

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF  
CALIFORNIA

**Jakubowski v. Clendenin**

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

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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.

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