# Restricting Abusive Litigation in the Appellate Court

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*"Always Appealing" is a column addressing current issues in appellate practice and recent appellate cases written by the lawyers of Smith Goodfriend, P.S., a Seattle law firm that limits its practice to civil appeals and related trial court motions practice.*

In 2020, the Legislature enacted the Abusive Litigation—Domestic Violence Act (AL-DVA), RCW ch. 26.51, recognizing "that individuals who abuse their intimate partners often misuse court proceedings in order to control, harass, intimidate, coerce, and/or impoverish the abused partner."[1] The AL-DVA grants courts statutory authority to restrict abusive litigation by a party who has been found to have committed domestic violence against the other party. In enacting the AL-DVA, the Legislature recognized the "considerable discretion" courts already have "to fashion creative remedies in order to curb abusive litigation," and intended for the AL-DVA "to provide the courts with an additional tool to curb abusive litigation and to mitigate the harms abusive litigation perpetuates."[2] As the AL-DVA defines "litigation" broadly to include "any kind of legal action or proceeding,"[3] "this additional tool to curb abusive litigation"[4] is available to appellate courts—although it is unclear how often, if at all, it is being used to curb abusive litigation in the appellate courts.

Before the enactment of the AL-DVA, appellate courts relied on their "inherent power to control the conduct of litigants who impede the orderly conduct of proceedings" under RCW 2.28.010(3) to "place reasonable restrictions on any litigant who abuses the judicial process" in its court.[5] For instance, Division III, in Yurtis v. Phipps, 143 Wn. App. 680, 693, 181 P.3d 849 (2008), relied on this "inherent power" to prohibit a plaintiff from filing any further appeals arising out of a disputed land transaction that had closed seventeen years earlier, which had already been subject to an earlier appeal, a motion to recall the mandate, and three motions for discretionary review to the Supreme Court, all brought by plaintiff and all rejected. Division III found that "[d]espite the fact that the courts have repeatedly rejected [plaintiff's] claims, she continues to pursue them, undeterred by prior sanctions."[6] Division III stated that while it "appreciates the need for appellate review, 'we also are mindful of the need for judicial finality and the potential for abuse of this revered system by those who would flood the courts with repetitive, frivolous claims which already have been adjudicated at least once'" because an "implicit requirement of access to the court system is that the litigation must proceed in good faith and comply with the court rules."[7]

More recently, Division II in two separate unpublished opinions, Nicholas Cabral v. Glinski, Cause no. 60610-1-II, 2026 WL 747107 (Mar. 17, 2026) (Cabral I) and Beth Anne Cabral v. Glinski, Cause no. 60613-5-II, 2026 WL 747110 (Mar. 17, 2026) (Cabral II), each brought by the same appellant, imposed prefiling restrictions on that appellant for any future appellate litigation involving respondents, who are the guardians of appellant's child, after it found he was a "vexatious litigant."[8]

The two appeals arose from appellant's challenge to the trial court granting orders to each guardian restricting appellant's abusive litigation in the trial court under the AL-DVA. Division II affirmed both trial court orders restricting appellant's abusive litigation, awarded fees to the guardians under the AL-DVA,[9] and granted the guardians' request that appellant be restrained "from engaging in additional appellate litigation involving them without first having any filings screened and authorized by a commissioner of our court."[10] In imposing these restrictions, Division II found that appellant's appeals from the orders restricting his abusive litigation were "part of an ongoing pattern of abusive litigation" that he has pursued against the guardians in both the trial court and appellate court.[11] Indeed, appellant had yet another appeal pending in Division II arising from the guardianship case at the time Cabral I and Cabral II were decided. Appellant had also twice previously sought discretionary review of interlocutory orders in the guardianship case, both of which were decided against him. Division II found appellant "has habitually and persistently" used the appellate court's "processes to hinder the administration of justice, delay proceedings, place an unacceptable burden on court staff, impede the court's essential functions, and harass" the guardians.[12]

In crafting its prefiling restrictions, Division II recognized that while sanctions and attorney fees awards are intended to "serve as a deterrent to frivolous or harassing litigation," they "only" work "if they are paid."[13] Therefore, Division II ordered the appellate court clerk not to accept further notices of appeal or discretionary review from appellant in cases involving the guardians "until he has submitted proof that all of his sanctions and attorney fees imposed in all cases involving them have been paid."[14] Further, appellant must submit with any new notice of appeal or notice of discretionary review a pleading consisting of no more than 2500 words stating the basis for the appeal or discretionary review in basic terms.[15] Division II ordered that no other filings will be accepted regarding the notice of appeal or notice of discretionary review unless and until the notice is accepted for filing.[16]

Interestingly, despite affirming orders entered under the AL-DVA, Division II did not rely on that statute in imposing its own prefiling restrictions. Instead, citing Yurtis, Division II relied on its "inherent authority to control the conduct of litigants in this court when they have impeded the orderly conduct of proceedings," as well as its authority under RAP 18.9(a) to "condition a party's right to participate" in appellate cases in this court "on compliance with terms of an order or ruling."[17] Division II also cited an order entered by the Supreme Court in Gallery Belltown Condo. Ass'n v. Roland Ma, No. 100725-6 (Wash. July 13, 2022), in which the Court prohibited the petitioner in that case from any future filings with the Court without first obtaining permission from the court clerk, after declaring the petitioner to be a "vexatious litigant based on his lengthy history of frivolous filings, which were undeterred by the imposition of sanctions."[18]

Whether under the AL-DVA or its "inherent authority to control the conduct of litigants in this court when they have impeded the orderly conduct of proceedings," appellate courts should more often consider imposing prefiling restrictions similar to the ones issued by Division II in Cabral I and Cabral II to stem what I see as a rise of abusive and harassing litigation being perpetuated in the appellate courts. It is notable, but maybe not surprising, that a commonality between Yurtis, Cabral I, Cabral II, and Gallery Belltown Condo. is that the party against whom the appellate courts imposed prefiling restrictions was self-represented. Indeed, the vast majority of appellants who seek review of orders finding them to be vexatious litigants and imposing prefiling restrictions on them are self-represented.[19] While not all self-represented individuals in the appellate court require prefiling restrictions, it does seem that they are more likely to engage in abusive and harassing litigation than those represented by attorneys. As the United States Supreme Court has recognized, “Pro se petitioners have a greater capacity than most to disrupt the fair allocation of judicial resources because they are not subject to the financial considerations—filing fees and attorney’s fees—that deter other litigants from filing frivolous petitions.”[20]

I think it is especially important when affirming a trial court’s order restricting abusive litigation under the AL-DVA that the appellate court considers imposing prefiling restrictions on that party in the appellate court. If a trial court has already found that an appellant has engaged in abusive litigation under the AL-DVA by pursuing litigation “primarily for the purpose of harassing, intimidating, or maintaining contact with the other party”[21], there is no reason for the other party to not be afforded similar protections from abusive litigation in the appellate court. Indeed, it would undermine the Legislature’s intent of preventing individuals from misusing “proceedings in order to control, harass, intimidate, coerce, and/or impoverish the abused partner”[22] if that individual is allowed to continue their misuse of court proceedings simply by shifting the litigation to a different court.

While I recognize imposing such prefiling restrictions in the appellate court may impose a burden on appellate court clerks or commissioners, who will be required to serve as “gatekeepers,” this initial burden will be balanced out by terminating abusive appellate court litigation at an early stage rather than allowing it to proceed over its usual course to a decision on the merits, which will impose even more burdens on the court. My experience is that a party who is found to have abused litigation in the trial court will do the same in the appellate court. They will drag out the process by filing multiple lengthy motions for stays or extensions rather than file their opening brief, and move to modify any adverse ruling. Oftentimes these motions contain personal attacks on the other party, their trial counsel, their appellate counsel, and the court.

And when the party does finally file their opening brief, it usually fails to comply with the rules by not citing the record, raising issues not addressed in the trial court, challenging orders outside the scope of review, and now, with the increased use of AI, providing lengthy citations of authority that may or may not have any relevance to the issues at hand, resulting in overlength briefs. In addition to the financial drain on the other party who is forced to respond to these filings, there is the emotional drain of being deprived of the finality of the trial court's decision and being subjected to continued personal attacks in pleadings and briefs filed in the appellate court.

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[1] RCW 26.51.010.

[2] RCW 26.51.010.

[3] RCW 26.51.020(3).

[4] RCW 26.51.010.

[5] Yurtis v. Phipps, 143 Wn. App. 680, 693, 181 P.3d 849 (2008).

[6] Yurtis, 143 Wn. App. at 695.

[7] Yurtis, 143 Wn. App. at 693 (quoting In re Pers. Restraint of LaLande, 30 Wn. App. 402, 405, 635 P.2d 895 (1981)).

[8] Cabral I, Cause no. 60610-1-II, *6, Cabral II, Cause no. 60613-5-II, *6.

[9] RCW 26.51.060(2)(b) requires the court to "award fees and costs of responding to the abusive litigation."

[10] Cabral I, Cause no. 60610-1-II, *6, Cabral II, Cause no. 60613-5-II, *6.

[11] Cabral I, Cause no. 60610-1-II, *6, Cabral II, Cause no. 60613-5-II, *6.

[12] Cabral I, Cause no. 60610-1-II, *6, Cabral II, Cause no. 60613-5-II, *6.

[13] Cabral I, Cause no. 60610-1-II, *7, Cabral II, Cause no. 60613-5-II, *7.

[14] Cabral I, Cause no. 60610-1-II, *7, Cabral II, Cause no. 60613-5-II, *7.

[15] Cabral I, Cause no. 60610-1-II, *7, Cabral II, Cause no. 60613-5-II, *7.

[16] Cabral I, Cause no. 60610-1-II, *7, Cabral II, Cause no. 60613-5-II, *7.

[17] Cabral I, Cause no. 60610-1-II, *6, Cabral II, Cause no. 60613-5-II, *6.

[18] Cabral I, Cause no. 60610-1-II, *6, Cabral II, Cause no. 60613-5-II, *6.

[19] See, e.g., Meeb v. Mellergaard, Cause no. 40771-3-III, 2026 WL 961022 (Apr. 9, 2026); Elkharwily v. Permanente, Cause no. 55283-3-II, 2025 WL 2401052 (Aug. 19, 2025); Nsejjere v. Anderton, Cause no. 60351-9-II, 2025 WL 1879969 (July 8, 2025), rev. denied, 5 Wn.3d 1021 (2025); Benshoof v. Cliber, Cause no. 86466-1-I, 2025 WL 252817 (Jan. 21, 2025).

[20] In re Sindram, 498 U.S. 177, 180, 111 S. Ct. 596, 597, 112 L. Ed. 2d 599, reh'g denied, 498 U.S. 1116 (1991).

[21] Litigation is "abusive" under RCW ch. 26.51 if it is "brought primarily for the purpose of harassing, intimidating, or maintaining contact with the other party" and at least one of the following factors apply: 1) the legal contentions "are not warranted by existing law or by a reasonable argument for the extension, modification, or reversal of existing law, or the establishment of new law"; 2) the factual contentions "are without the existence of evidentiary support"; or 3) if the issues raised have previously litigated and disposed of unfavorably to the party advancing the litigation.

[22] RCW 26.51.010.