
IN THE
Supreme Court of the United States

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NINA RINGGOLD et al.,
Petitioners,
v.

MYER SANKARY, as Trustee, etc. et al,
Respondent.

◆

On Petition For A Writ Of Certiorari To The
California Court of Appeal For The Second Appellate District,
Administrative Presiding Justice

◆

ON PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Does California Code of Civil Procedure § 391.7, facially and as applied to targeted persons and/or represented defendants, in the first instance in the state appellate courts, without an evidentiary hearing or mandatorily required statutory due process motion, violate the First, Fifth, and Fourteenth Amendment of the Constitution? And whether such an extraordinary method of imposing a prefilings order, that completely blocks any possible challenge by appeal, been used as a form of voter intimidation and retaliation in order to discourage implementation of a special judicial election and/or to cause a forfeiture of federal constitutional claims.

PARTIES TO THE PROCEEDINGS

The parties to this proceeding are as follows.

The petitioners are Nina Ringgold in the capacity of named Trustee of the Aubry Family Living Trust; Named Trustee of the Aubry Family Testamentary Trust; and Named Executor of the will of Robert Aubry; and Justin Ringgold-Lockhart as within the class of Beneficiaries in the Trust Instrument Art VI A (5)(c).

The respondents are Myer Sankary; Oldman, Cooley, Sallus, Gold, Birnberg & Coleman, LLP; Andrea Lyn Rice Esq.; Eric Yamamoto; Esq. ; and Marc Edwards, Esq.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners Nina Ringgold and Justin Ringgold-Lockhart respectfully request that a writ of certiorari issue to review the judgment of the California Court of Appeal, Second Appellate District, Administrative Presiding Justice.



OPINIONS BELOW

The opinion sought to be reviewed is of the California Court of Appeal, Second Appellate District, Administrative Presiding Justice dated October 24, 2017 in the case of *Nina Ringgold et al v. Myer Sankary et al.* (App. 2-4). The California Supreme Court as the state court of last resort denied discretionary review on January 24, 2018. (App. 1).



JURISDICTION

The jurisdiction of this Court is invoked under the provisions of Title 28, United States Code, Section 1257 (a). The California Court of Appeal is a state intermediate appellate court. California Constitution Article VI Sections 3 and 14 prohibits the Court of Appeal from rendering a decision

concerning the merits of an appeal unless it conducts “itself as a 3-judge court” and it acts to “determine causes” “in writing with reasons stated”. (App. 13). Since the California Supreme Court denied discretionary review of the January 24, 2018 order of a single administrative justice of an intermediate state appellate court on the merits of an appeal without specification of the reasons in accord with the requirements of the state constitution, the order functions as the decision of the highest court of the state in which a decision could be made. See American Ry. Express Co. v. Levee, 263 U.S. 19, 20-21 (1923), Cohen v. California, 403 U.S. 15, 17-18 (1971), Michigan-Wisconsin Pipe Line Co. v. Calvert, 347 U.S. 157, 159-161 (1954).



CONSTITUTIONAL AND STATUORY PROVISIONS INVOLVED

The First Amendment to the United States Constitution provides, in pertinent part: “Congress shall make no law... abridging the freedom of speech, or of the press, the right of the people peaceably to assemble, and to petition the Government for redress of grievances.”

The Fifth Amendment to the United States Constitution provides, in pertinent part: “No person shall...be deprived of life, liberty, or property,

without due process of law; nor shall private property be taken for public use, without just compensation.”

The Fourteenth Amendment of the United States Constitution provides in pertinent part that “[n]o State shall...make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

The following constitutional and statutory provisions of the State of California are involved in this petition and are set out verbatim in the appendix filed herewith. (App. 20-25). The provisions include: California Constitution Article VI §§ 3, 10, 14, 17, & 21; California Probate Code § 15602 (a)(3); uncodified Section 5 of California Senate Bill x211; California Code of Civil Procedure §§ 391.1-391.4 & 391.7 in effect through December 12, 2011; and California Code of Civil Procedure §§ 391.7 & 391.8 in effect through January 1, 2012.



STATEMENT OF THE CASE

Petitioners contend that a specific provision of the California Vexatious Litigant Statute, California Code of Civil Procedure (“CCP”) § 391.7 violates the First, Fifth, and Fourteenth Amendment of the United States Constitution. They also claim that CCP § 371.7 is being used as a form of voter intimidation, viewpoint discrimination, and to intentionally cause forfeiture of well-founded federal constitutional claims.

This petition presents solely questions of law. As discussed in more detail herein, the state appellate court cannot or has consciously determined that it should not resolve the legal issues raised by petitioners in light of the pending voting rights case in the federal court and California Supreme Court Committee on Judicial Ethics Opinion, CJEO Formal Opinion 2017-011 (May 2, 2017). This federal case is seeking a special judicial election after a court declaration that section 5 of Senate Bill x211 is unconstitutional. (App. 20). This uncodified statutory provision is in conflict with federal law and the United States and California Constitutions. The

federal case also seeks to implement institutional and political reforms in the state courts of record.¹

The pertinent facts are undisputed, were not opposed or contested, by the respondents. A critical statutory challenge is that application of CCP § 391.7 in the first instance in the state appellate court, against targeted persons associated with the voting rights case, is intended to impair the ability to present federal claims on appeal. CCP § 391.7 has been imposed directly or indirectly against this group as a method of retaliation and viewpoint discrimination. More importantly the petitioners claim that the statute is being used to prevent full presentation of the record on appeal of the federal constitutional claims in order to frustrate the ability to obtain direct review in this court.

The appellate court clerk's notice dated December 5, 2016 under CCP § 391.7 (c) stayed all proceedings thereby officially prohibiting preparation of the items designed by appellants on appeal, including reporter's transcripts, clerk's transcripts, exhibits, and appendices. Hence by official court action and specific provision of the challenged state statute, after paying a filing fee or obtaining a fee waiver order, an appellant may not present the record on appeal or a brief so that a qualified and

¹ See *Ringgold et al v. Brown et al* (USCA Cal.9th 17-16269). (Page 1-3 of Appellant's Opening Brief (Dkt # 23), Second

constitutionally constructed appellate court can determine the merits of an appeal.

This court should resolve the question of whether CCP § 391.7 is unconstitutional either facially or as applied to petitioners. This necessarily impacts members of the voting rights case who have indirectly been determined to be vexatious litigants by association.

A foundational point is that an unconstitutional order determining vexatious litigant status entered simultaneously with a prefiling order pursuant to CCP § 391.7 in the first instance in a state appellate court absolutely precludes represented defendant appellants from obtaining state appellate review of the offending prefiling orders unlike litigants who have had the benefit of the mandatory statutory due process motion filed by a defendant in the trial court. (See CCP 391.1 and 391.2 App. 20-21).

The October 24, 2017 order of the administrative presiding justice states: “Appellant Ringgold’s Response was received and filed on January 11, 2017. No Opposition was received from Respondents. [¶] The Court has read and considered the Appellant Ringgold’s Response to the Court’s Notice to Parties and *the available record* in this case and thereby rules as follows:....” (emphasis added). Although a full record designated by petitioners

which supports the merits of their appeal, given the official stay imposed by the state appellate clerk under CCP § 391.7, the reporter's transcript, appendix and brief based on the designated record cannot be filed. Preparation of the record is halted by statutory demand. This is a structural procedural flaw.² If the initial vexatious litigant decision is also made in a state appellate court in the first instance there is no right to appeal the initial adverse labeling. Essential to the California Vexatious Litigant Statute is the mandatory statutory due process motion filed in the state trial court and the right of review in accord with appeal procedures of state statutes and of the California Constitution. If the initial vexatious litigant order and prefiling order are simultaneously entered in the state appellate court there is no ability, to present a record as to how the how the prefiling order is applied and enforced.

The omission of the mandatory statutory due process motion filed against a defendant in the trial

² Here the record can only consist of: (1) a notice of appeal, (2) the appellant's notice of designating record on appeal, (3) the clerk's notice effectuating a stay, (4) appellants' case information statement, (5) appellants' certificate of interested parties identifying the judges and justices and county which have an interest in the appeal and the pending federal voting rights case, (6) appellant's unopposed response to the clerk's notice, (7) the administrative presiding judge's order dismissing the appeal pursuant to CCP § 391.7 (c), (8) appellants' petition for review in the California Supreme Court, (9) and the California Supreme Court's denial of the petition for review.

court with the corresponding right of review is the procedural method adopted in the state appellate court to use CCP § 391.7 to cause forfeiture of federal constitutional claims; to penalize persons that lodge legitimate grievances regarding judicial conduct, court policy and procedures, or discrimination; and to bar any effective challenge to the unconstitutional provisions of the CCP § 391.7. This can be shown by a limited yet powerful example in this case.

Myer Sankary (“Sankary”) filed a verified petition in the trial court admitting under penalty of perjury that he had been appointed by the state probate court as a trustee *without the required mandatory statutory bond*. (App. 14-16, Resp. to OSC p. 4-5, 12). A bond is mandatory when a state court appoints a person as a trustee of a private trust and that person is not named as a trustee in the trust instrument. The bond cannot be waived unless there is a compelling circumstance (i.e. when all adult beneficiaries consent). (App. 19). If the bond is not made at the time of appointment the proceedings are void.³ CCP § 391.7 direct the clerk to enjoin necessary preparation of the record on appeal (which the appellant paid for) and allows single justice to

³ See Texas Co. v. Bank of America Nat. Trust & Savings, 5 Cal.2d 35 (“An attempted sale of land by one who assumes to act as administrator, but who has not been regularly appointed, and who has not given the bond and qualified and received letters as such, is void, even if the sale is ordered and approved by the probate court”).

determine the merits of an appeal without the designated record or brief based on the appellate record. So, as shown here CCP § 391.7 officially prevents petitioners from presenting the verified admission of Sankary. Sankary was been liquidating one of the primary assets of an African American family primarily to pay himself when his court appointment is void and he does not have sufficient bond to cover the devastating losses.

This court should resolve the issue of whether CCP § 391.7 is constitutional either facially or as applied to petitioners particularly since this issue impacts not only the petitioners, but also all members of the pending voting rights case. The nature and extent of the record will not change as to persons challenging use of the California Vexatious Litigant Statute in the first instance in a state appellate court.

In addition to the inability to present evidence and the appellate record to demonstrate merit an appeal, CCP § 391.7 is applied in the state appellate court when appellate jurisdiction is completely lacking. California state courts of appeal have appellate jurisdiction when superior courts (trial court) have original jurisdiction, and in certain other cases prescribed by statute. Like the state supreme court, courts of appeal have original jurisdiction in habeas corpus, mandamus, certiorari, and prohibition proceedings. (Cal. Const ArtVI § 10,

App. 17). The superior court does not have jurisdiction to make an initial vexatious litigant determination without the mandatory statutory due process motion filed by a defendant or court itself. (App. 20-21, CCP § 391. & 391.2). The defendant has the burden to prove that the plaintiff is a vexatious litigant. The parties have the right to present evidence, call witnesses, and a right to appeal any unfavorable decision. Since the court of appeal does not have original jurisdiction, when the mandatory statutory due process motion is not filed or the superior court judge has not acted on his/her own motion, the court of appeal does not gain appellate jurisdiction. The court of appeal cannot act as a trial court or court of first instance when there does not exist original jurisdiction. See Sanborn v. Pacific Mut. Life Ins. Co., 42 Cal.App.2d 99 (1940).

With respect to each petitioner there was never a statutory due process motion filed in the superior court or the court of appeal by a defendant or court itself. Petitioners never received notice of what case(s) allegedly brought their conduct within the realm of the California Vexatious litigant statute. In fact as to petitioner Lockhart the trial court entered an order finding that Lockhart was *not* a vexatious litigant and found that he was represented by counsel so the statute did not apply. Sankary did not appeal this favorable decision as to Lockhart. Disregarding the lack of appellate jurisdiction, CCP § 391.7 was applied in the first

instance in the state appellate court without the existence of the mandatory required statutory due process motion labeling Lockhart as a vexatious litigant and entering a prefiling order which cannot be appealed. As to Ringgold as an appeal was pending, a single justice issued an order to show cause under a caption as if a writ proceeding was pending. No writ proceeding existed and the order to show cause had no listing of cases purportedly bringing Ringgold as an attorney representing a defendant or a trustee within the scope of California Vexatious Litigant Statute. The statute does not require that a defendant or attorney disprove they are not a vexatious litigant.

As to petitioner Ringgold the order to show cause cited to CCP §§ 391 (b)(1), (b)(2) and CCP § 391.7 (a). After a response was filed, as to those statutory provisions which had no application to petitioner Ringgold, then a decision was rendered citing to CCP § 391 (b)(3). However no notice had been provided to address this provision. Even if notice had been given CCP § 391 (b)(3) does not apply and no statutory due process motion had been filed in the court of appeal.

CCP § 391.7 has been applied in a retaliatory manner in order to impose a prefiling order against targeted persons with cases in the state court who are associated with the pending federal voting rights case. Although a state is not required to provide a

right to appellate review, procedures which adversely affect access to an appellate process which the State has chosen to provide requires close judicial scrutiny. See, e.g. Griffin v. Illinois, 351 U.S. 12 (1956). An appeal cannot be granted to some litigants and capriciously or arbitrarily denied to others without violating the Equal Protection Clause. Smith v. Bennett, 365 U.S. 708 (1961). For plaintiffs who have unsuccessfully opposed a statutory due process motion in the trial court under CCP § 391.1-391.2 there is an opportunity to challenge the resulting order by appellate review with a proper record on appeal. However, if a vexatious litigant is determined in the first instance in the court of appeal and there has never been a statutory due process motion, there is no evidentiary hearing and there is no opportunity to challenge the determination by appellate review in any fashion whatsoever.

The purpose of section CCP § 391.7 of the California Vexatious Litigant Statute is to curb unmeritorious and harassing litigation. It is not designed to “snuff out” unpopular views, legitimate grievances of discrimination or misconduct, or to prevent review of federal constitutional claims in this court. Its purpose does not include entry of prefilng orders to conceal an institutionally supported system of taking of private property without the mandatorily required statutory bond in state probate court proceedings or the lack the

essential element of subject matter jurisdiction. The California Vexatious Litigant Statute does not apply to prevent attorneys from practicing their profession, cannot bar access to the court to third parties whose rights depend on access to the court by persons acting in a representative capacity (i.e. attorneys, executors, trustees, guardians, conservators. A prefiling order is an extraordinary remedy that should be narrowly tailored and rarely issued. See Moy v. United States, 906 F.2d 467, 470 (9th Cir. 1990).

Petitioners complain that the probate department of the Los Angeles County Superior Court has been operating without subject matter jurisdiction and taking the private property of substantial numbers of African American families. They contend African American families in the County of Los Angeles primarily use private inter vivos trusts as an estate planning method to avoid interaction with the court in light of historical discrimination in the courts. They further contend that the state probate court is improperly devising de facto administration of decedent estate procedures without admission of a will to probate or notice to all known and reasonably ascertainable heirs. In order for the state court to obtain subject matter jurisdiction to initiate a proceeding to administer a decedent's estate there must be publication of notice. Constitutional notice is also required as set forth by

this court in Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 309, 318 (1950).

Petitioners claim that the probate court and Sankary created a de facto administration of a decedent's estate procedure designed to divest a younger generation of heirs and to allow court affiliates, adjuncts, and probate court "insiders" to amass fees higher than the statutory limit under Probate Code § 10810.

General Background

Adversely impacted by restrictive covenants in Los Angeles County in the 1940's, Mary Louise Aubry and Robert Aubry ("the Aubrys") became committed to residing in the predominately African American community of South Central Los Angeles. They wisely made investments in income property and other significant income producing investments. During their lifetime the Aubrys lived in the apartment buildings they owned and their properties remained free from any lien or mortgage. Since the Aubrys did not have children they devised an extremely detailed family trust which was to provide for income for family members and their children. After Ringgold graduated from Harvard Business School and Columbia law school she was named the youngest successor trustee.

Under the terms of the trust, after the death of Robert Aubry the successor trustees are to divide the trust. The trust mandates that the trustee is to pay beneficiaries who are over the age of 21 net trust income in quarterly or more frequent installments. At the age of 25 the beneficiary has the discretion to elect to withdraw the entire balance of their portion of the trust. For beneficiaries who have children, when the child reaches the age of 21 he is entitled to distributions of trust principal for his support, health, maintenance and education up to the entirety of the parent's distributive share within the discretion of the trustee. A child is also the successor to the parent's distributive share of the trust. Lockhart is within a class of beneficiaries of a younger generation who are over the age of 21 and entitled to current access to trust principal and to a future interest in both trust principal and income. Lockhart's current interest in the trust requires the exercise of discretion of the trustee appointed and named in the trust instrument. The design and intent of the trust was to increase the base of wealth and income production through expansion of investments for future generations.

After the deaths of the Aubrys on March 6, 2003 Ringgold and Mary Louella Saunders ("Saunders") as co-trustees and beneficiaries filed two separate petitions against co-trustee Eunice Summers ("Summers") to assert claims of elder abuse, to recover trust assets Summers had

misappropriated, to determine the validity and interpretation of trust provisions, and to obtain other relief. On October 14, 2003 two separate orders on the separate petitions of Ringgold and Saunders were entered confirming the trusteeship of Ringgold and Saunders and permanently suspending Summers as a co-trustee. The October 14, 2003 orders were final adjudications on the issue of trusteeship and no appeal was taken from the orders. Subsequently, Saunders had a stroke and pursuant to the terms of the trust she appointed Ringgold as sole trustee.

Later under the state court enforced a “trustee qualification rule” that a trustee of the private inter vivos trust had to be a lawyer or retired judge known to the judge and entered an order dated March 10, 2005 order that appointed Sankary as a trustee when no petition had been filed to remove the named African American trustees specified in the trust. A private inter vivos trust is not “subject to administration” by a court. Although the actual case before the court is a private inter vivos trust intended to produce income for beneficiaries until the approximate date of termination in 2023, there was a seizure and divestment of the private inter vivos trust and the power of appointment and discretion of all named trustees and executors identified in the trust instrument and will of the Aubrys.

Although Sankary was not named or appointed as an executor or a testamentary trustee, he filed a petition to determine distribution rights under Probate Code § 11700 and to petition to sell real property under Probate Code § 9611. Under Probate Code § 9611 only a personal representative may petition for instructions and any petition for instructions may only be sought “where no other procedure is provided by statute”. Sankary’s petition claimed he needed instructions to sell the primary income producing assets of the trust because he was “in doubt as to the appropriate procedure ... and there was no known Code procedure under which Petitioner could otherwise proceed.” After Sankary, without bond, was allowed to adopt a liquidation procedure as if the trust was a proceeding to administer a decedent’s estate he had the court approve a partial settlement agreement among a segment of beneficiaries.

Later Lockhart (who had no notice of the proceedings and was away at college) advanced to the age of 21. Pursuant to the terms of the trust he became entitled to current distributions from Ringgold’s share of the trust for his health, maintenance, and education. Urgently needing distributions for his college education Lockhart made repeated attempts to obtain distributions as designated in the trust instrument from Sankary without success.

Again, without notice to Lockhart, at the height of the mortgage crisis Sankary began liquidating the primary unencumbered and revenue generating real estate assets of the trust in a devastating market decline. He deposited all sales proceeds into declining accounts of Merrill Lynch. Petitioners filed objections to the sale and a formal constitutional rights violation petition raising federal constitutional claims. The court overruled the objections and request for an injunction but delayed ruling on the constitutional rights violation petition for almost a year. In the meantime Sankary repeatedly filed petitions to liquidate both income and principal of the trust without bond, to primarily pay his fees, and when any distribution was made it excluded the petitioners. There have been constant reoccurring petitions filed by Sankary and there can never be entry of a final judgment until all the assets of the private trust are depleted.

Petitioners were unaware that at the time they filed their constitutional rights violation petition in 2007 in the Aubry Family Trust proceedings that the California Judicial Council Probate Task Force was about to publish a report and recommendations due to massive complaints in the probate department which were the subject of investigative series of articles by the Los Angeles Times.⁴ Petitioners were seeking, in part, injunctive

⁴ See Los Angeles Times, Guardians for Profit Series (November 13-16, 2005, December 21, 2005).

relief and claiming that that there was systemic divestment of property; devices to prevent African American trustees and executors from protecting property, and lack of compliance with mandatory bonding requirements. It was only after this constitutional rights violation petition was filed that the California Vexatious Litigant Statue was used to prevent a right of appellate review and as a method to cause a forfeiture of federal claims. Also, after the constitutional rights petition was filed, in a retaliatory manner, clients of the law office of petitioner Ringgold were deemed “vexatious” when they were represented by counsel and absolutely no statutory due process motion had been filed against those clients under CCP § 361.1-361.2. (App. 20-21).

The probate department had been charging graduated filing fees as a percentage of an estate or trust which has now been found unconstitutional. The department was the cash cow of the Superior Court and fees collected were used to offset the dual compensation which the judges of the courts of record were receiving as employees of the County. However, California Constitution Art VI § 17 prohibited judges of the courts of record from acceptance of public employment or office from the County of Los Angeles. (See Cal. Const. VI § 17 App. 18). Upon acceptance of the salary and benefits of the County of Los Angeles the judges were subject to constitutional resignation. *Id.* California Constitution Article VI § 21 mandates that there

must be a stipulation among the parties to proceed before a temporary judge who is a member of the State Bar. In 2008 California Government Code § 53200.3 was repealed. This statute had allowed the dual compensation structure to persist. Thereafter uncodified section 5 of California Senate Bill x211 (“Section 5 of SBX 211”) was enacted to provide retroactive immunity to judges of the courts of record for acts that violate federal law and the United States Constitution.

The California Commission on Judicial Performance has twice provided opinions that Section 5 of SBX 211 is unconstitutional.

Petitioner and clients of her law office filed the federal voting rights case in 2012 attempting to implement a special judicial election in time for the 2016 General Election, to obtain declaratory and injunctive relief, to have a grievance procedure established, to determine that the CCP § 391.7 was unconstitutional on its face and as applied to them in a retaliatory manner, and other relief.

Recent Events

On May 17, 2016 Sankary filed a sixth final account and report again to pay his fees. Although petitioner have on file a request for special notice, not notice of Sankary’s petition was given. In his verified petition he admitted he had been appointed

without bond. (App13-16). Petitioners filed a timely appeal from the order granting Sankary's petition. Although petitioners filed a designation of record and were defendants/respondents on the petition of Sankary and were represented by counsel, the state appellate court clerk erroneously served the December 5, 2016 notice under CCP § 391.7.

On May 2, 2017 the California Supreme Court Committee on Judicial Ethics rendered CFEO Formal Opinion 2017-011 which addressed when constitutional resignation could arise under California Constitution Article VI § 17 in a manner favorable to the plaintiffs in the voting rights case.

The administrative presiding justice dismissed the appeal of petitioners on October 24, 2017 without assignment to a constitutionally constructed court or reasons stated in accord with California Constitution Article VI §§ 3, 14 and without allowing the record on appeal or brief to be filed.

On January 24, 2018 the California Supreme Court denied the petition for discretionary review filed by petitioners.



REASONS FOR GRANTING THE WRIT OF CERTIORARI

Certiorari Should Be Granted Because The Method And Application Of California Code Of Civil Procedure § 391.7 In The California Appellate Courts Severely Impairs Meaningful Review Of Important Questions Of Federal Law, Severely Impairs Rights Guaranteed Under The First, Fifth, And Fourteenth Amendment, And Is In Conflict With Decisions Of This Court And The United States Court Of Appeals

The First Amendment right to “petition the Government for a redress of grievances” which includes the right to a review by appeal is “one of the most precious of the liberties safeguarded by the Bill of Rights”. BE & K Constr. Co. v. NLRB, 536 U.S. 516, 524 (2002) (quoting United Mine Workers v. Illinois Bar Assn., 389 U.S. 217, 222 (1967)).

Unquestionably appellate review of institutional factors that operate in the state probate courts which bar African American families of the right to inherit and to pass wealth to future generation of heirs is of national importance. Studies show that that 31 percent of African American children born to parents in the middle-income group have family income greater than their parents, compared to 68 percent of

white children in the same circumstance. Nearly half (45%) of African American children in the middle-income group fall to the bottom of the income distribution in one generation, compared to only 16 percent of white children.⁵ Here, an attorney and named trustee and representative beneficiary of the youngest class of African American beneficiaries sought review of the procedures and structural devices that operate in the state courts and cause a forfeiture of federal statutory and constitutional rights and that contribute to devastating losses of wealth. The defensive actions of petitioners are not vexatious but rather directly relate to the constitutional right to petition and to effectuate necessary institutional change and reform through appropriate and necessary appellate review.

A standard of strict scrutiny should be applied to procedural barriers made by rule or statute applied in the state appellate courts that chill or penalize the exercise of First Amendment rights and act to limit direct review in this court. “The consideration of asserted constitutional rights may not be thwarted by simple recitation that there has not been observance of a procedural rule with which there has been compliance in both substance and form, in every real sense.” NAACP v. Alabama ex rel. Flowers, 377 U.S. 288, 297 (1964). Whichever version of CCP ¶ 391.7 is applied the California

⁵ Julia Isaacs, *Economic Mobility of Black and White Families*, The PEW Charitable Trusts (November 13, 2007).

Vexatious Litigant Statute only applies to self-represented litigants and the prefiling requirement does not apply to any person who is a defendant.

The taking of private property without consent of the owner for the private use of another violates the Fifth and Fourteenth Amendment. See Wilkinson v. Leland, 27 U.S. 627, 658 (1829); Missouri Pac. Ry. Co. v. State of Nebraska ex rel. Board of Transportation, 164 U.S. 403, 417 (1896) (order of state court requiring railroad company to surrender a portion of its property as a site for an elevator use by individual for their own benefit was a taking of private property without due process of law). The African America trustees of the Aubry Family Trust never consented to the taking of the private property of the trust or to relinquish their ownership of the intangible property right in the power of appointment and discretion with respect to the trust. They did not consent to court appointment of a trustee without bond or to a trustee qualification rule that was in conflict with the express terms of the trust. The 2003 unchallenged judgments confirming their appointment under the terms of the trust and are governed under the doctrine of res judicata. See Oldfield v. Superior Court of the County of Los Angeles, 217 Cal. 581, 584 (Cal. 1933) (“A court is without jurisdiction to try issues which have become finally determined by former judgment”). Application of CCP § 391.7 to dismiss an appeal prior to briefing and preparation of the record

prevents meaningful review of federal constitutional claims of the discriminatory trustee qualification rules used in the state court as a method of divestment of an essential property right needed for economic mobility of African American families. (Compare qualification devices in voting rights context discussed in Northwest Austin Municipal Utility District Number One v. Holder, 129 S.Ct. 2504, 2521 (2009) (literacy tests, property qualifications, good moral character tests).

Fundamental to the Fourteenth Amendment right to due process of law is the opportunity to be heard. Grannis v. Ordean, 234 U.S. 385, 394 (1914). When a person is deprived of property in a manner contrary to the basic tenets of due process, the slate must be wiped clean in order to restore the petitioner to the position he would have occupied if due process had been accorded to him in the first place. Peralta v. Heights Medical Center, Inc., 485 U.S. 80, 86-87 (1988). Certiorari should be granted to address matters which directly impact the ability to seek review in this court based on application of a specific provision of California's vexatious litigant statute as applied in the first instance in the state's appellate courts.

A. The California Appellate Court's Application Of California Code Of Civil Procedure Section 391.7 Conflicts With Decisions Of This Court And The United Court Of Appeals

For litigants who have unsuccessfully opposed a statutory due process motion under CCP § 391.1-391.2 there is an opportunity to challenge the resulting order by appellate review. However, if a vexatious litigant determination is first raised in the an appellate court and there has never been the required statutory due process motion, there is no evidentiary hearing and there is no opportunity to challenge the determination by appellate review. The unequal treatment of similarly situated persons violates the Due Process and Equal Protection.

The Ninth Circuit in De Long v. Hennessey, 912 F.2d 1144 (9th Cir. 1990) held that a pre-filing order was improperly issued in violation of the Due Process Clause and the general rule of free access to the court when there was not proper notice and opportunity to heard, there was a lack of an adequate record for review, there is not a specification of the filings which were claimed to be frivolous or harassing, there was not a substantive finding of frivolousness of the cases filed, and when the order is not narrowly tailored. Ringgold, a practicing attorney and who had not initiated any litigation in propria persona in any court in the

United States well over seven years, and Lockhart who had not filed any case in propria persona in any court in the United States in his lifetime, are subjected to a pre-filing order in all courts in California. See *Moy supra* at 470-471. (“the court’s order is overly broad... and prevents Moy from filing any other claim based upon the facts and issues involved in [the case], but also prevents Moy from filing actions without leave of court based upon all other disputes in which he might be involved. ...”). Petitioners were never given a list of cases which would define the rationale why a pre-filing order was required or how they could be deemed “vexatious” under the statute.

1. The Statutory Procedure And Application Of CCP § 391.7 In The First Instance In The State Appellate Court Violates The Due Process Clause and Equal Protection Clause of the Fourteenth Amendment

In California a vexatious litigant is expressly defined as a person acting in propria persona who engages in specified acts. CCP § 391 (b). A vexatious litigant determination requires that a defendant file a motion showing that the plaintiff is a vexatious litigant and that there is not a reasonably probability that he will prevail in the litigation against the moving defendant.⁶ CCP § 391.1. On

⁶ Petitioners are the plaintiffs on the petitions of Sankary and in the de facto administration of a decedent’s estate that he

defendant's motion each party has a right to present written or oral evidence, the right to present witnesses, and to an evidentiary proceeding and the defendant has the burden of proof. No determination is to be made on the merits of the issues involved in the litigation. If the court determines there is no reasonable probability that the plaintiff will prevail, the plaintiff is required to furnish security for the benefit of the defendant. If security is not furnished as ordered the litigation is to be dismissed. When such statutory due process motion is filed the proceedings are stayed. CCP § 391.1- 391.6. Once a statutorily required due process motion is filed by a defendant and a vexatious litigant determination is made, the California Judicial Council places the person on a list which is circulated to the clerks of the state. Petitioners are on this list when there were never given notice of the cases which subject them to this list and no statutory due process motion had been filed by a defendant in the trial court with a right of review any unfavorable decision. See Shalant v. Girardi, 51 Cal.4th 1164, 1170 (Cal. 2011); Bravo v. Ismaj, 99 Cal.App.4th 211, 224 (2002) ("[i]f the plaintiff...has never been declared a vexatious in a California court, section 391.7's assumption the

established. See Wilson v. Pier 1 Imports (US), Inc. 411 F.Supp.2d 1196 (E.D. Cal. 2006). For a defendant to have standing to bring a motion for determination of vexatious litigant status "their righteous indignation must be bottomed on their own blameless conduct.:

plaintiff has already been declared vexatious creates a procedural vacuum.”).

On its face the statute in effect through December 31, 2011 did not apply to a justice of an appellate court. See CCP § 391.7 (eff 1/2/2012 at App. 22-24). The modifications made to CCP § 391.7 do not satisfy required due process concerns. The changes do not cure the barrier to appellate review as to an initial vexatious litigant determination, to cure the fact that application of the statute in the appellate court conflicts with Cal. Constitution VI §§ 3 & 14, and that it barriers review in this court of well founded federal claims. All persons who find themselves subject to the California Vexatious Litigant Statute should have access to the same appellate review procedures.

A state appellate court in general is not in a position to conduct a statutory due process motion. Without the required evidentiary proceeding filed by a defendant in the trial court as envisioned by the statute, when the appellate court issues an order to show cause without a listing of cases that is purportedly bringing a person with the scope of the statute requires the person to “disprove” they are not “vexatious” in an absolute vacuum. Certiorari should be granted to provide guidance on the method and manner, if any, in which the state appellate courts can apply vexatious litigant statutes.

2. The Due Process Clause Prohibits A State Appellate Court From Disregarding the State Constitution, And Applying CCP § 391.7 To Limit the Right to Meaningful and Proper Review In This Court

Assuming that the language of CCP § 391.7 could be retroactively applied to allow a presiding “justice” of an appellate court rather than a trial “judge” to make a prefiling determination, there are still due process concerns. Once a statutory due process motion results in a vexatious litigant determination, CCP § 391.7 permits a single presiding justice of a division or of the court to prohibit the filing of an appeal unless it appears to the single justice “that the litigation has merit and has not been filed for the purposes of harassment or delay.” A California appellate court’s application of CCP § 391.7 violates both sections 3 and 14 of Article VI of the California Constitution because the merits of an appeal can only be determined by a constitutionally constructed court and a decision as to the merit of an appeal must have written stated reasons. There is no legal basis for excluding CCP § 391.7 from the requirements of the California Constitution. See Carter v. Seaboard Finance Co. 33 Cal.2d 564, 579(Cal. 1949); Hotel Employees & Restaurant Employees Internat. Union v. Davis 21 Cal.4th 585, 602 (Cal. 1999) (“A statute inconsistent with the California Constitution is, of course, void.”).

Two qualified justices are necessary to render a decision on the merits in the California court of appeal. People v. Castellano, 79 Cal.App.3d 844, 862 (Cal. 1978). Allowing CCP § 391.7 to permit the merits of an appeal to be resolved directly or indirectly by any presiding justice alone violates or impairs this constitutional requirement.

The De Long standard of the Ninth Circuit stressed the need for an adequate record for review. In this case petitioners are formally barred from filing their designated record on appeal or an opening brief based on that record. Both the old and revised CCP § 391.7 violate due process because there is no requirement that presiding judge or justice state the reason for prohibiting a party from filing an appeal and there is no requirement to allow the record on appeal to be filed for adequate review.

3. An Overbroad Application Of The Vexatious Litigant Statutes And Pre-Filing Orders To Persons Such As Attorneys, Trustees, Executors, And Guardians Are Improper In That They Adversely Impact The Due Process Rights Of Third Parties

In the State of California a named trustee in a trust instrument may not appear in a legal proceeding without representation by an attorney. See Ziegler v. Nickel, 64 Cal.App.4th 545 (Cal. 1998). In Ziegler the court concluded that a trustee who is

not an attorney could not act in pro per to represent the trust's interest in litigation. The court reasoned that it would be inappropriate for a trustee to do so, because "in this capacity such trustee would be representing interest of others and would therefore be engaged in the unauthorized practice of law." Id. at 548.

Irrespective of Sankary's appointment without bond and irrespective of the fact that no petition to remove the existing trustees named in the trust instrument at any point in time, the named trustees must still appear in the proceedings by counsel if they are asserting claims of the trust. The application of the vexatious litigant doctrine to attorneys is inconsistent with authority of the Ninth Circuit. See Weissman v. Quail Lodge Inc., 179 F.3d 1194, 1197 (9th Cir. 1999).

State court proceedings arising in the probate department involve many persons who may be acting in a representative capacity such as attorneys, trustees, executors, guardian, and conservators. Barring access to the court to persons acting in a representative capacity causes harm to third parties who rely on their representative to assert their interests and rights. Compare Natural Gas Anti-Trust Cases I, II, III, & IV, 137 Cal.App.4th 387 (Cal. 2006), Shalant at 1176. In California the failure to make an objection as a named trustee or beneficiary is construed as a waiver of substantial rights

including the right to recovery. See Probate Code § 16461 which allows a trustee to be relieved of liability if there is a failure to object in writing to an account or report).

4. Application Of CCP § 391.7 When There Has Been No New Litigation, The Litigation Is Defensive, And When The State Court Lacks Subject Matter Jurisdiction Violates The Fifth And Fourteenth Amendment

Applying a prefiling order on appeal when there has been no new litigation and when a party is defensively filing the appeal to obtain access to property is an unconstitutional taking of property and offensive to due process.

In Mahdavi v. Superior Court, 166 Cal.App.4th 32, 41 (Cal. 2008) the court held that “[a] defendant who appeals an adverse ruling is not filing ‘new’ litigation or ‘maintaining’ litigation, but rather, is attempting to ‘undo’ the results of the litigation that has been instituted against him or her”. Id. at 41. It further held that “even if the defendant has abused the judicial system in the past as a plaintiff, the defendant must be permitted to defend himself as any other defendant would.” Id. at 42. This legal principle was upheld in John v. Superior, 63 Cal.4th 91, 93 (Cal. 2016). Nevertheless petitioners, who are defendants and have not initiated new litigation are unable to appeal despite and verified admission of

lack of satisfaction of the mandatory bonding requirement on Sankary's appointment.

Petitioners have not filed any new litigation so there was no reason for the appellate court clerk to have issued a notice of a pre-filing requirement. Petitioners continue as defendants on the reoccurring petition filed by Sankary. The state must afford all individuals a meaningful opportunity to be heard in its courts. Boddie v. Connecticut, 401 U.S. 371 (1971). Prohibiting defendants from proceeding with an appeal with a proper appellate record to demonstrate a lack of subject matter jurisdiction or lack of mandatory statutory bond that voids a transaction offends the Fifth and Fourteenth Amendment.

**Due Process Required Recusal Of The
Administrative Presiding Justice Who has An
Interest In The Pending Federal Court
Litigation**

The certificate of interested persons filed in the state appellate court outlined in detail how the persons that could participate in the appeal would have a pecuniary interest in the appeal. By maintaining the pre-filing order and vexatious litigant determination in place not only impacted petitioners, but also the other members of the voting rights case who were being subjected to retaliation.

The administrative presiding judge entering the October 24, 2017 dismissal order was a former judge of the Superior Court of the County of Los Angeles and would be subject to the fines and penalties prayed for by the representative class on under the California Political Reform Act. Petitioners filed a certificate of interested parties and requested recusal.

An appearance of impropriety, whether such impropriety is actually present or proven, weakens our system of justice. “A fair trial in a fair tribunal is a basic requirement of due process. In re Murchison, 349 U.S. 133, 136 (1955). While claims of bias generally are resolved by common law, statute or professional standards of the bench and bar, the Due Process Clause of the Fourteenth Amendment “establishes a constitutional floor.” Bracy v. Gramley, 520 U.S. 899, 904 (1997). This court has repeatedly held that due process requires recusal not only where there is proof that a judge is actually biased, but also where an objective inquiry establishes a probability of bias. Caperton v. A. T. Massey Coal Co., Inc., 129 S.Ct. 2252, 2259-2263, (2009), Tumey v. Ohio, 273 U.S. 510, 532 (1927); Aetna Life Ins. Co. v. Lavoie, 475 U.S. 813, 825 (1986); see also Withrow v. Larkin, 421 U.S. 35, 47 (1975). (App. E 17-18, I 93 fn 1, H 79-83).

Since the October 24, 2017 order gives absolutely no hint why the appeal was deemed to

have no merit or taken for purposes of harassment or delay, this heightens the appearance of impropriety. The potential financial interest and the fact that there is linked pending federal litigation “offer a possible temptation to the average ... judge to ... lead him not to hold the balance nice, clear and true.” Lavoie at 825.

If this court does not grant review, it is respectfully requested that based on the recently enacted provision CCP § 391.8 (c), that this court direct the Administrative Justice of the California Court of Appeal to vacate the prefiling order requirement, remove petitioners from the vexatious litigant list, and restore the joint appeal of the petitioners after transferring the appeal to a different district.

CONCLUSION

For the above and foregoing reasons,
Petitioners respectfully request issuance of a writ of
certiorari to the California Court of Appeal Second
Appellate District, Administrative Presiding Justice.

Dated: April 24, 2018

Respectfully Submitted,

Nina R. Ringgold
Counsel of Record
Law Offices of Nina R. Ringgold
17901 Malden St.
Northridge, CA 91325
Telephone: (818) 773-2409

App. 1

APPENDIX A

SUPREME COURT
FILED
JAN 24 2018
Jorge Navarrete Clerk

Deputy

COURT OF APPEAL, SECOND APPELLATE
DISTRICT,– NO. B279276

S245760

IN THE SUPREME COURT OF CALIFORNIA
En Banc

MYER SANKARY, as Trustee, etc. et al., Plaintiffs
and Respondents,

v.

NINA RINGGOLD et al., Defendants and
Appellants.

The petition is denied.

CANTIL-SAKAUYE

App.2

Chief Justice
APPENDIX B

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

COURT OF APPEAL
SECOND DIST.
FILED
OCT 24 2017
Joseph A. Lane,
Clerk
CHon_____Deputy Clerk

MYER SANKARY,	)	Case No.: B279276
as Trustee, etc.	)	(Superior Ct. No.:
et al.	)	PP005201)
Plaintiffs and	)	
Respondents,	)	ORDER
v.	)	
	)	
NINA RINGGOLD,	)	
et al.	)	
Defendants	)	
and Appellants.	)	

App.3

Appellant Nina Ringgold filed a Notice of Appeal in the above-entitled matter on behalf of herself and Appellant Justin Ringgold-Lockhart on September 26, 2016. The appeal seeks review of an Order Approving Sixth and Final Account and Report of Successor Trustee, etc., entered on July 25, 2016 by the Los Angeles Superior Court.

Appellants have been previously declared vexatious litigants and made subject to a prefiling order requiring them to obtain permission from the Presiding Judge before filing new litigation in any court of the State of California. The record indicates that Appellants did not have the permission of the Administrative Presiding Justice of this Court before filing this appeal. A Notice to Parties was issued on December 5, 2016 directing that Appellant Ringgold show in writing that this appeal has merit and has not been taken for purposes of harassment or delay. Appellant Ringgold's Response was received and filed on January 11, 2017. No Opposition was received from Respondents.

App.4

The Court has read and considered the Appellant Ringgold's Response to the Court's Notice to Parties and the available record in this case and hereby rules as follows:

Appellant has failed to meet the burden of showing that this appeal has merit and has not been taken for purposes of harassment or delay. Therefore, the request for a prefiling order allowing this appeal to proceed is denied.

The request for a prefiling order having been denied, the Notice of Appeal filed on September 26, 2016 is hereby dismissed pursuant to Code of Civil Procedure § 391.7(c).

/s/

Perluss, Acting
Administrative Presiding
Justice

App.5

APPENDIX C

IN THE COURT OF
APPEAL OF THE STATE
OF CALIFORNIA
SECOND APPELLATE
DISTRICT

JOSEPH A. LANE, CLERK

DIVISION p December 5, 2016

Nina Rae Ringgold
9420 Reseda Blvd. #361
Northridge, CA 91324

AUBRY FAMILY TRUST
Plaintiff and Respondent.

v.

NINA RINGGOLD et al.
Defendants and Appellants.
B279276
Los Angeles County No. PP005201

App.6

NOTICE TO PARTIES

It has come to the attention of the Court that plaintiff has previously been found to be a vexatious litigant within the meaning of Code of Civil Procedure section 391.7, subdivision (a).

Pursuant to section 391.7, subdivision (c) of the Code of Civil Procedure, **all** proceedings are **hereby stayed**.

Within 10 days of the date of this notice plaintiff shall show in writing "that the litigation has merit and has not been taken for purposes of harassment or delay." (Code Civ. Proc., sec. 391.7 subd. (b))

If plaintiff fails to respond to this notice in a timely manner, or if the response fails to demonstrate the merit of the action herein, the appeal shall be dismissed. (*Andrisani v. Hoodack* (1992) 9 Cal.App.4th 279, 281.)

Very truly yours,

Joseph A. Lane, Clerk

By:_____

Deputy Clerk

cc: All Counsel

Superior Court-Civil Appeals

File

App.7

Second Appellate District
300 South Spring Street
Los Angeles, CA 90013
(213 830-7000
www.courts.ca.gov/2dca

App.8

APPENDIX D

FILED

Los Angeles Superior Court

SEP 26 2016

Sherri R. Carter, Executive Officer/Clerk

By: Grace Ho, Deputy

NINA R. RINGGOLD, ESQ. (SBN 133735)

LAW OFFICES OF NINA R. RINGGOLD

9420 Reseda Blvd. #361

Northridge, CA 91324

Telephone: (818) 773-2409

Fax: (866) 340-4312

Attorney for Nina R. Ringgold in the capacity of
named Trustee of the Aubry Family Living Trust,
Named Trustee of the Aubry Family Testamentary
Trust, and Named Executor of the Will of Robert
Aubry, for Justin Ringgold-Lockhart as within the
class of beneficiaries in Trust Instrument Art VI A
(5)(c)

APPELLANTS AND DEFENDANTS

SUPERIOR COURT OF THE STATE OF

CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

BY FAX

NOTICE OF APPEAL

Case No. PP005201

App.9

(No FEE RECEIVED
APP. Of Waiver FILED)

In Re AUBRY FAMILY TRUST,
Mary L. Aubry and Robert B.
Aubry, Settlers,
Established on March 4, 1987
Myer Sankary; Oldman, Cooley, Sallus, Birnberg &
Colman, LLP, Andrea Lynn Rice, Eric Yamamoto;
Marc Edwards, Esq.
Plaintiffs/Petitioners, Respondents,

v.

Nina Ringgold; Justin Ringgold-Lockhart, the
Aubry Family Trust (inter vivos, testamentary
Trusts)
Defendants/Real Parties In Interest,
Appellants.

NOTICE OF APPEAL

TO THE CLERK OF THE ABOVE-
ENTITLED COURT:

NOTICE IS HEREBY GIVEN that Nina
Ringgold and Justin Ringgold-Lockhart appeal to the
Court of Appeal of the State of California, Second
Appellate District from the order dated July 25, 2016

App.10

in which purportedly a notice of entry of such order was filed on or about July 28, 2016. The appeal is also from all interim orders, from all administrative orders whether entered in the trial or appellate court, from void orders and proceedings, all orders which were previously deemed non-appealable through a de facto administration of a decedent's estate procedure (without mandatory publication of notice to obtain subject matter jurisdiction) and from the whole thereof. Additionally, the appeal is from orders made in reliance upon administrative orders, void orders, or orders entered without constitutional authority, legislative authority, or jurisdiction (including in the appellate court) prior to July 28, 2016 and from the order dismissing (without prejudice) the constitutional rights violation petition filed by defendant/appellants in this case in 2007. The appeal challenges CCP Section 391.8 in that it has no application when no motion was ever filed in the trial court pursuant to mandatory legislative authority as to the appellants/defendants specified herein.

Dated: September 25, 2016

/s/ Nina Ringgold

NINA RINGGOLD, Esq
Attorney for the Defendants/Appellants
Proof of Service

App.11

I, the undersigned hereby certify that I am over the age of 18 and not a party to the within cause.

On September 26, 2016 I served a true and correct copy of the

Notice of Appeal

by depositing a true and correct copy in a sealed envelope with postage prepaid and addressed to the following:

Eric Yamamoto, Esq.
12100 Wilshire Blvd. Ste 710
LA, CA 90025

Andrea Lynn Rice
3420 Park Blvd Ste 3030
Santa Monica, CA 90405

Marshal Oldman, Esq.
16133 Ventura Blvd.
Penthouse A
Encino, CA 91436-2447

Marc Edwards, Esq.
18321 Ventura Blvd. Suite 320
Tarzana, CA 91356

App.12

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on September 26, 2016 in Los Angeles, California.

/s/ Nina Ringgold

App.13

**APPENDIX E
(EXCERPTS FROM PETITION)**

FILED

Los Angeles Superior Court

MAY 17 2016

Sherri R. Carter, Executive Officer/Clerk

By: Herman Tam, Deputy

ERIC R. YAMAMOTO (SBN: 064741)
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12100 Wilshire Boulevard, Suite 710
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ANDREA LYNN RICE (SBN: 94314)
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Santa Monica, California 90405
Telephone No. (310) 450-6789
Fax No. (310) 450-2112

Attorneys for Myer J. Sankary,
Trustee of the Aubry Family Trust

**SUPERIOR COURT OF THE STATE OF
CALIFORNIA
FOR THE COUNTY OF LOS ANGELES. CENTRAL
DISTRICT**

App.14

CASE NO. PP 005201
[Transferred To Central]

In Re the Matter:
AUBRY FAMILY TRUST,

SIXTH AND FINAL ACCOUNT AND REPORT OF
SUCCESSOR TRUSEE; PETITION FOR FEES FOR
SUCCESSOR TRUSTEE AND ATTORNEYS FOR
SUCCESSOR TRUSTEE; PETITION FOR
AUTHORITY TO CONTINUE TO RETAIN
ANDREA LYNN RICE AS ASSOCIATED
COUNSEL; PETITION FOR AUTHORITY TO
CONTINUE TO PAY ANDREA LYNN RICE AS
ASSOCIATED COUNSEL; PETITION TO
WITHHOLD A RESERVE; PETITION FOR FINAL
DISTRIBUTION; PETITION FOR EXONERATION
OF BOND; AND PETITION FOR DISCHARGE

DATE: 7/20/2016
TIME: 8:30 A.M.
DEPT: 5
JUDGE HON. Maria E. Stratton

Dated: ~~March~~ May 16, 2018

LAW OFFICE OF ANDREA LYNN RICE

s/ Andrea Lynn Rice

By: Andrea Lynn Rice Attorney for Petitioner
Myer J. Sankary, Successor Trustee of the
Aubry Family Trust

VERIFICATION

STATE OF CALIFORNIA)
) SS.
COUNTY OF LOS ANGELES)

I have read the foregoing **SIXTH AND FINAL ACCOUNT AND REPORT OF SUCCESSOR TRUSTEE; PETITION FOR FEES FOR SUCCESSOR TRUSTEE AND**

**ATTORNEYS FOR SUCCESSOR TRUSTEE;
PETITION FOR AUTHORITY TO CONTINUE
TO RETAIN ANDREA LYNN RICE AS
ASSOCIATED COUNSEL; PETITION FOR
AUTHORITY TO CONTINUE TO PAY ANDREA
LYNN RICE AS ASSOCIATED COUNSEL;
PETITION TO WITHHOLD A RESERVE;
PETITION FOR FINAL DISTRIBUTION;
PETITION FOR EXONERATION OF BOND;
AND PETITION FOR DISCHARGE** and know of
its contents.

I am party to this action. The matters stated
in its are true of my knowledge except as to those
matters which are stated on information and belief,
and as to those matters I believe them to be true.

Executed on ~~March~~ May 12, 2016 , at Los
Angeles, California.

I declare under penalty of perjury under the
laws of the State of California that the foregoing is
true and correct.

s/ Myer J. Sankary

Myer J. Sankary, Successor Trustee of the
Aubry Family Trust

APPENDIX F

A. CALIFORNIA CONSTITUTION

Article VI sec. 3 in pertinent part states:

The Legislature shall divide the State into districts each containing a court of appeal with one or more divisions. Each division consists of a presiding justice and 2 or more associate justices. It has the power of a court of appeal and shall conduct itself as a 3-judge court. Concurrence of 2 judges present at the argument is necessary for a judgment.

Article VI sec. 10 in pertinent part states:

The Supreme Court, courts of appeal, superior courts, and their judges have original jurisdiction in habeas corpus proceedings. Those courts also have original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition. ...

Superior courts have original jurisdiction in all other causes.

Article VI sec. 14 in pertinent part states:

Decisions of the Supreme Court and courts of appeal that determine causes shall be in writing with reasons stated.

App.18

Article VI sec. 17 states:

A judge of a court of record may not practice law and during the term for which the judge was selected is ineligible for public employment or public office other than judicial employment or judicial office, except a judge of a court of record may accept a part-time teaching position that is outside the normal hours of his or her judicial position and that does not interfere with the regular performance of his or her judicial duties while holding office. A judge of a trial court of record may, however, become eligible for election to other public office by taking a leave of absence without pay prior to filing a declaration of candidacy. Acceptance of the public office is a resignation from the office of judge.

A judicial officer may not receive fines or fees for personal use.

A judicial officer may not earn retirement service credit from a public teaching position while holding judicial office.

California Constitution Article VI Sect 21 states:

On stipulation of the parties litigant the court may order a cause to be tried by a temporary judge who is a member of the State Bar, sworn and empowered to act until final determination of the cause.

**B. CALIFORNIA STATUTORY AUTHORITY
RE: BONDING REQUIREMENT FOR COURT
APPOINTED TRUSTEES**

Cal. Probate Code § 15602 (a)(3) states in pertinent part:

(a) A trustee is not required to give a bond to secure performance of the trustee's duties, unless any of the following circumstances occurs:

....

(3) An individual who is not named as a trustee in the trust instrument is appointed as a trustee by the court.

(b) Notwithstanding paragraphs (1) and (3) of subdivision (a), the court may excuse a requirement of a bond, reduce or increase the amount of a bond, release a surety, or permit the substitution of another bond with the same or different sureties. The court may not, however, excuse the requirement of a bond for an individual described in paragraph (3) of subdivision (a), except under compelling circumstances. For the purposes of this section, a request by all the adult beneficiaries of a trust that bond be waived for an individual described in paragraph (3) of subdivision (a) for their trust is deemed to constitute a compelling circumstance.....

**C. UNCODIFIED SECTION 5 OF
CALIFORNIA SENATE BILL 211 (“Section 5 of
SBX2 11”) FILED WITH THE CALIFORNIA
SECRETARY OF STATE ON FEBRUARY 20,
2009**

....

SEC. 5. Notwithstanding any other law, no governmental entity, or officer or employee of a governmental entity, shall incur any liability or be subject to prosecution or disciplinary action because of benefits provided to a judge under the official action of a governmental entity prior to the effective date of this act on the ground that those benefits were not authorized under law.

**D. PERTINENT CALIFORNIA CODE OF
CIVIL PROCEDURE PROVISIONS
REGARDING VEXATIOUS LITIGANTS IN
EFFECT THROUGH DECEMBER 31, 2011**

CCP § 391.1. In any litigation pending in any court of this state, at any time until final judgment is entered, a defendant may move the court, upon notice and hearing, for an order requiring the plaintiff to furnish security. The motion must be based upon the ground, and supported by a showing, that the plaintiff is a vexatious litigant and that there is not a reasonable

probability that he will prevail in the litigation against the moving defendant.

CCP § 391.2. At the hearing upon such motion the court shall consider such evidence, written or oral, by witnesses or affidavit, as may be material to the ground of the motion. No determination made by the court in determining or ruling upon the motion shall be or be deemed to be a determination of any issue in the litigation or of the merits thereof.

CCP § 391.3. If, after hearing the evidence upon the motion, the court determines that the plaintiff is a vexatious litigant and that there is no reasonable probability that the plaintiff will prevail in the litigation against the moving defendant, the court shall order the plaintiff to furnish, for the benefit of the moving defendant, security in such amount and within such time as the court shall fix.

CCP § 391.4. When security that has been ordered furnished is not furnished as ordered, the litigation shall be dismissed as to the defendant for whose benefit it was ordered furnished.

CCP § 391.7

(a) In addition to any other relief provided in this title, the court may, on its own motion or the motion of any party, enter a prefiling order which prohibits a

vexatious litigant from filing any new litigation in the courts of this state in propria persona without first obtaining leave of the presiding judge of the court where the litigation is proposed to be filed. Disobedience of the order by a vexatious litigant may be punished as a contempt of court.

(b) The presiding judge shall permit the filing of that litigation only if it appears that the litigation has merit and has not been filed for the purposes of harassment or delay. The presiding judge may condition the filing of the litigation upon the furnishing of security for the benefit of the defendants as provided in Section 391.3.

**E. PERTINENT CALIFORNIA CODE OF
CIVIL PROCEDURE PROVISIONS
REGARDING VEXATIOUS LITIGANTS
AS AMENDED OR ADDED EFFECTIVE
JANUARY 1, 2012**

CCP § 391.7.

(a) In addition to any other relief provided in this title, the court may, on its own motion or the motion of any party, enter a prefiling order which prohibits a vexatious litigant from filing any new litigation in the courts of this state in propria persona without first obtaining leave of the presiding justice or

presiding judge of the court where the litigation is proposed to be filed. Disobedience of the order by a vexatious litigant may be punished as a contempt of court.

(b) The presiding justice or presiding judge shall permit the filing of that litigation only if it appears that the litigation has merit and has not been filed for the purposes of harassment or delay. The presiding justice or presiding judge may condition the filing of the litigation upon the furnishing of security for the benefit of the defendants as provided in Section 391.3.

(c) The clerk may not file any litigation presented by a vexatious litigant subject to a prefiling order unless the vexatious litigant first obtains an order from the presiding justice or presiding judge permitting the filing. If the clerk mistakenly files the litigation without the order, any party may file with the clerk and serve, or the presiding justice or presiding judge may direct the clerk to file and serve, on the plaintiff and other parties a notice stating that the plaintiff is a vexatious litigant subject to a prefiling order as set forth in subdivision (a). The filing of the notice shall automatically stay the litigation. The litigation shall be automatically dismissed unless the plaintiff within 10 days of the filing of that notice obtains an order from the presiding justice or presiding judge permitting the filing of the litigation as set forth in subdivision (b). If the presiding justice or presiding judge issues an order permitting the filing, the stay

of the litigation shall remain in effect, and the defendants need not plead, until 10 days after the defendants are served with a copy of the order.

(d) For purposes of this section, “litigation” includes any petition, application, or motion other than a discovery motion, in a proceeding under the Family Code or Probate Code, for any order.

(e) The presiding justice or presiding judge of a court may designate a justice or judge of the same court to act on his or her behalf in exercising the authority and responsibilities provided under subdivisions (a) to (c), inclusive.

(f) The clerk of the court shall provide the Judicial Council a copy of any prefiling orders issued pursuant to subdivision (a). The Judicial Council shall maintain a record of vexatious litigants subject to those prefiling orders and shall annually disseminate a list of those persons to the clerks of the courts of this state.

SEC. 2. Section 391.8 was added to the Code of Civil Procedure, to read:

CCP § 391.8.

(a) A vexatious litigant subject to a prefiling order under Section 391.7 may file an application to vacate the prefiling order and remove his or her name from

the Judicial Council's list of vexatious litigants subject to prefiling orders. The application shall be filed in the court that entered the prefiling order, either in the action in which the prefiling order was entered or in conjunction with a request to the presiding justice or presiding judge to file new litigation under Section 391.7. The application shall be made before the justice or judge who entered the order, if that justice or judge is available. If that justice or judge who entered the order is not available, the application shall be made before the presiding justice or presiding judge, or his or her designee.

(b) A vexatious litigant whose application under subdivision (a) was denied shall not be permitted to file another application on or before 12 months has elapsed after the date of the denial of the previous application.

(c) A court may vacate a prefiling order and order removal of a vexatious litigant's name from the Judicial Council's list of vexatious litigants subject to prefiling orders upon a showing of a material change in the facts upon which the order was granted and that the ends of justice would be served by vacating the order.