

UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF
ALABAMA, NORTHERN DIVISION

Carlton L. Avery d/b/a Avery Mediation Services v. The Buller
Group, LLC, et al.

Avery · No. 2:25-cv-571-MHT-JTA · Decided March 2, 2026

SUMMARY

This Report and Recommendation addresses the dismissal of Carlton L. Avery’s action against The Buller Group, LLC and other defendants. The magistrate judge recommends dismissal with prejudice under Federal Rule of Civil Procedure 41(b) based on Avery’s repeated failure to comply with orders requiring an amended complaint and to prosecute the case. The recommendation also sets a deadline of March 16, 2026, for objections.

CASE DETAILS

COURT	United States District Court for the Middle District of Alabama, Northern Division
WRITING FOR THE COURT	T. Adams
JURISDICTION	United States District Court for the Middle District of Alabama, Northern Division
DECIDED	March 2, 2026
DOCKET	2:25-cv-571-MHT-JTA
DISPOSITION	other
PROCEDURAL POSTURE	Report and recommendation by a magistrate judge recommending dismissal with prejudice of a removed civil action for failure to comply with court orders and failure to prosecute.
STANDARD OF REVIEW	Dismissal under Federal Rule of Civil Procedure 41(b) for failure to prosecute or failure to comply with court orders is committed to the district court's discretion. Dismissal with prejudice requires a clear record of delay or willful contempt and a finding that lesser sanctions would not suffice; dismissal with prejudice is a sanction of last resort generally reserved for extreme circumstances.
PRECEDENTIAL VALUE	unknown

TOPICS

sanctions

motions to dismiss

pleadings

civil procedure

civil rights

PRACTICE AREAS

civil procedure

civil rights

remedies

QUESTIONS PRESENTED

1. Whether the action should be dismissed under Federal Rule of Civil Procedure 41(b) for Plaintiff's failure to prosecute and failure to comply with court orders.
2. Whether dismissal with prejudice is appropriate where Plaintiff repeatedly disregarded orders and warnings and lesser sanctions would not suffice.

HOLDINGS

1. A federal district court may dismiss an action sua sponte under Rule 41(b), pursuant to its inherent authority to manage its docket, when a plaintiff fails to prosecute or comply with court orders.
2. Dismissal with prejudice is appropriate when the record establishes repeated delay or willful contempt, the plaintiff was repeatedly warned of the consequences, and lesser sanctions would not suffice.

KEY QUOTATIONS

"The legal standard to be applied under Rule 41(b) is whether there is a 'clear record of delay or willful contempt and a finding that lesser sanctions would not suffice.'" (at 2)

"Dismissal with prejudice "is a sanction of last resort, applicable only in extreme circumstances, and generally proper only where less drastic sanctions are unavailable.'" (at 2)

"Accordingly, considering the entire docket in this case, the undersigned finds a 'clear record of delay and willful contempt and that lesser sanctions' than dismissal "would not suffice.'" (at 10)

FACTUAL BACKGROUND

Plaintiff asserted, among other claims, discrimination and interference with housing rights under the Fair Housing Act. The court ordered him to file an amended complaint complying with Rule 8(a)(2), provided simple instructions and volunteer attorney assistance, and repeatedly warned that noncompliance could result in dismissal, including dismissal with prejudice. Plaintiff did not file the required amended complaint, did not obtain an extension or relief from the orders, and did not respond to the final show-cause order. The court found a repeated pattern of noncompliance, delay, and willful disregard of court orders.

PROCEDURAL HISTORY

Defendants removed the action on July 25, 2025, invoking federal-question and supplemental jurisdiction. The court twice ordered Plaintiff to amend his complaint, provided assistance through the Pro Se Assistance Program, and issued multiple warnings and show-cause orders. Plaintiff repeatedly failed to file an amended complaint or respond to the final show-cause order. After withdrawing an earlier recommendation for dismissal

without prejudice and giving Plaintiff another opportunity to comply, the magistrate judge recommended dismissal with prejudice.

DISPOSITION

other

CASES CITED

- Equity Lifestyle Props., Inc. v. Fla. Mowing & Landscape Serv., Inc., 556 F.3d 1232, 1240 (11th Cir. 2009)
- Chambers v. NASCO, Inc., 501 U.S. 32, 43 (1991)
- Centurion Sys., LLC v. Bank of New York Mellon, No. 8:21-CV-726-SDM-AAS, 2021 WL 7448071, at *1 (M.D. Fla. Aug. 12, 2021)
- Jones v. Graham, 709 F.2d 1457, 1458 (11th Cir. 1983)
- Nurse v. Sheraton Atlanta Hotel, 618 F. App'x 987, 989 (11th Cir. 2015)
- Mingo v. Sugar Cane Growers Co-op. of Fla., 864 F.2d 101, 102 (11th Cir. 1989)
- Durham v. Fla. E. Coast Ry. Co., 385 F.2d 366, 367 (5th Cir. 1967)
- Rodriguez v. Lawson, 848 F. App'x 412, 413 (11th Cir. 2021)
- Betty K Agencies, Ltd. v. M/V MONADA, 432 F.3d 1333, 1337-38 (11th Cir. 2005)
- Gratton v. Great Am. Commc'ns, 178 F.3d 1373, 1374 (11th Cir. 1999)
- Goforth v. Owens, 766 F.2d 1533, 1535 (11th Cir. 1985)
- McKinley v. F.D.I.C., 645 F. App'x 910, 911 n.3 (11th Cir. 2016)
- McKelvey v. AT & T Techs., Inc., 789 F.2d 1518, 1520 (11th Cir. 1986)
- Bonner v. City of Prichard, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc)
- Moon v. Newsome, 863 F.2d 835, 837 (11th Cir. 1989)
- Link v. Wabash R. Co., 370 U.S. 626, 630-31 (1962)
- Dietz v. Bouldin, 579 U.S. 40, 45, 47 (2016)
- Smith v. Circle K Inc., No. 2:23-cv-576-MHT-JTA, 2023 WL 9442574, at *5 (M.D. Ala. Dec. 8, 2023)
- Nettles v. Wainwright, 677 F.2d 404 (5th Cir. 1982)
- Stein v. Reynolds Sec., Inc., 667 F.2d 33 (11th Cir. 1981)