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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

DAVID ALLEN BAUMGAERTEL,

1:12-CV-01859 GSA HC

Petitioner,

ORDER DIRECTING CLERK OF COURT
TO RANDOMLY ASSIGN DISTRICT
JUDGE TO CASE

v.

K. HOLLAND,

FINDINGS AND RECOMMENDATION
REGARDING PETITIONER'S FAILURE TO
FOLLOW COURT ORDERS

Respondent.

[Doc. #2, 3, 4]

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

On November 13, 2012, Petitioner filed a petition for writ of habeas corpus. On November 15, 2012, the Court ordered Petitioner to complete and return within thirty days a form indicating consent or decline to the jurisdiction of the Magistrate Judge. Over thirty days passed and Petitioner failed to comply. On January 30, 2013, the Court issued a second order directing Petitioner to complete and file a consent/decline form. Petitioner was granted thirty days to comply. Again, the deadline passed with no response from Petitioner. Therefore, on March 12, 2013, the Court issued an order directing Petitioner to show cause why the petition should not be dismissed for failure to comply with a court order. He was granted fifteen days to comply. On March 21, 2013,

1 the order was returned by the U.S. Postal Service as “undeliverable - paroled.”

2 DISCUSSION

3 Local Rule 110 provides that a “[f]ailure of counsel or of a party to comply with these Rules
4 or with any order of the Court may be grounds for imposition by the Court of any and all sanctions
5 authorized by statute or Rule or within the inherent power of the Court.” District courts have the
6 inherent power to control their dockets and “in the exercise of that power, they may impose sanctions
7 including, where appropriate . . . dismissal of a case.” Thompson v. Housing Auth., 782 F.2d 829,
8 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party’s failure to
9 prosecute an action, failure to obey a court order, or failure to comply with local rules. See, e.g.,
10 Ghazali v. Moran, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance with local rule);
11 Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an
12 order requiring amendment of complaint); Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988)
13 (dismissal for failure to comply with local rule requiring pro se plaintiffs to keep court apprized of
14 address); Malone v. U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to
15 comply with court order); Henderson v. Duncan, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for
16 lack of prosecution and failure to comply with local rules). In determining whether to dismiss an
17 action for lack of prosecution, failure to obey a court order, or failure to comply with local rules, the
18 court must consider several factors: (1) the public’s interest in expeditious resolution of litigation;
19 (2) the court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public
20 policy favoring disposition of cases on their merits; and (5) the availability of less drastic
21 alternatives. Ghazali, 46 F.3d at 53; Ferdik, 963 F.2d at 1260-61; Malone, 833 F.2d at 130;
22 Thompson, 782 F.2d at 831; Henderson, 779 F.2d at 1423-24.

23 In the instant case, the Court finds that the public’s interest in expeditiously resolving this
24 litigation and the Court’s interest in managing the docket weigh in favor of dismissal because this
25 case has been pending in this Court since November 13, 2012. The third factor, risk of prejudice to
26 defendants, also weighs in favor of dismissal because a presumption of injury arises from any
27 unreasonable delay in prosecuting an action. Anderson v. Air West, 542 F.2d 522, 524 (9th Cir.
28 1976). The fourth factor, public policy favoring disposition of cases on their merits, is greatly

1 outweighed by the factors in favor of dismissal. Finally, a court’s warning to a party that his failure
2 to obey the court’s order will result in dismissal satisfies the “consideration of alternatives”
3 requirement. Ferdik, 963 F.2d at 1262; Malone, 833 at 132-33; Henderson, 779 F.2d at 1424. In this
4 case, the Court repeatedly warned Petitioner that dismissal would result from non-compliance with
5 the Court's order.

6 **ORDER**

7 IT IS HEREBY ORDERED that the Clerk of Court is DIRECTED to randomly assign a
8 District Judge to the case.

9 **RECOMMENDATION**

10 IT IS HEREBY RECOMMENDED that this action be DISMISSED for Petitioner's failure to
11 comply with a court order.

12 This Findings and Recommendation is submitted to the assigned District Judge pursuant to
13 the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304 of the Local Rules of Practice for the
14 United States District Court, Eastern District of California. Within fifteen (15) days after date of
15 service of the Findings and Recommendation, Petitioner may file written objections with the Court.
16 Such a document should be captioned “Objections to Magistrate Judge’s Findings and
17 Recommendation.” The Court will then review the Magistrate Judge’s ruling pursuant to 28 U.S.C.
18 § 636(b)(1)(C). Petitioner is advised that failure to file objections within the specified time may
19 waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

20
21 IT IS SO ORDERED.

22 **Dated: April 13, 2013**

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE