

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
KENTUCKY, LOUISVILLE DIVISION

Walter Elkins v. ABM Industries, Inc.

Elkins v. ABM Industries, Inc. · No. 3:24-CV-00719-RGJ · Decided February 2, 2026

SUMMARY

The magistrate judge recommends dismissing Walter Elkins’s personal-injury and wrongful-termination action against ABM Industries, Inc. without prejudice for failure to prosecute under Federal Rule of Civil Procedure 41(b). The recommendation follows Plaintiff’s failure to retain new counsel, file required status reports, or respond to court orders despite multiple warnings and opportunities to proceed.

CASE DETAILS

COURT	United States District Court for the Western District of Kentucky, Louisville Division
WRITING FOR THE COURT	Regina S. Edwards, Magistrate Judge
JURISDICTION	United States District Court for the Western District of Kentucky, Louisville Division
DECIDED	February 2, 2026
DOCKET	3:24-CV-00719-RGJ
DISPOSITION	other
PROCEDURAL POSTURE	Report and recommendation recommending dismissal of Plaintiff’s personal-injury and wrongful-termination action without prejudice for failure to prosecute.
STANDARD OF REVIEW	The court considered whether dismissal for failure to prosecute was appropriate under Federal Rule of Civil Procedure 41(b), with prior notice to the plaintiff identified as a key consideration.
PRECEDENTIAL VALUE	Nonprecedential report and recommendation; adoption by the district judge is not shown in the supplied text.
PARTIES	Walter Elkins v. ABM Industries, Inc.

TOPICS

- default
- civil procedure
- wrongful termination

PRACTICE AREAS

civil procedure

employment law

torts

QUESTIONS PRESENTED

1. Whether the action should be dismissed without prejudice under Federal Rule of Civil Procedure 41(b) for Plaintiff's failure to prosecute and failure to comply with court orders.

HOLDINGS

1. Dismissal without prejudice was appropriate because Plaintiff failed to participate in the action and failed to comply with multiple court orders after receiving prior notice that continued noncompliance could result in dismissal.

KEY QUOTATIONS

"Courts have inherent authority to dismiss a plaintiff's action because of their failure to prosecute."

"Because Plaintiff has been given several opportunities to move forward the case and twice received notice that his failure to participate could result in dismissal, the Court finds dismissal for failure to prosecute is appropriate under Rule 41(b)."

FACTUAL BACKGROUND

Walter Elkins brought personal-injury and wrongful-termination claims against ABM Industries, Inc. After Elkins's counsel died, the Court directed him to explain his failure to participate and state whether he would obtain new counsel or proceed pro se. Elkins stated that he was getting new counsel, but he did not retain counsel by the deadline, file the required status report, or respond to a later show-cause order despite repeated warnings that the action could be dismissed.

PROCEDURAL HISTORY

Plaintiff initiated the action in November 2024. After Plaintiff's counsel died, the Court ordered Plaintiff to provide status reports, obtain new counsel, or indicate an intent to proceed pro se, repeatedly warning that noncompliance could result in dismissal. Plaintiff responded once that he was obtaining new counsel but then failed to retain counsel, file the required status report, or respond to a subsequent show-cause order. The magistrate judge recommended dismissal without prejudice under Federal Rule of Civil Procedure 41(b), subject to objections under Rule 72(b).

DISPOSITION

other

CASES CITED

- Chambers v. NASCO, Inc., 501 U.S. 32, 49 (1991)
- Link v. Wabash R. Co., 370 U.S. 626, 629-32 (1962)

- Knoll v. Am. Tel. & Tel. Co., 176 F.3d 359, 363 (6th Cir. 1999)
- Stough v. Mayville Cmty. Schs., 138 F.3d 612, 615 (6th Cir. 1998)
- Thomas v. Arn, 728 F.2d 813 (6th Cir.), aff'd, 474 U.S. 140 (1984)

OPINION

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF KENTUCKY LOUISVILLE
DIVISION CIVIL ACTION NO. 3:24-CV-00719-RGJ WALTER ELKINS PLAINTIFF VS. ABM
INDUSTRIES, INC. DEFENDANT REPORT AND RECOMMENDATION Plaintiff Walker
Elkins initiated this personal-injury and wrongful-termination action in November 2024. (DN 1).

In September 2025, the Court was notified that Plaintiff's counsel in the case had died. (See DN 14). The Court, accordingly, issued an Order requiring Plaintiff to file a status report with the Court by November 25, 2025, showing cause for his failure to participate in this action since his counsel died and notifying the Court whether he intends to seek new counsel or proceed pro se in the matter.

(DN 16). The Court warned that Plaintiff's failure to comply "may result in dismissal of the case for failure to prosecute." (Id.). Plaintiff filed a response on November 19, 2025, stating he is "getting new counsel" and is "going to proceed with this case." (DN 17).

The next day, the Court issued an Order giving Plaintiff until December 20, 2025 to retain new counsel and for counsel to enter an appearance. (DN 18). The Court indicated that if Plaintiff had not retained new counsel by that date, Plaintiff should file a status report with the Court, explaining his efforts to retain counsel and whether he intends to proceed pro se in the matter.

(Id.). That deadline passed with no new counsel entering an appearance for Plaintiff and with no status report being filed. The Court then entered another Order, requiring Plaintiff to show cause in writing by January 23, 2026 for his failure to comply with the Court's November 20, 2025 Order. (DN 19).

The Court warned that if Plaintiff did not file a response by the deadline or sufficiently show cause for his failure to retain counsel and comply with the Court's order, the undersigned "may recommend the matter be dismissed based on Plaintiff's failure to prosecute his case." (Id.). Plaintiff did not file anything in the record by the January 23, 2026 deadline and has still filed nothing in the record over a week later.

Courts have inherent authority to dismiss a plaintiff's action because of their failure to prosecute. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 49 (1991) (noting that "a federal district court has the inherent power to dismiss a case sua sponte for failure to prosecute" as recognized in *Link v. Wabash R. Co.*, 370 U.S. 626, 629-32 (1962)). This authority is expressly recognized in Federal Rule of Civil Procedure 41(b).

Dismissal for failure to prosecute “is available to the district court as a tool to effect management of its docket and avoidance of unnecessary burdens on the tax- supported courts [and] opposing parties.” *Knoll v. Am. Tel. & Tel. Co.*, 176 F.3d 359, 363 (6th Cir. 1999) (citation omitted) (internal quotations omitted); *Stough v. Mayville Cmty. Schs.*, 138 F.3d 612, 615 (6th Cir.

1998)). Whether the party received “prior notice” is a “key consideration” in determining if dismissal under Rule 41(b) is appropriate. *Stough*, 138 F.3d at 615. While the Court understands the dilemma Plaintiff faced when his counsel passed away, Plaintiff has failed to participate in this case since November 19, 2025. Since then, the Court has issued two Orders requesting action from Plaintiff and warning that his failure to act could result in dismissal of the case.

Despite these warnings, Plaintiff’s inaction has continued, with nothing being filed in the record and no communication with the Court. Because Plaintiff has been given several opportunities to move forward the case and twice received notice that his failure to participate could result in dismissal, the Court finds dismissal for failure to prosecute is appropriate under Rule 41(b).

IT IS THEREFORE RECOMMENDED that the Court DISMISS without prejudice Plaintiff’s claims against Defendant ABM Industries, Inc. for failure to prosecute. Regina S. Edwards, Magistrate Judge United States District Court February 2, 2026 Copies: Counsel of Record Walter Elkins, 5611 Arvis Dr., Louisville, KY 40216 NOTICE Therefore, under the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Fed.R.Civ.P.

72(b), the Magistrate Judge files these findings and recommendations with the Court and a copy shall forthwith be electronically transmitted or mailed to all parties. Within fourteen (14) days after being served with a copy, any party may serve and file written objections to such findings and recommendations as provided by the Court. If a party has objections, such objections must be timely filed or further appeal is waived.

Thomas v. Arn, 728 F.2d 813 (6th Cir.), *aff’d*, 474 US. 140 (1984).