

1 From the outset of this litigation, Mr. Jimenez engaged in harassment and abusive
2 conduct toward the staff of the Clerk's Office. Consequently, the Chief Deputy Clerk of the
3 Court issued a Memorandum on February 28, 2000 setting forth the procedure for allowing
4 Mr. Jimenez to conduct his business with the Court. (Ex. 1). The Memorandum notes his
5 weekly visits to the Courthouse, indicating that he was frequently disruptive and abusive to
6 the Clerk's Office staff. The Memorandum outlined four conditions for Mr. Jimenez's
7 contacts with the Court: (1) he was required to state the purpose of his visit to a Court
8 Security Officer ("CSO"); (2) the CSO would advise him to be cooperative and comply with
9 directions given by Court staff; (3) the CSO would advise him that he would be accompanied
10 during his visit and that if he failed to behave appropriately, he may be removed and
11 permanently barred from the Courthouse; and (4) the CSO was to accompany him during the
12 transaction of his business with the Court and would escort him from the building for
13 inappropriate behavior. Despite these measures, Mr. Jimenez continued to behave abusively
14 toward Court staff, both on the telephone and in person.

15 Within five days of the Court's termination of this action, Mr. Jimenez filed a Motion
16 for Ruling on a Motion to Produce filed November 15, 2000 and a Motion for Certified
17 Signature from Judge. On September 28, 2001, he filed a Notice of Appeal, and on
18 October 11, 2001, the Court denied his motions for a discovery ruling and for a certified
19 signature. In conjunction with Mr. Jimenez's official filings with the Court after the case
20 ended, he continued to telephone Court personnel on numerous occasions, disrupting the
21 business of the Court with abusive and threatening language that resulted in the
22 November 19, 2001 Order to Show Cause hearing.

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24 Dismiss. On July 7, 2000, the Court denied Mr. Jimenez's Motion for Entry of Default;
25 denied Defendant Coca-Cola's ("Defendant") motion to dismiss; and granted Defendant
26 United Industrial Workers' motion to dismiss. On September 8, 2000, and again on
27 December 22, 2000, Mr. Jimenez filed further motions for default judgment against
28 Defendant, which were denied on November 3, 2000 and August 30, 2001, respectively.
Meanwhile, on November 1, 2000, Defendant filed a motion for summary judgment, which
was granted on August 30, 2001.

1 At that hearing, various witnesses testified to the frequency and substance of Mr.
2 Jimenez's contacts with the Clerk's Office and the Court's staff throughout the pendency of
3 this litigation. This testimony demonstrated that the procedures outlined in the
4 February 28, 2000 Memorandum had not been completely effective. The Operations
5 Manager for the United States District Court for the District of Arizona described being
6 summoned to the Customer Service counter by her staff when Mr. Jimenez became "irate"
7 with the counter clerks. According to this witness, Mr. Jimenez's recurring complaint was
8 that the clerks had not docketed his filings accurately. She repeatedly explained to Mr.
9 Jimenez that if he identified specific errors, they would be promptly corrected. Despite the
10 attempt to reason with Mr. Jimenez, he became increasingly abusive and combative: "He had
11 done things like taken papers and thrown them on the counter, shaking his finger at the staff,
12 would not listen to anything they said, just kept on basically yelling at them." (11/19/01 Hr'g
13 Tr. at 9). This same witness testified that she had similar encounters with Mr. Jimenez at
14 other times during this litigation and that he was invariably loud and disruptive, insulting the
15 Clerk's Office staff and accusing them of conspiring against him.

16 Regarding Mr. Jimenez's telephone calls to the Clerk's Office personnel, the Assistant
17 to the Clerk testified that she dealt with Mr. Jimenez twice by telephone in October 2001.
18 During the initial conversation, which concerned Mr. Jimenez's disagreement with various
19 docket entries, she succeeded in calming him down and directed him to submit his objections
20 to the docket entries in writing. Two days later, Mr. Jimenez telephoned again with the
21 identical complaint, refusing to submit anything in writing. The "conversation" consisted
22 of Mr. Jimenez yelling at her. (*Id.* at 16).

23 The docket clerk assigned to handle Mr. Jimenez's Ninth Circuit filings testified that
24 she dealt with him during his interlocutory appeal in 2000.² Mr. Jimenez angrily accused her
25 and her office of "misinterpreting" his filings, and he repeatedly visited and telephoned to

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27 ² Mr. Jimenez appealed the Court's dismissal of Defendant United Industrial
28 Workers. The Ninth Circuit dismissed the appeal for lack of jurisdiction on
September 20, 2000.

1 register his complaint. (Id. at 20). This witness also testified that Mr. Jimenez was “volatile”
2 and that she was “nervous” about the prospect of dealing with him in person. (Id. at 22).

3 Finally, a law clerk for this Court testified that he received telephone calls from Mr.
4 Jimenez in early 2001. Mr. Jimenez inquired about the status of his case and accused the
5 Court and the arbitrator handling the union matter of conspiring with his attorney and
6 Defendant Coca-Cola. The law clerk also testified that after the Court granted Defendant’s
7 Motion for Summary Judgment, Mr. Jimenez telephoned again in September 2001, indicating
8 his intention to appeal and stating that he would “then take care of all the bad people
9 afterwards.” (Id. at 26).

10 Mr. Jimenez declined to cross-examine these witnesses at the hearing, steadfastly
11 claiming not to recall the conversations and stating generally:

12 Well, all that she’s [the clerk] testifying, I don’t recall any of those incidents.
13 I’ve been having good behavior, and they’re the ones, this [clerk] there been
14 giving me the hard time all the time. They’re the ones causing the hostile
15 environment.

16 (Id. at 14). Curiously, though Plaintiff claims not to remember the incidents, he is able to
17 state with confidence that it was the Clerk’s Office that caused the incidents to be hostile.
18 (See also id. at 18, 23) (blaming Clerk’s Office staff for the hostile incidents he claims not
19 to recall). In fact, Mr. Jimenez did not proffer any reason or justification for his actions in
20 writing or at the hearing.

21 Discussion

22 I. Legal Standard

23 “Courts of justice are universally recognized to be vested, by their very creation, with
24 the power to impose silence, respect, decorum, in their presence, and submission to their
25 lawful mandates.” Chambers v. Nasco, 501 U.S. 32, 43 (1991) (internal quotation marks
26 omitted); see also Illinois v. Allen, 397 U.S. 337, (1970) (upholding trial court’s removal of
27 disruptive criminal defendant from the courtroom during his trial). Moreover, “[t]his power
28 reaches both conduct before the court and that beyond the court’s confines.” Id. at 44. In
addition, the All Writs Act empowers the Court to enjoin vexatious litigants from filing

1 complaints or other papers without leave of the Court. 28 U.S.C. § 1651(a) (1988); see also
2 Moy v. United States, 906 F.2d 467, 469 (9th Cir. 1990).

3 Concomitantly, a court's power to issue pre-filing injunctions when faced with
4 vexatious litigants is well-established. See Moy, 906 F.2d at 469; De Long v. Hennessey,
5 912 F.2d 1144, 1147 (9th Cir. 1990); see also Ibrahim v. District of Columbia, 755 A.2d 392,
6 393 (D.C. Cir. 2000) (upholding injunction requiring pro se litigant to get court approval
7 before filing additional complaints or petitions); In re Martin-Trigona, 9 F.3d 226, 228 (2d
8 Cir. 1993) (recognizing court's authority to issue pre-filing order). In these cases, courts
9 were confronted with repeated meritless filings that threatened the "integrity of the courts and
10 the orderly and expeditious administration of justice." Ibrahim, 755 A.2d at 393. As the
11 Supreme Court has indicated, "[t]he goal of fairly dispensing justice . . . is compromised
12 when the Court is forced to devote its limited resources to the processing of repetitious and
13 frivolous requests." In re Sindram, 498 U.S. 177, 180 (1991).

14 The Ninth Circuit has also recognized "the inherent power of federal courts to regulate
15 the activities of abusive litigants by imposing carefully tailored restrictions under the
16 appropriate circumstances." De Long v. Hennessey, 912 F.2d 1144, 1147 (9th Cir. 1990)
17 (quoting Tripati v. Beaman, 878 F.2d 351, 352 (10th Cir. 1989)). In De Long, the Ninth
18 Circuit acknowledged that such pre-filing orders are an extreme remedy and should be
19 imposed rarely. The court identified a number of considerations relevant for limiting a
20 litigant's access to the courts. Id.

21 First, the trial court must provide notice to the litigant of the proposed sanction and
22 afford an opportunity for him to oppose it. Id. Second, the court must develop an adequate
23 record for review which clearly establishes that the litigant is abusing the judicial process.
24 Id. Third, the court must make substantive findings of frivolousness or harassment. Id. at
25 1148. Fourth, the court must consider the breadth of the order, being careful to narrowly
26 tailor the remedy to fit the circumstances. Id. Where a court resorts to extreme remedies
27 without first exhausting less drastic measures, the imposition of sanctions may constitute an
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1 abuse of discretion. See, e.g., Hamilton Cooper & Steel Corp. v. Primary Steel, Inc., 898
2 F.2d 1428, 1429 (9th Cir. 1990).

3 **II. Analysis**

4 Mr. Jimenez has not engaged in frivolous filings, but his relentless abuse of the
5 Clerk's Office and Court's staff is no less disruptive to the administration of justice. Mindful
6 that limiting court access must be undertaken with "particular caution," De Long, 912 F.2d
7 at 1147, the Court has applied the De Long factors and finds that a conditional limitation of
8 Plaintiff's access to the Courthouse and telephone contact with the Clerk's Office and
9 Court's staff is warranted.

10 **A. Notice**

11 The De Long court emphasized that a district court's failure to provide a litigant an
12 opportunity to oppose a pre-filing order raises due process concerns. See De Long, 912 F.2d
13 at 1147; see also In re Powell, 851 F.2d 427, 431 (D.C. Cir. 1988) ("Due process requires
14 notice and an opportunity to be heard[.]"); In re Oliver, 682 F.2d 443, 446 (3d Cir. 1982)
15 (requiring district court to give litigant notice and an opportunity to be heard); In re Martin-
16 Trigona, 737 F.2d 1254, 1260 (2d Cir. 1984) (same).

17 Recognizing these due process concerns, the Court notified Mr. Jimenez by order
18 dated November 6, 2001 that as a result of his abusive conduct, the Court intended to limit
19 his access to the Courthouse. Mr. Jimenez was directed to appear at the November 19, 2001
20 show cause hearing, and afforded an opportunity to present evidence or information on his
21 behalf and to cross-examine the Courthouse staff who testified about his conduct. Although
22 Mr. Jimenez appeared at the hearing, he declined to ask questions of the witnesses and
23 offered no explanation for his conduct, except to insist emphatically that he was not at fault.

24 **B. Record for Review and Substantive Findings**

25 In De Long, the Ninth Circuit indicated that an adequate record for review should
26 specify the conduct that prompted the trial court to impose a pre-filing order. The record
27 must be "sufficiently developed to show that [a litigant] is abusing the judicial system."
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1 De Long, 912 F.2d at 1147; see also Tripati v. Beaman, 878 F.2d 351, 353 (10th Cir. 1989)
2 (“[I]njunctiions are proper where the litigant’s abusive and lengthy history is properly set
3 forth.”). In addition, “before a district court issues a pre-filing injunction against a pro se
4 litigant, it is incumbent on the court to make ‘substantive findings as to the frivolous or
5 harassing nature of the litigant’s actions.’” De Long, 912 F.2d at 1148 (quoting Powell, 851
6 F.2d at 431).

7 Plaintiff commenced this litigation in September 1999. By February of the following
8 year, Plaintiff’s conduct had become sufficiently disruptive that a security officer was
9 assigned to escort him during his Courthouse visits.³ On at least one occasion, security
10 personnel ordered Plaintiff to leave the building. In the year and a half since then, as detailed
11 above, the frequency and abusiveness of Plaintiff’s contacts with Court staff have only
12 escalated. Although each of the Clerk’s Office staff described efforts made to explain the
13 docketing process to Mr. Jimenez, he continued to harass and berate them, as recently as
14 September 2001 after his case was terminated. Indeed, a staff member testified regarding the
15 one occasion Mr. Jimenez identified an error, which she promptly corrected:

16 [I]n one instance, he was correct, I did forget a couple words. I did go back
17 and fix them. I apologized. I sent out a new docket.

18 (11/19/01 Hr’g Tr. at 25). Nevertheless, Plaintiff continued to call her and relentlessly
19 challenge every docket entry she made.

20 For a period of approximately two years, Plaintiff has visited and telephoned the
21 Courthouse, often on a weekly basis, subjecting staff to his invective and abuse. Although
22 Court personnel took reasonable measures to defuse the tension associated with Mr.
23 Jimenez’s Courthouse visits, the pattern of abusive behavior persisted. Accordingly, the
24 Court finds that a suitably tailored order limiting Mr. Jimenez’s access to the Courthouse and
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27 ³ These incidents are documented in a series of contemporaneous e-mail messages
28 prepared and sent to the Court by the Clerk’s Office staff during January and February 2000.
(Ex. 2).

1 its personnel is amply justified. “No one, rich or poor, is entitled to abuse the judicial
2 process.” Tripati, 878 F.2d at 353.

3 **C. Breadth of the Order**

4 An order limiting a litigant’s access to the courts “must be narrowly tailored to closely
5 fit the specific vice encountered.” De Long, 912 F.2d at 1148. Thus, in De Long, the Ninth
6 Circuit vacated a pre-filing order that unnecessarily restricted a litigant’s court access. See
7 id. at 1149 (remanding for reconsideration). Similarly, the Ninth Circuit modified an overly
8 broad pre-filing order, adopting the pre-filing restriction only with respect to claims by the
9 litigant arising out of a single set of facts. See Moy, 906 F.2d at 471 (“[W]e find the order
10 to be overbroad since it is designed to prevent Moy from filing any complaint in any case
11 without leave of court, although Moy has only been abusive in the area of this particular
12 litigation.”); see also Tripati, 878 F.2d at 354 (“[T]here must be some guidelines as to what
13 plaintiff must do to obtain the court’s permission to file an action.”). Ultimately, however,
14 “even onerous conditions may be imposed upon a litigant as long as they are designed to
15 assist the district court in curbing the particular abusive behavior involved.” Id. at 352
16 (internal quotations and alterations omitted).

17 In this case, Mr. Jimenez has no further business with the District Court for the
18 District of Arizona with respect to his claims against Coca-Cola and the United Industrial
19 Workers in this matter. Indeed, though Mr. Jimenez expressed at the hearing an intention to
20 file a separate lawsuit against the Equal Employment Opportunity Commission, he
21 acknowledged that his case against Defendants is “finished” and “shipped to the Ninth
22 Circuit.” (11/19/01 Hr’g Tr. at 29-30). At the hearing, the Court advised him that he is free
23 to file future law suits with the Court, though he must make any such filings with the District
24 Court by mail or other appropriate means. (Id. at 33). Additionally, the Court indicated that
25 if Mr. Jimenez should have an emergency that cannot be addressed by the use of the mail,
26 he would be permitted to hand deliver documents to Courthouse security personnel. (Id.).
27 Finally, the Court assured Mr. Jimenez that he would not be prevented from pursuing his
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1 pending appeal, nor barred from other courthouses. (Id. at 35). The specific scope and nature
2 of the Court's Order restricting Mr. Jimenez is set forth below.

3 **IT IS ORDERED** that Joe Jimenez is not allowed to telephone the Clerk's Office or
4 the Court's staff of the District Court for the District of Arizona concerning the above
5 entitled matter.

6 **IT IS FURTHER ORDERED** that Joe Jimenez is not allowed to personally visit the
7 Clerk's Office or the Court's Staff at the Sandra Day O'Connor U.S. Courthouse concerning
8 the above entitled matter.

9 **IT IS FURTHER ORDERED** that if Joe Jimenez believes he has any reason to
10 contact the Court's staff or the Clerk's Office concerning the above entitled matter, he may
11 do so only in writing, delivered by mail or other appropriate means. If he has good cause to
12 telephone the Court's staff or the Clerk's Office concerning the above entitled matter, he may
13 seek an amendment to this order by filing a motion with this Court.

14 **IT IS FURTHER ORDERED** that if Joe Jimenez believes he has business with the
15 District Court for the District of Arizona unrelated to the above entitled matter that requires
16 him to visit the Courthouse, the Court staff, or the Clerk's Office, he may visit under the
17 following conditions:

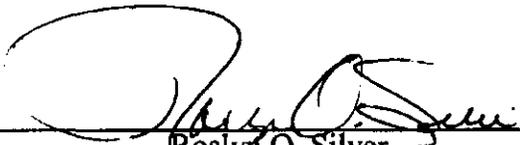
- 18 1. He must state the purpose of his visit to court security personnel and
19 identify the party he wishes to visit;
- 20 2. He will be escorted by court security personnel to the appropriate destination;
21 and
- 22 3. He will conduct his business expeditiously and courteously.

23 **IT IS FURTHER ORDERED** that if Joe Jimenez believes he has business with the
24 District Court for the District of Arizona unrelated to the above entitled matter that requires
25 him to make telephone calls to the Court's staff, he will make such calls expeditiously and
26 courteously.

27 **IT IS FURTHER ORDERED** that if Joe Jimenez visits the Courthouse for business
28 unrelated to the above entitled matter and is again abusive and discourteous, Court Security

1 Officers are to escort Mr. Jimenez out of the Courthouse. All personnel of the District Court
2 for the District of Arizona are to make written notes of any abusive telephone calls in
3 violation of this Order and immediately discontinue such calls when Mr. Jimenez becomes
4 abusive. Court Security Officers and personnel of the District Court for the District of
5 Arizona are ordered to report any such incidents of abusive or harassing conduct to the Chief
6 Judge of the District Court of Arizona, Judge Stephen McNamee.

7 DATED this 9 day of December, 2001.

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11 Roslyn O. Silver
12 United States District Judge
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