

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
OKLAHOMA

David B. McDermott, II v. Seminole District Court, et al.

McDermott · No. CIV-23-149-JFH-JAR · Decided February 17, 2026

SUMMARY

The United States District Court for the Eastern District of Oklahoma recommends dismissing David B. McDermott, II’s pro se action without prejudice. The recommendation is based on McDermott’s failure to complete installment payments for the filing fee, file a typed complaint, provide service forms, and otherwise comply with the Court’s order. The document advises that objections must be filed within fourteen days.

CASE DETAILS

COURT	United States District Court for the Eastern District of Oklahoma
WRITING FOR THE COURT	Jason A. Robertson
JURISDICTION	United States District Court for the Eastern District of Oklahoma
DECIDED	February 17, 2026
DOCKET	CIV-23-149-JFH-JAR
DISPOSITION	other
PROCEDURAL POSTURE	A pro se plaintiff failed to pay the filing fee in full, failed to file the required typed and restyled complaint, failed to provide service forms, and failed to comply with a court order. The magistrate judge issued Findings and Recommendation recommending dismissal without prejudice for failure to prosecute and failure to comply with the court's order.
STANDARD OF REVIEW	Abuse of discretion governs a district court's sanctions for failure to prosecute or failure to comply with procedural rules. Under Rule 41(b), a court may dismiss an action sua sponte for failure to prosecute. A dismissal without prejudice may be entered without particular procedures when the circumstances warrant.
PRECEDENTIAL VALUE	unpublished
PARTIES	David B. McDermott, II v. Seminole District Court, et al.

TOPICS

sanctions

pleadings

service of process

civil procedure

PRACTICE AREAS

civil procedure

federal courts

QUESTIONS PRESENTED

1. Whether the action should be dismissed without prejudice because Plaintiff failed to prosecute the case.
2. Whether the action should be dismissed without prejudice because Plaintiff failed to comply with the Court's order requiring payment of the filing fee and submission of a typed complaint and service forms.

HOLDINGS

1. A district court has discretion under Federal Rule of Civil Procedure 41(b) to dismiss an action sua sponte for failure to prosecute or failure to comply with procedural rules and court orders.
2. When dismissing without prejudice, a district court may, without abusing its discretion, enter the dismissal without attention to any particular procedures under the circumstances presented.

KEY QUOTATIONS

"A district court undoubtedly has discretion to sanction a party for failing to prosecute or defend a case, or for failing to comply with local or federal procedural rules." (2)

"Indeed, the Tenth Circuit 'ha[s] consistently interpreted Rule 41(b) to permit courts to dismiss actions sua sponte for a [party's] failure to prosecute.'" (2)

"Since Plaintiff has failed to complete the prerequisite act of paying the filing fee to commence and continue this action and has failed to comply with the Order of the Court, this Court would recommend that the case be dismissed without prejudice without further notice or hearing since Plaintiff was already provided with the unusual opportunity to pay in installments." (2)

"IT IS THE RECOMMENDATION OF THE UNDERSIGNED that this action be DISMISSED WITHOUT PREJUDICE to refiling based upon Plaintiff's failure to prosecute the case and the failure to comply with this Court's Order." (3)

FACTUAL BACKGROUND

Plaintiff filed the action pro se and was permitted to pay the filing fee in installments. He made only one \$100 payment and did not pay the fee in full. He also failed to file the required typed and restyled complaint or provide completed USM-285 service forms, despite the Court's order requiring those steps before the case could advance.

PROCEDURAL HISTORY

Plaintiff initiated the action pro se on May 5, 2023. On Plaintiff's motion, the Court permitted payment of the filing fee in \$50 installments and directed that the case could proceed after the fee was paid in full and Plaintiff filed a typed, restyled complaint and completed USM-285 service forms. Plaintiff made one \$100 payment on

February 20, 2024, took no further action, and did not comply with the Court's order. The magistrate judge recommended dismissal without prejudice and allowed fourteen days for objections.

DISPOSITION

other

CASES CITED

- AdvantEdge Bus. Grp. v. Thomas E. Mestmaker & Assocs., Inc., 552 F.3d 1233, 1236 (10th Cir.)
- Reed v. Bennett, 312 F.3d 1190, 1195 (10th Cir.)
- Huggins v. Supreme Court of the United States, 480 F. App'x 915, 916-17 (10th Cir.)
- Nasious v. Two Unknown B.I.C.E. Agents, 492 F.3d 1158, 1162 (10th Cir.)

OPINION

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF OKLAHOMA DAVID B. MCDERMOTT, II,)) Plaintiff,)) v.) Case No. CIV-23-149-JFH-JAR) SEMINOLE DISTRICT COURT, et al.,)) Defendants.) FINDINGS AND RECOMMENDATION This matter comes before the Court on a review for Plaintiff's compliance with this Court's Order directing that the filing fee be paid in installments entered February 7, 2024.

This case was referred to the undersigned by United States District Judge John F. Heil, III, who presides over this case. Plaintiff initiated this case acting pro se on May 5, 2023. In the barest of Complaints, Plaintiff poses a series of questions which do not actually state an actionable claim.

However, upon Plaintiff's Motion, the Court permitted Plaintiff to pay the required filing fee in \$50.00 installments, to be paid "each Monday to the court clerk until the filing fee is paid for in full." Doc. Ent. No. 19. Additionally, the Court directed in the same Order that "[a]fter the filing fee is paid in full and the Plaintiff has filed his typed lawsuit, restyled it and prepared his service forms (USM-285) to serve the Defendants with, then the case can be advanced." Id. Plaintiff made one payment toward the filing fee on February 20, 2024 of \$100.00.

To date, no further payment has been made. Indeed, Plaintiff has taken no further action to advance this lawsuit, including filing a typed Complaint or providing the Clerk with completed USM-285 forms. Plaintiff has failed to pay the complete filing fee for this case and has failed to comply with an Order of this Court.

Accordingly, Plaintiff has failed to prosecute this action. "A district court undoubtedly has discretion to sanction a party for failing to prosecute or defend a case, or for failing to comply with local or federal procedural rules." AdvantEdge Bus. Grp. v. Thomas E. Mestmaker & Assocs., Inc., 552 F.3d 1233, 1236 (10th Cir. 2009) quoting Reed v. Bennett, 312 F.3d 1190, 1195 (10th Cir.

2002). Indeed, the Tenth Circuit “ha[s] consistently interpreted Rule 41(b) to permit courts to dismiss actions sua sponte for a [party's] failure to prosecute.” *Huggins v. Supreme Court of the United States*, 480 F. App'x 915, 916-17 (10th Cir. 2012) (quotations omitted). When dismissing a case without prejudice, “a district court may, without abusing its discretion, enter such an order without attention to any particular procedures.” *Id.* quoting *Nasious v. Two Unknown B.I.C.E.*

Agents, 492 F.3d 1158, 1162 (10th Cir. 2007). Since Plaintiff has failed to complete the prerequisite act of paying the filing fee to commence and continue this action and has failed to comply with the Order of the Court, this Court would recommend that the case be dismissed without prejudice without further notice or hearing since Plaintiff was already provided with the unusual opportunity to pay in installments.

IT IS THE RECOMMENDATION OF THE UNDERSIGNED that this action 2 be DISMISSED WITHOUT PREJUDICE to refiling based upon Plaintiff’s failure to prosecute the case and the failure to comply with this Court’s Order. Plaintiff is given fourteen (14) days from the date of the service of these Findings and Recommendation to file any objections to them with the Clerk of the Court.

Any such objection shall be limited to ten (10) pages in length. The failure to object to the Findings and Recommendation within fourteen (14) days will preclude their review. 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b). IT IS SO ORDERED this 17th day of February, 2026.

JASON A. ROBERTSON UNITED STATES
MAGISTRATE JUDGE 3