

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Clark v. Cleveland

Clark · No. 2:21-CV-1975-TLN-DMC-P · Decided March 18, 2025

SUMMARY

The document contains findings and recommendations by a United States Magistrate Judge in a prisoner civil rights action under 42 U.S.C. § 1983. It recommends dismissal without prejudice for lack of prosecution and failure to comply with court rules and orders after the plaintiff failed to submit documents required for service.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Dennis M. Cota
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	March 18, 2025
DOCKET	2:21-CV-1975-TLN-DMC-P
DISPOSITION	other
PROCEDURAL POSTURE	A prisoner-plaintiff brought a 42 U.S.C. § 1983 action. After determining that the complaint was suitable for service, the court directed plaintiff to submit service documents and warned that noncompliance could result in dismissal. The magistrate judge issued findings and recommendations recommending dismissal without prejudice for lack of prosecution and failure to comply with court rules and orders.
STANDARD OF REVIEW	Dismissal as a sanction for lack of prosecution or failure to comply with court rules and orders requires consideration of five factors: the public interest in expeditious resolution, the court's need to manage its docket, prejudice to opposing parties, the public policy favoring disposition on the merits, and the availability of less drastic sanctions.
PRECEDENTIAL VALUE	Nonprecedential findings and recommendations; no final district court disposition appears in the source.
PARTIES	Andre James Clark, Sr. v. Cleveland

TOPICS

sanctions civil procedure section 1983 prisoners rights

PRACTICE AREAS

civil rights civil procedure prisoner litigation

QUESTIONS PRESENTED

1. Whether dismissal without prejudice is appropriate for plaintiff's failure to prosecute and failure to comply with the court's service-document order.
2. Whether the five-factor test governing dismissal as a sanction supports dismissal under the circumstances.

HOLDINGS

1. A court may dismiss an action as a sanction for lack of prosecution or failure to comply with court rules and orders after weighing five factors: the public interest in expeditious resolution, the court's need to manage its docket, the risk of prejudice to opposing parties, the public policy favoring disposition on the merits, and the availability of less drastic sanctions.
2. Dismissal without prejudice is appropriate because plaintiff failed to submit the required service documents after being ordered to do so and warned of the consequences.

KEY QUOTATIONS

"The Court must weigh five factors before imposing the harsh sanction of dismissal." (at 1)

"Based on the foregoing, the undersigned recommends that this action be dismissed, without prejudice, for lack of prosecution and failure to comply with court rules and orders." (at 2)

FACTUAL BACKGROUND

Plaintiff, a prisoner proceeding pro se, filed a civil rights action under 42 U.S.C. § 1983. The court determined that the complaint was appropriate for service and directed plaintiff to submit documents needed for service by the United States Marshal within 30 days. Although warned that noncompliance could lead to dismissal, plaintiff did not submit the required documents.

PROCEDURAL HISTORY

On January 28, 2025, the court found the complaint appropriate for service and ordered plaintiff to submit documents for service by the United States Marshal within 30 days. Plaintiff did not comply. After considering the required dismissal factors, the magistrate judge recommended dismissal without prejudice, subject to objections and review by the assigned district judge under 28 U.S.C. § 636(b)(1).

DISPOSITION

CASES CITED

- *Bautista v. Los Angeles County*, 216 F.3d 837, 841 (9th Cir. 2000)
- *Malone v. U.S. Postal Service*, 833 F.2d 128, 130, 132-33 & n.1 (9th Cir. 1987)
- *Ghazali v. Moran*, 46 F.3d 52, 53 (th Cir. 1995) (per curiam)
- *Henderson v. Duncan*, 779 F.2d 1421, 1423 (9th Cir. 1986)
- *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992)
- *Martinez v. Yist*, 951 F.2d 1153 (9th Cir. 1991)

OPINION

1 2 3 4 5 6 7 8 IN THE UNITED STATES DISTRICT COURT 9 FOR THE EASTERN
DISTRICT OF CALIFORNIA 10 11 ANDRE JAMES CLARK, SR., No. 2:21-CV-1975-TLN-
DMC-P 12 Plaintiff, 13 v. FINDINGS AND RECOMMENDATIONS 14 CLEVELAND, 15
Defendant. 16 17 Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to
18 42 U.S.C. § 1983. 19 On January 28, 2025, the Court determined that Plaintiff's complaint was
20 appropriate for service and directed Plaintiff to submit documents for service by the United
States 21 Marshal within 30 days.

Plaintiff was warned that failure to submit the required documents may 22 result in dismissal of
this action for lack of prosecution and failure to comply with court rules and 23 orders. See Local
Rule 110. To date, Plaintiff has not complied. 24 The Court must weigh five factors before
imposing the harsh sanction of dismissal. 25 See *Bautista v. Los Angeles County*, 216 F.3d 837,
841 (9th Cir.

2000); *Malone v. U.S. Postal* 26 *Service*, 833 F.2d 128, 130 (9th Cir. 1987). Those factors are: (1)
the public's interest in 27 expeditious resolution of litigation; (2) the court's need to manage its
own docket; (3) the risk of 28 prejudice to opposing parties; (4) the public policy favoring
disposition of cases on their merits; 1 | and (5) the availability of less drastic sanctions.

See *id.*; see also *Ghazali v. Moran*, 46 F.3d 52, 2 | 53 (th Cir. 1995) (per curiam). A warning that
the action may be dismissed as an appropriate 3 || sanction is considered a less drastic alternative
sufficient to satisfy the last factor. See *Malone*, 4 | 833 F.2d at 132-33 & n.1.

The sanction of dismissal for lack of prosecution is appropriate where 5 || there has been
unreasonable delay. See *Henderson v. Duncan*, 779 F.2d 1421, 1423 (9th Cir. 6 || 1986). Dismissal
has also been held to be an appropriate sanction for failure to comply with an 7 || order to file an
amended complaint. See *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir.

8 | 1992). 9 Having considered these factors, and in light of Plaintiffs failure to submit service 10 || documents as directed, the Court finds that dismissal of this action is appropriate. 11 Based on the foregoing, the undersigned recommends that this action be dismissed, 12 || without prejudice, for lack of prosecution and failure to comply with court rules and orders.

13 These findings and recommendations are submitted to the United States District 14 || Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days 15 || after being served with these findings and recommendations, any party may file written 16 || objections with the court. Responses to objections shall be filed within 14 days after service of 17 || objections.

Failure to file objections within the specified time may waive the right to appeal. See 18 | Martinez v. Yist, 951 F.2d 1153 (9th Cir. 1991). 19 20 | Dated: March 17, 2025 Co 21 DENNIS M. COTA 02 UNITED STATES MAGISTRATE JUDGE 23 24 25 26 27 28