

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Elijah Lee Miller v. Andrew Montgomery

Miller · No. 2:23-CV-0994-KJM-DMC-P · Decided August 4, 2025

SUMMARY

The United States District Court for the Eastern District of California adopted findings and recommendations recommending dismissal of a pro se prisoner’s civil rights action. The court dismissed the action without prejudice for lack of prosecution and failure to comply with court rules and orders, specifically the failure to pay the filing fee. The court applied the Ninth Circuit’s factors governing dismissal as a sanction and directed the Clerk to enter judgment and close the case.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	August 4, 2025
DOCKET	2:23-CV-0994-KJM-DMC-P
DISPOSITION	dismissed
PROCEDURAL POSTURE	After timely objections to a magistrate judge's findings and recommendations, the district court conducted de novo review and adopted the recommendation to dismiss the action without prejudice as a sanction for failure to pay the filing fee and comply with court rules and orders.
STANDARD OF REVIEW	De novo review of the magistrate judge's findings and recommendations under 28 U.S.C. § 636(b)(1)(C) and Local Rule 304(f).
PRECEDENTIAL VALUE	Unknown; district court order with no reporter citation.

TOPICS

- sanctions
- civil procedure
- section 1983
- prisoners rights
- civil rights

PRACTICE AREAS

- prisoner civil rights
- civil procedure
- federal courts

QUESTIONS PRESENTED

1. Whether dismissal without prejudice was an appropriate sanction for the plaintiff's failure to pay the filing fee and comply with court rules and orders.
2. Whether the five-factor test governing dismissal as a sanction supported dismissal in the circumstances of this case.

HOLDINGS

1. Dismissal without prejudice was appropriate because four of the five relevant factors favored dismissal: the public interest in expeditious resolution, the court's need to manage its docket, the risk of prejudice to the defendant, and the availability of less drastic alternatives.

KEY QUOTATIONS

"Dismissal is a harsh penalty and is to be imposed only in extreme circumstances." (Opinion at 1)

"Before acting, the court must weight five factors to determine if dismissal is an appropriate sanction: "(1) the public interest; (2) the court's need to manage the docket; (3) the risk of prejudice to the defendant; (4) the public policy favoring disposition of cases on the merits; and (5) the availability of less drastic alternatives."" (Opinion at 1)

"This action is dismissed without prejudice for lack of prosecution and failure to comply with court rules and orders." (Opinion at 3)

FACTUAL BACKGROUND

The plaintiff failed to pay the filing fee within thirty days of a January 30, 2025 order, and the fee remained approximately 180 calendar days overdue as of July 29, 2025. The plaintiff's objections did not directly address the failure to pay the fee. The court had warned that noncompliance could result in dismissal and concluded that monetary sanctions would likely be ineffective.

PROCEDURAL HISTORY

The prisoner plaintiff brought a pro se civil-rights action under 42 U.S.C. § 1983. The matter was referred to a magistrate judge, who filed findings and recommendations on April 24, 2025, recommending dismissal as a sanction. After timely objections, the district court conducted de novo review under 28 U.S.C. § 636(b)(1)(C) and Local Rule 304(f), adopted the findings and recommendations in full, dismissed the action without prejudice, and directed the clerk to enter judgment and close the case.

DISPOSITION

dismissed

CASES CITED

- Henderson v. Duncan, 779 F.2d 1421, 1423 (9th Cir. 1986)
- Raiford v. Pounds, 640 F.2d 944, 945 (9th Cir. 1981)

- *Bautista v. Los Angeles County*, 216 F.3d 837, 841 (9th Cir. 2000)
- *Stone v. City of Tucson*, 249 F.R.D. 326, 327 (D. Ariz. 2008)
- *Yourish v. California Amplifier*, 191 F.3d 983, 990 (9th Cir. 1999)
- *Malone v. U.S. Postal Service*, 833 F.2d 128, 131-133 (9th Cir. 1987)
- *Hernandez v. City of El Monte*, 138 F.3d 393, 399 (9th Cir. 1998)
- *Oliva v. Sullivan*, 958 F.2d 272, 274 (9th Cir. 1992)
- *Ghazali v. Moran*, 36 F.3d 52, 53 (9th Cir. 1994)

OPINION

1 2 3 4 5 6 7 8 IN THE UNITED STATES DISTRICT COURT 9 FOR THE EASTERN
DISTRICT OF CALIFORNIA 10 11 ELIJAH LEE MILLER, No. 2:23-CV-0994-KJM-DMC-P 12
Plaintiff, 13 v. ORDER 14 ANDREW MONTGOMERY, 15 Defendant. 16 17 Plaintiff, a prisoner
proceeding pro se, brings this civil rights action under 42 U.S.C. 18 § 1983.

The matter was referred to a United States Magistrate Judge as provided by Eastern 19 District of
California local rules. 20 On April 24, 2025, the Magistrate Judge filed findings and
recommendations, which were 21 served on the parties, and which contained notice that the parties
may file objections within the 22 time specified therein. Timely objections to the findings and
recommendations have been filed.

23 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304(f), this 24
Court has conducted a de novo review of this case. Having reviewed the file, the court finds the 25
findings and recommendations to be supported by the record.

The court writes separately to 26 clarify its reasons for adopting the recommendation to impose
dismissal as a sanction. ECF 27 No. 27. 28 ///// 1 “Dismissal is a harsh penalty and is to be
imposed only in extreme circumstances.” 2 *Henderson v. Duncan*, 779 F.2d 1421, 1423 (9th Cir.
1986) (citing *Raiford v. Pounds*, 640 F.2d 3 944, 945 (9th Cir. 1981)).

Before acting, the court must weight five factors to determine if 4 dismissal is an appropriate
sanction: “(1) the public interest; (2) the court’s need to manage the 5 docket; (3) the risk of
prejudice to the defendant; (4) the public policy favoring disposition of 6 cases on their merits; and
(5) the availability of less drastic alternatives.” *Bautista v. Los Angeles 7 Cnty.*, 216 F.3d 837, 841
(9th Cir.

2000) (citation omitted). “The Ninth Circuit ‘may affirm a 8 dismissal where at least four factors
support dismissal,... or where at least three factors 9 “strongly” support dismissal.’” *Stone v. City
of Tucson*, 249 F.R.D. 326, 327 (D. Ariz. 2008) 10 (citations omitted). 11 Here, the first and
second factors weigh in favor of dismissal. “[T]he public’s interest in 12 expeditious resolution of
litigation” strongly favors dismissal.

Yourish v. California Amplifier, 13 191 F.3d 983, 990 (9th Cir. 1999). The court's need to manage the docket also strongly favors 14 dismissal due to the high caseload in the Eastern District of California and the many other cases 15 requiring the court's attention. 16 The third factor, risk of prejudice to the defendant, weighs in favor of dismissal. 17 "Whether prejudice is sufficient to support an order of dismissal is in part judged with reference 18 to the strength of the plaintiff's excuse for the default." Malone v. U.S. Postal Serv., 833 F.2d 19 128, 131 (9th Cir.

1987). The plaintiff's objections do not directly address her failure to pay the 20 filing fee within thirty days of the January 30, 2025, order. As of July 29, 2025, the fee is 180 21 calendar days overdue. Because "[u]nreasonable delay creates a presumption of injury to the 22 defense," this factor weighs in favor of dismissal. See Henderson, 779 F.2d at 1423.

23 The fourth factor weighs strongly against dismissal, especially in civil rights cases. 24 Hernandez v. City of El Monte, 138 F.3d 393, 399 (9th Cir. 1998). Finally, the fifth factor also 25 weighs in favor of dismissal. "In cases involving sua sponte dismissal of an action, rather than 26 dismissal following a noticed motion under Rule 41(b), Fed. R. Civ.

P., there is a closer focus on' 27 the considerations of less drastic alternatives and warning to the party." Stone, 249 F.R.D. at 327 28 (quoting Oliva v. Sullivan, 958 F.2d 272, 274 (9th Cir. 1992)). The court has considered less 1 | drastic alternatives when a plaintiff has been warned that failure to obey a court order will result 2 | in dismissal. Malone, 833 F.2d at 132-33.

Here, the findings and recommendations put plaintiff 3 || □□ notice that her case was at risk of dismissal. Moreover, failure to follow local rules may be 4 | grounds for dismissal. Ghazali v. Moran, 36 F.3d 52, 53 (9th Cir. 1995). This Court's Local 5 || Rule 110 indicates that "[f]ailure... of a party to comply... with any order of the Court may be 6 || grounds for imposition by the Court of any and all sanctions authorized by statute or Rule or 7 || within the inherent power of the Court." Additionally, there are few options left for the court to 8 | pursue.

Given the plaintiffs failure to pay the filing fee, it appears that monetary sanctions are of 9 || little use. The recommended sanction, dismissal without prejudice, is less drastic than dismissal 10 | with prejudice.

For these reasons, the fifth factor weighs in favor of dismissal. 11 Because four factors weigh in favor of dismissal, and considering all the relevant 12 || circumstances, the court adopts the findings and recommendations, ECF No. 27, in full. 13 Accordingly, IT IS HEREBY ORDERED as follows: 14 1.

The findings and recommendations filed April 24, 2025, ECF No. 27, are adopted 15 || in full. 16 2. This action is dismissed without prejudice for lack of prosecution and failure to 17 || comply with court rules and orders. 18 3.

The Clerk of the Court is directed to enter judgment and close this file. 19 | DATED: August 1, 2025. 21 □ STATES DISTRICT JUDGE 22 23 24 25 26 27 28

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