

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Hoffer v. Gamboa

Hoffer · No. 2:25-CV-1253-DMC-P · Decided July 16, 2025

OPINION

(HC) Hoffer v. Gamboa

PER CURIAM.

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8 IN THE UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10

11 MICHAEL HOFFER, No. 2:25-CV-1253-DMC-P

12 Petitioner,

ORDER

13 v. and

14 MARTIN GAMBOA,

FINDINGS AND RECOMMENDATIONS

15 Respondent. 16

17 Petitioner, a state prisoner proceeding pro se, brings this petition for a writ of 18 habeas corpus under 28 U.S.C. § 2254. On May 8, 2025, the Court directed Petitioner to submit 19 either a completed application for leave to proceed in forma pauperis or the full filing fee for this 20 action within 30 days. See ECF No. 4. Petitioner was warned that failure to comply may result in 21 dismissal of this action for lack of prosecution and failure to comply with court rules and orders. 22 See Local Rule 110. To date, Petitioner has failed to comply. 23 The Court must weigh five factors before imposing the harsh sanction of 24 dismissal. See *Bautista v. Los Angeles County*, 216 F.3d 837, 841 (9th Cir. 2000); *Malone v. 25 U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987). Those factors are: (1) the public's interest 26 in expeditious resolution of litigation; (2) the Court's need to manage its own docket; (3) the risk 27 of prejudice to opposing parties; (4) the public policy favoring disposition of cases on their 28 merits; and (5) the availability of less drastic sanctions. See *id.*; see also *Ghazali v. Moran*, 46 1 || F.3d 52, 53 (9th Cir. 1995) (per curiam). A warning that the action may be dismissed as an 2 || appropriate sanction is considered a less drastic alternative sufficient to satisfy the last factor. See 3 | *Malone*, 833 F.2d at 132-33 & n.1. The sanction of dismissal for lack of prosecution 1s 4 | appropriate where there has been unreasonable delay. See *Henderson v. Duncan*, 779 F.2d 1421, 5 || 1423 (9th Cir. 1986). Dismissal has also been held to be an appropriate sanction for failure to 6 || comply with an order

to file an amended complaint. See *Ferdik v. Bonzelet*, 963 F.2d 1258, 7 || 1260-61 (9th Cir. 1992).
8 Having considered these factors, and in light of Petitioner's failure to resolve the 9 || fee status
for this case as directed, the Court finds that dismissal of this action is appropriate. 10
Accordingly, IT IS HEREBY ordered and recommended as follows: 11 1. It is ORDERED that the
Clerk of the Court is directed to randomly assign 12 | a District Judge to this case. 13 2. It is
RECOMMENDED that this action be dismissed without prejudice for 14 | lack of prosecution and
failure to comply with court rules and orders. 15 These findings and recommendations are
submitted to the United States District 16 || Judge assigned to the case, pursuant to the provisions
of 28 U.S.C. § 636(b)(I). Within 14 days 17 || after being served with these findings and
recommendations, any party may file written 18 || objections with the court. Responses to
objections shall be filed within 14 days after service of 19 | objections. Failure to file objections
within the specified time may waive the right to appeal. See 20 | *Martinez v. Yist*, 951 F.2d 1153
(9th Cir. 1991). 21 22 Dated: July 15, 2025 Co
23 DENNIS M. COTA
4 UNITED STATES MAGISTRATE JUDGE
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