasley argues that because SIM failed to provide certified, self-authenticated, or sworn copies of the prior litigations, there was no evidence to meet 11.054(1)'s requirements. VLA § 11.054(1). At trial, SIM offered into evidence a volume of exhibits containing opinions, orders, and other court filings in the litigations at issue. Beasley objected at trial that none of "the alleged public records are properly authenticated." The trial court overruled Beasley's objection, stating that the documents were self-authenticating. *See generally* Tex. R. Ev. 902 (evidence that is self-authenticating). SIM cites *Williams Farms Produce Sales, Inc. v. R&G Produce Co.*, 443 S.W.3d 250, 259 (Tex. App.—Corpus Christi-Edinburg 2014, no pet.), for

the proposition that documents from government websites are self-authenticating under rule of evidence 902(5). *See* Tex. R. Ev. 902(5) (official publications by public authorities are self-authenticating).

We conclude that Beasley's blanket objection to over 800 pages of exhibits, some of which were publicly-issued orders and opinions of this Court, was insufficient to preserve a specific objection to any particular exhibit the trial court admitted into evidence. "'A general objection to a unit of evidence as a whole, . . . which does not point out specifically the portion objected to, is properly overruled if any part of it is admissible.'" *Stovall & Assocs., P.C. v. Hibbs Fin. Ctr., Ltd.*, 409 S.W.3d 790, 797 (Tex. App.—Dallas 2013, no pet.) (quoting *Speier v. Webster College*, 616 S.W.2d 617, 619 (Tex. 1981)). "Absent a specific objection, the complaining party waives any argument to the improper admission or consideration of the evidence." *Id.* We conclude that the trial court did not abuse its discretion in admitting the evidence.

C. Challenges to individual litigations (Issues 6–11, 20–23)

Next, we consider the litigations SIM alleges Beasley "commenced, prosecuted, or maintained" in the seven-year period before SIM filed its vexatious litigant motion. *See* VLA § 11.054(1) (vexatious litigant criteria). A "litigation" is "a civil action commenced, maintained, or pending in any state or federal court." *Id.* § 11.001(2). The trial court was required to find at least five litigations meeting the statutory criteria in order to find Beasley to be a vexatious litigant under section 11.054, subsection (1). *Id.* § 11.054(1). These litigations must have been finally adversely

determined to Beasley, or permitted to remain pending at least two years without having been brought to trial or hearing, or determined by a trial or appellate court to be frivolous or groundless under state or federal laws or rules of procedure. *Id.* § 11.054(1)(A)–(C).

i. Number of litigations (Issue 6)

SIM contends there are nine litigations meeting the statutory criteria:

1. *Peter Beasley v. Susan M. Coleman and Randall C. Romei*, No. 1:13-cv-1718 in the United States District Court for the Northern District of Illinois ("LN [Litigation No.] 1");
2. *Peter Beasley v. John Krafcisin, John Bransfield, Ana-Maria Downs, and Hanover Insurance Co.*, No. 3:13-cv-4972-M-BF in the United States District Court for the Northern District of Texas, Dallas Division ("LN 2");
3. *Peter Beasley v. Seabrum Richardson and Lamont Aldridge*, No. 05-15-01156-CV, 2016 WL 5110506 (Tex. App.—Dallas Sept. 20, 2016, pet. denied) (mem. op.) ("LN 3");
4. *In re Peter Beasley*, No. 05-15-00276-CV, 2015 WL 1262147 (Tex. App.—Dallas Mar. 19, 2015) (orig. proceeding) (mem. op.) ("LN 4");
5. *In re Peter Beasley*, No. 05-17-01365-CV, 2017 WL 6276006 (Tex. App.—Dallas Dec. 11, 2017) (orig. proceeding) (mem. op.) ("LN 5");
6. *In re Peter Beasley*, No. 17-1032 in the Supreme Court of Texas ("LN 6");

7. *Peter Beasley v. Society for Information Management*, No. DC-16-03141 in the 162nd Judicial District Court of Dallas County ("LN 7");

8. *In re Peter Beasley*, No. 05-18-00382-CV, 2018 WL 2126826 (Tex. App.—Dallas May 8, 2018) (orig. proceeding) (mem. op.) ("LN 8"), and

9. *In re Peter Beasley*, No. 05-18-00395-CV, 2018 WL 1919008 (Tex. App.—Dallas Apr. 24, 2018) (orig. proceeding) (mem. op.) ("LN 9").

Beasley challenges each of the nine[4] as failing to meet one or more of the statutory criteria.

ii. Pro se (Issue 7)

Beasley argues that only LN 7 has "any reference that Beasley commenced, prosecuted, or maintained [the] litigations pro se, which is required." *See* VLA § 11.054(1). Beasley did not raise this objection in the trial court, and does not now argue that he was, in fact, represented by counsel in any proceeding other than LN 7. Beasley argues that at the time LN 7 was dismissed by the trial court, he was represented by

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4 Beasley lists two additional prior litigations, both original proceedings in this Court captioned *In re Peter Beasley, Relator*, but argues they do not meet the VLA's requirements because he filed them after SIM filed its VLA motion. *See In re Beasley*, No. 05-18-00553-CV, 2018 WL 2315964, at *3 (Tex. App.— Dallas May 22, 2018, orig. proceeding) (mem. op.) (writs of injunction and mandamus denied); *In re Beasley*, No. 05-18-00559-CV, 2018 WL 2316017, at *1 (Tex. App.—Dallas May 22, 2018, orig. proceeding) (mem. op.) (mandamus denied). Because SIM does not rely on them to meet the VLA's requirements, we do not discuss them further.

counsel. SIM contends the VLA contemplates that a pro se litigant may at different times in a proceeding lose or gain counsel by providing that a plaintiff "has commenced, prosecuted, or maintained" litigations "as a pro se litigant." VLA § 11.054(1). We concluded in *Drake v. Andrews*, 294 S.W.3d 370, 374–75 (Tex. App.—Dallas 2009, pet. denied), that the VLA's language "is broad enough to reach all vexatious litigants, whether represented by counsel or not." That Beasley was at times represented by counsel does not render the VLA inapplicable to his litigations. *See id.* We decide Beasley's seventh issue against him.

iii. Adverse determination (Issues 10, 20, and 23)

Beasley argues that LN 1 and LN 2 were not determined adversely to him because the courts "did not have jurisdiction to render any judgment." In LN 1, Beasley sued his former attorney and the judge presiding over an Illinois probate proceeding in which Beasley was the former representative of the estate. *See Beasley v. Coleman*, 560 Fed. App'x 578, 579 (7th Cir. Feb. 21, 2014) (Mem.). A federal district court and a federal circuit court on appeal determined that under the "probate exception" to federal jurisdiction, the district court lacked jurisdiction over Beasley's claims. *See id.* at 580. The district court's judgment also reflects that Beasley's claim against Coleman, the Cook County judge, initially was dismissed "on the grounds that it was filed frivolously."[5]

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[5] The appeals court noted that "[a]fter Beasley moved to correct the judgment to a dismissal without prejudice and to reinstate the conspiracy claim against Romei, the district court granted Beasley's motion in part. It amended its order to specify that the

LN 2, filed in the Northern District of Texas, also arose from an Illinois probate matter. The district court granted defendants' motions to dismiss Beasley's claims for injunctive and declaratory relief under the *Younger* abstention doctrine and his remaining claims for improper venue. *See Beasley v. Krafcisin*, No. 3:13-CV-4972-M-BF, 2014 WL 4651996, at *4 (N.D. Tex. Sept. 17, 2014) (Order Accepting Findings, Conclusions, and Recommendation of the United States Magistrate Judge), *aff'd per curiam*, 609 Fed. App'x 215 (5th Cir. July 7, 2015) (mem.). Beasley cites no authority for the proposition that cases dismissed for lack of jurisdiction cannot constitute adverse determinations under VLA section 11.054(1)(A). SIM relies on *Leonard v. Abbott*, 171 S.W.3d 451, 459–60 (Tex. App.—Austin 2005, pet. denied), where the court counted several litigations dismissed for lack of subject matter jurisdiction in meeting the VLA's numerosity requirement. SIM also points out that in any event, a litigation determined by a court to be frivolous under state or federal law separately qualifies under VLA subsection 11.054(1)(C). We conclude that the trial court did not abuse its discretion by concluding that LN 1 and LN 2 were determined adversely to Beasley.

Next, Beasley argues that LN 3 and LN 7 were not determined adversely to him because they were voluntary nonsuits. SIM offered evidence, however, that LN 3 was Beasley's appeal of an order dismissing his case with prejudice on Beasley's own motion; in other words, Beasley appealed the granting of his

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dismissal was 'for want of jurisdiction without determining the merits of any putative claim in the complaint,' but the court declined to revive the conspiracy claim." 560 Fed. App'x at 579.

own motion for nonsuit. *See Beasley v. Richardson*, No. 05-15-01156-CV, 2016 WL 5110506, at *1 (Tex. App.—Dallas Sept. 20, 2016, pet. denied) (mem. op.). LN 7 is another, previously-filed suit against SIM arising from the same circumstances that Beasley complains of in this case. *See Beasley*, 2018 WL 5725245, at *1 (appeal of attorney's fees award). Although Beasley nonsuited his claims on the merits, he continued to litigate, unsuccessfully, the trial court's award of attorney's fees to SIM after the trial court found the nonsuit had been taken to avoid an unfavorable ruling on the merits. *See id.* at *1–2. Beasley's appeal of both judgments is evidence to support a finding that both were determined adversely to him. *See also Retzlaff v. GoAmerica Commc'ns Corp.*, 356 S.W.3d 689, 700 (Tex. App.—El Paso 2011, no pet.) ("An action which is ultimately dismissed by the plaintiff, with or without prejudice, is nevertheless a burden on the target of the litigation and the judicial system, albeit less of a burden than if the matter had proceeded to trial." [internal quotation and citation omitted]). Consequently, Beasley's voluntary nonsuits of LN 3 and LN 7 do not preclude those litigations from counting under section 11.054(1).

Next, Beasley contends that LN 4, 5, 6, 8 and 9, original proceedings in this Court or the Supreme Court of Texas, were not "finally determined adversely" to him because they were filed in the course of ongoing lawsuits and were entirely within the appellate court's discretion. But as the court in *Retzlaff* reasoned, "a person who seeks mandamus relief commences a civil action in the appellate court." *Id.* Although the mandamus proceedings arose from ongoing lawsuits, they were separate original proceedings that did

not challenge the trial court's final decision in the underlying case or relate to the merits of the underlying case. *See id.* Each was determined adversely to Beasley. *See* LN 4, 2015 WL 1262147, at *1 (challenge to ruling allowing withdrawal of deemed admissions, mandamus denied); LN 5, 2017 WL 6276006, at *1 (challenge to denial of motion to disqualify and recuse trial judge, mandamus denied); LN 6 (same, in Texas Supreme Court, mandamus denied); LN 8, 2018 WL 2126826, at *1 (challenge to order granting motion to transfer venue, mandamus denied); LN 9, 2018 WL 1919008, at *1 (complaint that trial court refused to hold hearing on rule 12 motion to show authority, mandamus denied); *cf. Goad v. Zuehl Airport Flying Cmty. Owners Ass'n, Inc.*, 04-11-00293-CV, 2012 WL 1865529, at *4 (Tex. App.—San Antonio May 23, 2012, no pet.) (mem. op.) (direct appeals and attempted removal to federal court were not separate litigations for purposes of VLA).[6] We conclude that LN 4, 5, 6, 8, and 9 were determined adversely to Beasley. We decide issues 10, 20, and 23 against Beasley.

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[6] Beasley argues there is no evidence that LN 7 was finally determined adversely to him, because at the time the trial court granted SIM's vexatious litigant motion, the matter was still pending on appeal. VLA § 11.054(1)(A). SIM, however, relies on subsection (1)(B) of section 11.054 for its inclusion of LN 7, not subsection (1)(A). *See* VLA § 11.043(1)(B) (litigation permitted to remain pending at least two years without trial or hearing). Consequently, we discuss this complaint in the next section.

iv. Time pending without trial or hearing (Issue 8)

Beasley argues there is no evidence that any of the litigations remained pending for at least two years without having been brought to trial or hearing. *See* VLA § 11.054(1)(B). As we noted, SIM relies on this subsection for its inclusion of LN 7.

SIM argues that LN 7, filed in March 2016, meets the requirements of subsection (1)(B) because Beasley "permitted [LN 7] to remain pending at least two years without having been brought to trial or hearing." *See* VLA § 11.054(1)(B). SIM argues that "the claims filed by Beasley in March 2016 were not brought to trial or hearing before March 2018." In LN 7, Beasley filed a notice of nonsuit in October, 2017, moved to disqualify and recuse the trial judge the following month, and filed his notice of appeal in December 2017. This Court resolved the appeal against Beasley in November 2018, and Beasley filed a petition for review in the Texas Supreme Court that was denied in December 2019. *See Beasley*, 2018 WL 5725245, at *1–2. Beasley's motion for rehearing in the Texas Supreme Court was denied in February 2020. We conclude that Beasley did not bring the claims he filed in March 2016 to trial in LN 7, and, as we have discussed above, filed substantially the same claims in this lawsuit in Collin County in November 2017. We decide Beasley's eighth issue against him.

Having decided Beasley's first, sixth through eleventh,[7] and twentieth through twenty-third issues

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[7] In his ninth issue, Beasley argues there is no evidence of any litigations that were determined by a trial or appellate court to

against him, we conclude that the trial court did not abuse its discretion by concluding that each of the nine litigations met one or more of VLA section 11.054(1)'s requirements.[8]

6. Required security and dismissal (Issues 12 and 25)

Beasley contends the trial court abused its discretion "in affixing a $422,032 security amount—the

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be frivolous or groundless under any law or rule. *See* VLA § 11.054(1)(C). As we have discussed, the court in LN 1 initially ruled that "The matter is dismissed with respect to Susan M. Coleman on the grounds that it was filed frivolously." The court of appeals' opinion reflects that the court subsequently amended its order at Beasley's request to specify that the dismissal was for want of jurisdiction "without determining the merits of any putative claim in the complaint." *See Beasley*, 560 Fed. App'x at 579. Regardless of whether this litigation also falls within VLA § 11.054(1)(C), we have already concluded that it was properly included in the count of litigations finally determined adversely to Beasley under VLA § 11.054(1)(B).

[8] In his tenth and twentieth issues, Beasley makes additional arguments that there is no evidence he attempted to relitigate any litigations that were "finally determined" against him under subsection (2) of section 11.054. *See* VLA § 11.054(2). Subsection 11.054(2) provides an alternative method by which a movant may establish that a plaintiff is a vexatious litigant. Because we have concluded there was evidence to support the trial court's ruling under subsection 11.054(1), we need not consider whether any of the litigations also satisfies the requirements of subsection (2). Similarly, we need not consider Beasley's eleventh issue regarding the lack of evidence to support a finding that he has previously been declared a vexatious litigant. *See* VLA § 11.054(3). And in Beasley's twenty-first and twenty-second issues, he complains that transfers between courts should not count as adverse judgments. Because no transfer was so treated, we need not consider these issues.

largest amount in state history without requiring any evidence." Beasley also argues the trial court erred by dismissing his lawsuit for failure to pay the bond. He argues: (1) no security should have been required, since he is not a vexatious litigant, and (2) under VLA section 11.055(c), the amount of security is limited to "defendant's reasonable expenses incurred in or in connection with" the litigation, and SIM did not offer evidence of same.

Subsection (a) of VLA section 11.055 provides that a court "shall" order the plaintiff to furnish security if the court determines, after hearing evidence, that the plaintiff is a vexatious litigant. VLA § 11.055(a). Subsection (c) governs the trial court's determination of the security's amount:

> The court shall provide that the security is an undertaking by the plaintiff to assure payment to the moving defendant of the moving defendant's reasonable expenses incurred in or in connection with a litigation commenced, caused to be commenced, maintained, or caused to be maintained by the plaintiff, including costs and attorney's fees.

VLA § 11.005(c); *see also Willms*, 190 S.W.3d at 805 (trial court is required to order plaintiff to furnish "security for the benefit of the moving defendant" if court determines plaintiff is vexatious litigant).

SIM argues that the security amount was based on the attorney's fees it incurred in LN 7, the first case filed by Beasley against SIM, before judgment was rendered on November 3, 2017. In that case, the trial court awarded SIM $211,032.02 in attorney's fees after finding that Beasley's nonsuit, filed immediately

before the scheduled hearing on SIM's motion for summary judgment, was filed to avoid an unfavorable ruling on the merits of Beasley's claims. *See Beasley*, 2018 WL 5725245, at *1–2.

As we have explained, LN 7 arose out of the same facts underlying this lawsuit, specifically, Beasley's expulsion from SIM. *See id.* at *1. When this suit was filed, SIM faced the prospect of beginning again to defend against these claims, this time to their conclusion. Consequently, we conclude it was not an abuse of the trial court's discretion to use the fees SIM incurred in LN 7 as a guide to determine a reasonable amount of security to assure payment to SIM of its reasonable expenses incurred to defend against Beasley's claims in this lawsuit. *See Willms*, 190 S.W.3d at 805 ("[I]f the security is furnished and the litigation is dismissed on the merits, the moving defendant has recourse to the security.").

Beasley also argues that the trial court abused its discretion by dismissing the lawsuit. It is undisputed, however, that Beasley did not furnish the security within the time set in the trial court's order granting SIM's motion to declare Beasley a vexatious litigant. In that circumstance, VLA section 11.056 requires dismissal. *See* VLA § 11.056 ("The court shall dismiss a litigation as to a moving defendant if a plaintiff ordered to furnish security does not furnish the security within the time set by the order."); *Willms*, 190 S.W.3d at 805 (trial court must dismiss litigation if plaintiff fails to furnish security for moving defendant's benefit).

We decide issues 12 and 25 against Beasley.

7. Constitutional challenges to vexatious litigant statute (Issues 14–23)

Beasley contends the vexatious litigant statute is unconstitutional because he was denied hearings on his motion for SIM's attorneys to show authority under civil procedure rule 12 and his motion alleging extrinsic fraud, among other matters. He also argues the statute is unconstitutional because its criteria of five litigations in a seven-year period is unreasonable and arbitrary when applied to him. He contends he "demonstrates a pattern of zealous advocacy using properly filed original proceedings before a final judgment" has been rendered.

Beasley specifically criticizes this Court's opinion in *Drum*, arguing that it was applied to him in violation of his due process rights. *See Drum*, 299 S.W.3d at 369. In *Drum*, we overruled Drum's complaint that the trial court should have heard and ruled on multiple motions he filed after the defendant filed a motion to declare Drum a vexatious litigant. *See id.* We explained,

> Under the vexatious litigant statute, on the filing of a timely motion to declare the plaintiff a vexatious litigant, "the litigation is stayed" until the motion is decided. Tex. Civ. Prac. & Rem. Code Ann. § 11.052(a). Consequently, based on the record presented here, the trial court was required to rule on the vexatious litigant motions before it could reach Drum's motions. *Id.* And when those motions were granted, the litigation remained stayed as a matter of statutory law unless and until Drum posted the required security. *Id.* § 11.052(a)(2).

Drum, 299 S.W.3d at 369. Beasley argues that applying *Drum* here "[was] not fair" and violated his due process rights because it precluded him from "challeng[ing] issues directly related to the vexatious litigant hearing."

In *Leonard*, the court considered a challenge to the VLA's constitutionality. *See Leonard*, 171 S.W.3d at 457–58. The court reasoned that the VLA's "restrictions are not unreasonable or arbitrary when balanced against the purpose and basis of the statute." *Id.* at 457. Citing the VLA's purpose to restrict frivolous and vexatious litigation, the court explained that the VLA "does not authorize courts to act arbitrarily, but permits them to restrict a plaintiff's access to the courts only after first making specific findings that the plaintiff is a vexatious litigant based on factors that are closely tied to the likelihood that the incident litigation is frivolous." *Id.* The court noted that the plaintiff was not categorically barred from prosecuting his lawsuit, "but merely [was] required . . . to post security to cover appellees' anticipated expenses to defend what the circumstances would reasonably suggest is a frivolous lawsuit." *Id.* Further, the VLA's requirement that plaintiffs obtain a prefiling order does not prohibit them from filing new lawsuits; they are "merely required to obtain permission from the local administrative judge before filing." *Id.* at 458 (citing VLA § 11.101–.102). The court concluded, "[t]he restrictions are not unreasonable when balanced with the significant costs of defending [the plaintiff's] likely frivolous lawsuits in the future." *Id.* This court reached a similar conclusion in *Dolenz v. Boundy*, No. 05-08-01052-CV, 2009 WL 4283106, at *3–4 (Tex. App.—

Dallas 2009, no pet.) (mem. op.), rejecting the plaintiff's open courts, due process and equal protection challenges to the VLA. *See also Retzlaff*, 356 S.W.3d at 702–04 (same).

Similarly here, the trial court's order "did not categorically bar [Beasley] from prosecuting his lawsuit," *see Leonard*, 171 S.W.3d at 457, nor was Beasley barred from bringing matters "material to the ground" of SIM's VLA motion to the trial court's attention at the hearing, although the litigation was stayed. *See* VLA § 11.053(a), (b) (court shall conduct a hearing on the vexatious litigant motion, and "may consider any evidence material to the ground of the motion, including: (1) written or oral evidence; and (2) evidence presented by witnesses or by affidavit."). Matters not brought to the court's attention at the hearing could be pursued once Beasley posted security. *See Leonard*, 171 S.W.3d at 457.

We decide Beasley's issues 14 through 23 challenging the VLA's constitutionality against him.

8. Summary (Issue 24)

In his twenty-fourth issue, Beasley argues that the trial court abused its discretion in issuing a prefiling order because the trial court's underlying vexatious litigant declaration was unwarranted. *See* VLA § 11.101 (court may enter order prohibiting person from filing new litigation pro se without permission of administrative judge). Because we have decided Beasley's issues challenging the trial court's order finding Beasley to be a vexatious litigant against him, we also decide this issue against Beasley.

CONCLUSION

We affirm the trial court's December 11, 2018 order granting appellees' motion to declare Beasley a vexatious litigant and its June 11, 2019 "Final Order of Dismissal and Take Nothing Judgment."

/s/ Leslie Osborne
Justice

JUDGMENT OF THE TEXAS COURT OF APPEALS, FIFTH DISTRICT OF TEXAS, AFFIRMING TRIAL COURT JUDGMENT (AUGUST 28, 2020)

IN THE COURT OF APPEALS FIFTH DISTRICT OF TEXAS AT DALLAS

PETER BEASLEY,

Appellant,

v.

SOCIETY OF INFORMATION MANAGEMENT, DALLAS AREA CHAPTER; JANIS O'BRYAN; AND NELLSON BURNS,

Appellees.

No. 05-19-00607-CV

On Appeal from the 191st Judicial District Court Dallas County, Texas Trial Court Cause No. DC-18-05278

Before: WHITEHILL, OSBORNE, and CARLYLE, Justices.

JUDGMENT

In accordance with this Court's opinion of this date, the trial court's December 11, 2018 Order Granting Defendants' Motion to Declare Peter Beasley a Vexatious Litigant and its June 11, 2019 Final Order

of Dismissal and Take Nothing Judgment are AFFIRMED.

It is ORDERED that appellees Society of Information Management, Dallas Area Chapter; Janis O'Bryan and Nellson Burns recover their costs of this appeal from appellant Peter Beasley.

Judgment entered August 28, 2020

ORDER OF THE TEXAS COURT OF APPEALS, FIFTH DISTRICT OF TEXAS, GRANTING AN EXTENSION OF TIME AND FILING APPELLANT BRIEF (NOVEMBER 7, 2019)

IN THE COURT OF APPEALS FIFTH DISTRICT OF TEXAS AT DALLAS

PETER BEASLEY,

Appellant,

v.

SOCIETY OF INFORMATION MANAGEMENT, DALLAS AREA CHAPTER; JANIS O'BRYAN; AND NELLSON BURNS,

Appellees.

No. 05-19-00607-CV

On Appeal from the 191st Judicial District Court Dallas County, Texas Trial Court Cause No. DC-18-05278

Before: Ken MOLBERG, Justice.

ORDER

Before the Court are appellant's October 16, 2019 motion to strike appellees' brief and appellees' October 21, 2019 response; appellant's October 17, 2019 opposed first supplemental motion to consolidate appeals; and, appellant's November 5, 2019 unopposed motion

for extension of time to file amended brief. We rule as follows.

As we granted appellant's motion to consolidate appeals on October 17, 2019, we DENY the first supplemental motion as moot. We also DENY appellant's motion to strike. We GRANT the motion for extension of time and ORDER appellant's second amended brief, received November 4, 2019, filed as of the date of this order.

Appellees' amended brief, if any, shall be filed no later than November 21, 2019.

/s/ Ken Molberg
Justice

ORDER OF THE TEXAS COURT OF APPEALS, FIFTH DISTRICT OF TEXAS, GRANTING MOTION TO CONSOLIDATE (OCTOBER 17, 2019)

IN THE COURT OF APPEALS FIFTH DISTRICT OF TEXAS AT DALLAS

PETER BEASLEY,

Appellant,

v.

SOCIETY OF INFORMATION MANAGEMENT, DALLAS AREA CHAPTER; JANIS O'BRYAN; AND NELLSON BURNS,

Appellees.

No. 05-19-00607-CV

On Appeal from the 191st Judicial District Court Dallas County, Texas Trial Court Cause No. DC-18-05278

Before: BURNS, Chief Justice., MOLBERG, and NOWELL, Justices.

ORDER

By order dated December 11, 2018, the trial court declared appellant a vexatious litigant, required him to post bond in the amount of $422,064.00 as security to continue the suit, and required him to obtain permission from the appropriate local administrative

judge prior to filing any new suits. *See* Tex. Civ. Prac. & Rem. Code Ann. §§ 11.051, 11.055, 11.101. Appellant failed to post the bond, and the suit was dismissed. *See id.* § 11.056. Appellant appealed both the December order and the order of dismissal. This appeal concerns the December order. Appellate cause number 05-19-01111-CV concerns the dismissal order.

Before the Court are appellant's (1) second motion for rehearing of our September 11, 2019 order denying his opposed first amended motion for emergency temporary orders and (2) opposed motion to consolidate the two appeals. We DENY the motion for rehearing. Because the two appeals stem from the same underlying cause, we GRANT the motion to consolidate and CONSOLIDATE appellate cause number 05-19-01111-CV into this appeal. We DIRECT the Clerk of the Court to transfer all documents from appellate cause number 05-19-01111-CV into this appeal. For administrative purposes, appellate cause number 05-19-01111-CV is treated as a closed case. The parties shall now use only cause number 05-19-00607-CV when referencing the appeal.

We note appellant's brief in this appeal was filed September 10, 2019 and appellee's brief was filed October 10, 2019. In light of the consolidation, appellant may file, no later than November 1, 2019, any amended brief addressing issues concerning the dismissal order and appellees may file an amended response brief no later than November 18, 2019.

/s/ Ken Molberg
Justice

ORDER OF THE TEXAS COURT OF APPEALS, FIFTH DISTRICT OF TEXAS, GRANTING MOTION REHEARING AND DENYING MOTION FOR EMERGENCY TEMPORARY ORDERS (SEPTEMBER 13, 2019)

IN THE COURT OF APPEALS FIFTH DISTRICT OF TEXAS AT DALLAS

PETER BEASLEY,

Appellant,

v.

SOCIETY OF INFORMATION MANAGEMENT, DALLAS AREA CHAPTER; JANIS O'BRYAN; AND NELLSON BURNS,

Appellees.

No. 05-19-00607-CV

On Appeal from the 191st Judicial District Court Dallas County, Texas Trial Court Cause No. DC-18-05278

Before: BURNS, Chief Justice., MOLBERG, and NOWELL, Justices.

Before the Court is appellant's motion for rehearing of our September 11, 2019 order denying his first opposed motion for emergency temporary orders. Appellant states we incorrectly defined the scope of the appeal in the order and asks for a correction. We

GRANT the motion and VACATE our September 11th order. The following is now the order on the motion for emergency temporary orders.

The underlying suit in this appeal was filed by appellant. On appellees' motion, the trial court declared appellant vexatious pursuant to chapter 11 of the Texas Civil Practice and Remedies Code, ordered him to post bond in the amount of $422,064 as security to continue the suit, and required him to obtain permission from the appropriate local administrative judge prior to filing any new suits. *See* Tex. Civ. Prac. & Rem. Code Ann. §§ 11.051, 11.055, 11.101. Appellant failed to post the bond, and the suit was dismissed. *See id.* § 11.056. This appeal challenges the order declaring appellant vexatious.

Asserting the trial court impermissibly denied him hearings on his motion for new trial and motion challenging defense counsel's authority to defend against the suit, appellant has filed an opposed first amended motion for emergency temporary orders. Specifically, he asks the Court to direct the trial court to "not interfere with [him] obtaining [] hearing[s]." And, because the trial court's plenary power will soon expire, he also asks we extend the plenary power.[1]

Civil practice and remedies code section 11.052 provides that, on the filing of a motion for an order declaring a plaintiff vexatious, "the litigation is stayed." *See id.* § 11.052. If the motion is granted, the stay

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[1] Appellant has a third request, that we direct the trial court "to not interfere with [him] filing court documents in support of this appeal," but he acknowledges both the Clerk of this Court and the trial court clerk have accepted his filings.

remains in effect unless and until appellant posts security. *Drum v. Calhoun*, 299 S.W.3d 360, 369 (Tex. App.—Dallas 2009, pet. denied).

Because appellant failed to post the bond, the stay remains in place. Accordingly, we DENY the motion.

Appellant's motion to recuse Justices Lana Myers and Ada Brown remains pending.

/s/ Ken Molberg
Justice

ORDER GRANTING DEFENDANTS' MOTION TO STRIKE (JUNE 11, 2019)

IN THE DISTRICT COURT DALLAS COUNTY, TEXAS 191st JUDICIAL DISTRICT

PETER BEASLEY,

Plaintiff,

v.

SOCIETY OF INFORMATION MANAGEMENT, DALLAS AREA CHAPTER; ET AL.,

Defendant.

Cause No. DC-18-05278

Before: Hon. Gena SLAUGHTER, Presiding Judge.

ORDER GRANTING DEFENDANT'S MOTION TO STRIKE

On June 11, 2019 Defendants' Motion to Strike was heard. The Court, having considered the pleadings and arguments of counsel, is of the Opinion that Defendants' Motion should be GRANTED and Plaintiff's Motion to Disqualify Attorney and Motion to Show Authority filed May 14, 2019 and Motion to Dismiss filed May 30, 2019 should be stricken from the docket.

IT IS THEREFORE ORDERED that Defendants' Motion to Strike is GRANTED and Plaintiff's Motion

to Disqualify Attorney and Motion to Show Authority filed May 14, 2019 and Plaintiff's Motion to Dismiss filed May 30, 2019 are hereby struck from the Court's docket and the hearing on June 14, 2019 is hereby cancelled.

Signed this 11th day of June, 2019.

/s/ Gena Slaughter
Presiding Judge

FINAL ORDER OF DISMISSAL AND TAKE NOTHING JUDGMENT (JUNE 11, 2019)

IN THE DISTRICT COURT DALLAS COUNTY, TEXAS 191st JUDICIAL DISTRICT

PETER BEASLEY,

Plaintiff,

v.

SOCIETY OF INFORMATION MANAGEMENT, DALLAS AREA CHAPTER; ET AL.,

Defendant.

Cause No. DC-18-05278

Before: Hon. Gena SLAUGHTER, Presiding Judge.

FINAL ORDER OF DISMISSAL AND TAKE NOTHING JUDGMENT

On December II, 2018, this Court declared Plaintiff a vexatious litigant and required him to post $422,064 in security within 30 days. Plaintiff failed to post any security and instead filed motion asking for reconsideration of the Court's December 11, 2018 Order. On April 5, 2019, this Court held a hearing on Plaintiff's Motion for Reconsideration. After considering the motion and response, and the arguments of counsel, the Court DENIES Plaintiff's Motion to Reconsider.

Accordingly, because Plaintiff failed to post the security, this Court DISMISSES Plaintiffs claims with prejudice pursuant to Tex. Civ. Prac. & Rem. Code § 11.056.

Furthermore, the Court accepts the verbal nonsuit without prejudice of Defendants' pending counter-claims. All relief not expressly granted herein is denied. This judgment disposes of all parties and all claims and is therefore a final judgment.

Signed this 11th day of June, 2019.

/s/ Gena Slaughter
Presiding Judge

ORDER GRANTING DEFENDANTS' MOTION TO DECLARE PETER BEASLEY A VEXATIOUS LITIGANT (DECEMBER 11, 2018)

IN THE DISTRICT COURT DALLAS COUNTY, TEXAS 191st JUDICIAL DISTRICT

PETER BEASLEY,

Plaintiff,

v.

SOCIETY OF INFORMATION MANAGEMENT, DALLAS AREA CHAPTER; ET AL.,

Defendant.

Cause No. DC-18-05278

Before: Hon. Gena SLAUGHTER, Presiding Judge.

ORDER GRANTING DEFENDANTS' MOTION TO DECLARE PETER BEASLEY A VEXATIOUS LITIGANT

On September 20, 2018, the undersigned heard Defendants' Motion to Declare Peter Beasley a Vexatious Litigant. The Parties appeared through counsel. After considering the motion, the post-hearing briefing from both parties, the evidence presented, and arguments of counsel, the Court finds that the statutory elements are satisfied in all respects and therefore makes the following ORDER.

The Motion to Declare Peter Beasley a Vexatious Litigant is GRANTED and the Court declares Peter Beasley a Vexatious Litigant.

Plaintiff Peter Beasley is required to post bond in the amount of $422,064.00 with the District Clerk as security per Tex. Civ. Prac. & Rem. Code § 11.055 within thirty (30) days of this Order. If such security is not timely posted, this case will be dismissed with prejudice per Tex. Civ. Prac. & Rem. Code § 11.056.

Furthermore, the Court prohibits Plaintiff Peter Beasley from filing any new lawsuits *pro se* in any court in the State of Texas until Plaintiff receives permission from the appropriate local administrative judge pursuant to sections 11.101 and 11.102 of the Tex. Civ. Prac. & Rem. Code. Failure to comply with this ORDER shall be punishable by contempt, jail time, and all other lawful means of enforcement. Tex. Civ. Prac. & Rem. Code § 11.101 (b).

It is further ORDERED that the Clerk of the Court provide a copy of this order to the Office of Court administration of the Texas Judicial System within 30 days of entering this order.

Signed this 11th day of December, 2018.

/s/ Gena Slaughter
Presiding Judge

ORDER OF THE SUPREME COURT OF TEXAS DENYING MOTION FOR REHEARING (MAY 21, 2021)

SUPREME COURT OF TEXAS

BEASLEY,

v.

SOCIETY OF INFO. MGMT.

RE: Case No. 20-0960

COA #: 05-19-00607-CV

TC#: DC-1 8-05278

Today the Supreme Court of Texas denied the motion for rehearing of the above-referenced petition for review.

Mr. Peter Beasley
Delivered Via E-Mail

ORDER OF THE TEXAS COURT OF APPEALS, FIFTH DISTRICT OF TEXAS, DENYING MOTION FOR EN BANC RECONSIDERATION (OCTOBER 29, 2020)

IN THE COURT OF APPEALS
FIFTH DISTRICT OF TEXAS AT DALLAS

PETER BEASLEY,

Appellant,

v.

SOCIETY OF INFORMATION MANAGEMENT, DALLAS AREA CHAPTER; JANIS O'BRYAN; AND NELLSON BURNS,

Appellees.

No. 05-19-00607-CV

On Appeal from the 191st Judicial District Court Dallas County, Texas
Trial Court Cause No. DC-18-05278

Before: Robert D. BURNS, III, Chief Justice.

ORDER

Before the Court is appellant's October 12, 2020 motion for en banc reconsideration. Appellant's motion is DENIED.

/s/ Robert D. Burns, III
Chief Justice

ORDER OF THE TEXAS COURT OF APPEALS, FIFTH DISTRICT OF TEXAS DENYING MOTIONS FOR LEAVE TO FILE PREVIOUSLY UNAVAILABLE EVIDENCE AND FOR REHEARING (SEPTEMBER 28, 2020)

IN THE COURT OF APPEALS
FIFTH DISTRICT OF TEXAS AT DALLAS

PETER BEASLEY,

Appellant,

v.

SOCIETY OF INFORMATION MANAGEMENT, DALLAS AREA CHAPTER; JANIS O'BRYAN; AND NELLSON BURNS,

Appellees.

No. 05-19-00607-CV

On Appeal from the 191st Judicial District Court Dallas County, Texas
Trial Court Cause No. DC-18-05278

Before: Leslie OSBORNE, Justice.

ORDER
Before the Court En Banc

Before the Court are appellant's (1) "Opposed Motion for Leave of Court to Provide Previously Unavailable Evidence to Aid Determination of the Appeal" filed on September 11, 2020, and (2) motion

for rehearing filed on September 14, 2020. The motions are DENIED.

/s/ Leslie Osborne
Justice

CONSTITUTIONAL STATUTORY PROVISIONS INVOLVED

Tex. Civ. Prac. & Rem. Code § 11.001
Definitions.–In this chapter:

(1) "Defendant" means a person or governmental entity against whom a plaintiff commences or maintains or seeks to commence or maintain a litigation.

(2) "Litigation" means a civil action commenced, maintained, or pending in any state or federal court.

(3) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1224, Sec. 10, eff. September 1, 2013.

(4) "Moving defendant" means a defendant who moves for an order under Section 11.051 determining that a plaintiff is a vexatious litigant and requesting security.

(5) "Plaintiff" means an individual who commences or maintains a litigation pro se.

Sec. 11.002.–Applicability.

(a) This chapter does not apply to an attorney licensed to practice law in this state unless the attorney proceeds pro se.

(b) (b) This chapter does not apply to a municipal court.

SUBCHAPTER B. VEXATIOUS LITIGANTS

Sec. 11.051.–Motion for Order Determining Plaintiff a Vexatious Litigant and Requesting Security.

In a litigation in this state, the defendant may, on or before the 90th day after the date the defendant files the original answer or makes a special appearance, move the court for an order:

(1) determining that the plaintiff is a vexatious litigant; and

(2) requiring the plaintiff to furnish security.

Sec. 11.052.–Stay of Proceedings On Filing of Motion.

(a) On the filing of a motion under Section 11.051, the litigation is stayed and the moving defendant is not required to plead:

(1) if the motion is denied, before the 10th day after the date it is denied; or

(2) if the motion is granted, before the 10th day after the date the moving defendant receives written notice that the plaintiff has furnished the required security.

(b) On the filing of a motion under Section 11.051 on or after the date the trial starts, the litigation is stayed for a period the court determines.

Sec. 11.053.–Hearing.

(a) On receipt of a motion under Section 11.051, the court shall, after notice to all parties, conduct a hearing to determine whether to grant the motion.

(b) The court may consider any evidence material to the ground of the motion, including:

(1) written or oral evidence; and

(2) evidence presented by witnesses or by affidavit.

Sec. 11.054.–Criteria for Finding Plaintiff a Vexatious Litigant.

A court may find a plaintiff a vexatious litigant if the defendant shows that there is not a reasonable probability that the plaintiff will prevail in the litigation against the defendant and that:

(1) the plaintiff, in the seven-year period immediately preceding the date the defendant makes the motion under Section 11.051, has commenced, prosecuted, or maintained at least five litigations as a pro se litigant other than in a small claims court that have been:

(A) finally determined adversely to the plaintiff;

(B) permitted to remain pending at least two years without having been brought to trial or

(C) hearing; or determined by a trial or appellate court to be frivolous or groundless under state or federal laws or rules of procedure;

(2) after a litigation has been finally determined against the plaintiff, the plaintiff repeatedly relitigates or attempts to relitigate, pro se, either:

(A) the validity of the determination against the same defendant as to whom the litigation was finally determined; or

(B) the cause of action, claim, controversy, or any of the issues of fact or law determined or concluded by the final determination against the same defendant as to whom the litigation was finally determined; or

(3) the plaintiff has previously been declared to be a vexatious litigant by a state or federal court in an action or proceeding based on the same or substantially similar facts, transition, or occurrence.

Sec. 11.055.–Security.

(a) A court shall order the plaintiff to furnish security for the benefit of the moving defendant if the court, after hearing the evidence on the motion, determines that the plaintiff is a vexatious litigant.

(b) The court in its discretion shall determine the date by which the security must be furnished.

(c) The court shall provide that the security is an undertaking by the plaintiff to assure payment to the moving defendant of the moving defendant's reasonable expenses incurred in or in connection with a litigation commenced, caused to be commenced, maintained, or caused to be maintained by the plaintiff, including costs and attorney's fees.

Sec. 11.056.–Dismissal for Failure to Furnish Security.

The court shall dismiss a litigation as to a moving defendant if a plaintiff ordered to furnish security does not furnish the security within the time set by the order.

Sec. 11.057.–Dismissal On the Merits.

If the litigation is dismissed on its merits, the moving defendant has recourse to the security furnished by the plaintiff in an amount determined by the court.

SUBCHAPTER C.
PROHIBITING FILING OF NEW LITIGATION

Sec. 11.101. Prefilling Order; Contempt.

(a) A court may, on its own motion or the motion of any party, enter an order prohibiting a person from filing, pro se, a new litigation in a court to which the order applies under this section without permission of the appropriate local administrative judge described by Section 11.102(a) to file the litigation if the

court finds, after notice and hearing as provided by Subchapter B, that the person is a vexatious litigant.

(b) A person who disobeys an order under Subsection (a) is subject to contempt of court.

(c) A litigant may appeal from a prefiling order entered under Subsection (a) designating the person a vexatious litigant.

(d) A prefiling order entered under Subsection (a) by a justice or constitutional county court applies only to the court that entered the order.

(e) prefiling order entered under Subsection (a) by a district or statutory county court applies to each court in this state.

Sec. 11.102. Permission by Local Administrative Judge.

(a) A vexatious litigant subject to a prefiling order under Section 11.101 is prohibited from filing, pro se, new litigation in a court to which the order applies without seeking the permission of:

(1) the local administrative judge of the type of court in which the vexatious litigant intends to file, except as provided by Subdivision (2); or

(2) the local administrative district judge of the county in which the vexatious litigant intends to file if the litigant intends to file in a justice or constitutional county court.

(b) A vexatious litigant subject to a prefiling order under Section 11.101 who files a request seeking permission to file a litigation shall provide a copy of the request to all defendants named in the proposed litigation.

(c) The appropriate local administrative judge described by Subsection (a) may make a determination on the request with or without a hearing. If the judge determines that a hearing is necessary, the judge may require that the vexatious litigant filing a request under Subsection (b) provide notice of the hearing to all defendants named in the proposed litigation.

(d) The appropriate local administrative judge described by Subsection (a) may grant permission to a vexatious litigant subject to a prefiling order under Section 11.101 to file a litigation only if it appears to the judge that the litigation:

(1) has merit; and

(2) has not been filed for the purposes of harassment or delay.

(e) The appropriate local administrative judge described by Subsection (a) may condition permission on the furnishing of security for the benefit of the defendant as provided in Subchapter B.

(f) A decision of the appropriate local administrative judge described by Subsection (a) denying a litigant permission to file a litigation under Subsection (d), or conditioning

permission to file a litigation on the furnishing of security under Subsection (e), is not grounds for appeal, except that the litigant may apply for a writ of mandamus with the court of appeals not later than the 30th day after the date of the decision. The denial of a writ of mandamus by the court of appeals is not grounds for appeal to the supreme court or court of criminal appeals.

Sec. 11.103.–Duties of Clerk.

(a) Except as provided by Subsection (d), a clerk of a court may not file a litigation, original proceeding, appeal, or other claim presented, pro se, by a vexatious litigant subject to a prefiling order under Section 11.101 unless the litigant obtains an order from the appropriate local administrative judge described by Section 11.102(a) permitting the filing.

(b) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1224, Sec. 10, eff. September 1, 2013.

(c) If the appropriate local administrative judge described by Section 11.102(a) issues an order permitting the filing of the litigation, the litigation remains stayed and the defendant need not plead until the 10th day after the date the defendant is served with a copy of the order.

(d) A clerk of a court of appeals may file an appeal from a prefiling order entered under Section 11.101 designating a person a vexatious litigant or a timely filed writ of mandamus under Section 11.102.

Sec. 11.1035.–Mistaken Filing.

(a) If the clerk mistakenly files litigation presented, pro se, by a vexatious litigant subject to a prefiling order under Section 11.101 without an order from the appropriate local administrative judge described by Section 11.102(a), any party may file with the clerk and serve on the plaintiff and the other parties to the litigation a notice stating that the plaintiff is a vexatious litigant required to obtain permission under Section 11.102 to file litigation.

(b) Not later than the next business day after the date the clerk receives notice that a vexatious litigant subject to a prefiling order under Section 11.101 has filed, pro se, litigation without obtaining an order from the appropriate local administrative judge described by Section 11.102(a), the clerk shall notify the court that the litigation was mistakenly filed. On receiving notice from the clerk, the court shall immediately stay the litigation and shall dismiss the litigation unless the plaintiff, not later than the 10th day after the date the notice is filed, obtains an order from the appropriate local administrative judge described by Section 11.102(a) permitting the filing of the litigation.

(c) An order dismissing litigation that was mistakenly filed by a clerk may not be appealed.

Sec. 11.104. Notice to Office of Court Administration;

(a) Dissemination of List. (a) A clerk of a court shall provide the Office of Court Administration of the Texas Judicial System a copy of any prefiling order issued under Section 11.101 not later than the 30th day after the date the prefiling order is signed.

(b) The Office of Court Administration of the Texas Judicial System shall post on the agency's Internet website a list of vexatious litigants subject to prefiling orders under Section 11.101. On request of a person designated a vexatious litigant, the list shall indicate whether the person designated a vexatious litigant has filed an appeal of that designation.

(c) The Office of Court Administration of the Texas Judicial System may not remove the name of a vexatious litigant subject to a prefiling order under Section 11.101 from the agency's Internet website unless the office receives a written order from the court that entered the prefiling order or from an appellate court. An order of removal affects only a prefiling order entered under Section 11.101 by the same court. A court of appeals decision reversing a prefiling order entered under Section 11.101 affects only the validity of an order entered by the reversed court.

OPPOSED MOTION FOR LEAVE OF COURT TO PROVIDE PREVIOUSLY UNAVAILABLE EVIDENCE TO AID DETERMINATION OF THE APPEAL (SEPTEMBER 11, 2020)

IN THE 5th DISTRICT COURT
COURT OF APPEALS DALLAS TEXAS

PETER BEASLEY,

Appellant,

v.

SOCIETY OF INFORMATION MANAGEMENT, DALLAS AREA CHAPTER; ET AL.,

Appellees.

No. 05-19-00607-CV

To the Honorable Justices of Said Court:

COMES NOW, Appellant, Peter Beasley, ("Beasley"), pursuant to Rule 10.2, and states the following:

1. August 28, 2020, this Court affirmed the trial court's judgment, in a detailed 30-page opinion, authored by Justice Osborne. With this opinion, Appellant is entitled to file a Motion for Rehearing by Monday, September 14, 2020. The Opinion affirmed the trial court's December 11, 2018, judgment declaring Appellant a vexatious litigant. The Office of Court Administration (OCA) administers the list of those

litigants, and the list is available online, https://www.txcourts.gov/judicial-data/vexatious-litigants/.

2. To aid the finding of justice, Appellant requests leave of court to provide the additional relevant information from ¶ 6, below which was previously unavailable.

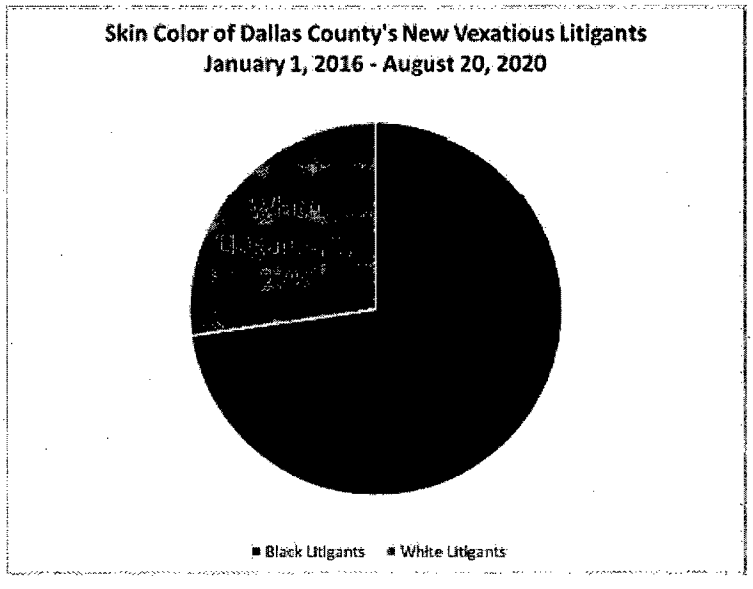
3. Below is a listing from the OCA website, sorted to identify the people added to the list since 2016 from Dallas County, as updated September 9, 2020.

Office of Court Administration						
List of Vexatious Litigants						
Subject to Prefiling Orders under Section 11.101, Civil Practice and Remedies Code						
Vexatious Litigant						
Last Name	First Name	Middle Name	Date	Cause #	Court	Comment
Coleman	Alvester		8/6/2020	DC-20-09073	14th	
Stuer	Jules	Dylan	2/28/2020	DC-19-16060	298th	
Claiborne	Shanta	Y.	6/14/2019	DC-19-03933	192nd	
Rowe	Jamers	Laray	2/13/2019	JC-18-01005	304th	
Jones	Jason	Patrick	12/17/2018	DC-18-05511-D	95th	
Beasley	Peter		12/11/2018	DC-18-05278	191st	on appeal
Williams	Yolanda		10/11/2017	DC-17-08050	162nd	
Gross	Samuel	R.	5/19/2017	PR-15-04382-2	Probate Court #2	
Aubrey	Steven	B.	2/2/2017	DC-16-12693	116th	
Duru	Rose	Adanma	4/18/2016	DC-16-00496	68th	
Nixon	Tracy		4/14/2016	DF1601234	301st	
Aubrey	Steven	B.	3/25/2016	DC-15-11685	14th	

4. Appellant, Peter Beasley, has reached-out to all of these individuals either by phone or e-mail, or through on-line records to determine their ethnicity. Appellant, he is a Black man. I've spoken with Alvester Coleman, Tracy Nixon and Yolanda Williams to confirm their race. Through police and incarceration records, I've confirmed the ethnicity of Jason Jones, Jules Stuer, and James Rowe. Through on-line web-sites, social media and phone conversations, I have researched the ethnicity of Shanta Claiborne, Samuel Gross, Rose Duru, and Steven Aubrey.

5. The list of Dallas County vexatious litigants since January 1, 2016, by race is listed below.

Office of Court Administration								
List of Vexatious Litigants								
Subject to Prefiling Orders under Section 11.101, Civil Practice and Remedies Code								
Vexatious Litigant		Race						
Last Name	First Name	Black	White	Date	Cause #	Court	County	Comment
Aubrey	Steven		1	3/25/2016	DC-15-11685	14th	Dallas	
Nixon	Tracy	1		4/14/2016	DF1601234	301st	Dallas	
Duru	Rose	1		4/18/2016	DC-16-00496	68th	Dallas	
Gross	Samuel	1		5/19/2017	PR-15-04382-2	bbate Court	Dallas	
Williams	Yolanda	1		10/11/2017	DC-17-08050	162nd	Dallas	
Beasley	Peter	1		12/11/2018	DC-18-05278	191st	Dallas	on appeal
Jones	Jason		1	12/17/2018	DC-18-05511-D	95th	Dallas	
Rowe	Jamers	1		2/13/2019	JC-18-01005	304th	Dallas	
Claiborne	Shanta	1		6/14/2019	DC-19-03933	192nd	Dallas	
Stuer	Jules		1	2/28/2020	DC-19-16060	298th	Dallas	
Coleman	Alvester	1		8/6/2020	DC-20-09073	14th	Dallas	
		8	3	11				
		73%	27%					



White Litigants, 3 – 27%

Black Litigants, 8 – 73%

ARGUMENT AND AUTHORITIES

6. The underlying lawsuit is about race discrimination. Beasley, was the first Black person elected to the Board of Directors of the Society of Information Management for the Dallas Area Chapter (SIM). The record before this court has Appellant's live, 2nd Amended Petition, which lists the "Underlying Dispute" to be:

> This lawsuit stems from Beasley, a board member with legal fiduciary duties, to have SIM Dallas operate within its own bylaws, him trying 1) to stop a give-away of member's dues to non-members who are friends of the board and 2) *to stop the organization's discriminatory membership practices*–to

> unfairly exclude minorities, keeping them from advancement opportunities.

7. SIM is a Texas non-profit corporation which prohibits money being funneled to members. And, it is against public policy to withhold membership and expel members based on race and gender discrimination.

8. As this court identified in its Opinion affirming the underlying judgment, Appellant argued that the Texas Vexatious Litigant statute is unconstitutionally vague, which unfairly allows attorneys and courts to discriminate against Black litigants.

9. The U.S. Supreme Court said it best:

> The vagueness of a law not only withholds fair notice of what those regulated may do, but also leaves unwarranted discretion in the hands of enforcement authorities. *E.g.*, *Grayned v. City of Rockford*, 408 U.S. 104, 108-09 & n. 5, 92 S. Ct. 2294, 2298-99 & n. 5, 33 L.Ed.2d 222 (1972).

Implicit Bias is Real–
Unequal Protection under the Law

10. People have innate, unconscious biases. Today, we see demonstrations daily worldwide in protest to how Black people are treated in America. We've all now seen our President Donald J. Trump scoff June 19, 2020, at "the anger and pain" Black Americans face throughout their lifetime as victims of "White Privilege."

11. This Court and perhaps the George Allen courthouse judiciary may be unaware of the overwhelming pattern of how Black people are ushered onto the Texas Vexatious Litigant list–through unequal protection under the law.

12. In the trial court Beasley alleged that the Texas Vexatious Litigant statute was unconstitutionally vague. But, the trial court would not hear Beasley. And now this Court, in its August 28, 2020, Opinion failed to address any of Beasley's nine specific constitutional challenges.

13. The four year pattern bias evidence in ¶ 6 to September 2020, covering the period before Beasley was added to the list, up to when this Court affirmed the judgment was of course unavailable at the time Beasley was required to perfect his appeal.

14. Racial discrimination is often proven looking backwards at patterns which make a prima facie case that unfair, discriminatory practices may exist. Retroactive pattern data exposed a long lines of cases of discriminatory venire men selection[1] to eliminate Black people from juries, and Texas death penalty sentences[2] that unequally executed Black people.

15. To show the relevance of the requested information, first, Beasley, as an African-American, identifies as part of a group that is a recognizable,

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[1] *Cassell v. Texas*, 339 U.S. 282, 286-287 (1950)

[2] *Furman v. Georgia*, 408 U.S. 238, 92 S. Ct. 2726, 33 L.Ed.2d 346 (1972) (A study of capital cases in Texas from 1924 to 1968 reached the following conclusions: "Application of the death penalty is unequal: most of those executed were poor, young, and ignorant.)

distinct class, historically singled out for different treatment under the laws, as written or as applied. *See, Castaneda v. Partida*, 430 U.S. 482, 492-95 & n. 12, 97 S. Ct. 1272, 51 L.Ed.2d 498 (1977).

16. Second, the pattern data uncovered in ¶ 6, *supra.* of the 3x times number of Black people added to the Texas Vexatious Litigant list from Dallas County than White people makes out a prima facie case that unequal protection or application of the law exists, whether it is conscious or unconscious. *See, Hernandez v. Texas*, 347 U.S. 475, 478-479 (1954).

17. This court denying Beasley appeal on August 28, 2020, has made the requested evidence relevant to the issues on appeal, and leave of court is requested to add this evidence in support of his rehearing motion and in support of the existing claims on appeal.

WHEREFORE, Beasley requests this court grant leave of court to include the Table and Chart evidence from ¶ 6, *supra.* in Beasley's contemporaneously filed Motion for Rehearing, in the interest of justice.

Plaintiff prays for general relief.

Respectfully submitted,

/s/ Peter Beasley
Pro Se
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Richardson, TX 75083-1359
(972) 365-1170
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BEN RICHARD DRUM v. CYNTHIA FIGUEROA CALHOUN,
OPINION OF COURT OF APPEALS OF TEXAS
(AUGUST 25, 2009)

IN THE COURT OF APPEALS
FIFTH DISTRICT OF TEXAS AT DALLAS

BEN RICHARD DRUM,

Appellant,

v.

CYNTHIA FIGUEROA CALHOUN, AMERICAN STATES INSURANCE COMPANY SAFECO SURETY, AND UNITRIN BUSINESS INSURANCE,

Appellees.

No. 05-07-01520-CV.

Before: MORRIS, RICHTER, and LANG-MIERS, Justices.

Opinion by Justice LANG-MIERS.

Appellant Ben Richard Drum, appearing pro se, appeals from the trial court's orders declaring him a vexatious litigant and dismissing his claims with prejudice for failure to post the required security. We overrule Drum's issues and affirm the trial court's orders declaring Drum a vexatious litigant and dismissing his claims with prejudice.

Background

The IRS filed five notices of federal income tax liens in the Dallas County real property records against Drum's property. According to the notices, a total of $203,415.98 for multiple tax periods was assessed against Drum and/or Traci L. Drum and remains unpaid.

Appearing pro se, Drum filed an "Original Civil Complaint for Money Damages" against former Dallas County Clerk Cynthia Figueroa Calhoun, and her primary and secondary bond carriers, American States Insurance Company Safeco Surety and Unitrin Business Insurance. In his "Complaint," Drum alleges, among other things, that the notices of federal income tax liens filed against his homestead are "statutorily unauthorized, libelous, invalid, inchoate, non-judgment [and] non-abstracted," and that "Calhoun has violated the mandatory, official and ministerial terms and conditions of the people's office by knowingly and willingly allowing fraudulent liens against [Drum] into the Dallas County Records Index, with intentional, knowing and willing, criminal intent and with deliberate indifference and gross negligence to [Drum's] rights."

In addition to answers and other responsive pleadings filed by defendants, Calhoun filed a motion pursuant to chapter 11 of the Texas Civil Practice and Remedies Code asking the trial court to (1) declare Drum a vexatious litigant, (2) stay proceedings, and (3) order Drum to furnish a $10,000 security to cover the expenses Calhoun incurred in connection with the lawsuit. In that motion, Calhoun stated that Drum's lawsuit is his third lawsuit against Calhoun based on the notices of federal income tax liens filed

in the Dallas County real property records against Drum's property. Calhoun also states that Drum's first lawsuit against Calhoun was "finally determined adversely to Drum." American States also filed a motion to declare Drum a vexatious litigant, and the trial court held a hearing on the motions.

After reviewing the pleadings and hearing the arguments from both sides, the trial court orally announced, on April 20, 2007, that it was declaring Drum to be a vexatious litigant. Drum objected to the trial court's announcement on the basis that the trial judge was "disqualified" and apparently handed the trial court a motion to disqualify the trial judge, which was denied later that same day by the presiding judge of the administrative judicial district.

On April 24, 2007, the trial court signed an order declaring Drum a vexatious litigant and requiring him to post $10,000 with the district clerk as security within 30 days. The trial court's order also stated that if the security was not posted, the lawsuit would be dismissed. Drum filed multiple requests for findings of fact and conclusions of law, and the trial court declined to issue findings of fact and conclusions of law.[1]

After Drum's deadline to post the security expired, defendants filed motions to dismiss Drum's lawsuit.

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1 The trial court sent a letter to the parties, which is included in our record, in which it cited *Willms v. Americas Tire Co., Inc.*, 190 S.W.3d 796 (Tex.App.-Dallas 2006, pet. denied), and explained that "a party is not entitled to Findings of Fact and Conclusions of Law after an order determining the party to be a vexatious litigant."

On August 10, 2007, Drum filed another motion to disqualify the trial judge, which was denied by the presiding judge of the administrative judicial district. Later that same day, the trial court held a hearing on the motions to dismiss and signed an order dismissing Drum's claims with prejudice. Drum filed motions for rehearing and for new trial, which the trial court denied.

Pro Se Appellants

We begin by addressing Drum's request at the conclusion of his appellant's brief, asking this Court "that if any technical or procedural deficiencies are found in this appellant brief that ample time would be given to correct and amend such deficiencies so that justice might be served." Although we construe pro se pleadings and briefs liberally, a pro se litigant is still required to follow the same rules and laws as litigants represented by a licensed attorney. *See Mansfield State Bank v. Cohn,* 573 S.W.2d 181, 184-85 (Tex. 1978); *Cooper v. Circle Ten Council Boy Scouts of Am.,* 254 S.W.3d 689, 693 (Tex.App.-Dallas 2008, no pet.). Otherwise a pro se litigant would have an unfair advantage over a litigant represented by a licensed attorney. *Mansfield State Bank,* 573 S.W.2d at 185; *Cooper,* 254 S.W.3d at 693.

Among the rules of appellate procedure is a rule that requires an appellant's brief to contain "a clear and concise argument for the contentions made, with appropriate citations to authorities and to the record." Tex. R. App. P. 38.1(i). And we cannot review an issue on appeal when it is not supported by argument or citation to applicable legal authority. *See Birnbaum v. Law Offices of G. David Westfall, P.C.,* 120 S.W.3d

470, 477 (Tex.App.-Dallas 2003, pet. denied); *see also Siddiqui v. Siddiqui,* No. 14-07-00235-CV, 2009 WL 508260, at *1 (Tex.App.-Houston [14th Dist.] Mar. 3, 2009, pet. denied) (mem. op.) ("Failure to make appropriate argument or provide relevant citations will result in the overruling of the issue raised."). Consequently, we have construed Drum's pleadings and briefs liberally, and have applied the same rules and laws we apply to all appellants without regard to whether they are represented by counsel.

Issues On Appeal

Drum raises nine issues on appeal, several of which include multiple subparts. Because Drum asks this Court to reverse the orders declaring him a vexatious litigant and dismissing his claims with prejudice, we address his complaints about those orders first.

The Trial Court's Order Declaring Drum a Vexatious Litigant

In his third issue, Drum challenges the trial court's order that declared him to be a vexatious litigant and required him to post $10,000 as security for the defendants.

Standard of Review

We review the trial court's determination that Drum was a vexatious litigant under an abuse of discretion standard. *Harris v. Rose,* 204 S.W.3d 903, 906 (Tex. App.-Dallas 2006, no pet.). Under that standard, we are not free to substitute our own judgment for the trial court's judgment. *Bowie Mem'l Hosp. v. Wright,* 79 S.W.3d 48, 52 (Tex. 2002). A trial

court abuses its discretion if it "acts in an arbitrary or capricious manner without reference to any guiding rules or principles." *Bocquet v. Herring,* 972 S.W.2d 19, 21 (Tex. 1998).

Applicable Law

Chapter 11 of the Texas Civil Practice and Remedies Code provides a mechanism to restrict frivolous and vexatious litigation. *See* Tex. Civ. Prac. & Rem. Code Ann. §§ 11.051-.057 (Vernon 2002); *Harris v. Rose,* 204 S.W.3d 903, 905 (Tex.App.-Dallas 2006, no pet.). In this chapter, the Texas legislature sought to strike a balance between Texans' right of access to their courts and the public interest in protecting defendants from those who abuse the Texas court system by systematically filing lawsuits with little or no merit. *Willms v. Americas Tire Co.,* 190 S.W.3d 796, 804 (Tex.App.-Dallas 2006, pet. denied). The purpose behind the statute was to curb vexatious litigation by requiring plaintiffs found by the court to be "vexatious" to post security for costs before proceeding with a lawsuit. *Id.*

Under chapter 11, a defendant may move the court for an order determining that the plaintiff is a vexatious litigant and requiring the plaintiff to furnish a security for the benefit of the moving defendant. Tex. Civ. Prac. & Rem. Code Ann. § 11.051. A court may find a plaintiff to be a vexatious litigant if the defendant shows that there is a reasonable probability that the plaintiff will not prevail in the litigation and

(1) the plaintiff, in the seven-year period immediately preceding the date the defendant makes the motion under Section 11.051, has commenced, prosecuted, or maintained in

propria persona at least five litigations other than in a small claims court that have been:

(A) finally determined adversely to the plaintiff;

(B) permitted to remain pending at least two years without having been brought to trial or hearing; or

(C) determined by a trial or appellate court to be frivolous or groundless under state or federal laws or rules of procedure;

(2) after a litigation has been finally determined against the plaintiff, the plaintiff repeatedly relitigates or attempts to relitigate, in propria persona, either:

(A) the validity of the determination against the same defendant as to whom the litigation was finally determined; or

(B) the cause of action, claim, controversy, or any of the issues of fact or law determined or concluded by the final determination against the same defendant as to whom the litigation was finally determined; or

(3) the plaintiff has previously been declared to be a vexatious litigant by a state or federal court in an action or proceeding based on the same or substantially similar facts, transition [sic], or occurrence.

Id. § 11.054. If the trial court determines that the plaintiff is a vexatious litigant, the trial court is

required to order the plaintiff to furnish security for the benefit of the moving defendant and determine the date by which the security must be furnished. *Id.* § 11.055(a), (b). If the plaintiff does not furnish the security within the time set by the trial court's order, the trial court must dismiss the litigation as to the moving defendant. *Id.* § 11.056; *see also Gant v. Grand Prairie Ford, L.P.,* No. 02-06-00386-CV, 2007 WL 2067753, at *4 (Tex.App.-Fort Worth July 19, 2007, pet. denied) (mem. op.) (after trial court declared plaintiff a vexatious litigant, trial court had duty as a matter of statutory law to dismiss plaintiff's lawsuit after plaintiff failed to furnish required security within time ordered).

Relevant Facts

The parties' arguments below and on appeal, as well as the trial court' ruling and our review of that ruling, are necessarily based in part on procedural events that occurred before this lawsuit was filed. Although the parties dispute the legal effect of certain events, the occurrence of the following events is undisputed.

Drum's 2004 Lawsuit Regarding the Tax Liens

In 2004, Drum sued Calhoun and Dallas County in Dallas County District Court, alleging, among other things, that four notices of federal income tax liens filed in the Dallas County real property records against his property are invalid. Drum sought damages and injunctive relief barring Calhoun from accepting notices of federal income tax liens for filing against his property in the Dallas County property records. In an

amended pleading, Drum added eight federal employees as additional defendants. The United States removed the case to federal district court and moved to dismiss the case for failure to state a claim. In response, Drum filed amended petitions and moved for voluntary dismissal of the federal-employee defendants, "so that the case can return to the County of Dallas 191st District Court." Based on his voluntary dismissal of the federal-employee defendants, Drum argued that the federal district court lost jurisdiction and asked the federal district court to remand his case to state court. The United States opposed the motion to remand and argued that the key issue at the center of Drum's complaint—the validity of notices of federal income tax liens—is a federal question. In a memorandum opinion and order issued September 9, 2005, the federal district court granted Drum's motion to dismiss the federal-employee defendants and denied Drum's motion to remand. *See Drum v. Calhoun,* No. 3:05-CV-0932-P, 2005 WL 2217504 (N.D. Tex. Sept. 9, 2005) (mem. op. and order).

In analyzing Drum's claims, that court explained, "[i]n the end, [Drum's] complaint is a challenge to the federal government's assessment of income tax." It concluded that any court order declaring the notices of federal income tax liens invalid or prohibiting them from being filed in the property records would greatly interfere with the federal government's ability to assess and collect taxes, and that the United States was the real party in interest in the case. The court held "that the [federal] Anti-Injunction Act bars [Drum's] claim that the federal income tax was wrongfully assessed against him and that the federal tax lien notices were therefore wrongfully filed against

his real property," and dismissed Drum's claims against the United States, Calhoun, and Dallas County with prejudice to refiling. *See Drum,* 2005 WL 2217504, at *4-5.

Drum's 2006 Motion Regarding the Tax Liens

On November 7, 2006, Drum filed a pro se, ex parte "Motion for Judicial Review of Instruments Purporting to Create a Lien or Claim" in Dallas County district court pursuant to section 51.903 of the government code.[2] In that motion, Drum alleged that five notices of federal income tax liens filed against his property, including the four notices at issue in Drum's 2004 lawsuit, "should be totally removed from the Dallas County Record" because they are not properly certified and "abrogate state law."[3] On

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2 Section 51.903 of the government code is titled "Action on Fraudulent Lien on Property." Tex. Gov't Code Ann. § 51.903 (Vernon 2005). Section 51.903(a) provides a "suggested form" for a motion, verified by affidavit, that a person who believes that a purported lien is fraudulent may file with the district clerk. *Id.* § 51.903(a). Section 51.903(c) provides that a motion under section 51.903 may be ruled on by a district judge having jurisdiction over real property matters in the county where the subject document was filed. *Id.* § 51.903(c). It also provides that "[t]he court's finding may be made solely on a review of the documentation or instrument attached to the motion and without hearing any testimonial evidence." *Id.* "The court's review may be made ex parte without delay or notice of any kind." *Id.* Section 51.903(e) provides that "the district judge shall enter an appropriate finding of fact and conclusion of law." *Id.* § 51.903(e). The moving party is required to send a copy of the finding of fact and conclusion of law, within seven days by first class mail, to the party that filed the "fraudulent lien or claim." *Id.*

3 The fifth notice of federal income tax liens was filed in the Dallas County property records against Drum's property after

the same day, a Dallas County district court associate judge signed a document titled "Judicial Finding of Fact and Conclusion Regarding Instruments Purporting to Create a Lien or Claim" (the "2006 Findings and Conclusions"), which stated that the five notices of federal income tax liens filed against Drum's property:

> (1) ARE NOT provided for by specific state or federal statutes or constitutional provisions;
>
> (2) ARE NOT created by implied or express consent or agreement of the obligor, debtor, or owner of the real property, or an interest in the real property, or by implied or express consent or agreement of an agent, fiduciary, or other representative of that person;
>
> (3) ARE NOT equitable, constructive, or other liens imposed by a court of competent jurisdiction created by or established under the constitution or laws of this state or the United States; and therefore
>
> (4) ARE NOT lawfully asserted against real property or an interest in real property.

The 2006 Findings and Conclusions further state that it is "ORDERED AND ADJUDGED that the Motion to vacate alleged Liens . . . is hereby FULLY

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the federal district court dismissed Drum's claims in the 2004 lawsuit and before Drum filed his motion for judicial review.

GRANTED," and describe certain additional "evidentiary proof" that must be submitted before "[t]his order may be reversed."[4]

This Lawsuit

In December 2006, Drum filed a pro se "Original Civil Complaint for Money Damages" against Calhoun and her insurance carriers. In his "Complaint," Drum alleges, among other things, that the five notices of federal income tax liens filed against his homestead in the Dallas County real property records are "statutorily unauthorized, libelous, invalid, inchoate, non-judgment [and] non-abstracted," and that "Calhoun has violated the mandatory, official and ministerial terms and conditions of the people's office by knowingly and willingly allowing fraudulent liens against [Drum] into the Dallas County Records Index, with intentional, knowing and willing, criminal intent and with deliberate indifference and gross negligence to [Drum's] rights."

The Motions to Declare Drum a Vexatious Litigant

In their motions to declare Drum a vexatious litigant, Calhoun and American States argued that

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4 Our appellate record demonstrates that in January 2007, after this lawsuit was filed, the associate judge signed an order vacating and withdrawing the 2006 Findings and Conclusions. Drum filed a motion to quash the order that vacated and withdrew the 2006 Findings and Conclusions, on the ground that it was signed after the court's plenary power expired. The district court judge signed an order granting Drum's motion to quash the order that vacated and withdrew the 2006 Findings and Conclusions.

Drum met the requirements of section 11.054(2), which allows the trial court to determine that a pro se plaintiff is a vexatious litigant if the plaintiff attempts to the relitigate the validity of an adverse final determination in a prior litigation, or any of the claims or issues finally determined in a prior litigation. Tex. Civ. Prac. & Rem. Code Ann. § 11.054(2). After a hearing, the trial court signed an order declaring Drum a vexatious litigant and requiring him to post $10,000 with the District Clerk as security within 30 days. The trial court's order also stated that if the security was not posted, the lawsuit "will be dismissed per Tex. Civ. Prac. And Rem. Code § 11.0567[sic]" and that Drum is prohibited "from filing any new lawsuits in propria persona in any court in the State of Texas" without first obtaining permission from the local administrative judge. Drum did not post the required security. After Drum's deadline to post the required security expired, defendants filed motions to dismiss Drum's claims pursuant to section 11.056 of the vexatious litigant statute. The trial court granted those motions, denied Drum's motion for new trial, and denied Drum's multiple requests that the trial court issue findings of fact and conclusions of law.

Analysis

In his third issue, Drum argues that the trial court "misapplied the statute" because the trial court "knew there were not five cases" as required by section 11.054(1). More specifically, Drum contends that Calhoun only pleaded section 11.054(1) as a basis to declare him a vexatious litigant. He argues that the trial court's ruling must be reversed because it was based on section 11.054(2) and that basis for

declaring Drum a vexatious litigant was not pleaded by Calhoun. We disagree.

In her motion, Calhoun cites generally to chapter 11 and refers to this lawsuit as Drum's "third lawsuit" against her based on the notices of federal tax liens. She also argues that this lawsuit is "the very same action/claim/controversy" as Drum's 2004 lawsuit against her, which was finally determined adversely to Drum. These are the criteria required by section 11.054(2), not section 11.054(1). *See* Tex. Civ. Prac. & Rem Code Ann. § 11.054. Moreover, American States's motion to declare Drum a vexatious litigant specifically cites section 11.054(2) and also alleges that this lawsuit is "the very same action/claim/controversy" as Drum's 2004 lawsuit, which was finally determined adverse to Drum. In summary, the motions to declare Drum a vexatious litigant were based on section 11.054(2), not section 11.054(1).

Next, Drum argues that he does not meet the statutory criteria to be determined a vexatious litigant because "Defendants had to show that Drum did not have a reasonable probability of prevailing and this was a hurdle they could not overcome in the face of" the "res judicata" 2006 Findings and Conclusions. Drum contends that the 2006 Findings and Conclusions "overshadow the dismissal by an inferior federal judge," "trumped the dubious federal Ruling," prove that Drum can and will prevail on his claims against Calhoun as a matter of law, and "barrs [sic] the court from ruling Drum vexatious." We disagree.

Because Drum's ex parte motion under section 51.903 for judicial review of the notices of federal income tax liens essentially sought to have the lien notices declared fraudulent and removed from the

property records, the trial court in this case could have reasonably concluded that Drum's ex parte motion under section 51.903 was an impermissible collateral attack on the federal district court's final order. *See generally Browning v. Prostok,* 165 S.W.3d 336, 345-46 (Tex. 2005) ("A collateral attack is an attempt to avoid the binding force of a judgment in a proceeding not instituted for the purpose of correcting, modifying, or vacating the judgment, but in order to obtain some specific relief which the judgment currently stands as a bar against.").[5] And regardless of the legal effect, if any, of the ex parte 2006 Findings and Conclusions, they do not effect the federal district court's prior, final determination that Drum's claims against Calhoun relating to the lien notices are barred as a matter of federal law.[6] *See Drum,* 2005 WL 2217504,

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[5] We also disagree with Drum's contention that the 2006 Findings and Conclusions issued pursuant to section 51.903 are comparable to a trial court's findings of fact and conclusions of law issued after a nonjury trial. Unlike findings and conclusions issued after a nonjury trial, findings and conclusions under section 51.903 may be issued after an ex parte review of documents and without prior notice. As a result, findings and conclusions issued pursuant to section 51.903 are not comparable to findings and conclusions issued after a nonjury trial. And in this case, we note that the 2006 Findings and Conclusions purport to "vacate alleged Liens" and describe certain additional "evidentiary proof" that must be submitted before "[t]his order may be reversed." As a result, they substantially deviate from the suggested form order provided under section 51.903 of the government code. *See* Tex. Gov't Code Ann. § 51.903(g).

[6] Moreover, Calhoun was not a party to the proceeding that resulted in the 2006 Findings and Conclusions and our record does not reflect whether a copy of the 2006 Findings and Conclusions was sent to "the person who filed the fraudulent lien or

at *1-5. As a result, the trial court could have also concluded that there is not a reasonable probability that Drum will prevail in this case because Drum is collaterally estopped from relitigating his claims against Calhoun relating to the lien notices. *See Stromberger v. Law Offices of Windle Turley, P.C.,* No. 05-06-00841-CV, 2007 WL 2994643, at *4 (Tex.App.-Dallas Oct. 16, 2007, no pet.) (mem. op.) ("Collateral estoppel promotes judicial efficiency and precludes inconsistent judgments by preventing the relitigation of any ultimate fact issue previously litigated even though the subsequent suit brings a different cause of action.").

In his third issue, Drum also argues that the motions to declare him a vexatious litigant were an "abuse of the discovery process" and that the trial court should have heard and ruled on his multiple motions to compel discovery and for discovery sanctions, which were filed after Calhoun's motion to declare Drum a vexatious litigant. We disagree. Under the vexatious litigant statute, on the filing of a timely motion to declare the plaintiff a vexatious litigant, "the litigation is stayed" until the motion is decided. Tex. Civ. Prac. & Rem. Code Ann. § 11.052(a). Consequently, based on the record presented here, the trial court was required to rule on the vexatious litigant motions before it could reach Drum's motions. *Id.* And when those motions were granted, the litigation remained stayed as a matter of statutory law unless and until Drum posted the required security. *Id.* § 11.052(a)(2). We overrule Drum's third issue.

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claim . . . within seven days" as required by section 51.903(e). *See* Tex. Gov't Code Ann. § 51.903(e).

Drum's Constitutional Challenge to the Vexatious Litigant Statute

In his fourth issue, Drum argues that the vexatious litigant statute "violate[d] the Constitution's open courts doctrine in Drum's particular case" because the "[s]ecurity requirement of $10,000 is an insurmountable financial barrier that effectively barred Drum's access to court." Appellees argue that this issue was not preserved for appeal.

Constitutional complaints must be raised below or they are not preserved for appellate review. *See e.g., In re L.M.I.*, 119 S.W.3d 707, 711 (Tex. 2003). And "[t]o preserve an error for appeal, a party's argument on appeal must comport with its argument in the trial court." *Knapp v. Wilson N. Jones Mem'l Hosp.*, 281 S.W.3d 163, 170-71 (Tex.App.-Dallas 2009, no pet.). Drum does not cite, and we have not found, any place in the appellate record where Drum raised an argument about the open courts doctrine to the trial court with sufficient specificity to apprise the trial court of the complaint, either before or after the trial court's ruling on the vexatious litigant motion. *See* Tex. R. App. P. 33.1(a). In Drum's reply brief, however, Drum contends that his argument that the trial court's "ruling that denies Drum a trial on the merits is a Textbook case on open courts doctrine violation" was "preserved for appeal in Drum's Motion for New Trial." But Drum's motion for new trial does not cite the open courts doctrine or make any other argument about the constitutionality of the trial court's ruling or the vexatious litigant statute.[7]

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[7] And to the extent that Drum contends that he preserved a complaint regarding the constitutionality of the vexatious litigant

We conclude that Drum's fourth issue was not preserved for appellate review. *See Brown v. Tex. Bd. of Nurse Exam'rs,* 194 S.W.3d 721, 723 (Tex.App.-Dallas 2006, no pet.) (concluding "constitutional claim regarding the vexatious litigant statute was not preserved for appeal"); *McIntyre v. Wilson,* 50 S.W.3d 674, 688 (Tex.App.-Dallas 2001, pet. denied) (same). We overrule Drum's fourth issue.

The Dismissal Orders

In his second and sixth issues, Drum challenges the trial court's orders dismissing his claims with prejudice. In his second issue, Drum argues that the trial court's dismissal orders as to each defendant are "a Breach of Contract." Drum's argument on this issue consists of two sentences:

> Whether Judge Slaughter's Arbitrary Ruling to Dismiss Drum's Cause of Action with Prejudice while fraudulent liens continue to cause damage to Drum is a Breach of Contract as Outlined in the Recorded instrument filed into the trial Court on July 5, 2007 and Recorded into the Dallas County Record file no. 20070242437[] as a private binding contract.
>
> Judge Slaughter affirmed her duty to uphold both the Constitution of Texas and the

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statute by filing an affidavit of indigence pursuant to rule of appellate procedure 20.1, we disagree. An affidavit filed pursuant to rule 20.1 does not preserve complaints about the trial court's rulings for appellate review. Rule 20.1 does not relate to error preservation; it allows an indigent party to proceed with an appeal without advance payment of filing fees and charges for preparing the appellate record. *See* Tex. R. App. P. 20.1.

> United States of America [], and yet maintained her ruling against Drum that clearly violated his right to property and redress [].

(Record citations omitted.) Drum does not provide any citations to applicable authority to support his argument. Consequently, we conclude that Drum's second issue is not sufficiently presented for appellate review. Tex. R. App. P. 38.1(i). We overrule his second issue.

In his sixth issue, Drum argues that the trial court "[a]rbitrarily and capriciously" "waiv[ed] local rules" because it held a hearing on defendants' motions to dismiss, and signed orders granting those motions, even though "Unitrin failed to have the local rule 2.07 conference for a Dismissal with Drum in the proper time." But the same local rule that Drum cites and relies upon, describing conference requirements, expressly states that the requirements "do not pertain to dispositive motions." Dallas (Tex.) Civ. Dist. Ct. Loc. R. 2.07(e). Moreover, the record demonstrates that all three motions to dismiss were based on the mandatory dismissal required by section 11.056, and Calhoun's and American States's motions include certificates of conference. The record also demonstrates that Drum had notice of the hearing and attended the hearing. We overrule Drum's sixth issue.

The Dallas County District Attorney's Office's Representation of Calhoun

In his first issue, Drum argues that "[t]he Dallas County District Attorney's office should be officially disqualified from representing Calhoun for criminally aiding, abetting and protecting Calhoun's criminal actions." Drum contends that because he filed "Verified

criminal complaints" against former Assistant District Attorneys, the District Attorney's office "should have voluntarily stepped aside in this case" or the trial court should not have "allowed the DA's office to defend Calhoun." In response, Calhoun argues that Drum's complaint was not properly and timely raised in the trial court in order to preserve the complaint for appellate review.

Drum alleged in his "Complaint" that the criminal actions of two assistant district attorneys "barred the Dallas D.A.'s office from representing, defending, filing documents or pleading for Defendant Calhoun in this action due to a conflict of interest." Under Texas Rule of Appellate Procedure 33.1(a), in order to preserve this complaint for appellate review, Drum was required to bring his complaint to the trial court's attention in a timely manner and obtain a ruling on that complaint. Tex. R. App. P. 33.1(a). In this case, the record shows that Drum did not bring his complaint about the alleged conflict of interest to the trial court's attention until the hearing on his "Objection to Dismissal and Motion to Strike"—*i.e.*, after the trial court signed the order dismissing his claims with prejudice. Consequently, we conclude that Drum did not bring his complaint to the trial court's attention within the time required by law in order to preserve the complaint for appellate review. *Id.* We overrule Drum's first issue.

Drum's "Constitutional Disqualifications" of the Trial Judge

In his fifth issue, Drum argues that he is entitled to a hearing on his two "Constitutional Disqualifications" of the trial judge, which were denied

by the presiding judge of the administrative judicial district without a hearing.

Procedural Facts

When the trial court orally announced that it was declaring Drum to be a vexatious litigant, Drum immediately objected to the trial court's announcement on the basis that the trial judge was "disqualified." Drum apparently handed to the trial court a document titled "CONSTITUTIONAL DISQUALIFICATION OF JUDGE GENA SLAUGHTER AFFIDAVITOF [sic] PREJUDICE VERIFIED," which the trial court judge agreed to send to presiding judge of the administrative judicial district. Later the same day, the presiding judge of the administrative judicial district signed an order stating that (1) the "Motion to Recuse" does not provide allegations that warrant a hearing and (2) the motion is denied. Several months later, before the hearing on defendants' motions to dismiss Drum's lawsuit, Drum filed an "OBJECTION TO ASSIGNED JUDGE" and a "SECOND NOTICE OF CONSTITUTIONAL DISQUALIFICATION OF JUDGE GENA SLAUGHTER AFFIDAVITOF [sic] PREJUDICE VERIFIED." Before the hearing on defendants' motions to dismiss, the presiding judge of the administrative judicial district signed another order stating that (1) the "Motion to Recuse" does not provide allegations that warrant a hearing and (2) the motion is denied.[8]

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[8] At the beginning of the hearing on the motions to dismiss, the trial court stated, "Mr. Drum has filed a second notice of disqualification today which I did fax to Judge Ovard. Judge Ovard has considered it and his staff has notified me that it has been denied

Analysis

On appeal, Drum argues that because his two "verified Constitutional Disqualification[s]" "met all the requirements of Tex. Rule 18a(a)," the administrative court abused its discretion because it did not conduct "a hearing according to TRCP 18a(c)." Drum specifically argues on appeal, as he did below, that the trial judge was constitutionally disqualified from sitting in this case, as opposed to being subject to recusal.[9]

When a party files a motion contending that a judge is disqualified from sitting in a case, that motion must comply with the procedural requirements prescribed by Texas Rule of Civil Procedure 18a. *See* Tex. R. Civ. P. 18a. One of the procedural requirements of rule 18a is that a motion for disqualification "must state with particularity the grounds why the judge before whom the case is pending should not sit." Tex. R. Civ. P. 18a(a). The grounds for disqualification of a judge are found in the Texas Constitution and Texas Rule of Civil Procedure 18b(1). Under the Texas Constitution,

No judge shall sit in any case where in the

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and that [] an order will be on [its] way shortly. I am going to, therefore, continue with the hearing."

9 More specifically, Drum argues that "[a]ll of Judge Gena Slaughter's rulings are void ab initio due to the Constitutional Disqualifications that her and judge Ovard are trying to ignore by calling them recusals. Both of these Judges knew or should have known the difference between disqualification and recusal." (Emphasis original; record citations omitted.)

> judge may be interested,[10] or where either of the parties may be connected with the judge, either by affinity or consanguinity, within such a degree as may be prescribed by law, or when the judge shall have been counsel in the case.

Tex. Const. art. V, § 11. And under rule 18(b)(1), judges are disqualified if:

> (a) they have served as a lawyer in the matter in controversy, or a lawyer with whom they previously practiced law served during such association as a lawyer concerning the matter; or
>
> (b) they know that, individually or as a fiduciary, they have an interest in the subject matter in controversy,
>
> (c) either of the parties may be related to them by affinity or consanguinity within the third degree.

Tex. R. Civ. P. 18b(1).

Neither of Drum's two "Constitutional Disqualifications" allege any of these legally recognized grounds

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10 The Amarillo Court of Appeals has explained,

> [T]he type of interest required for disqualification must be of a pecuniary nature so that the judge would gain or lose by the judgment rendered in the case. The pecuniary interest must be capable of valuation. It must also be direct, real, and certain and be in the subject matter and in the result of the case in question.

Williams v. Viswanathan, 65 S.W.3d 685, 689 (Tex.App.-Amarillo 2001, no pet.).

for constitutional disqualification of a trial judge. Instead, they principally allege that the trial judge is constitutionally disqualified from sitting in this case because she "has shown prejudice in favor of the Respondent, Defendant Cynthia Figueroa Calhoun in every aspect of the case." The United States Supreme Court has explained, however, that disqualification of a judge is constitutionally required only "in the most extreme of cases," and general allegations of bias and prejudice "are insufficient to establish any constitutional violation." *Aetna Life Ins. Co. v. Lavoie,* 475 U.S. 813, 821, 106 S.Ct. 1580, 89 L.Ed.2d 823 (1986). Moreover, stating at least one legally recognized ground for disqualification is a mandatory procedural requirement of a disqualification motion filed pursuant to rule 18a. *See* Tex. R. Civ. P. 18a(a); *see also Rammah v. Abdeljaber,* 235 S.W.3d 269, 274 (Tex.App.-Dallas 2007, no pet.) ("Texas courts have consistently held that the procedural requirements of Rule 18a are mandatory."). Because Drum's "Constitutional Disqualifications" state only general allegations of bias and prejudice, and do not state at least one legally recognized ground for constitutional disqualification, we conclude that they do not meet the mandatory procedural requirements of rule 18a. As a result, we conclude that the presiding judge of the administrative judicial district did not abuse his discretion by denying Drum's "Constitutional Disqualifications" without holding a hearing. *Cf. Rammah,* 235 S.W.3d at 274 (presiding judge of administrative judicial district "did not abuse its discretion by denying a defective recusal motion without a hearing"); *In re Lincoln,* 114 S.W.3d 724, 726-27 (Tex.App.-Austin 2003, no pet.) (per curiam) (presiding judge of administrative judicial district did not abuse his discretion

by summarily denying defective recusal motion without first conducting hearing because basis underlying motion "is an insufficient ground for recusal as a matter of law"). We overrule Drum's fifth issue.

Drum's Remaining Issues

In his seventh issue, Drum asks this Court "[w]hether Drum prevails as a matter of law since all of his pleadings are verified, while Defendants['] answers are not." Although Drum cites generally to rule of civil procedure 93, he does not make any argument about how or why that rule applied in this case. Moreover, Drum does not identify any particular pleadings he claims were required to be verified, nor does he describe why those pleadings were required to be verified.[11] We conclude that Drum's seventh issue

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11 In his reply brief, Drum cites the following paragraph from his motion for new trial to demonstrate that he preserved his complaint about unverified pleadings for appellate review:

> It would seem odd to a Jury Panel in Dallas County that Defense Attorneys would not submit verified pleadings if their ability to count to five would come into question. Is it possible that the extensive legal training these two culprits have, somehow has affected their ability to perform basic math? Just you look at your right hand and count the number of fingers and then look at TCPRC 11.054, then count the number of rulings filed against Defendant Calhoun that were ruled adverse. (Maybe One) A Non-Suit is not an adverse ruling, is it?

Even if we assumed, however, that this paragraph somehow preserved for appellate review a complaint that Calhoun's motion to declare Drum a vexatious litigant was not verified, Drum does not argue in his seventh issue on appeal that Calhoun's motion to declare Drum a vexatious litigant, or any other document filed below, was required to be verified. Moreover, we have found no authority suggesting that a motion to declare a plaintiff a vexatious litigant must be verified.

is not sufficiently presented for appellate review. Tex. R. App. P. 38.1(i). Consequently, we overrule Drum's seventh issue.

In his eighth issue, Drum complains that the trial court held a hearing and made rulings on the district clerk's challenge to his affidavit of indigence, which Drum filed pursuant to rule of appellate procedure 20.1 before his notice of appeal. Drum does not cite any authority to demonstrate that it was reversible error for the trial court to conduct a hearing on the district clerk's challenge. *See* Tex. R. App. P. 38.1(i), 44.1(a). Moreover, the record demonstrates that Drum prevailed at this hearing and that the district clerk's challenge to his rule 20.1 affidavit was denied by the trial court as untimely.

Drum also argues in his eighth issue that the trial court erred when it concluded that it did not have plenary power to hear Drum's motion for sanctions against Unitrin. We disagree. Drum filed a motion for sanctions against Unitrin, and sought a hearing on that motion, approximately three months after the trial court issued a written order denying his motion for new trial.[12] As a result, the trial court lacked plenary power to consider Drum's motion. *See* Tex. R. Civ. P. 329b(e) (trial court's plenary power expires 30 days after motion for new trial is overruled). We disagree with Drum's contention that the trial court's order denying the district clerk's challenge to his rule 20.1 affidavit of indigence extended the trial

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12 The trial court's order denying Drum's motion for new trial was issued on October 12, 2007. Drum's motion for sanctions was filed January 9, 2008.

court's plenary power to grant a motion for sanctions. We overrule Drum's eighth issue.

In his ninth issue, Drum asks this Court whether the trial court had a statutory duty to seal the criminal complaints he claims to have filed against the trial court judge. The criminal complaints, however, are not included in our appellate record. *See Perry v. Kroger Stores, Store No. 119,* 741 S.W.2d 533, 534 (Tex.App.-Dallas 1987, no writ) ("The attachment of documents as exhibits or appendices to briefs is not formal inclusion in the record on appeal and, thus, the documents cannot be considered."). Moreover, Drum does not cite any authority to support his contention that the trial court was required to seal the criminal complaints, nor does he cite the record to demonstrate that he asked the trial court to seal the criminal complaints and obtained a ruling on that request. Consequently, we conclude that Drum's ninth issue has not been preserved for appellate review and is not sufficiently presented for appellate review. Tex. R. App. P. 33.1(a), 38.1(i). We overrule Drum's ninth issue.

Conclusion

We affirm the trial court's orders declaring Drum a vexatious litigant and dismissing his claims with prejudice.

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Color-blind Racial Attitudes: Microaggressions in the Context of Racism and White Privilege

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Abstract

Interest in institutional racism, White privilege, and microaggressions appears to be growing. We are living in times when the impact of race and racism are debated—when even the existence of racism is debated along with the appropriateness of examining the worst parts of U.S. history. This special-issue invited article includes a brief examination of historical information and current context in which racism and microaggressions exist, leading to their connections to Color-Blind Racial Attitudes (CoBRAs). Reviewed research on CoBRAs addresses teacher training, educational practices, experiences on college campuses, and organizational management.

[. . .]

As an introduction to *AIJ*'s special section on microaggressions, I have been given the opportunity to provide some context and basic definitions. The

most fundamental question related to any topic can be reduced to this: Is this topic worth discussing or exploring? More plainly: Does it matter?

As obvious as the answer may seem, it has been met with debate. Sue et al. (2008) directly addressed the challenges that they have received to their work on microaggressions. In my own experience discussing and teaching the concept of microaggressions and other topics related to diversity, I have been asked if, and in some cases, have been told that, issues related to prejudice, including racism, sexism, heterosexism, gender bias, and ethnocentrism would go away if we would just stop talking about them and drawing attention to them. This idea holds two implications. First, it suggests a seductive idea: there is an easy solution to all types of strife in our society; just ignore them. Second, and more problematic for multicultural research, education, and social activism, we are being told that our work is not part of the solution, but rather the source of the problem.

I intend to make the case for addressing questions of diversity, including the topics of microaggressions and institutional racism as our journal and the following authors have chosen to do, through active exploration instead of through avoidance and denial. I will begin with examination of the social context in which prejudice, discrimination, and microaggressions occur. Then I will provide a brief overview of institutional racism (Neville, Worthington, & Spanierman, 2001); White privilege (D'Andrea & Daniels, 2001), which is a both a source and a result of institutional racism; and microaggressions (Sue & Sue, 2013), which are a source and result of institutional racism and White privilege. Finally, I will focus on Color-Blind

Racial Attitudes (CoBRAs; Neville et al., 2000) and Color Blind Racial Ideology (Neville et al., 2013), which are a specific type of microaggression and a perpetuating factor in other types of microaggressions (Sue & Sue, 2013, p. 157).

Social & Cultural Context

The context in which racism, prejudice, and discrimination exist in the United States is complex. Our history is a one of promise and triumph, but also failed opportunities. It is beyond the scope of this, or any, article to fully address the history of prejudice and discrimination in the United States, but some exploration of context seems appropriate. My intent is not to negate or deny the growth and progress the U.S. has accomplished, but to recognize that concerns and anxieties expressed by members of racial and ethnic minority groups are based in recent history and current issues, not just the distant past.

How U.S. history should be presented is, in itself, a hotly debated topic. Some argue that probing the following information is unpatriotic or anti-American, with multiple states challenging the content of AP history courses for focusing on negative components of U.S. history (Stefanoni, 2015). However, it is my belief that we can be proud of our accomplishments while acknowledging and challenging our shortfalls. The historical and current issues cited below are drawn from a combination of academic text books, peer reviewed journal articles, and popular press/news media (especially for recent news items in 2016 and 2017). For many of the following issues, one or two articles from dozens of options are presented as examples of what is available.

Historical Context

Some parts of U.S. history are sufficiently well-known to be considered common knowledge without denying the importance of their impact on our collective history or on the people who experienced them. The history of slavery and segregation based on race (especially for African Americans) falls into this category. Other examples of discrimination and oppression may be less well-known. Examples of racial discrimination are woven throughout the development of U.S. culture. There are many possible examples of injustice and oppression that are not included here. This is not meant to devalue or negate those experiences.

In addition to slavery and forced relocation of native tribal groups (including but not limited to the Trail of Tears; Sue & Sue, 2013, p. 384), there have been attempts to control what groups of people have been allowed to immigrate to the United States (Allerfeldt, 2003; Calavita, 2006; Faragher, Buhle, Czitrom, & Armitage, 2012, pp. 609-610), attempts to force assimilation of non-European populations within the United States (Dawson, 2012; Sue & Sue, 2013, p. 384), and attempts to limit the reproduction of non-Europeans (Ellis & Abrams, 2009, pp. 388-395).

Among policies based on racial and ethnic discrimination were restrictions focusing on Chinese immigrants, with limits on Japanese immigrants added later (Allerfeldt, 2003; Calavita, 2006). These policies represented an effort to keep Asian traditions and values from gaining a significant influence on the development of culture in the American West. Also, in what may be one of the more under-acknowledged cases of discrimination based on country of

origin, during World War II, Japanese Americans living on the west coast were forced to relocate to internment camps to prevent them from supporting a much-feared Japanese invasion of the west coast (Faragher et al., 2012, pp. 662-663; Wollenberg, 2012). The Japanese internment camps began operating in 1942, with the last camp closing in 1946 (Muyskens & Steckelberg, 2017).

Discrimination against American Indians illustrates another deep-seated issue in the U.S. history of diversity. This was the forced assimilation that was an explicit attempt to eradicate a culture's traditions and values, if not its members. Most students of U.S. history are aware of tribes forced to relocate from Eastern and Southern States to territory in the Southwest (Sue & Sue, 2013, p. 384). Fewer may be aware of the Indian Schools which functioned as boarding schools for the openly expressed intent of separating children from their tribe and family in order to prevent transmission of language and values from one generation to the next (Dawson, 2012). Children were forced to abandon their language and traditions in cultural isolation (Tapahonso, 2016). Even more surprising and disappointing is how recently this strategy was utilized. Removing children from their families (through a combination of boarding schools and foster placements) in order to eliminate their traditions persisted until the passage of the 1975 Indian Self-Determination and Education Assistance Act (Tapahonso, 2016, p. 75) and the 1978 adoption of the Indian Child Welfare Act (Sue & Sue, 2013, p. 384). Tapahonso (2016) points out that even with the passage of these legislative bills, boarding schools persisted into the 1980s, with the 1990s finally marking

the period when the few remaining tribal schools became a place where native culture is taught under community and tribal guidance instead of eliminated through federal intervention (p. 75).

There is also a poorly acknowledged history of willingness to use science as a tool against members of minority groups or to unethically practice science on members of minority groups. The Tuskegee Experiments, which ran from 1932 until 1972, involved the intentional lack of treatment for African American men with syphilis (who were given placebos under the guise of active treatment) to observe the progression of the disease (Sue & Sue, 2013, p. 90). Beyond the Tuskegee experiments, the eugenics movement in the United States was a social and political movement in private and government sectors that advocated forced contraception for those who were seen as less beneficial to society. Eugenic limitation of reproduction was directed at those with physical, intellectual, and psychological disabilities, but it was also directed at non-European Americans based on the belief that intelligence and personality were genetically distinct across racial groups with some racial groups being superior (and more desirable) in comparison to others (Allen, 2013; Bayor, 2011; Ellis & Abrams, 2009, p. 388-395; Leonard, 2005). While the full implementation of eugenics in Germany served as a wake-up call that ended the formal movement in the United States, echoes of eugenics can still be heard in calls for reproductive limitations connected to social services and reactions to immigration and population shifts (Bayor, 2011, p. 60-61).

This represents an extremely incomplete list of racial and ethnic bias and discrimination in U.S.

history. It also does not address similar challenges related to religion, sex/gender, sexuality, and disability. However, none of the events described above are ancient history. Japanese internment, Indian boarding schools, the Tuskegee Experiment, and the U.S. Eugenics movement are all recent enough that not only the grandchildren and children of those affected live among us, but those with direct experience are still alive to bear witness. When members of oppressed groups are told that prejudice, intolerance, and discrimination are a thing of the distant past, personal and family history say otherwise.

Recent & Current Context

Our challenges in dealing with our own diversity continue as our historical struggles are either mirrored or repeated in current issues and national headlines. Equality related to sex and gender was a focal point of the 2016 election and its aftermath (Stolle, 2017). Rights related to sexuality and gender identity are hotly debated at the local, state, and national level (Duvall, 2017). Prejudice based on ethnicity and religion dominate the discussion of immigration bans as the refugee debate of 2015-2016 (Fernandez, 2016) has morphed into the travel ban battles of 2016-2017 (Richer, 2017), with echoes of Japanese internment (O'Connor, 2017). Racial discrimination and perceptions of it are highlighted by, but in no means limited to, the Black Lives Matter movement and the various reactions against it (Ross & Lowery, 2017). Even a plan for a cross-national World Cup in North America in 2026 that would be shared between the United States, Canada, and Mexico has required discussions of U.S. policy related to diversity because of the possibility that President Trump's travel bans would

impact teams that qualified for matches in the U.S. (Smith, 2017).

As a nation, we spent eight years debating what the election of Barack Obama meant from a race relations perspective (Editorial Board, 2017; Welch & Sigelman, 2011). We are now debating what the candidacy, nomination, and election of Donald Trump means from a race relations perspective (Douglas & Harrell, 2017; Savransky, 2017). Arguments that race no longer matters have never been convincing, and now it is an argument that few could seriously support. The most obvious conclusion at this point is that the U.S. has not reached a point where prejudice, discrimination, and racism are a thing of the past.

Growing Interest

Not only are issues related to our challenges in dealing with diversity current, but literature searches show an increase in both peer reviewed and popular press attention to issues of diversity and discrimination (see Table 1). I used three search terms, "White privilege," "institutional racism," and "microaggression" in selected databases in EBSCOhost, using a search date-range of 2001 to 2017. What emerged clearly suggests that the ideas of race and discrimination have a growing place is our cultural consciousness and discourse.

Table 1

Number of Search Results for Terms Related to Diversity as of May 23, 2017

	White Privilege		Institutional Racism		Microaggression		
	Academic	Popular	Academic	Popular	Academic	Popular	Total for range
2001-2010	278 (27.8)	60 (6)	220 (22)	311 (31.1)	113 (11.3)	none	982 (98.2)
2011-2015	267 (53.40)	183 (36.6)	121 (22.2)	255 (51)	406 (81.2)	32 (6.4)	1264 (252.8)
2016	34	178	15	79	129	21	456
2017 (through 5/23/17)	5 (12)	88 (211.2)	3 (7.2)	32 (76.8)	55 (132)	48 (115.2)	231 (554.4)

Note. All searches utilized EBSCOhost. Academic searches included *PsychINFO*, *PsychARITICLES*, and *ERIC*. Popular Press searches included *Newspaper Source Plus, Newswires,* and *Web News*. Parentheses contain 1 year equivalents for direct comparison with 2016.

While there are limitations to this approach, such as duplicated results, false positives, and false negatives, the searches do demonstrate an increase in interest in White privilege and institutional racism (adjusting for the decreasing amount of time represented in each descending row) in the popular press, with an even larger relative increase in interest in microaggressions, while academic publications on White privilege and institutional racism are decreasing as publications related to microaggressions increase.

Part of the larger increase in microaggression may be due to microaggressions including other demographic divisions beyond race and ethnicity. I believe that this demonstrates further evidence for the relevance and importance of microaggressions as a topic of research and discussion. If the general public and popular press are engaging with this topic, the academic arena should continue to contribute to the discussion.

Institutional Racism & White Privilege

In addition to being areas of growing interest in the U.S. social discourse, institutional racism and White privilege are the necessary beginning points for a discussion of microaggressions. A system or institution that directs benefits in one direction while denying those same benefits in other directions is inherently unjust, and any unjust system must lead

to unearned privilege (Neville, Worthington, & Spanierman, 2001, p. 260).

I would be remiss not to point out that systemic heterosexism leads to heterosexual privilege, systemic gender bias leads to male privilege, systemic ethnocentrism leads to ethnic privilege, and systems that fail to recognize the potential of those with disabilities also confer unjust privilege (Sue & Sue, 2013). The concepts explored in the following paragraphs are primarily discussed in terms of racial bias and discrimination, but they can, and I would argue should be extrapolated to other forms of bias and discrimination.

Institutional racism is the pervasive pattern of prejudice and discrimination that, in its sum total, limits the most complete access to those in power while placing barriers or unjust requirements of acquiescence on those who are different along lines of race (Sue & Sue, 2013, p. 123; Utsey, Bolden, & Brown, 2001, p. 318). Institutional racism differs from the actions of individual racists in significant ways. First, while the stereotypical (individual) racist engages in intentionally aggressive behaviors against those of other racial groups, many of the actions that add up to institutional racism are not intentionally malicious or even consciously directed at those that they negatively impact. Second, the beneficiaries of institutional racism may not be aware of their own benefits or even have any direct contact with those who are being negatively impacted by institutional racism. And, finally, the overall impact of institutional racism is less overtly threatening while being more pervasively damaging (Sue & Sue, 2013, p. 123-124). For example, when loan policies or the implicit prejudice of a loan

officer benefit European American loan applicants, the European Americans who receive better loan rates or more rapid loan approval (and benefit) may never meet the non-European loan applicants who have a more difficult path to home ownership. While the recipients of the privilege may remain unaware, the impact would be widespread and difficult to confront directly.

The strong image of the individual racist in society, as opposed to institutional racism permeating society, complicates our discussions of race and prejudice. Sue and Sue (2013) point out that our usual view of racism committed intentionally by individuals in specific and identifiable situations may hide or distract from the more common institutional or systemic racism that is more harmful to members of minority groups across situations (p. 123). Sue and Sue also recognize that most people do not want to view themselves as racist or prejudiced and suggest that focusing on the overt, individual racist allows most European Americans to dismiss or ignore their own biases and behaviors as non-existent or insignificant in comparison (2013, p. 124).

If some (those who are not perceived as being of European descent) are negatively impacted by institutional racism, then others (those who are perceived as being of European descent) must benefit. This is the most clear and direct form of White privilege (D'Andrea & Daniels, 2001, p. 261-269). There is, however, a second component of White privilege that is less obvious but more central to the arguments of this article. White privilege includes the ability to ignore institutional racism and insist that White privilege itself does not exist. Being able to ignore,

dismiss, or truly believe that privilege does not exist comes from being the recipient of that privilege (Sue et al., 2008). Those who are negatively impacted by institutional racism are less able simply to go through life believing that everything is fair (D'Andrea & Daniels, 2001, p. 273-274).

White privilege and the background of institutional racism in which White privilege is inherently embedded along with the prejudice upon which they are based are often expressed, transmitted, perpetuated, and maintained in subtle ways. These subtle expressions of racism and privilege are referred to as micro-aggressions (Sue et al., 2007; Sue et al., 2008; Sue & Sue, 2013).

Microaggressions

Sue et al. (2007) defined microaggressions as "brief and commonplace daily verbal, behavioral, and environmental indignities, whether intentional or unintentional, that communicate hostile, derogatory, or negative racial slights and insults to the target person or group" (p. 273). Sue and Sue (2013) expanded on this definition by explicitly including sexism and heterosexism as sources of microaggressions. Sue et al. (2007) also pointed out that microaggressions can be communicated through behavior or environmental conditions. Sue et al. (2008) along with Sue and Sue (2013) continued the exploration of microaggressions by focusing specifically on the confusion that may come with experiencing a microaggression ("what was my experience"), the lack of conscious intent that may accompany microaggression ("that isn't what I meant"), the cumulative impact of microaggressions to those consistently on the receiving end, and,

significantly, the ability of perpetrators of microaggressions to deny the existence of microaggressions.

Sue and Sue (2013) provided an extensive list (Table 6.1 of Sue & Sue) with 16 themes of microaggressions that provides specific examples of types microaggressions along with the subtle (or not so subtle) message transmitted (pp. 156-160). Specific microaggressions can be questions: "'Where are you from?'" (p. 156); compliments: "'You are a credit to your race'" (p. 156); and behaviors: "Someone helps you onto a bus or train, even when you need no help" (p. 159). All of them imply that a person's experiences, behaviors, abilities, or values are unusual or deviant and are not valued or welcomed. A briefer, previous version of this table may be found in Sue et al.'s 2007 article (pp. 276-277).

Not all microaggressions are necessarily equal in intent or impact. Sue et al. (2007) divided microaggressions into three subcategories. Microinsults are typically unconscious microaggressions that are "rude, insensitive, or demeaning." Microassaults are more often conscious "explicit racial derogations" that are "meant to hurt the intended victim." Finally, microinvalidations are typically unconscious and "exclude, negate, or nullify the psychological thoughts, feelings, or experiential reality of a person of color" (Figure 1, p. 278).

As Sue and his coauthors (Sue et al., 2007; Sue et al., 2008; Sue & Sue 2013) pointed out, the subtle nature of each individual microaggression often leads to a dismissal of microaggressions as nonexistent or the resignation of microaggressions to cases of miscommunication and overreaction. The effect of these

dismissals is an inability to address the powerful cumulative impact that the microaggressions have across the total experience of those subjected to continuous subtle attacks.

Those in power denying the existence of their own prejudice and invalidating the experiences of those who experience microaggressions may be the result of CoBRAs or Color-Blind Racial Ideology (Kohatsu et al., 2011; Neville et al., 2000; Neville et al., 2013; Zou & Dickter, 2013).

CoBRAs

Within multicultural psychology, and multicultural education in general, there is extensive writing on the idea of just ignoring prejudice so that it will go away. One of the main areas for this research is the concept of CoBRAs, which are the values expressed by those who claim to see all people as the same without acknowledging, or even noticing, racial identity (Kohatsu et al., 2011; Neville et al., 2000; Neville et al., 2013; Zou & Dickter, 2013).

Human experience can be viewed on three levels (Sue & Sue, 2003, p. 10-14). The Universal Level contains those similar experiences and attributes which all humans share, the Group Level includes similarities (and differences) based on the different groups (including, but not limited to, race, ethnicity, gender, & sexual orientation) to which we belong, and the Individual Level contains our uniqueness that we share with no one. Color blindness and denial of cultural impacts on experience (including prejudice, discrimination, and oppression) occur when the universal level and the individual level are used as arguments to negate or ignore the group level. This

means that when we "only see people," we are using the universal level to avoid the group level (including race), while pointing out that "we are all different" is using the individual level to justify color-blindness (Sue & Sue, 2007, p. 14-15).

Sue and Sue (2013) included Color Blindness as a specific theme of microaggression: "'When I look at you, I don't see color.' 'America is a Melting Pot.' 'There is only one race, the human race.' (p. 157)" that either denies race, denies experience, or demands acculturation. Sue et al. (2007) classified color blindness as an often unconscious microaggression of the micro-invalidation variety (Figure 1, p. 278). Therefore, CoBRAs are simultaneously a type of microaggression when acted upon and a passive reason that other microaggressions may go unchallenged, unacknowledged, or unnoticed.

CoBRAs are most likely to be endorsed by those of the majority culture from a racial perspective (Neville et al., 2013). Claiming not to notice racial differences is virtually impossible if you are among those being subjected to differential treatment based on race. CoBRAs present challenges that are directly related to microaggressions and systemic racism. According to Neville et al. (2013) when a color-blind racial ideology is adopted by members of racial minority groups, the result is internalized racism and self-blame for experiences of discrimination. However, when European Americans adopt CoBRAs, the result is color-evasion and power evasion. By refusing to acknowledge color or privilege, European Americans can reduce guilt while experiencing antagonistic attitudes toward members of racial and ethnic minority groups by blaming them for the continued discussion of

race. These challenges, contrary to the expressed beliefs of those who endorse CoBRAs, make resolution of prejudice in our society more difficult.

CoBRAs can also contribute to a lack of trust between those of different cultural backgrounds (Arredondo & Abdullah, 2017). Those who express CoBRAs probably believe that they are demonstrating a more highly developed view of race and a more embracing approach to diversity (Neville et al., 2013). The opposite is true. Those who endorse CoBRAs tend to have a lower awareness of and value for issues related to diversity (Burkard & Knox, 2004; Neville et al., 2000; Neville et al, 2013; Wang, Castro, & Cunningham, 2014). Working from a social psychology perspective, Richeson and Nussbaum (2004) found that those who utilized a color-blind approach (in contrast to a multicultural approach) demonstrated more racial bias.

How can we accept each other if we refuse to see each other? How can we truly accept someone if we refuse to acknowledge different values, experiences, and traditions that are part of their identity? Those who espouse CoBRAs are telling those of different racial identities that they are expected to pretend that we are all the same to avoid the discomfort of admitting that we are different (Sue & Sue, 2013, p. 157). Instead of representing higher development and advanced acceptance, CoBRAs are perceived by members of racial and ethnic minority groups as a lack of authenticity and openness to any real connection.

Finally, CoBRAs are obstacles to addressing existing prejudice and discrimination from others. If a manager, supervisor, administrator, or educator claims not to see differences based on race, then how can that authority figure recognize or acknowledge

when an employee, supervisee, colleague, or student is being discriminated against due to race or is being subjected to microaggressions (Atwater, 2008; Burkard & Knox, 2004; Offermann et al., 2014; Wang, Castro, & Cunningham, 2014). If a person cannot acknowledge that race impacts experience, then the negative impacts of prejudice cannot be addressed.

Our basic communication patterns and reactions to others have been linked to CoBRAs. Zou and Dikter (2013) found that CoBRAs predicted how European Americans would respond to ambiguous racially charged comments; those with higher levels of color-blindness were more likely to believe that people were overreacting to comments with subtle racial insults. Tynes and Markoe (2010) examined interactions on social networks. They found that participants with higher CoBRA levels were less likely to recognize offensive racial material in social network posts and that higher CoBRA levels predicted a lower likelihood of confronting racist content when it was recognized.

More situation-specific research related to CoBRAs has been conducted across disciplines. The effects of CoBRAs held by counselors (Burkard & Knox, 2004; Neville et al., 2001; Sue et al., 2007; Sue & Sue, 2013), teachers (Atwater, 2008; Wang, Castro, & Cunningham, 2014), college students (Neville et al., 2014; Neville et al., 2011; Poteat & Spanierman, 2012; Worthington et al., 2008), and managers (Offerman et al., 2014) have been explored.

Burkard and Knox (2004) found that therapists who demonstrated high levels of CoBRAs were lower on empathy for all clients, had a lower awareness of cultural challenges, and were more likely to assign

responsibility for solutions to problems to African American clients than to European American clients. Sue et al. (2007) described multiple ways that CoBRAs may lead to less trust and a less helpful therapeutic relationship, including blaming clients for their problems, dismissing possible cases of discrimination, and minimizing the experiences of those who are from racial or ethnic minority groups (p. 280-281). Also, Sue and Sue (2013) explained how Color Blindness can lead to blaming clients (p. 119), denying experience with a demand for acculturation (p. 157), and believing that race is not an important part of experience (p. 170).

In arguing that race still matters in schools and in teacher training, Atwater (2008) connected previous research to suggest that observed differences in teacher opinions of students (race predicts level of intelligence or potential) and approaches to teaching (especially attempting to change the values of ethnic minority students) could be related to color-blind approaches of teachers promoted by teacher education and school policy. Also, Wang, Castro, and Cunningham (2014) found that color blindness could help explain relationships between other variables (such as perfectionism and individualism) and cultural diversity awareness. In short, their study demonstrated that CoBRAs could help explain why some teachers have less cultural sensitivity when working with students from racial and ethnic minority groups.

How college students view and react to campus climate and events is also influenced by CoBRAs. Lewis, Neville, and Spanierman (2012) found that higher levels of color-blindness predicted lower levels of social justice attitudes. Additionally, Poteat and

Spanierman (2012) found that color-blind racial ideology predicted higher levels of racist ideology and interacted with other predictors of racial bias. Worthington et al. (2008) demonstrated that higher levels of color-blindness predicted a more positive rating of general campus climate, suggesting that those who endorse CoBRAs at a higher level will be less likely to recognize hostile environments when they exist. Specifically, Neville et al. (2011) found that lower levels of CoBRAs predicted more support for discontinuing the use of a racialized (American Indian) university mascot while higher CoBRA scores predicted a negative reaction to the decision and general support for the use of a stereotyped college mascot.

Poteat and Spanierman (2012) recommended explicitly addressing CoBRAs among college students as a way of decreasing racist attitudes (p. 770). Lewis, Neville, and Spanierman (2012) found that campus diversity experiences did predict changes in social justice attitudes and a decrease in color-blind racial ideology. Adding further credibility to Poteat and Sapneriman's (2012) recommendation, Neville et al. (2014) reported on a longitudinal study of college students and CoBRAs that demonstrated a general decrease in CoBRAs as time in college increased and that the decrease in CoBRAs was greater for students who enrolled in courses specifically addressing diversity.

Offerman et al. (2014) examined the connection between color-blindness and discrimination in the workplace. In addition to finding that European Americans in the workplace were more likely to endorse CoBRAs (p. 504), they found that CoBRAs predicted a lower perception of microaggressions and

institutional discrimination. As suggested above, managers with higher levels of CoBRAs seem less likely to recognize discrimination in their organizations, and are, therefore, less likely to be able to support employees who are experiencing discrimination.

Conclusion

CoBRAs apply directly to prejudice and discrimination based on race by being both product of institutional racism and White privilege and a perpetuating factor in them. A parallel process can apply to gender, sexual orientation, ethnicity, religion, disability, and other cultural factors. If we refuse to embrace our differences, then we cannot truly accept each other. If we can't see difference in experience, then we will never be able to fully understand when that difference includes prejudice, discrimination, and oppression.

However, when we choose to truly explore our differences and really see others with their identities and experiences intact, then we can move toward true acceptance and valuation of diversity. Open exploration and recognition is part of the solution, not the source of our problems. Recently a student asked me if openly discussing differences quit being awkward. From my experience, I had to say no, but that seeing that it *does* make a positive difference makes it easier to push yourself into that awkward but important area.

The articles contained in this issue of the *AIJ* come from different perspectives and address different types of microaggressions, including but not limited to microaggressions based on race and ethnicity. The topics presented may not be comfortable, but for true

progress these conversations are an important step. As Poteat and Spanierman (2012), Lewis, Neville, and Spanierman (2012), and Neville et al. (2014) found, exposure helps us move past color-blindness and toward a more authentic acceptance.

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