

**FILED**

UNITED STATES DISTRICT COURT  
ALBUQUERQUE, NEW MEXICO  
IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO JUL 06 2007

WILLIAM H. PAYNE,

Plaintiffs,

vs.

NATIONAL SECURITY AGENCY,

Defendant.

**MATTHEW J. DYKMAN**  
CLERK

CIVIL NO. 97-266 MCA

**ORDER TO SHOW CAUSE**<sup>1</sup>

Due to a history of repetitive, frivolous and vexatious litigation,<sup>2</sup> *pro se* litigants William H. Payne ("Payne") and Arthur R. Morales ("Morales") were enjoined by the Honorable William F. Downes, Chief Judge of the District of Wyoming (sitting in New Mexico by designation), from filing new cases and from reasserting in pending cases any previously dismissed claims unless Payne and Morales complied with the requirements outlined in Appendix A to the court's injunction,<sup>3</sup> Morales and Payne v. Baca et al., CIV 01-634 WFD [Docs. 57, 61].

So, too, due to a history of abusive and frivolous lawsuits brought in State District Court, two separate New Mexico state court judges enjoined Payne and Morales from filing any *pro se* pleading in any New Mexico court.<sup>4</sup> Thus, Payne and Morales are barred from litigation in both state

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<sup>1</sup>This matter is before the Court pursuant to an Order of Reference issued by the Honorable M. Christina Armijo [Doc. 89]. An earlier Order of Reference issued by the district's Chief Judge, the Honorable Martha Vázquez, was withdrawn after the case was assigned to Judge Armijo [Text Order, Doc. 88].

<sup>2</sup>A history of Payne's and Morales' litigation in the United States District Court for the District of New Mexico is attached as Appendix "B." A history of their State litigation is attached as Appendix "C."

<sup>3</sup>Appendix "A" sets out the requirements imposed by Judge Downes on Payne and Morales for future filings.

<sup>4</sup>Payne v. Brennan et al., 2001-07794 (On 5/16/2002, State District Court Judge Kenneth Brown entered an injunction granting defendants' motion for injunctive relief prohibiting William H. Payne from

and federal fora unless they comply with specific filing requirements.

The federal order admonished Payne and Morales that violation of the injunction would be deemed contempt of the court and would subject the violators to sanctions [Doc. 61]. Contempt sanctions may include censure, imposition of monetary fines and incarceration. *See Hicks on Behalf of Feiock v. Feiock*, 485 U.S. 624, 649, 108 S. Ct. 1423, 1439 (1988) (noting that contempt could be punished by a conditional prison term); *Hutto v. Finney*, 437 U.S. 678, 690-91, 98 S.Ct. 2565, 2573 (1978) (fines may be imposed as sanction for contempt).

Notwithstanding the existence of both federal and state court injunctions, on May 16, 2007, Payne and Morales filed pleadings [Docs. 81, 82] seeking to reassert claims previously dismissed by the Honorable Santiago Campos [Doc. 72], and affirmed on appeal [Doc. 80].

The pleadings and papers filed by Payne and Morales on May 16, 2007 include a motion to set aside the December 2000 judgment [Doc. 81]; a pleading captioned "Mandatory Judicial Notice" [Doc. 82]; a motion for extension of time to respond was filed June 12, 2007 [Doc. 84]; a reply was filed June 12, 2007 [Doc. 85]; and a Motion To Void Judgment for Lack of Jurisdiction was filed June 21, 2007 [Doc. 91].

Similarly, on May 30, 2007, Payne sought to file a pleading captioned "Motion to Void Judgment for Lack of Jurisdiction" [Doc. 168] in a closed case, *Payne v. Sandia Corp. et al.*, CIV

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filing lawsuits in New Mexico court without representation of licensed counsel); *Morales and Payne v. Brennan et al.*, 2002-3425 (July 8, 2002, then State District Court Judge Robert H. Scott permanently enjoined Morales from filing any pleadings in state court unless represented by counsel. Judge Scott is now a Magistrate Judge with the United States District Court in New Mexico. In both cases, Payne and Morales were deemed "vexatious" litigants who impair, impede, delay and obstruct the administration of justice.

In both district court cases, Payne and Morales sought to appeal the dismissals of their cases and the injunctions entered against them. In both instances, the appeals were dismissed or denied.

A court may judicially notice records of sister courts. *See, e.g., United States v. Estep*, 1060, 1063 (10th Cir. 1985) (judicial notice is particularly applicable to court records of litigation closely related to the case before it).

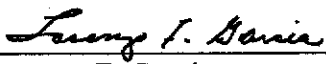
92-1452 JC. Senior Judge John Edwards Conway immediately entered an order finding "no basis in law" for entertaining Payne's request, as the case had been dismissed 1994 (Docs. 154, 155), and the dismissal was affirmed on appeal [Doc. 167]. Further, Judge Conway directed the Clerk of the Court to accept no further pleadings in this case [Doc. 169]. Prior to filing the various pleadings referred to above, neither Payne nor Morales complied with any of the requirements set out in Appendix A.

The filing of repetitive, frivolous and vexatious pleadings and lawsuits congests court dockets, imposes substantial litigation costs and attorney fees on individuals who are required to respond, taxes judicial resources, and diverts the Court's attention from meritorious litigation.

The filing of pleadings in this case in an attempt to resurrect claims previously dismissed and affirmed appears to be a violation of the federal injunction which was intended to bar this kind of misconduct, and, therefore, appears to be in contumacious disregard of this Court's authority.

Accordingly, Payne and Morales are directed to show cause, if any they have, why the undersigned magistrate judge should not certify facts pursuant to 28 U.S.C. § 636(b)(a)(C) and issue a report and recommendation to the Chief Judge pursuant to 28 U.S.C. § 636(b)(1) recommending that sanctions against Payne and Morales be imposed.

Plaintiffs are further directed to show cause, if any they have, why their recent pleadings and papers [Docs. 81, 82, 84, 85 and 91] should not be denied or stricken, as this case was long ago closed. Payne and Morales are directed to file their written responses and supporting affidavits no later than July 25, 2007.

  
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Lorenzo F. Garcia  
Chief United States Magistrate Judge

## APPENDIX A

### Procedures for Petition Seeking Leave to File *Pro Se* Action

Any documents William H. Payne and/or Arthur R. Morales ("Plaintiffs") wish to submit for filing in the District of New Mexico shall be delivered to the Office of the Clerk, United States District Court, United States Courthouse, P.O. Box 689, Albuquerque, NM 87103 (333 Lomas Blvd N.W., Suite 270). As a requisite to filing a *pro se* complaint, Plaintiffs must file three documents:

- (1) a petition entitled, "Petition Pursuant to Court Order Seeking Leave to File a *Pro Se* Action." Plaintiffs shall affix a copy of this Order to the petition;
- (2) an affidavit in proper legal form as directed below; and
- (3) the proposed complaint or claims sought to be filed in this District.

The Petition Pursuant to Court Order Seeking Leave to File a *Pro Se* Complaint must contain the following information:

- (1) a statement advising the Court whether any defendant to the lawsuit was a party, or was in any way involved in, any prior lawsuit involving Plaintiffs, and if so in what capacity;
- (2) a list of all lawsuits in the United States District Court for the District of New Mexico, the United States Court of Appeals for the Tenth Circuit, the United States Supreme Court, and state courts in which Plaintiffs are or were parties; the name and citation of each case, if applicable, including jurisdiction; Plaintiffs' involvement in each lawsuit; the status of each lawsuit; and the disposition;
- (3) a list of all federal or state cases in which a judgment was rendered against either or both Plaintiffs, if any; the name and citation of each case; the amount of judgment rendered against them, if any; the amount of the outstanding judgment; and the reasons the judgment remains outstanding; and
- (4) a list of all federal or state cases in which a judgment was rendered in favor of either or both Plaintiffs, if any; the name and citation of each case; the amount of judgment rendered in favor of them, if any; the amount of outstanding judgment; and the reasons the judgment remains outstanding;

The affidavit accompanying the Petition shall state the following:

- (1) that the complaint or claims Plaintiffs wish to present have never before been raised by them and disposed of by any federal or state court;
- (2) that to the best of their knowledge the claim(s) are not frivolous or taken in bad

faith; that the claim(s) are well-grounded in fact and warranted by existing law or a good faith argument for the extension, modification or reversal of existing law; that the lawsuit is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation, *see* FED. R. CIV. P. 11; and

- (3) that the claims are not meant to harass any individual or entity.

The complaint or claims sought to be filed in this District must comply with this Order, with FED. R. CIV. P. 8 and all other provisions of the Federal Rules of Civil Procedure, and with the Local Rules of Practice for this District.

The procedure for review of Plaintiffs' intended filings is as follows.

- (1) the Clerk of the Court will accept the documents, mark them received, and immediately forward them pursuant to a United States Magistrate Judge
- (2) The Magistrate shall recommend approval or disapproval of the petition after considering the following criteria:
  - (a) whether Plaintiffs have complied with this Order in all particulars;
  - (b) whether Plaintiffs' complaint complies with the Federal Rules of Civil Procedure and the Local Rules of Practice;
  - (c) whether the complaint is frivolous, abusive, harassing or malicious;
  - (d) whether the claims raised in Plaintiffs' complaint have been raised by either of them and disposed of by any federal or state court;
  - (e) whether there has been full compliance with FED. R. CIV. P. 11 and all pleadings and filings are not violative of 28 U.S.C. § 1927;
  - (f) whether the complaint alleges claims against individuals or entities that may have immunity from suit; and
  - (g) such other reasonable requirements established by the Court or the Magistrate Judge.

Failure to comply with the procedures and principles mandated by this Order shall be sufficient grounds for denying the petition. The Magistrate Judge may recommend disapproval of the petition upon false recitals in the filings. Upon false recitals in the filings, Plaintiffs may be considered in violation of this Order, and they may be subject to other Orders of the Court, including appropriate sanctions. The provisions contained in FED. R. CIV. P. 11 and 28 U.S.C. § 1927 are incorporated into this Order.

The Magistrate Judge shall not otherwise address the merits of the complaint. The Magistrate Judge shall submit proposed findings and a recommendation as to disposition of the

Petition to the proper District Judge. Copies of proposed findings and recommendations shall be mailed to the Plaintiffs and all interested parties. These individuals shall have ten (10) days after service of the proposed findings and recommendations to serve and file written, specific objections to them. If no such objections are filed in a timely manner, the Magistrate Judge's proposed findings and recommendations may be accepted by the District Judge and appropriate Orders entered without further notice. No provision is made for oral presentation in support of a petition. *Tripati v. Beaman*, 878 F.2d 351, 354 (10th Cir. 1989).

If the Court enters an Order granting the petition, the Clerk shall cause the complaint and materials to be filed as of the date of the Order. All filings in the matter shall be in strict conformity with the Federal Rules of Civil Procedure and the Local Rules of Practice. This Order shall not interfere in any way with pending actions, Orders, or Judgments of any federal court involving Plaintiffs.

## **History of Frivolous and Vexatious Litigation in the United States District Court**

Garcia and Morales v. Sandia Nat'l Lab., No. CIV 91-00614 JHG. This was an alleged unlawful employment discrimination case. It resulted in 238 docket entries. The federal Court dismissed the claims with prejudice on August 28, 1995. On April 2, 1996, the 10th Circuit affirmed the District Court's decision.

Payne v. Sandia et al., CIV 92-1452. This sealed case was filed against Sandia Laboratories and numerous others. It was summarily dismissed by the Honorable John Edwards Conway on August 25, 1994, and the dismissal was affirmed by the Tenth Circuit in March 1995. There are 167 docket entries.

Payne and Morales v. Minihan et al., No. CIV 97-266 SC/DJS. Plaintiffs brought this case against the Director of the National Security Agency under the Freedom of Information Act. Payne and Morales sought release of various allegedly secret communications related to the Gulf War. There are 88 docket entries. Both Plaintiffs were sanctioned by Judge Svet for violations of the Court's orders [Doc. 37]. Plaintiffs were ordered to pay sanctions in the amount of \$625.00 [Doc. 41]. The Court granted the Defendant's Motion for Summary Judgment against the Plaintiffs on October 27, 1999. On appeal, the 10th Circuit affirmed the District Court's decision on December 13, 2000.

Morales v. Lockheed Martin Corp. et al., No. CIV 97-350 LH/DJS. Morales brought this case alleging violations of Title VII of the Civil Rights Act, 29 U.S.C. § 623, 42 U.S.C. § 1981, and the New Mexico Human Rights Act. The Plaintiff sued the National Laboratory, various contractors, and lab officials. Morales was sanctioned by Judge C. Leroy Hansen for failing to comply with discovery obligations [Doc. 81]. and was ordered to pay attorney fees in the amount of \$2,260.85. The Court dismissed the action with prejudice on December 29, 1999. On appeal, the 10th Circuit affirmed the District Court's decision. There were 165 docket entries.

Payne v. EEOC et al., No. CIV 99-270 LFG/KBM. Payne brought this case alleging violations of the Privacy Act, 5 U.S.C. § 552(a). The Court dismissed the action on November 30, 1999. Payne was sanctioned for his litigation misconduct by the trial court. The court found that Payne's claims had no basis in law and that he failed to withdraw his claims within the "safe harbor" time provisions of Fed. R. Civ. P. 11 [Doc. 52]. Payne was ordered to pay sanctions of \$912.50 [Doc. 60]. On January 3, 2001, the 10th Circuit affirmed the District Court's decision. Payne sued five separate corporations and thirty-three separate individual defendants. There were 119 docket entries.

Morales and Payne v. United States et al., No. CIV 00-1574 WFD. In this case, Plaintiffs alleged harassment in violation of New Mexico State law. The Plaintiffs sued the U.S. Attorney for the District of New Mexico, as well as three Assistant U.S. Attorneys, and one federal judge. The action was removed to the Federal District Court of New Mexico on November 8, 2000 and was dismissed with prejudice on May 31, 2002. There are seventy-one filings in this case docket. In an order denying reconsideration, Judge Downes noted,

Plaintiffs have established a practice of indiscriminately suing the various judges assigned to their cases, as well as various attorneys and law firms representing opposing parties . . . . It is apparent to this Court that Plaintiffs will continue to file lawsuits against the judges whenever unfavorable rulings are rendered.

[Doc. 64].

Payne v. Sandia Corp., No. CIV 00-1677 WFD. Payne sued four corporations, one law firm, three attorneys, and one federal judge. Payne alleged that the Court's earlier dismissals of his lawsuits constituted harassment and defamation. The action was removed to the United States District Court of New Mexico by the United States and was dismissed on May 30, 2003. Judge Downes referred to Payne's litigation history and called his lawsuits "frivolous." [Doc. 105, p. 7]. There were 122 docket entries.

Morales and Payne v. Baca, No. CIV 01-0634 BB/DJS. Plaintiffs again alleged harassment in violation of New Mexico State law. The action was removed to the United States District Court of New Mexico and was dismissed with prejudice on May 28, 2004. The Plaintiffs sued one law firm, three Assistant U.S. Attorneys, one State judge, and one federal judge. In dismissing the lawsuit, Judge Downes stated,

The Court finds the Plaintiffs' conduct to be a frivolous, ranting diatribe grounded in unbridled contempt for the law--a continuation of the Plaintiffs' litigious pattern spanning nearly a decade.

[Doc. 57, p. 15]. There were seventy-five docket entries.

Payne v. Dow et al., No. CIV 01-1132 DVB. This case involves Plaintiff's allegations of conspiracy or harassment in violation of New Mexico State law. Payne unsuccessfully sought to sue a federal judge, the Honorable William Downes, an Assistant U.S. Attorney, and the law firm that successfully represented Defendants in a prior Payne lawsuit. The action was removed to the United States District Court

of New Mexico on September 28, 2001 and was dismissed with prejudice on October 4, 2004. There were forty docket entries in this case.

Morales and Payne v. Zavitz, No. CIV 01-01198 DVB. In this case Plaintiffs allege conspiracy and harassment in violation of New Mexico State law. The action was removed to the United States District Court of New Mexico and was dismissed with prejudice on October 4, 2004. In this case, Plaintiffs filed suit against a federal judge, an Assistant U.S. Attorney, and a law firm that had successfully represented Defendants in a prior Morales' case. There were fifty-two docket entries.

Payne and Morales were unsuccessful in each and every lawsuit they prosecuted in federal court.

## **HISTORY OF LITIGATION** **IN BERNALILLO COUNTY STATE DISTRICT COURT**

Morales and Payne v. Dow et al., 202-CV-2001-105900. This lawsuit was filed in State District Court in Bernalillo County, Plaintiffs alleged that the Defendants' actions in previously dismissing the *pro se* Plaintiffs' prior federal suit constituted harassment and defamation. Plaintiffs brought suit against Assistant U.S. Attorney Phyllis Dow and Assistant U.S. Attorney Michael Hoses, who had both successfully represented various federal judges and federal officials in Payne and Morales' prior federal litigation. Plaintiffs also sued Chief United States District Judge William F. Downes who had dismissed some of Payne and Morales' earlier federal lawsuits. In addition, Payne and Morales sued attorney Robert St. John, who successfully defended Sandia Laboratories and other federal officials in Payne and Morales' prior federal litigation. This case was ultimately removed to federal court and, there, dismissed with prejudice.

Morales and Payne v. Gorence et al., 202-CV-2000-10289. Payne and Morales brought suit against New Mexico's United States Attorney John Kelly, as well as three Assistant U.S. Attorneys, Robert Gorence, Manuel Lucero and Jan Mitchell. Payne and Morales also sued United States Magistrate Judge Don J. Svet who earlier sanctioned them for violation of discovery obligations in federal court. This case was removed to federal court and was dismissed by Judge Downes with prejudice.

Morales and Payne v. Baca et al., 202-CV-2001-13118. Payne and Morales sought to bring another lawsuit for damages against State District Judge Ted Baca, United States Attorney Norman Bay, Assistant U.S. Attorneys Phyllis Dow, Ray Hamilton, and United States District Judge Martha Vázquez. The theory in this case, as before, was that prior judicial rulings in dismissing state or federal cases, or counsel's representation of Defendants in prior state and federal cases constituted harassment and defamation against the Plaintiffs. This state case was removed to federal court and, ultimately, dismissed with prejudice by Judge Downes.

Morales and Payne v. Brennan et al., 202-CIV-2001-07794. This case, also filed in Bernalillo County State District Court, was a lawsuit for damages filed by the *pro se* Plaintiffs against two state district judges, the Honorable John Brennan, presiding judge of the Second Judicial District Court, as well as the Honorable W. Daniel Schneider. Plaintiffs alleged conspiracy and breach of contract. The breach of contract related to the claim that Plaintiffs had paid a filing fee and were entitled to a jury trial. The court characterized their claims as "frivolous," and dismissed this lawsuit with prejudice.

The presiding judge, he Honorable Kenneth Brown, entered an order enjoining Plaintiffs from filing any future state court litigation unless they were represented by counsel.

Payne v. Sandia Nat'l Lab. et al., 202-2001-10278. This case was filed subsequent to the federal court's dismissal of Payne's lawsuit against Sandia and subsequent to the Tenth Circuit's affirmance of the dismissal. In this state lawsuit, Payne sued Sandia National Laboratories, its attorney Robert St. John, attorneys Mark Smith, the law firm of Krehbiel, Bannerman and Horne, Assistant U.S. Attorney Phyllis Dow, federal judge Lorenzo F. Garcia, and attorney Carol Smith. This case was removed to federal court where it was dismissed with prejudice by the Honorable William F. Downes.

Morales and Payne v. Zavitz et al., 202-CV-2001-6293. Morales and Payne brought suit against Assistant U.S. Attorney John Zavitz, who had represented judicial and assistant U.S. Attorney defendants in Payne and Morales' prior lawsuits in federal court. Payne and Morales also sued the Honorable William F. Downes, who ruled against them in prior federal court cases and who enjoined their further federal court litigation. They also sued the lawyers in the French & Associates law firm, which had successfully represented State District Judge Ted Baca in prior state litigation. This lawsuit was removed to federal court and dismissed with prejudice by United States District Judge Dee V. Benson.

Morales and Payne v. Brennan et al., 202-CIV-2002-3425. This case was filed in the State District Court for Bernalillo County. The *Pro se* litigants again sued the state court's Chief District Judge, the Honorable John Brennan, District Judge Theodore Baca, William Haas, the Chief Justice of the New Mexico Supreme Court Patricio Serna (who had denied Plaintiffs' request for extraordinary relief in New Mexico's appellate courts), and the law firm of Walz & Associates, who successfully represented individuals previously sued by Morales and Payne.

This lawsuit was dismissed with prejudice by State District Judge Robert H. Scott, who also entered an order permanently enjoining Plaintiffs from filing future *pro se* lawsuits in any New Mexico district court.

In addition to the foregoing state district court litigation, Payne and Morales filed a variety of alleged criminal complaints against judicial officers in New Mexico's Metropolitan Court. Those complaints sought the arrest of various federal judges, Assistant U.S. Attorneys, and private lawyers on allegations of harassment, defamation and other claimed violations of law. Without exception, all of those Metropolitan Court cases were dismissed.

Payne and Morales were unsuccessful in each and every lawsuit they sought to prosecute in state court.

Payne and Morales also engaged in several unsuccessful efforts to obtain extraordinary relief from New Mexico's two appellate courts--the intermediate Court of Appeals and the New Mexico Supreme Court. In each of those instances, the appellate courts either refused to accept Payne and Morales' filings or, alternatively, denied the requested relief.