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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ELIAS CASTANEDA,

1:11-CV-01672 GSA HC

Petitioner,

ORDER DIRECTING CLERK OF COURT
TO ASSIGN DISTRICT JUDGE

v.

M.C. EWEN,

FINDINGS AND RECOMMENDATION
REGARDING PETITIONER'S FAILURE TO
FOLLOW COURT ORDERs
[Docs. #3,5]

Respondent.

[FIFTEEN DAY DEADLINE]

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

On October 4, 2011, Petitioner filed a petition for writ of habeas corpus. On the same date, the Court issued new case documentation as well as an order directing Petitioner to complete and return a consent/decline form. After thirty days passed with no response from Petitioner, the Court re-served the documentation and order on Petitioner on November 17, 2011. Again, Petitioner did not respond. Therefore, on January 3, 2012, the Court issued a second order directing Petitioner to complete and return a consent/decline form. Again, the allotted thirty days passed and Petitioner failed to comply.

DISCUSSION

Local Rule 110 provides that a “[f]ailure of counsel or of a party to comply with these Rules

1 or with any order of the Court may be grounds for imposition by the Court of any and all sanctions
2 authorized by statute or Rule or within the inherent power of the Court.” District courts have the
3 inherent power to control their dockets and “in the exercise of that power, they may impose sanctions
4 including, where appropriate . . . dismissal of a case.” Thompson v. Housing Auth., 782 F.2d 829,
5 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party’s failure to
6 prosecute an action, failure to obey a court order, or failure to comply with local rules. See, e.g.,
7 Ghazali v. Moran, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance with local rule);
8 Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an
9 order requiring amendment of complaint); Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988)
10 (dismissal for failure to comply with local rule requiring pro se plaintiffs to keep court apprized of
11 address); Malone v. U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to
12 comply with court order); Henderson v. Duncan, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for
13 lack of prosecution and failure to comply with local rules). In determining whether to dismiss an
14 action for lack of prosecution, failure to obey a court order, or failure to comply with local rules, the
15 court must consider several factors: (1) the public’s interest in expeditious resolution of litigation;
16 (2) the court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public
17 policy favoring disposition of cases on their merits; and (5) the availability of less drastic
18 alternatives. Ghazali, 46 F.3d at 53; Ferdik, 963 F.2d at 1260-61; Malone, 833 F.2d at 130;
19 Thompson, 782 F.2d at 831; Henderson, 779 F.2d at 1423-24.

20 In the instant case, the Court finds that the public’s interest in expeditiously resolving this
21 litigation and the Court’s interest in managing the docket weigh in favor of dismissal because this
22 case has been pending in this Court since October 4, 2011. The third factor, risk of prejudice to
23 defendants, also weighs in favor of dismissal because a presumption of injury arises from any
24 unreasonable delay in prosecuting an action. Anderson v. Air West, 542 F.2d 522, 524 (9th Cir.
25 1976). The fourth factor, public policy favoring disposition of cases on their merits, is greatly
26 outweighed by the factors in favor of dismissal. Finally, a court’s warning to a party that his failure
27 to obey the court’s order will result in dismissal satisfies the “consideration of alternatives”
28 requirement. Ferdik, 963 F.2d at 1262; Malone, 833 at 132-33; Henderson, 779 F.2d at 1424.

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ORDER

Accordingly, the Clerk of Court is DIRECTED to randomly assign a District Judge to the case.

RECOMMENDATION

Accordingly, the Court RECOMMENDS that this action be DISMISSED for Petitioner's failure to comply with a court order.

This Findings and Recommendation is submitted to the assigned District Judge pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304 of the Local Rules of Practice for the United States District Court, Eastern District of California. Within fifteen (15) days after service of the Findings and Recommendation, Petitioner may file written objections with the Court. Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendation." The Court will then review the Magistrate Judge's ruling pursuant to 28 U.S.C. § 636(b)(1)(C). Petitioner 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: March 2, 2012

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE