

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Drumwright v. Pascua

Drumwright · No. 1:20-cv-01055-KES-CDB (PC) · Decided July 22, 2025

SUMMARY

The United States District Court for the Eastern District of California recommends dismissing Marquise Louis Drumwright’s 42 U.S.C. § 1983 action without prejudice. The recommendation is based on the plaintiff’s failure to keep the Court apprised of his current address, comply with applicable Local Rules, and prosecute the action after court mail was returned as undeliverable.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	July 22, 2025
DOCKET	1:20-cv-01055-KES-CDB (PC)
DISPOSITION	other
PROCEDURAL POSTURE	A magistrate judge issued findings and recommendations that the plaintiff's prisoner civil-rights action be dismissed without prejudice for failure to keep the Court apprised of his address, failure to obey Local Rules, and failure to prosecute. The recommendations were submitted to the assigned district judge for review under 28 U.S.C. § 636(b)(1)(C), subject to a 14-day objection period.
STANDARD OF REVIEW	A district court evaluating dismissal for failure to prosecute or failure to comply with court rules weighs five factors: 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PRECEDENTIAL VALUE	nonprecedential
PARTIES	Marquise Louis Drumwright v. F. Pascua, et al.

TOPICS

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

PRACTICE AREAS

civil procedure

prisoner civil rights

federal courts

sanctions and dismissal

QUESTIONS PRESENTED

1. Whether the action should be dismissed without prejudice because Plaintiff failed to keep the Court and opposing parties apprised of his current address.
2. Whether dismissal without prejudice was warranted under the five-factor Ninth Circuit test for failure to prosecute and failure to comply with court rules.

HOLDINGS

1. A pro se plaintiff's failure to notify the Court of a changed address, after mail is returned as undeliverable and the plaintiff fails to respond within the period required by the Local Rules, may warrant dismissal without prejudice for failure to prosecute and failure to comply with court rules.
2. The five factors governing dismissal for failure to prosecute weighed sufficiently in favor of dismissal without prejudice.

KEY QUOTATIONS

"District courts have inherent power to control their dockets" (at 2)

"In determining whether to dismiss an action for lack of prosecution, the district court is required to weigh 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 3)

"Accordingly, for the reasons stated above, the Court HEREBY RECOMMENDS that this action be dismissed, without prejudice, based on Plaintiff's failure to obey the Local Rules and to prosecute this action." (at 5)

FACTUAL BACKGROUND

Plaintiff's action proceeded on specified Eighth Amendment and First Amendment claims after screening and dismissal of one defendant. Orders mailed to Plaintiff at Mule Creek State Prison were returned as undeliverable after the prison indicated that he had been discharged, and a search of the California Department of Corrections and Rehabilitation's records produced no results. Plaintiff had not filed a change-of-address notice or any other filing since the relevant orders were returned, despite having been warned that failure to update his address could result in dismissal.

PROCEDURAL HISTORY

Drumwright, a state prisoner proceeding pro se and in forma pauperis under 42 U.S.C. § 1983, was permitted to proceed on Eighth Amendment failure-to-protect and excessive-force claims and a First Amendment retaliation claim; one defendant was dismissed. After orders mailed to his address of record were returned as undeliverable,

Drumwright filed no notice of change of address or other filing. The magistrate judge recommended dismissal without prejudice after applying the Ninth Circuit's five-factor failure-to-prosecute analysis.

DISPOSITION

other

REMAND INSTRUCTIONS

No remand was ordered. The magistrate judge recommended dismissal without prejudice and directed that the findings and recommendations be submitted to the assigned district judge, with objections due within 14 days.

CASES CITED

- Thompson v. Housing Auth., City of Los Angeles, 782 F.2d 829, 831 (9th Cir. 1986)
- Ferdik v. Bonzelet, 963 F.2d 1258, 1260-62 (9th Cir. 1992)
- Malone v. U.S. Postal Service, 833 F.2d 128, 130-31 (9th Cir. 1987)
- Henderson v. Duncan, 779 F.2d 1421, 1424 (9th Cir. 1986)
- Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988)
- In re Phenylpropanolamine (PPA) Products Liability Litigation, 460 F.3d 1217, 1226, 1228 (9th Cir. 2006)
- Anderson v. Air W., 542 F.2d 522, 524 (9th Cir. 1976)
- Pagtalunan v. Galaza, 291 F.3d 639, 643 (9th Cir. 2002)
- Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014)

OPINION

(PC) Drumwright v. Pascua

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF CALIFORNIA

10 11 MARQUISE LOUIS DRUMWRIGHT, Case No. 1:20-cv-01055-KES-CDB (PC) 12
Plaintiff, FINDINGS AND RECOMMENDATIONS

TO DISMISS ACTION WITHOUT

13 v. PREJUDICE FOR PLAINTIFF’S

FAILURE TO OBEY LOCAL RULES

14 F. PASCUA, et al., AND FAILURE TO PROSECUTE

15 Defendants. 14-DAY OBJECTION DEADLINE

16 17 Plaintiff Marquise Louis Drumwright is a state prisoner proceeding pro se and in forma 18
pauperis in this civil rights action filed under 42 U.S.C. § 1983.

19 I. INTRODUCTION

20 On May 30, 2025, District Judge Kirk E. Sherriff issued his Order Adopting Findings and 21

Recommendations to Dismiss Certain Claims and Defendant. (Doc. 24.) Specifically, Judge 22 Sherriff ordered this action to proceed only on the following claims: Eighth Amendment failure to 23 protect against Defendants Reaves, Pascua, and Davidson; Eighth Amendment excessive force 24 against Defendants Mendoza, Pascua, Cerda, Garcia, Carranza, Vellido, and Podsakoff; and First 25 Amendment retaliation against Defendant Pascua. (Id. at 2.) Further, Defendant Delos Santos was 26 dismissed from the action and the matter was referred back to the undersigned for further 27 proceedings. (Id.) Plaintiff was served with a copy of Judge Sherriff's order by mail that same 28 date to his address of record: Marquise Louis Drumwright, AR-6719, Mule Creek State Prison, 1 P.O. Box 409020, Ione, CA 95640. 2 On June 2, 2025, the Court issued its Order Finding Service Appropriate. (Doc. 25.) 3 Summonses issued that same date. (Doc. 26.) The order concerns service of Plaintiff's third 4 amended complaint upon Defendants pursuant to the Court's e-service pilot program. (Id.) 5 Plaintiff was served with a copy of this order that same date. 6 On June 11, 2025, Judge Sherriff's order was returned by the United States Postal Service 7 (USPS) marked "Undeliverable," "Inmate Discharged 04/20/2025," and "No longer here." 8 On June 16, 2025, the service order was returned by the USPS marked "Undeliverable," 9 "[Return to Sender]," "Insufficient Address," and "Unable to Forward." 10 As of the date of this order, Plaintiff has made no filings in this action since the orders 11 noted above were returned to the Court undeliverable.

12 II. DISCUSSION

13 Plaintiff has failed to keep the Court apprised of his current address. Therefore, the 14 undersigned will recommend this action be dismissed without prejudice. 15 Applicable Legal Standards 16 The Local Rules, corresponding with Federal Rule of Civil Procedure 11, provide, 17 "[f]ailure of counsel or of a party to comply with these Rules or with any order of the Court may 18 be grounds for the imposition by the Court of any and all sanctions authorized by statute or Rule 19 or within the inherent power of the Court." Local Rule 110. "District courts have inherent power 20 to control their dockets" and, in exercising that power, may impose sanctions, including dismissal 21 of an action. *Thompson v. Housing Auth., City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). 22 A court may dismiss an action based on a party's failure to prosecute an action, obey a court 23 order, or comply with local rules. See, e.g., *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 24 1992) (dismissal for failure to comply with a court order to amend a complaint); *Malone v. U.S. 25 Postal Service*, 833 F.2d 128, 130-31 (9th Cir. 1987) (dismissal for failure to comply with a court 26 order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for failure to 27 prosecute and to comply with local rules). 28 Local Rule 182(f) provides that a "pro se party is under a continuing duty to notify the 1 Clerk and all other parties of any change of address Absent such notice, service of documents 2 at the prior address of the ... pro se party shall be fully effective." Further, Local Rule 183(b) 3 states that a "party appearing in propria persona shall keep the Court and opposing parties advised 4 as to his or her current address. If mail directed to a plaintiff in propria persona by the Clerk is 5 returned by the U.S.

Postal Service, and if such plaintiff fails to notify the Court and opposing 6 parties within thirty (30) days thereafter of a current address, the Court may dismiss the action 7 without prejudice for failure to prosecute.” (Emphasis omitted.) 8 “In determining whether to dismiss an action for lack of prosecution, the district court is 9 required to weigh several factors: (1) the public’s interest in expeditious resolution of litigation; 10 (2) the court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public 11 policy favoring disposition of cases on their merits; and (5) the availability of less drastic 12 sanctions.” *Carey v. King*, 856 F.2d 1439, 1440 (9th Cir. 1988) (internal quotation marks & 13 citation omitted). These factors guide a court in deciding what to do and are not conditions that 14 must be met in order for a court to take action. In re Phenylpropanolamine (PPA) Products 15 Liability Litigation, 460 F.3d 1217, 1226 (9th Cir. 2006) (citation omitted). 16 Analysis 17 Here, Plaintiff has failed to file a notice of change of address or to otherwise advise the 18 Court of his current address. As noted above, according to the Court’s docket, Plaintiff’s address 19 of record is “Mule Creek State Prison, P.O. Box 409020, Ione, CA 95640.” All orders issued by 20 the Court since January 21, 2022, have been served at that address. On June 11 and June 16, 21 2025, mail directed to Plaintiff was returned to the Court marked “Undeliverable” and no 22 forwarding address was available. A recent search of the CDCR’s California Incarcerated 23 Records and Information Search (CIRIS) tool using Plaintiff’s full name and CDCR number 24 revealed “No Results.”¹ Because Plaintiff has failed keep the Court apprised of his current 25 address, this action is subject to dismissal. Given the Court’s inability to communicate with 26 27 1 <https://ciris.mt.cdcr.ca.gov/results?cdcrNumber=AR6719>; <https://ciris.mt.cdcr.ca.gov/results?lastName=drumwright&firstName=marquise>, last accessed 7/22/2025. 28 1 Plaintiff, there are no other reasonable alternatives available to address Plaintiff’s failure to obey 2 the Local Rules and failure to prosecute. Thus, the first and second factors — the expeditious 3 resolution of litigation and the Court’s need to manage its docket — weigh in favor of dismissal. 4 *Carey*, 856 F.2d at 1440. 5 The third factor, risk of prejudice to defendant, also weighs fairly in favor of dismissal 6 since a presumption of injury arises from the occurrence of unreasonable delay in prosecuting an 7 action. See *Anderson v. Air W.*, 542 F.2d 522, 524 (9th Cir. 1976). Here, service of process is 8 underway under the Court’s e-service pilot program. However, these proceedings are essentially 9 at a standstill because of Plaintiff’s failure to keep the Court and the parties apprised of his 10 current address. Plaintiff has unreasonably delayed the prosecution of this action since at least

11 June 11, 2025, 2 when mail directed to Plaintiff was returned to the Court as undeliverable. Thus,

12 the third factor also weighs in favor of dismissal. *Carey*, 856 F.2d at 1440-41. 13 The fourth factor usually weighs against dismissal because public policy favors 14 disposition on the merits. *Pagtalunan v. Galaza*, 291 F.3d 639, 643 (9th Cir. 2002). However, 15 “this factor lends little support to a party whose responsibility it is to move a case toward 16 disposition on the merits but whose conduct impedes progress in that direction.” In re PPA, 460 17 F.3d at 1228. Plaintiff has

not moved this case forward toward disposition on the merits. It is his 18 responsibility to do so. Instead, Plaintiff has stopped communicating with the Court altogether 19 and has failed to comply with this Court's Local Rules. More than 30 days have passed since the 20 USPS returned both Judge Sherriff's order and the service order marked undeliverable, yet 21 Plaintiff has failed to file a notice of change of address in compliance with Local Rule 183(b). 22 Therefore, the fourth factor — the public policy favoring disposition of cases on their merits — 23 also weighs in favor of dismissal. *Carey*, 856 F.2d at 1440. 24 Finally, the Court's warning to a party that failure to obey the court's orders will result in 25 dismissal satisfies the "considerations of the alternatives" requirement. *Ferdik*, 963 F.2d at 1262. 26 2 Prior to Judge Sherriff's May 30, 2025, order (see Doc. 24), the last order issued by the Court was served to 27 Plaintiff on August 19, 2024 (see Doc. 23). Therefore, Plaintiff was released from Mule Creek State Prison sometime between August 2024 and May 2025, a period of about nine months. Hence, Plaintiff could have delayed prosecution 28 of this action as early as late August 2024 by failing to keep the Court apprised of his current address. 1 Here, in the First Informational Order in Prisoner/Civil Detainee Civil Rights Case issued July 31, 2 2020, Plaintiff was advised as follows: "In litigating this action, the parties must comply with this 3 Order, the Federal Rules of Civil Procedure ("Fed. R. Civ. P."), and the Local Rules of the United 4 States District Court, Eastern District of California ("Local Rules"), as modified by this Order. 5 Failure to so comply will be grounds for imposition of sanctions which may include dismissal of 6 the case. Local Rule 110; Fed. R. Civ. P. 41(b)." (See Doc. 3 at 1.) That Order further advised: "A 7 pro se plaintiff must keep the Court and opposing parties informed of the party's correct current 8 address. Local Rule 182(f). If a party moves to a different address without filing and serving a 9 notice of change of address, documents served at a party's old address of record shall be deemed 10 received even if not actually received. ... If mail directed to a pro se plaintiff at the address of 11 record is returned by the United States Postal Service as undeliverable, the order will not be re- 12 served a second time absence a notice of change of address. If a pro se plaintiff's address is not 13 updated within sixty-three (63) days of mail being returned as undeliverable, the case will be 14 dismissed for failure to prosecute." (*Id.* at 5.) 3 However, as of January 1, 2025, Local Rule 183(b) 15 provides that a change of address must be filed within 30 days. 4 The undersigned finds Plaintiff 16 had adequate warning that dismissal could result from his noncompliance with this Court's Local 17 Rules or failure to update his address. Thus, the fifth factor — the availability of less drastic 18 sanctions — weighs in favor of dismissal. *Ferdik*, 963 F.2d at 1262; *Carey*, 856 F.2d at 1440. 19 In sum, Plaintiff has failed to comply with this Court's Local Rules, and in doing so, has 20 failed to prosecute this action. Having weighed the equities and considered the relevant factors 21 noted above, the undersigned concludes that dismissal of this action is warranted. 22 /// 23 3 A blank "Notice of Change of Address" form was also provided for Plaintiff's use. (See Doc. 3 at 7.) 24 4 The Local Rules state: "These Local Rules are effective on December 1, 2009, and shall govern all actions then 25 pending or commenced thereafter." See Local Rule 100(e). Further, the Local Rules

provide: “Immediately upon the adoption of these Rules or any change in these Rules, copies of the new and revised Rules shall be provided to such 26 publications and persons as the Chief Judge deems appropriate. The Clerk shall promptly notify ... other law libraries maintained by the State [like state prison law libraries] ... in the Eastern District of California. Copies shall 27 be distributed in a manner calculated to ensure maximum notification to those practicing in the Eastern District of California. A notice shall be posted prominently in the Clerk's Offices and on the Court's website.” See Local Rule 28 102(c), *italics added*.

1 IW. CONCLUSION AND RECOMMENDATION

2 Accordingly, for the reasons stated above, the Court HEREBY RECOMMENDS that 3 | this action be dismissed, without prejudice, based on Plaintiff's failure to obey the Local Rules 4 | and to prosecute this action. 5 These Findings and Recommendations will be submitted to the United States District 6 | Judge assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(). Within 14 days 7 | after being served with a copy of these Findings and Recommendations, a party may file written 8 | objections with the Court. Local Rule 304(b). The document should be captioned, “Objections to 9 | Magistrate Judge's Findings and Recommendations” and shall not exceed 15 pages without 10 | leave of Court and good cause shown. The Court will not consider exhibits attached to the 11 | Objections. To the extent a party wishes to refer to any exhibit(s), the party should reference the 12 | exhibit in the record by its CM/ECF document and page number, when possible, or otherwise 13 | reference the exhibit with specificity. Any pages filed in excess of the 15-page limitation may be 14 | disregarded by the District Judge when reviewing these Findings and Recommendations under 28 15 U.S.C. § 636(b)(C). A party's failure to file any objections within the specified time may result 16 | in the waiver of certain rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014). 17 | IT IS SO ORDERED. | Dated: _ July 22, 2025 | hr

19 UNITED STATES MAGISTRATE JUDGE

20 21 22 23 24 25 26 27 28