

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

Robert S. Stone, Jr. v. The State of New York, et al.

Stone · No. 24-CV-7600 · Decided January 12, 2026

SUMMARY

The court recommends dismissing Robert S. Stone, Jr.’s action for failure to prosecute and failure to comply with court orders. The recommendation follows the plaintiff’s failure to appear at a conference, properly serve the New York Commissioner of Transportation, and file proof of service despite being given a final opportunity to do so.

CASE DETAILS

COURT	United States District Court for the Eastern District of New York
WRITING FOR THE COURT	Steven Tiscione
JURISDICTION	United States District Court for the Eastern District of New York
DECIDED	January 12, 2026
DOCKET	24-CV-7600
DISPOSITION	other
PROCEDURAL POSTURE	Sua sponte Report and Recommendation by a United States Magistrate Judge recommending dismissal for failure to prosecute and failure to comply with court orders.
STANDARD OF REVIEW	Dismissal under Federal Rule of Civil Procedure 41(b) for failure to prosecute or failure to comply with a court order is committed to the district court’s discretion.
PRECEDENTIAL VALUE	Report and Recommendation; not a final disposition by the district court as reflected in the opinion text.
PARTIES	Robert S. Stone, Jr. v. The State of New York, New York Commissioner of Transportation

TOPICS

- service of process
- civil procedure
- sanctions

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the action should be dismissed for failure to prosecute under Federal Rule of Civil Procedure 41(b).
2. Whether the action should be dismissed for plaintiff's failure to comply with court orders, including the order requiring proper service and proof of service.

HOLDINGS

1. Dismissal under Federal Rule of Civil Procedure 41(b) for lack of prosecution or failure to comply with a court order is a matter committed to the discretion of the district court.
2. The action should be dismissed for failure to prosecute and failure to comply with court orders.

KEY QUOTATIONS

"It is, of course, well established that dismissal pursuant to Fed.R.Civ.P. 41(b) for lack of prosecution or for failure to comply with an order of the court is a matter committed to the discretion of the district court[.]" (2)

FACTUAL BACKGROUND

Plaintiff filed a lengthy complaint alleging that COVID-era policies led to the deaths of nursing-home residents, later amending it to name New York and the New York Commissioner of Transportation. Plaintiff did not properly serve the Commissioner, did not oppose New York's extension request, failed to appear at a telephone conference, and did not comply with the court's final order requiring proof of service by December 19, 2025.

PROCEDURAL HISTORY

Plaintiff filed an original complaint and then an amended complaint naming New York and the New York Commissioner of Transportation. After New York sought an extension to answer and notified the court that the Commissioner had not been properly served, plaintiff failed to oppose the extension request, failed to appear at a telephone conference, failed to properly serve the Commissioner by the court-ordered deadline, and remained inactive. The magistrate judge therefore recommended that the district court dismiss the action under Federal Rule of Civil Procedure 41(b).

DISPOSITION

other

CASES CITED

- *Harding v. Fed. Rsrv. Bank of New York*, 707 F.2d 46, 50 (2d Cir. 1983)
- *Marcella v. Cap. Dist. Physicians' Health Plan, Inc.*, 293 F.3d 42, 46 (2d Cir. 2002)
- *Small v. Sec'y of Health & Human Servs.*, 892 F.2d 15, 16 (2d Cir. 1989)
- *Thomas v. Arn*, 474 U.S. 140 (1985)

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