

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

DANIEL A. BERNATH,

Plaintiff,

v.

Case No: 2:15-cv-358-FtM-38CM

MARK CAMERON SEAVEY,

Defendant.

PRE-SUIT INJUNCTION ORDER¹

This matter comes before the Court on review of the file. The Court has declared Bernath to be a vexatious litigant because of his excessive filing and repeated failures to comply with the Federal Rules of Civil Procedure, the Middle District of Florida Local Rules, and the Court's orders. ([Doc. 259](#); [Doc. 255](#)). It also has granted (and modified) a pre-suit injunction against Bernath for filing any new suits in the United States District Court for the Middle District of Florida. ([Doc. 259](#); [Doc. 295](#)). For clarity's sake, this Pre-Suit Injunction Order reiterates the procedures for Bernath, the Clerk's Office, and the Court to follow if Bernath seeks to file a new complaint and other initiating document in this Court.²

Accordingly, it is **ORDERED**:

¹ Disclaimer: Documents filed in CM/ECF may contain hyperlinks to other documents or websites. These hyperlinks are provided only for users' convenience. Users are cautioned that hyperlinked documents in CM/ECF are subject to PACER fees. By allowing hyperlinks to other websites, this Court does not endorse, recommend, approve, or guarantee any third parties or the services or products they provide on their websites. Likewise, the Court has no agreements with any of these third parties or their websites. The Court accepts no responsibility for the availability or functionality of any hyperlink. Thus, the fact that a hyperlink ceases to work or directs the user to some other site does not affect the opinion of the Court.

² The procedures are also outlined in the Court's previous Order ([Doc. 295](#)).

- (1) The Clerk of Court shall open a miscellaneous case titled, “In re: Daniel A. Bernath” that contains this Order as the first docket entry.
- (2) Bernath may not file, as a *pro se* litigant,³ any new lawsuit, action, proceeding, writ, or other matter against Mark Seavey and The American Legion in the United States District Court for the Middle District of Florida without first obtaining leave of court. In moving for leave, Bernath must adhere to these procedures:
 - a. file a motion titled, “Motion Seeking Leave to File a Complaint”;
 - b. attach as “Exhibit 1” to the motion the proposed new complaint;
 - c. attach as “Exhibit 2” a copy of this Order; and
 - d. attach as “Exhibit 3” a sworn affidavit from Bernath certifying that (1) the complaint raises a new issue that has never been previously raised by him in this or any other court; (2) the claim or issue is not frivolous, vexatious, or harassing; and (3) the document is not filed in bad faith.
- (3) If Bernath does not follow the above procedures, the Clerk is **DIRECTED** to reject any new complaint and make an entry on the docket in the miscellaneous case file to reflect that a new complaint was rejected and returned for failure to comply with the pre-filing screening procedures.
- (4) If Bernath meets the pre-filing procedures, the Clerk is **DIRECTED** to forward his motion and exhibits to the senior Magistrate Judge in the applicable division for review. The Magistrate Judge must decide whether the complaint has

³ The pre-filing screening procedure will not apply if an attorney who is a member of good standing in the Middle District of Florida files a new complaint on Bernath’s behalf.

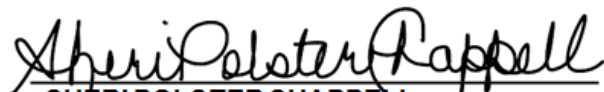
arguable merit; that is, a material basis in law and fact. No abusive, frivolous, scandalous, or otherwise impertinent complaint will be permitted.

- a. If the action is arguably meritorious, the Magistrate Judge shall issue an order so stating and directing the Clerk to file the complaint for random assignment. The Magistrate Judge's order shall be docketed with the complaint in the new civil case.
- b. If, however, the Magistrate Judge's preliminary review determines that the complaint has no arguable merit, the Magistrate Judge shall enter an order denying the motion, in which event the complaint will not be filed with the Court. Instead, the Clerk shall return the motion and exhibits to Bernath, after making a copy for the Court. The Magistrate Judge's order and the copy of the motion and exhibits must be filed in the miscellaneous case.

(5) Bernath's failure to comply with the terms of this Order will be sufficient grounds to deny any motion for leave to file, and may be considered an act of contempt for which Bernath may be sanctioned accordingly.

(6) The remedial measures imposed by this Order do not restrict other judges' authority to impose sanctions, if appropriate, in cases that Bernath has already filed in this Court.

DONE and **ORDERED** in Fort Myers, Florida this 11th day of December 2017.


SHERI POLSTER CHAPPELL
UNITED STATES DISTRICT JUDGE

Copies: All Parties of Record