

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Davis v. Rodriguez

No. 1:25-cv-00368-BAM (PC) (E.D. Cal. May 12, 2025) · No. 1:25-cv-00368-BAM (PC) · Decided May 12, 2025

SUMMARY

The document contains findings and recommendations by a United States magistrate judge in a prisoner civil rights action under 42 U.S.C. § 1983. The court recommends dismissal without prejudice for failure to obey an order requiring payment of the filing fee or submission of an in forma pauperis application and for failure to prosecute. The plaintiff is given fourteen days to file objections, and the clerk is directed to randomly assign a district judge.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Barbara A. McAuliffe
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	May 12, 2025
DOCKET	1:25-cv-00368-BAM (PC)
DISPOSITION	other
PROCEDURAL POSTURE	A magistrate judge issued findings and recommendations, and ordered the clerk to randomly assign a district judge, recommending dismissal without prejudice of a prisoner's § 1983 action for failure to obey a court order and failure to prosecute.
STANDARD OF REVIEW	Dismissal for failure to prosecute or failure to obey a court order is evaluated under the Ninth Circuit's five-factor test: the public's interest in expeditious resolution, the court's need to manage its docket, the risk of prejudice to defendants, the public policy favoring disposition on the merits, and the availability of less drastic sanctions.
PRECEDENTIAL VALUE	unpublished

TOPICS

- civil procedure
- sanctions
- prisoners rights
- section 1983
- civil rights

PRACTICE AREAS

civil rights

civil procedure

prisoners rights

remedies

QUESTIONS PRESENTED

1. Whether the action should be dismissed without prejudice because Plaintiff failed to obey the court's order requiring an in forma pauperis application or payment of the filing fee.
2. Whether dismissal without prejudice was warranted for failure to prosecute under the applicable five-factor test.

HOLDINGS

1. A district court may dismiss an action, including without prejudice when appropriate, as a sanction for failure to prosecute, failure to obey a court order, or failure to comply with local rules.
2. Before dismissing an action for failure to prosecute or failure to obey a court order, the court must consider the public interest in expeditious resolution, docket management, prejudice to defendants, the policy favoring decisions on the merits, and the availability of less drastic sanctions.
3. Dismissal without prejudice was the appropriate recommended sanction because Plaintiff failed to comply with the filing-fee order after receiving an express warning, and lesser sanctions were unlikely to be effective.

KEY QUOTATIONS

“In determining whether to dismiss an action, the Court must consider several 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 2)

“Thus, Plaintiff had adequate warning that dismissal could result from his noncompliance.” (at 4)

FACTUAL BACKGROUND

Plaintiff Cornell E. Davis, a state prisoner proceeding pro se, brought a civil rights action under 42 U.S.C. § 1983. The court ordered him to submit a completed in forma pauperis application or pay the \$405 filing fee and warned that failure to comply would result in dismissal without prejudice. Plaintiff missed the deadline and did not otherwise communicate with the court.

PROCEDURAL HISTORY

Plaintiff filed a civil rights action under 42 U.S.C. § 1983. The court ordered him to submit an application to proceed in forma pauperis or pay the \$405 filing fee, expressly warning that noncompliance could result in dismissal. Plaintiff neither complied nor communicated with the court by the deadline. The magistrate judge recommended dismissal without prejudice and gave Plaintiff fourteen days to object.

DISPOSITION

other

CASES CITED

- Thompson v. Housing Authority, 782 F.2d 829, 831 (9th Cir. 1986)
- Ghazali v. Moran, 46 F.3d 52, 53-54 (9th Cir. 1995)
- Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61, 1262 (9th Cir. 1992)
- Malone v. U.S. Postal Service, 833 F.2d 128, 130-33, 132-33 (9th Cir. 1987)
- Henderson v. Duncan, 779 F.2d 1421, 1423-24 (9th Cir. 1986)
- Carey v. King, 856 F.2d 1439, 1440 (9th Cir. 1988)
- Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976)
- Pagtalunan v. Galaza, 291 F.3d 639, 643 (9th Cir. 2002)
- In re Phenylpropanolamine (PPA) Products Liability Litigation, 460 F.3d 1217, 1228 (9th Cir. 2006)
- Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014)
- Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)

OPINION

(PC) Davis v. Rodriguez

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF CALIFORNIA

10 11 CORNELL E. DAVIS, Case No. 1:25-cv-00368-BAM (PC) 12 Plaintiff, ORDER
DIRECTING CLERK OF COURT TO

RANDOMLY ASSIGN DISTRICT JUDGE TO

13 v. ACTION

14 RODRIGUEZ, et al., FINDINGS AND RECOMMENDATIONS TO

DISMISS ACTION, WITHOUT PREJUDICE,

15 Defendants. FOR FAILURE TO OBEY COURT ORDER

AND FAILURE TO PROSECUTE

16 (ECF No. 5) 17

FOURTEEN (14) DAY DEADLINE

18 19 I. Background 20 Plaintiff Cornell E. Davis (“Plaintiff”) is a state prisoner proceeding pro se
in this civil 21 rights action pursuant to 42 U.S.C. § 1983. 22 On March 31, 2025, the Court issued
an order directing Plaintiff to submit a completed 23 application to proceed in forma pauperis or
pay the \$405.00 filing fee to proceed with this action. 24 (ECF No. 5.) The Court expressly
warned Plaintiff that failure to comply with the Court’s order 25 would result in dismissal of this
action without prejudice. (Id.) The deadline has expired, and 26 Plaintiff has failed to respond to

the Court's order or otherwise communicate with the Court 27 regarding his application or payment of the filing fee. 28 /// 1 II. Failure to Prosecute and Failure to Obey a Court Order 2 A. Legal Standard 3 Local Rule 110 provides that "[f]ailure . . . of a party to comply with these Rules or with 4 any order of the Court may be grounds for imposition by the Court of any and all sanctions . . . 5 within the inherent power of the Court." District courts have the inherent power to control their 6 dockets and "[i]n the exercise of that power they may impose sanctions including, where 7 appropriate, . . . dismissal." *Thompson v. Hous. Auth.*, 782 F.2d 829, 831 (9th Cir. 1986). A 8 court may dismiss an action, with prejudice, based on a party's failure to prosecute an action, 9 failure to obey a court order, or failure to comply with local rules. See, e.g., *Ghazali v. Moran*, 46 10 F.3d 52, 53–54 (9th Cir. 1995) (dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 11 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring 12 amendment of complaint); *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130–33 (9th Cir. 1987) 13 (dismissal for failure to comply with court order). 14 In determining whether to dismiss an action, the Court must consider several factors: 15 (1) the public's interest in expeditious resolution of litigation; (2) the Court's need to manage its 16 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of 17 cases on their merits; and (5) the availability of less drastic sanctions. *Henderson v. Duncan*, 779 18 F.2d 1421, 1423 (9th Cir. 1986); *Carey v. King*, 856 F.2d 1439, 1440 (9th Cir. 1988). 19 B. Discussion 20 Here, Plaintiff's application to proceed in forma pauperis or payment of the filing fee is 21 overdue and he has failed to comply with the Court's order. The Court cannot effectively manage 22 its docket if Plaintiff ceases litigating his case. Thus, the Court finds that both the first and 23 second factors weigh in favor of dismissal. 24 The third factor, risk of prejudice to defendant, also weighs in favor of dismissal, since a 25 presumption of injury arises from the occurrence of unreasonable delay in prosecuting an action. 26 *Anderson v. Air W.*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor usually weighs against 27 dismissal because public policy favors disposition on the merits. *Pagtalunan v. Galaza*, 291 F.3d 28 639, 643 (9th Cir. 2002). However, "this factor lends little support to a party whose 1 responsibility it is to move a case toward disposition on the merits but whose conduct impedes 2 progress in that direction," which is the case here. In re *Phenylpropanolamine (PPA) Products* 3 *Liability Litigation*, 460 F.3d 1217, 1228 (9th Cir. 2006) (citation omitted). 4 Finally, the Court's warning to a party that failure to obey the court's order will result in 5 dismissal satisfies the "considerations of the alternatives" requirement. *Ferdik*, 963 F.2d at 1262; 6 *Malone*, 833 at 132–33; *Henderson*, 779 F.2d at 1424. The Court's March 31, 2025 order 7 expressly warned Plaintiff that his failure to comply with the Court's order would result in 8 dismissal of this action. (ECF No. 5.) Thus, Plaintiff had adequate warning that dismissal could 9 result from his noncompliance. 10 Additionally, at this stage in the proceedings there is little available to the Court that 11 would constitute a satisfactory lesser sanction while protecting the Court from further 12 unnecessary expenditure of its scarce resources. Plaintiff has not paid the filing fee, or would be 13 proceeding in forma pauperis in this action, apparently making monetary

sanctions of little use, 14 and the preclusion of evidence or witnesses is likely to have no effect given that Plaintiff has 15 ceased litigating his case. 16 III. Recommendation 17 Accordingly, the Court HEREBY ORDERS the Clerk of the Court to randomly assign a 18 District Judge to this action. 19 Further, the Court finds that dismissal is the appropriate sanction and HEREBY 20 RECOMMENDS that this action be dismissed, without prejudice, for failure to obey a Court 21 order and for Plaintiff's failure to prosecute this action. 22 These Findings and Recommendation will be submitted to the United States District Judge 23 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within fourteen 24 (14) days after being served with these Findings and Recommendation, Plaintiff may file written 25 objections with the Court. The document should be captioned "Objections to Magistrate Judge's 26 Findings and Recommendation." Objections, if any, shall not exceed fifteen (15) pages or 27 include exhibits. Exhibits may be referenced by document and page number if already in 28 the record before the Court. Any pages filed in excess of the 15-page limit may not be 1 considered. The parties are advised that failure to file objections within the specified time may 2 result in the waiver of the "right to challenge the magistrate's factual findings" on 3 appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 838–39 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 492 F.2d 1391, 1394 (9th Cir. 1991)). 5 IT IS SO ORDERED. 6 7 Dated: May 12, 2025 /s/ Barbara A. McAuliffe _

UNITED STATES MAGISTRATE JUDGE

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