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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

STEPHEN GARCIA,	}	1:10-cv-00866 AWI MJS HC
Petitioner,	}	FINDINGS AND RECOMMENDATION
v.	}	REGARDING DISMISSING PETITION
MUNICIPAL COURTHOUSE,	}	DUE TO PETITIONER'S FAILURE TO
Respondent.	}	FOLLOW A COURT ORDER
	}	[Doc. 7]

____ Petitioner is proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

On May 17, 2010, Petitioner filed a petition for writ of habeas corpus. On June 15, 2010, the Court issued an order authorizing in forma pauperis status as to Petitioner and served the order on Petitioner. (IFP Order, ECF No. 6.) On June 24, 2010, the order served on Petitioner was returned by the U.S. Postal Service as undeliverable. On August 18, 2010, the Court issued a order to show cause why the petition should not be dismissed due to Petitioner's failure to inform the Court of his current address by September 21, 2010. (Order to Show Cause, ECF No. 7.) On August 25, 2010, the order served on Petitioner was returned by the U.S. Postal Service as undeliverable.

Pursuant to Local Rule 183(b), a party appearing in propria persona is required to keep the court apprised of his or her current address at all times. Local Rule 183(b) provides, in pertinent part:

1 If mail directed to a plaintiff in propria persona by the Clerk is
2 returned by the U.S. Postal Service, and if such plaintiff fails to
3 notify the Court and opposing parties within sixty-three (63) days
thereafter of a current address, the Court may dismiss the action
without prejudice for failure to prosecute.

4 In the instant case, over sixty-three (63) days have passed since Petitioner's mail was
5 returned and he has not notified the court of a current address.

6 In determining whether to dismiss an action for lack of prosecution, the court must
7 consider several factors: (1) the public's interest in expeditious resolution of litigation; (2) the
8 court's need to manage its docket; (3) the risk of prejudice to the respondents; (4) the public
9 policy favoring disposition of cases on their merits; and (5) the availability of less drastic
10 alternatives. Henderson v. Duncan, 779 F.2d 1421, 1423-24 (9th Cir. 1986); Carey v. King,
11 856 F.2d 1439, 1440-41 (9th Cir. 1988). The Court finds that the public's interest in
12 expeditiously resolving this litigation and the Court's interest in managing the docket weigh in
13 favor of dismissal as this case has been pending since September 9, 2009. The Court cannot
14 hold this case in abeyance indefinitely based on Petitioner's failure to notify the Court of his
15 address. The third factor, risk of prejudice to respondents, also weighs in favor of dismissal,
16 since a presumption of injury arises from the occurrence of unreasonable delay in prosecuting
17 an action. Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor, public
18 policy favoring disposition of cases on their merits, is greatly outweighed by the factors in favor
19 of dismissal discussed herein. Finally, given the Court's inability to communicate with
20 Petitioner based on Petitioner's failure to keep the Court apprised of his current address, no
21 lesser sanction is feasible.

22 Accordingly, it is recommended that this action be dismissed without prejudice for
23 Petitioner's failure to prosecute.

24 **RECOMMENDATION**

25 Accordingly, the Court HEREBY RECOMMENDS that the motion to dismiss be
26 GRANTED and the habeas corpus petition be DISMISSED without prejudice for Petitioner's
27 failure to prosecute.

28 This Findings and Recommendation is submitted to the assigned United States District

1 Court Judge, pursuant to the provisions of 28 U.S.C. section 636 (b)(1)(B) and Rule 304 of the
2 Local Rules of Practice for the United States District Court, Eastern District of California.
3 Within thirty (30) days after the date of service of this Findings and Recommendation, any
4 party may file written objections with the Court and serve a copy on all parties. Such a
5 document should be captioned "Objections to Magistrate Judge's Findings and
6 Recommendation." Replies to the Objections shall be served and filed within fourteen (14)
7 days after service of the Objections. The Finding and Recommendation will then be submitted
8 to the District Court for review of the Magistrate Judge's ruling pursuant to 28 U.S.C. § 636
9 (b)(1)(c). The parties are advised that failure to file objections within the specified time may
10 waive the right to appeal the Order of the District Court. Martinez v. Ylst, 951 F.2d 1153 (9th
11 Cir. 1991).

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IT IS SO ORDERED.

Dated: October 6, 2010

1st Michael J. Seng
UNITED STATES MAGISTRATE JUDGE