

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Jakubowski v. Clendenin

Jakubowski · No. 1:23-cv-01156-SKO · Decided May 30, 2025

SUMMARY

The United States Magistrate Judge recommends dismissing David Jakubowski’s § 1983 action without prejudice because he failed to return service documents and comply with court orders. Applying the factors governing dismissal for failure to prosecute and failure to obey court orders, the court concludes that dismissal is warranted and provides a 14-day period for objections.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Sheila K. Oberto
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	May 30, 2025
DOCKET	1:23-cv-01156-SKO
DISPOSITION	other
PROCEDURAL POSTURE	Findings and recommendations by a magistrate judge recommending dismissal without prejudice of a civil-rights action for failure to obey court orders and failure to prosecute.
STANDARD OF REVIEW	Dismissal for failure to prosecute or failure to comply with court orders is reviewed under the court's inherent docket-management authority and the factors governing dismissal, including the public interest in expeditious resolution, the court's need to manage its docket, prejudice to defendants, the policy favoring disposition on the merits, and the availability of less drastic sanctions.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	David Jakubowski v. Stephanie Clendenin, Price, Van de Putte, Fulton

TOPICS

- sanctions
- service of process
- civil procedure
- civil rights
- prisoners rights

PRACTICE AREAS

Civil procedure

Civil rights

Prisoner and civil detainee litigation

Sanctions and dismissal

QUESTIONS PRESENTED

1. Whether the action should be dismissed without prejudice because Plaintiff failed to obey court orders requiring submission of documents necessary to effect service.
2. Whether dismissal for failure to prosecute is warranted under the applicable five-factor analysis.
3. Whether the Court adequately considered less drastic sanctions before recommending dismissal.

HOLDINGS

1. A court may dismiss an action when a party fails to prosecute, fails to obey court orders, or fails to comply with applicable rules, including where the party fails to submit documents necessary to commence service after repeated orders and warnings.

KEY QUOTATIONS

“District courts have inherent power to control their dockets” (at 1-2)

“this factor lends little support to a party whose responsibility it is to move a case toward disposition on the merits but whose conduct impedes progress in that direction.” (at 4)

“Plaintiff is informed that failure to comply with this order will result in a recommendation that this action be dismissed without prejudice for failure to obey court orders.” (at 5)

FACTUAL BACKGROUND

Plaintiff, a pro se civil detainee proceeding in forma pauperis, brought a civil-rights action under 42 U.S.C. § 1983. After the Court authorized service, Plaintiff failed to return the required USM-285 forms, summonses, notice, and endorsed complaint within the ordered 30-day period. He also failed to respond to an order to show cause or submit the service documents after receiving an additional 14-day opportunity and warnings that noncompliance could result in dismissal.

PROCEDURAL HISTORY

Following screening, the action proceeded on Plaintiff's Fourteenth Amendment due-process claim against Price, Van de Putte, and Fulton. The Court found service appropriate and directed Plaintiff to return completed service documents within 30 days. After Plaintiff failed to do so, the Court issued an order to show cause and gave him an additional opportunity either to respond or to submit the service documents. Plaintiff did neither, leading the magistrate judge to recommend dismissal without prejudice and referral to an assigned district judge under 28 U.S.C. § 636(b)(1).

DISPOSITION

other

REMAND INSTRUCTIONS

The Clerk was directed to assign a district judge. The magistrate judge recommended dismissal without prejudice, subject to review and objections under 28 U.S.C. § 636(b)(1).

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, 1423-24 (9th Cir. 1986)
- Carey v. King, 856 F.2d 1439, 1440 (9th Cir. 1988)
- Anderson v. Air W., 542 F.2d 522, 524 (9th Cir. 1976)
- Pagtalunan v. Galaza, 291 F.3d 639, 643 (9th Cir. 2002)
- In re Phenylpropanolamine (PPA) Products Liability Litigation, 460 F.3d 1217, 1228 (9th Cir. 2006)
- Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014)

OPINION

1 2 3 4 5 6 7 UNITED STATES DISTRICT COURT 8 EASTERN DISTRICT OF CALIFORNIA
9 10 DAVID JAKUBOWSKI, 1:23-cv-01156-SKO 11 Plaintiff, FINDINGS AND
RECOMMENDATIONS TO DISMISS ACTION WITHOUT 12 v. PREJUDICE FOR
PLAINTIFF'S FAILURE TO OBEY COURT ORDERS AND 13 STEPHANIE CLENDENIN, et
al., FAILURE TO PROSECUTE 14 Defendants. 14-DAY OBJECTION DEADLINE 15 Clerk of
the Court to Assign District Judge 16 17 18 Plaintiff David Jakubowski is a civil detainee
proceeding pro se and in forma pauperis in 19 this civil rights action pursuant to 42 U.S.C. § 1983.

20 I. BACKGROUND 21 Following screening, this action proceeds on Plaintiff's Fourteenth
Amendment due 22 process violation against Defendants Price, Van de Putte, and Fulton. (See
Doc. 8.) 23 On April 2, 2025, the Court issued its Order Finding Service Appropriate. (Doc. 9.) 24
Plaintiff was provided USM-285 forms, summonses, a Notice of Submission of Documents form,
25 and a copy of the endorsed complaint.

(Id. at 1-2.) He was directed to return those documents, as 26 outlined in the order, within 30 days.
(Id.) 27 On May 7, 2025, when more than 30 days passed and Plaintiff failed to return the 28
completed service documents, the Court issued its Order to Show Cause (OSC) in Writing Why 1
Action Should Not be Dismissed for Plaintiff's Failure to Comply with Court Order.

(Doc. 10.) 2 Plaintiff was directed to respond in writing within 14 days, or, alternatively, to return
the 3 completed service documents to the Court within that same time. (Id. at 2.) 4 More than 14
days, plus time for mailing, have now passed, yet Plaintiff has failed to 5 return the completed
service documents to the Court.

Therefore, the undersigned will recommend 6 this action be dismissed without prejudice. 7 II. DISCUSSION 8 A. Applicable Legal Standards 9 The Local Rules, corresponding with Federal Rule of Civil Procedure 11, provide, 10 “[f]ailure of counsel or of a party to comply with these Rules or with any order of the Court may 11 be grounds for the imposition by the Court of any and all sanctions authorized by statute or Rule 12 or within the inherent power of the Court.” Local Rule 110. “District courts have inherent power 13 to control their dockets” and, in exercising that power, may impose sanctions, including dismissal 14 of an action.

Thompson v. Housing Auth., City of Los Angeles, 782 F.2d 829, 831 (9th Cir. 1986). 15 A court may dismiss an action based on a party’s failure to prosecute an action, obey a court 16 order, or comply with local rules. See, e.g., *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 17 1992) (dismissal for failure to comply with a court order to amend a complaint); *Malone v. U.S. 18 Postal Service*, 833 F.2d 128, 130-31 (9th Cir.

1987) (dismissal for failure to comply with a court 19 order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for failure to 20 prosecute and to comply with local rules). 21 In determining whether to dismiss an action, the Court must consider several factors: 22 (1) the public’s interest in expeditious resolution of litigation; (2) the Court’s need to manage its 23 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of 24 cases on their merits; and (5) the availability of less drastic sanctions.

Henderson, 779 F.2d at 25 1423; *Carey v. King*, 856 F.2d 1439, 1440 (9th Cir. 1988). 26 B. Analysis 27 Plaintiff has failed to return the completed service documents to the Court and service of 28 process cannot commence.

The Court cannot effectively manage its docket if Plaintiff ceases 1 litigating his case. The Court finds that both the first and second factors—the public’s interest in 2 expeditious resolution of litigation and the Court’s need to manage its docket—weigh in favor of 3 dismissal. *Carey*, 856 F.2d at 1440. 4 The third factor weighs in favor of dismissal since a presumption of injury arises from the 5 occurrence of unreasonable delay in prosecuting an action.

Anderson v. Air W., 542 F.2d 522, 524 6 (9th Cir. 1976). Here, while no defendant has appeared in this action because service has not been 7 effected, Plaintiff’s inaction amounts to an unreasonable delay in prosecuting this action resulting 8 in a presumption of injury.

Therefore, the third factor—a risk of prejudice to defendants—also 9 weighs in favor of dismissal. *Carey*, 856 F.2d at 1440. 10 The fourth factor usually weighs against dismissal because public policy favors 11 disposition on the merits. *Pagtalunan v. Galaza*, 291 F.3d 639, 643 (9th Cir. 2002).

However, 12 “this factor lends little support to a party whose responsibility it is to move a case toward 13 disposition on the merits but whose conduct impedes progress in that direction.” In re 14 *Phenylpropanolamine (PPA) Products Liability Litigation*, 460 F.3d 1217, 1228 (9th Cir. 2006)

15 (citation omitted). By failing to return the service documents to the Court, that would allow for
16 service efforts to proceed, Plaintiff is not moving this case forward and is impeding its
progress.

17 Thus, the fourth factor—the public policy favoring disposition of cases on their merits—weighs
18 in favor of dismissal. *Carey*, 856 F.2d at 1440. 19 Finally, the Court’s warning to a party that
failure to obey the court’s order will result in 20 dismissal satisfies the “considerations of the
alternatives” requirement. *Ferdik*, 963 F.2d at 1262. 21 Here, the Court’s April 2, 2025, Order
warned: “Plaintiff is informed that failure to comply 22 with this order will result in a
recommendation that this action be dismissed without 23 prejudice for failure to obey court
orders.” (Doc.

9 at 2, emphasis in original.) Next, the OSC 24 issued May 7, 2025, warned: “Failure to comply
with this order to show cause will result in a 25 recommendation that this action be dismissed for a
failure to comply with a court order.” 26 (Doc. 10 at 3, emphasis in original.) Additionally, in the
Court’s First Informational Order in 27 Prisoner/Civil Detainee Civil Rights Case, issued August
3, 2023, Plaintiff was advised, in 28 relevant part: “In litigating this action, the parties must
comply with this Order, the Federal Rules 1 of Civil Procedure (“Fed.

R. Civ. P.”), and the Local Rules of the United States District Court, 2 Eastern District of
California (“Local Rules”), as modified by this Order. Failure to so comply 3 will be grounds for
imposition of sanctions which may include dismissal of the case. Local Rule 4 110; Fed. R. Civ. P.
41(b).” (Doc. 3 at 1.) That order also advised that “all Court deadlines are 5 strictly enforced.” (Id.
at 5.)

Thus, Plaintiff had adequate warning that dismissal could result from 6 his noncompliance.
Therefore, the fifth factor—the availability of less drastic sanctions—also 7 weighs in favor of
dismissal. *Carey*, 856 F.2d at 1440. 8 In sum, Plaintiff has failed to comply with the Court’s orders,
and in doing so, has failed 9 to prosecute this action. Whether Plaintiff has done so intentionally or
mistakenly is 10 inconsequential.

It is Plaintiff’s responsibility to comply with the Court’s orders and to prosecute 11 this action. The
Court declines to expend its limited resources on a case that Plaintiff has chosen 12 to ignore. 13
III. CONCLUSION AND RECOMMENDATION 14 Accordingly, the Court DIRECTS the Clerk
of the Court to assign a district judge to this 15 action. 16 Further, for the reasons given above, the
Court HEREBY RECOMMENDS that this 17 action be DISMISSED without prejudice for
Plaintiff’s failure to obey court orders and failure to 18 prosecute.

19 These Findings and Recommendations will be submitted to the United States District 20 Judge
assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days 21 after

being served with a copy of these Findings and Recommendations, a party may file written 22 objections with the Court. Local Rule 304(b).

The document should be captioned, “Objections to 23 Magistrate Judge’s Findings and Recommendations” and shall not exceed fifteen (15) pages 24 without leave of Court and good cause shown. The Court will not consider exhibits attached to 25 the Objections.

To the extent a party wishes to refer to any exhibit(s), the party should reference 26 the exhibit in the record by its CM/ECF document and page number, when possible, or otherwise 27 reference the exhibit with specificity. Any pages filed in excess of the fifteen (15) page limitation 28 may be disregarded by the District Judge when reviewing these Findings and Recommendations 1 under 28 U.S.C. § 636(b)(1)(C).

A party’s failure to file any objections within the specified time 2 may result in the waiver of certain rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 3 (9th Cir. 2014). 4 IT IS SO ORDERED. 5 6 Dated: May 30, 2025 /s/ Sheila K. Oberto. UNITED STATES MAGISTRATE JUDGE 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28