

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

RAYNARD B. HILL,

CASE NO. 1:07-cv-01866-AWI DLB PC

Plaintiff,

FINDINGS AND RECOMMENDATIONS
RECOMMENDING DISMISSAL OF ACTION
FOR FAILURE TO OBEY A COURT ORDER

v.

TATE, et al.,

(Doc. 10)

Defendants.

OBJECTIONS, IF ANY, DUE WITHIN
TWENTY DAYS

Plaintiff Raynard B. Hill ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. On October 31, 2008, the Court issued an order finding that Plaintiff's complaint states claims under the Eighth Amendment against Defendants Tate, Afra, Runyan, and McConnell, but fails to state any other claims upon which relief may be granted. The Court ordered Plaintiff, within thirty days, to either file an amended complaint curing the deficiencies identified by the Court or notify the Court in writing that he does not wish to file an amended complaint and is willing to proceed only on the claims found to be cognizable. More than thirty days have passed and Plaintiff has not complied with or otherwise responded to the Court's order.

Local Rule 11-110 provides that "failure of counsel or of a party to comply with these Local Rules or with any order of the Court may be grounds for the imposition by the Court of any and all sanctions . . . within the inherent power of the Court." District courts have the inherent power to control their dockets and "in the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal of a case." Thompson v. Housing Auth., 782 F.2d 829, 831 (9th Cir.

1 1986). A court may dismiss an action, with prejudice, based on a party's failure to prosecute an
2 action, failure to obey a court order, or failure to comply with local rules. See, e.g. Ghazali v.
3 Moran, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance with local rule); Ferdik v.
4 Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an order
5 requiring amendment of complaint); Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988)
6 (dismissal for failure to comply with local rule requiring pro se plaintiffs to keep court apprised of
7 address); Malone v. U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to
8 comply with court order); Henderson v. Duncan, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for
9 failure to lack of prosecution and failure to comply with local rules). In determining whether to
10 dismiss an action for lack of prosecution, failure to obey a court order, or failure to comply with local
11 rules, the Court must consider several factors: (1) the public's interest in expeditious resolution of
12 litigation; (2) the Court's need to manage its docket; (3) the risk of prejudice to the defendants; (4)
13 the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic
14 alternatives. Thompson, 782 F.2d at 831; Henderson, 779 F.2d at 1423-24; Malone, 833 F.2d at 130;
15 Ferdik, 963 F.2d at 1260-61; Ghazali, 46 F.3d at 53.

16 In the instant case, the Court finds that the public's interest in expeditiously resolving this
17 litigation and the Court's interest in managing the docket weigh in favor of dismissal, as this case
18 has been pending since December 20, 2007. The third factor, risk of prejudice to defendants, also
19 weighs in favor of dismissal, since a presumption of injury arises from the occurrence of
20 unreasonable delay in prosecuting an action. Anderson v. Air West, 542 F.2d 522, 524 (9th Cir.
21 1976). The fourth factor -- public policy favoring disposition of cases on their merits -- is greatly
22 outweighed by the factors in favor of dismissal discussed herein. Finally, a court's warning to a
23 party that his failure to obey the court's order will result in dismissal satisfies the "consideration of
24 alternatives" requirement. Ferdik v. Bonzelet, 963 F.2d at 1262; Malone, 833 at 132-33; Henderson,
25 779 F.2d at 1424. The Court's order expressly stated: "If Plaintiff fails to comply with this order,
26 this action will be dismissed for failure to obey a court order." Thus, Plaintiff had adequate warning
27 that dismissal would result from his noncompliance with the Court's order.

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Accordingly, it is HEREBY RECOMMENDED that this action be dismissed, without prejudice, based on Plaintiff's failure to obey the Court's order of October 31, 2008.

These Findings and Recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **twenty (20) days** after being served with these Findings and Recommendations, Plaintiff may file written objections with the Court. Such a document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file objections within the specified time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

IT IS SO ORDERED.

Dated: January 7, 2009

/s/ **Dennis L. Beck**
UNITED STATES MAGISTRATE JUDGE