

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

Abe Developments LLC, et al. v. Auto-Owners Insurance Company,
et al.

Abe Developments · No. CV-25-02792-PHX-KML · Decided February 13, 2026

SUMMARY

The United States District Court for the District of Arizona dismissed the complaint without prejudice after plaintiff Alvin Yono failed to obtain new counsel, comply with court orders, or oppose the defendants’ motion to dismiss. Applying Ninth Circuit failure-to-prosecute factors, the court concluded that defendants would be prejudiced and that dismissal was the only realistically available lesser sanction. The court denied the motion to dismiss as moot and ordered Auto-Owners Insurance Company to address its counterclaims by February 20, 2026.

CASE DETAILS

COURT	United States District Court for the District of Arizona
WRITING FOR THE COURT	Krissa M. Lanham
JURISDICTION	United States District Court for the District of Arizona
DECIDED	February 13, 2026
DOCKET	CV-25-02792-PHX-KML
DISPOSITION	dismissed
PROCEDURAL POSTURE	Defendants moved to dismiss the complaint after plaintiff Alvin Yono's counsel withdrew and Yono failed to obtain new counsel, elect to proceed pro se, comply with court orders, or oppose the motion. The district court dismissed the complaint without prejudice for failure to prosecute, denied the motion to dismiss as moot, and ordered Auto-Owners to address its pending counterclaims.
STANDARD OF REVIEW	The court applied the Ninth Circuit's five-factor framework for determining whether a plaintiff's failure to prosecute warrants dismissal.
PRECEDENTIAL VALUE	Nonprecedential district court order

TOPICS

- civil procedure
- sanctions
- motions to dismiss
- default
- insurance

PRACTICE AREAS

Civil procedure

Insurance litigation

Commercial litigation

QUESTIONS PRESENTED

1. Whether the complaint should be dismissed without prejudice because plaintiff failed to prosecute the action and disregarded multiple court orders.
2. Whether defendants' motion to dismiss should be resolved on its merits after plaintiff failed to oppose it.
3. What procedural step Auto-Owners must take regarding its pending counterclaims.

HOLDINGS

1. A plaintiff's repeated failure to comply with court orders and failure to participate in the action warranted dismissal of the complaint without prejudice.
2. The motion to dismiss was denied as moot because the complaint was dismissed without prejudice for failure to prosecute.
3. Auto-Owners was required either to move to dismiss its counterclaims or to move to strike the plaintiff's answer to the counterclaims so that default judgment could be pursued.

KEY QUOTATIONS

“Yono has a duty to prosecute this case.” (at 1)

“In determining whether Yono’s failure to prosecute warrants dismissal of the case, the court must weigh five factors: “(1) the public’s interest in expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions.”” (at 1)

“The only less drastic sanction realistically available is a dismissal without prejudice. That is appropriate.” (at 2)

FACTUAL BACKGROUND

Yono's counsel was permitted to withdraw, after which the court ordered Yono to obtain new counsel or indicate that he would proceed without counsel. Yono ignored that order and a later order requiring him to oppose defendants' motion to dismiss, filing no document indicating that he wished to continue prosecuting the case. The court found that the case could not proceed without Yono's participation and that defendants would be prejudiced by allowing it to continue.

PROCEDURAL HISTORY

On January 8, 2026, the court permitted Yono's counsel to withdraw and ordered Yono either to obtain new counsel or state that he would proceed without counsel. Yono filed nothing, and defendants moved to dismiss. After another order requiring Yono to oppose the motion by February 6, 2026, Yono again filed nothing. The court dismissed the complaint without prejudice, denied the motion to dismiss as moot, and directed Auto-Owners either to move to dismiss its counterclaims or seek to strike the answer to those counterclaims.

DISPOSITION

dismissed

CASES CITED

- *Fid. Phila. Tr. Co. v. Pioche Mines Consol., Inc.*, 587 F.2d 27, 29 (9th Cir. 1978)
- *Carey v. King*, 856 F.2d 1439, 1440 (9th Cir. 1988)
- *Wanderer v. Johnson*, 910 F.2d 652, 656 (9th Cir. 1990)

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