

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

Howard Cochran v. Josef Edwin Thomas, et al.

Cochran · No. CV-23-2402-PHX-MTL (JFM) · Decided January 28, 2026

SUMMARY

A United States magistrate judge recommends dismissal without prejudice of Howard Cochran's pro se civil-rights action under Federal Rule of Civil Procedure 41(b). The recommendation is based on Cochran's failure to file an independent case management report, maintain a current mailing address, and respond to orders to show cause, which the court found constituted failure to prosecute. The court also orders that all unexpired scheduling deadlines be vacated pending the district judge's review.

CASE DETAILS

COURT	United States District Court for the District of Arizona
WRITING FOR THE COURT	James F. Metcalf, United States Magistrate Judge
JURISDICTION	United States District Court for the District of Arizona
DECIDED	January 28, 2026
DOCKET	CV-23-2402-PHX-MTL (JFM)
DISPOSITION	other
PROCEDURAL POSTURE	Report and recommendation on referral for pretrial proceedings under 28 U.S.C. § 636(b)(1)(B), recommending dismissal without prejudice for failure to prosecute and failure to comply with court orders.
STANDARD OF REVIEW	For dismissal for failure to prosecute or failure to comply with court orders, the court applies the Ninth Circuit's five-factor analysis: the public interest in expeditious resolution, the court's need to manage its docket, the risk of prejudice to defendants, the public policy favoring disposition on the merits, and the availability of less drastic sanctions. Under Rule 72, objections to the recommendation would receive de novo consideration by the district judge.
PRECEDENTIAL VALUE	nonprecedential

TOPICS

- sanctions
- civil procedure
- section 1983
- motions to dismiss

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Plaintiff's failure to file the required Independent Case Management Report and respond to the related order to show cause warranted dismissal as a sanction under Federal Rules of Civil Procedure 16(f) and 37(b)(2)(A)(v).
2. Whether Plaintiff's failure to maintain a current, deliverable address and respond to the second order to show cause constituted failure to prosecute warranting dismissal under Rule 41(b).
3. Whether dismissal should be with or without prejudice after considering the Ninth Circuit's five-factor analysis and less drastic sanctions.

HOLDINGS

1. A party's failure to obey a scheduling or other pretrial order may support dismissal under Rules 16(f) and 37(b)(2)(A)(v), including when the party fails to participate in required pretrial planning.
2. A pro se plaintiff's failure to keep the court apprised of a current address and failure to comply with court orders may constitute failure to prosecute supporting sua sponte dismissal under Rule 41(b).
3. Dismissal without prejudice was the appropriate sanction because the five-factor analysis supported dismissal, but dismissal with prejudice would be unnecessarily harsh given uncertainty about Plaintiff's actual notice and address.

KEY QUOTATIONS

"A party, not the district court, bears the burden of keeping the court apprised of any changes in his mailing address." (at 4)

"The first two of these factors favor the imposition of sanctions in most cases, while the fourth factor cuts against a default or dismissal sanction. Thus the key factors are prejudice and availability of lesser sanctions." (at 6)

"The Complaint and this action should therefore be dismissed without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure." (at 7)

FACTUAL BACKGROUND

Plaintiff, proceeding pro se in a § 1983 action, failed to file the Independent Case Management Report required by the scheduling order and did not respond to the resulting order to show cause. After filing a notice of change of address following his release from prison, mail sent to the listed address was returned as undeliverable, and Plaintiff did not provide a corrected address or respond to a second order to show cause. Plaintiff had taken no further action in the case since the notice of change of address.

PROCEDURAL HISTORY

Plaintiff filed a pro se 42 U.S.C. § 1983 complaint and ultimately filed a Third Amended Complaint, which was ordered served on Defendant Hardesty. After service, Defendant answered. Plaintiff then failed to file an

Independent Case Management Report, failed to respond to orders to show cause, and failed to provide a current deliverable address. The magistrate judge recommended dismissal without prejudice under Federal Rule of Civil Procedure 41(b), while vacating unexpired scheduling deadlines pending review by the referring district judge.

DISPOSITION

other

REMAND INSTRUCTIONS

No remand was ordered. The magistrate judge ordered all unexpired scheduling deadlines vacated, to be reset if the recommendation is rejected, and recommended withdrawal of the referral and dismissal without prejudice.

CASES CITED

- Nascimento v. Dummer, 508 F.3d 905, 909 (9th Cir. 2007)
- Fidelity Philadelphia Trust Co. v. Pioche Mines Consolidated, Inc., 587 F.2d 27, 29 (9th Cir. 1978)
- Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988)
- Henderson v. Duncan, 779 F.2d 1421, 1423 (9th Cir. 1986)
- Wanderer v. Johnson, 910 F.2d 652, 656 (9th Cir. 1990)
- United States v. Reyna-Tapia, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc)
- Robbins v. Carey, 481 F.3d 1143, 1146-47 (9th Cir. 2007)