

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
TEXAS, HOUSTON DIVISION

Floyd Irvin Sanders Jr. v. Phillip Cash, et al.

Sanders v. Cash · No. H-25-5407 · Decided February 26, 2026

SUMMARY

The United States District Court for the Southern District of Texas recommends dismissing Floyd Irvin Sanders Jr.’s action with prejudice for failure to prosecute under Federal Rule of Civil Procedure 41(b). The recommendation is based on Sanders’s failure to appear at two court-ordered hearings, failure to communicate with the court or serve defendants, and the court’s finding that lesser sanctions would be futile.

CASE DETAILS

COURT	United States District Court for the Southern District of Texas, Houston Division
WRITING FOR THE COURT	United States Magistrate Judge
JURISDICTION	United States District Court for the Southern District of Texas, Houston Division
DECIDED	February 26, 2026
DOCKET	H-25-5407
DISPOSITION	other
PROCEDURAL POSTURE	The court sua sponte issued a Memorandum and Recommendation recommending dismissal with prejudice under Federal Rule of Civil Procedure 41(b) for failure to prosecute.
STANDARD OF REVIEW	A Rule 41(b) dismissal is reviewed for abuse of discretion. A dismissal with prejudice requires a clear record of delay or contumacious conduct, an express finding that lesser sanctions would not prompt diligent prosecution or that lesser sanctions were futile, and ordinarily at least one aggravating factor.
PRECEDENTIAL VALUE	nonprecedential memorandum and recommendation
PARTIES	Floyd Irvin Sanders Jr. v. Phillip Cash, et al.

TOPICS

sanctions

civil procedure

PRACTICE AREAS

civil procedure

civil rights

QUESTIONS PRESENTED

1. Whether the court may sua sponte recommend involuntary dismissal under Federal Rule of Civil Procedure 41(b) for failure to prosecute or comply with court orders.
2. Whether Plaintiff's repeated failure to appear and failure to take further action established the clear record of delay, futility of lesser sanctions, and aggravating factors required for dismissal with prejudice.

HOLDINGS

1. Federal Rule of Civil Procedure 41(b) permits a court to dismiss an action sua sponte when a plaintiff fails to prosecute or comply with the Federal Rules or a court order.
2. Dismissal with prejudice was recommended because Plaintiff created a clear record of delay, lesser sanctions would be futile, and the delay was attributable to Plaintiff and characterized as intentional.

KEY QUOTATIONS

“Rule Federal Rule of Civil Procedure 41(b) permits involuntary dismissal of an action when “the plaintiff fails to prosecute or to comply with these rules or a court order[.]”” (Legal Standard and Analysis)

“Rule 41(b) dismissal with prejudice is “a severe sanction” that requires (1) “a clear record of delay or contumacious conduct by the plaintiff[;]” and (2) an express finding that “lesser sanctions would not prompt diligent prosecution, or the record shows that the district court employed lesser sanctions that proved to be futile.”” (Legal Standard and Analysis)

FACTUAL BACKGROUND

The case was set for an initial conference on February 12, 2026, but Plaintiff did not appear. He also failed to appear at a later show-cause hearing after receiving an order warning that failure to appear would result in a recommendation of dismissal with prejudice. Plaintiff had not updated his address, communicated with the court, or served any defendant, and the action had been pending for more than three months.

PROCEDURAL HISTORY

Plaintiff filed the civil-rights action and requested leave to proceed in forma pauperis. He failed to appear at an initial conference and then failed to appear at a subsequent show-cause hearing despite mailed notices and an express warning that nonappearance could result in dismissal with prejudice. No defendant had been served, and the magistrate judge recommended dismissal subject to the parties' fourteen-day period for objections.

DISPOSITION

other

CASES CITED

- Campbell v. Wilkinson, 988 F.3d 798, 800-02 (5th Cir. 2021)
- Berry v. CIGNA/RSI-CIGNA, 975 F.2d 1188, 1191 (5th Cir. 1992)
- Thomas v. Arn, 474 U.S. 140, 147-49 (1985)
- Rodriguez v. Bowen, 857 F.2d 275, 276-77 (5th Cir. 1988)

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