

7-8-2004

FRIVOLOUS COURT FILINGS. PAYMENT
OF LEGAL COSTS. STATE BAR NOTICE.
INITIATIVE STATUTE.

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FRIVOLOUS COURT FILINGS. PAYMENT OF LEGAL COSTS. STATE BAR NOTICE. INITIATIVE STATUTE. California Initiative 1059 (2004).
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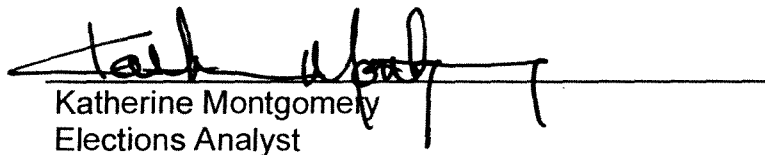
SECRETARY OF STATE
KEVIN SHELLEY
STATE OF CALIFORNIA

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December 31, 2004

TO: ALL COUNTY CLERKS/REGISTRARS OF VOTERS AND
PROponents (04418)

FROM:


Katherine Montgomery
Elections Analyst

SUBJECT: FAILURE OF INITIATIVE #1059

Pursuant to Elections Code section 9030(b), you are hereby notified that the total number of signatures to the hereinafter named initiative statute filed with all county elections officials is less than 100 percent of the number of qualified voters required to find the petition sufficient; therefore, the petition has **failed**.

TITLE: FRIVOLOUS COURT FILINGS. PAYMENT OF LEGAL COSTS.
STATE BAR NOTICE. INITIATIVE STATUTE.

SUMMARY DATE: 07/08/04

PROponent: Robert McCracken





SECRETARY OF STATE
KEVIN SHELLEY
STATE OF CALIFORNIA

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July 8, 2004

TO: ALL REGISTRARS OF VOTERS/COUNTY CLERKS AND PROPONENTS
(04213)

FROM: Brianna Lierman
Brianna Lierman
Elections Analyst

SUBJECT: **INITIATIVE #1059**

Pursuant to Elections Code section 336, we transmit herewith a copy of the Title and Summary prepared by the Attorney General on a proposed initiative measure entitled:

**FRIVOLOUS COURT FILINGS.
PAYMENT OF LEGAL COSTS.
STATE BAR NOTICE.
INITIATIVE STATUTE.**

The proponent of the above-named measure is:

Robert McCracken

(626) 919-8290

#1059

FRIVOLOUS COURT FILINGS.
PAYMENT OF LEGAL COSTS.
STATE BAR NOTICE.
INITIATIVE STATUTE.

CIRCULATING AND FILING SCHEDULE

1. Minimum number of signatures required: 373,816
California Constitution, Article II, Section 8(b)
2. Official Summary Date:..... Thursday, 07/08/04
3. Petitions Sections:
 - a. First day Proponent can circulate Sections for
signatures (EC §336) Thursday, 07/08/04
 - b. Last day Proponent can circulate and file
with the county. All sections are to be filed at the
same time within each county (EC §336, 9030(a))..... Monday, 12/06/04*
 - c. Last day for county to determine total number of
signatures affixed to petitions and to transmit total
to the Secretary of State (EC §9030(b))..... Thursday, 12/16/04

(If the Proponent files the petition with the county on a date prior to 12/06/04,
the county has eight working days from the filing of the petition to determine the
total number of signatures affixed to the petition and to transmit the total to the
Secretary of State) (EC §9030(b)).

 - d. Secretary of State determines whether the total number
of signatures filed with all county clerks/registrars of
voters meets the minimum number of required signatures,
and notifies the counties..... Saturday, 12/25/04**
 - e. Last day for county to determine total number of qualified
voters who signed the petition, and to transmit certificate
with a blank copy of the petition to the Secretary of State
(EC §9030(d)(e))Monday, 02/07/05

*Date adjusted for official deadline, which falls on a Sunday (EC §15)

**Date varies based on the date of county receipt.

INITIATIVE #1059
Circulating and Filing Schedule continued:

(If the Secretary of State notifies the county to determine the number of qualified voters who signed the petition on a date other than 12/25/04, the last day is no later than the thirtieth working day after the county's receipt of notification).(EC §9030(d)(e)).

- f. If the signature count is more than 411,198 or less than 355,125 then the Secretary of State certifies the petition as qualified or failed, and notifies the counties. If the signature count is between 355,125 and 411,198 inclusive, then the Secretary of State notifies the counties using the random sampling technique to determine the validity of **all** signatures..... Thursday, 02/17/05

- g. Last day for county to determine actual number of all qualified voters who signed the petition, and to transmit certificate with a blank copy of the petition to the Secretary of State. (EC §9031(b)(c)).Monday, 04/04/05

(If the Secretary of State notifies the county to determine the number of qualified voters who have signed the petition on a date other than 02/17/05, the last day is no later than the thirtieth working day after the county's receipt of notification)
(EC §9031(b)(c)).

- h. Secretary of State certifies whether the petition has been signed by the number of qualified voters required to declare the petition sufficient (EC §9031(d); 9033) Friday,04/08/05*

*Date varies based on receipt of county certification.

IMPORTANT POINTS

- California law prohibits the use of signatures, names and addresses gathered on initiative petitions for any purpose other than to qualify the initiative measure for the ballot. This means that the petitions cannot be used to create or add to mailing lists or similar lists for any purpose, including fundraising or requests for support. Any such misuses constitutes a crime under California law. Elections Code section 18650; *Bilofsky v. Deukmejian* (1981) 124 Cal. App. 3d 825, 177 Cal. Rptr. 621; 63 Ops. Cal. Atty. Gen. 37 (1980).
- Please refer to Elections Code sections 100,101,101.5,104,9001, 9008, 9009, 9021, and 9022 for appropriate format and type consideration in printing, typing and otherwise preparing your initiative petition for circulation and signatures. Please send a copy of the petition after you have it printed. This copy is not for our review or approval, but to supplement our file.
- Your attention is directed to the campaign disclosure requirements of the **Political Reform Act of 1974**, Government Code section 81000 et seq.
- When writing or calling state or county elections officials, provide the official title of the initiative which was prepared by the Attorney General. Use of this title will assist elections officials in referencing the proper file.
- When a petition is presented to the county elections official for filing by someone other than the proponent, the required authorization shall include the name or names of the persons filing the petition.
- When filing the petition with the county elections official, please provide a blank petition for elections official use.

Enclosures

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



1300 I STREET, SUITE 125
P.O. BOX 944255
SACRAMENTO, CA 94244-2550
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Facsimile: (916) 324-8835
Phone: (916) 324-5490

July 8, 2004

FILED

in the office of the Secretary of State
of the State of California

JUL 08 2004

KEVIN SHELLEY, Secretary of State

By Bianna Lierman
Deputy Secretary of State

Kevin Shelley
Secretary of State
1500 - 11th Street, 5th Floor
Sacramento, California 95814

RE: Initiative Title and Summary
SUBJECT: FRIVOLOUS COURT FILINGS.
PAYMENT OF LEGAL COSTS.
STATE BAR NOTICE. INITIATIVE STATUTE.
FILE NO: SA2004RF0021

Dear Mr. Shelley:

Pursuant to the provisions of sections 9004 and 336 of the Elections Code, you are hereby notified that on this day we mailed our title and summary to the proponent of the above-identified proposed initiative.

Enclosed is a copy of our transmittal letter to the proponent, a copy of our title and summary, a declaration of service thereof, and a copy of the proposed measure.

According to information available in our records, the name and address of the proponent is as stated on the declaration of service.

Sincerely,

Tricia Knight

TRICIA KNIGHT
Initiative Coordinator

For **BILL LOCKYER**
Attorney General

TK/cw
Enclosures

Date: July 8, 2004
File No.: SA2004RF0021

The Attorney General of California has prepared the following title and summary of the chief purpose and points of the proposed measure:

FRIVOLOUS COURT FILINGS. PAYMENT OF LEGAL COSTS. STATE BAR NOTICE.

INITIATIVE STATUTE. Requires losing party and lawyer in frivolous civil lawsuit, as defined, to pay legal costs of prevailing party. Judge required to give written explanation for dismissing or continuing case when party claims opponent's court filing is frivolous, and to notify State Bar if judge sanctions attorney or law firm for frivolous filing, with cost of notification paid by sanctioned attorney or firm. State Bar must recommend discipline if three sanction notices received against same attorney or law firm within five year period. Measure inapplicable to small claims actions. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local governments: This measure would result in an unknown, but probably minor absorbable cost to the state.

CALB
Citizens Against Legal Blackmail

JM2004 KF 0021

phone / fax (626) 919-8290

May 1, 2004

Bill Lockyer, Attorney General
Attn: Initiative Coordinator
Office of the Attorney General
13001 I Street
Sacramento, CA 95814

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MAY 18 2004

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

We are requesting title and summary for our proposed initiative to amend the California Code of Civil Procedure Section 128.7.

Should you have any questions or need further information, please contact me at the above phone number or you may leave a message at (626) 918-5339. Thank you for immediate attention in this matter.

Sincerely,



Robert McCracken
Director

S K W N I W Z I

INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS

TO THE HONORABLE SECRETARY OF STATE OF CALIFORNIA

We, the undersigned, registered, qualified voters of California, residents of _____ County, hereby propose amendments to the Government Code, relating to frivolous lawsuits, and petition the Secretary of State to submit the same to the voters of California for their adoption or rejection at the next succeeding general election or at any special statewide election held prior to that general election or otherwise provided by law. The proposed statutory amendments read as follows:"

The people of the state of California have decided that it is time to do something about frivolous lawsuits and propose to amend the California Code of Civil Procedures Section 128.7 to include the following:

- (1) Make it mandatory that the loser and their lawyer, of a frivolous lawsuit, pay the legal cost of the other side.
- (2) Judges should be held accountable for not dismissing frivolous lawsuits. Make it mandatory that if a party to a lawsuit declares the suit to be frivolous and upon presentation of the reasons for this declaration, the judge shall prepare a written explanation for dismissing or continuing the case, which becomes part of the case file.

For the purpose of this section, frivolous means;

- (a) It is being presented primarily for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.
 - (b) The claims, defenses and other legal contentions are contrary to common knowledge.
 - (c) The goods or services of one or more of the defendants is not relevant to the case.
 - (d) The claims, defenses, and other legal contentions are not warranted by existing law or by nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law.
 - (e) The allegations and other factual contentions have no evidentiary support or, if specifically so identified, are not likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.
 - (e) The denials of factual contentions are not warranted on the evidence or, if specifically so identified, are not reasonably based on lack of information or belief.
- (3) When the court imposes sanctions upon an attorney or law firm, it shall notify the State Bar of the sanction imposed for filing a frivolous lawsuit or frivolous answer or other responsive pleading. The notification shall include the sanction order, any written findings related thereto and those portions of the record relevant to the order. The attorney or law firm against whom the order was written shall reimburse the court for all expenses incurred in reporting to the State Bar. If the State Bar determines that it has received three notifications of sanctions against the same attorney or law firm within the past five years, the State Bar shall recommend appropriate discipline, including, but not limited to, suspension or disbarment.
 - (4) If the plaintiff's own actions result in a measure of liability, the plaintiff must be responsible for the consequences of their own actions.
 - (5) This section shall not apply to small claims court.
 - (6) This section shall have no expiration date.