

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PRECEDENTIAL VALUE	Nonprecedential report and recommendation; adoption by the district judge is not shown in the supplied text.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)

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