

# Vexatious Litigation: Does an Unfiled Lawsuit Constitute “Litigation?”

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Vexation litigant law was enacted to curb the misuse of the court system by *in propria persona* filing groundless lawsuits or attempting to re-litigate issues previously determined against them. (C.C.P. § 391.) There are four circumstances under which a plaintiff may be deemed “vexatious.” They include:

1. During the preceding seven-year period has commenced, *in propria persona (pro per)*, at least five litigations (other than in small claims court) that have been i) finally determined adversely to the person, or ii) unjustifiably permitted to remain pending at least two years without being brought to trial.
2. After litigation is finally determined against the person, repeatedly re-litigates or attempts to re-litigate *in pro per* i) the

validity of the determination or ii) issues previously concluded.

3. Files unmeritorious motions, pleadings, papers, discovery, or engages in frivolous tactics while acting *in pro per*.
4. Has previously been declared to be a “vexation litigant” by any state or federal court. (C.C.P. § 391(b).)

In *Garcia v. B.A. Lacey* (2014) WL5858473, the court of appeal for the Fifth District determined that an unfiled lawsuit does not constitute litigation within the statutory provision of California’s vexatious litigation law. (*Id.* at 5.) Here, Garcia was an inmate and filed a *pro se* civil lawsuit against the warden and other correctional staff for general negligence and intentional tort. No supporting facts were alleged in his complaint. After one month, Garcia filed a documents purporting to be the attachments of the complaint. Respondents, including the warden and correctional officers, filed a motion to declare Garcia a vexatious litigant. They requested judicial notice be taken of nine *pro se* civil lawsuits filed by Garcia in the preceding seven years.

Garcia’s nine lawsuits included five cases filed in the United States District Court. However, in each of these cases, the

magistrate denied Garcia’s requests to proceed *in forma pauperis (IFP)*. *IFP* is a designation given to someone who is without the funds to pursue the normal costs of a lawsuit or a criminal defense. Thus, the complaints were never filed and the actions contemplated never commenced.

The court determined the language of section 391 is unequivocal in the definition of “litigation” as “any civil action or proceeding, commenced, maintained or pending in any state or federal court.” ((2014) WL5858473, 5.) In federal and state courts, civil actions commence with the filing of the complaint. (*Id.*) As reflected in the court records, Garcia’s five actions in the United States District Court were never commenced because the *IFP* applications were denied and the complaints were never filed. The federal district courts have a process of screening prisoner complaints. When a prisoner submits a civil complaint with an application to proceed *IFP*, the complaint is merely lodged with the court rather than filed. It does not commence litigation. ((2014) WL5858473, 6.)

The court determine unequivocally a lodged lawsuit, which remains “unfiled” does not constitute litigation within the meaning of the vexatious litigation law.

## **ABOUT THE AUTHOR**

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