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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

HECTOR LOPEZ,
Petitioner,
v.
MICHAEL BENOVA,
Respondent.

Case No. 1:15-cv-00490-LJO-SAB-HC
FINDINGS AND RECOMMENDATION
RECOMMENDING DISMISSAL OF
PETITION

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

On March 30, 2015, Petitioner filed the instant petition for writ of habeas corpus. On March 31, 2015, the Court issued prisoner new case documents and order re consent or request for reassignment. On March 31, 2015, the Court mailed Petitioner the prisoner new case documents and order re consent or request for reassignment, an order authorizing IFP, and a copy of the petition. However, on April 20, 2015, these items were returned as “undeliverable, no longer at facility.” As of this date, Petitioner has not notified the Court of his new address.

I.
DISCUSSION

Pursuant to Federal Rule of Civil Procedure 41(b), a district court may dismiss an action for failure to prosecute, failure to comply with the Federal Rules of Civil Procedure, failure to

1 comply with the court’s local rules, or failure to comply with the court’s orders. See, e.g.,
2 Chambers v. NASCO, Inc., 501 U.S. 32, 44, 111 S.Ct. 2123, 115 L.Ed.2d 27 (1991) (recognizing
3 that a court “may act *sua sponte* to dismiss a suit for failure to prosecute”); Hells Canyon
4 Preservation Council v. U.S. Forest Serv., 403 F.3d 683, 689 (9th Cir. 2005) (recognizing that
5 courts may dismiss an action pursuant to Federal Rule of Civil Procedure 41(b) *sua sponte* for a
6 plaintiff’s failure to prosecute or comply with the rules of civil procedure or the court’s orders);
7 Ferdik v. Bonzelet, 963 F.2d 1258, 1260 (9th Cir. 1992) (“Pursuant to Federal Rule of Civil
8 Procedure 41(b), the district court may dismiss an action for failure to comply with any order of
9 the court.”); Pagtalunan v. Galaza, 291 F.3d 639, 642–43 (9th Cir. 2002) (affirming district
10 court’s dismissal of case for failure to prosecute when habeas petitioner failed to file a first
11 amended petition). Local Rule 110 provides that a “[f]ailure of counsel or of a party to comply
12 with these Rules or with any order of the Court may be grounds for the imposition by the Court
13 of any and all sanctions . . . within the inherent power of the Court.” District courts have the
14 inherent power to control their dockets and “in the exercise of that power, they may impose
15 sanctions including, where appropriate . . . dismissal of a case.” Thompson v. Housing Auth.,
16 782 F.2d 829, 831 (9th Cir. 1986).

17 When determining whether to dismiss an action for lack of prosecution, failure to comply
18 with a court order or failure to comply with a district court’s local rules, the Court must consider
19 several factors: (1) the public’s interest in expeditious resolution of litigation; (2) the Court’s
20 need to manage its docket; (3) the risk of prejudice to the Respondents; (4) the public policy
21 favoring disposition of cases on their merits; and, (5) the availability of less drastic alternatives.
22 Henderson v. Duncan, 779 F.2d 1421, 1423 (9th Cir. 1986); Carey v. King, 856 F.2d 1439 (9th
23 Cir. 1988).

24 Here, the Court relies on Local Rule 183(b), which confers discretion on the court to
25 dismiss an action without prejudice if a petitioner appearing in propria persona fails to keep the
26 court apprised of his correct address. Local Rule 183(b) provides:

27 A party appearing in propria persona shall keep the Court and
28 opposing parties advised as to his or her current address. If mail
 directed to a plaintiff in propria persona by the Clerk is returned by

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

4 It has been over 63 days since the mail was returned as “undeliverable, no longer at
5 facility.” The Court finds that the public’s interest in expeditiously resolving this litigation and
6 the court’s interest in managing the docket weigh in favor of dismissal. The Court cannot hold
7 this case in abeyance indefinitely based on Petitioner’s failure to notify the Court of his new
8 address. See Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988). Although Petitioner did
9 not receive the Court’s prisoner new case documents and order re consent or request for
10 reassignment, which includes a change of address form, Local Rule 183(b) provides notice that a
11 petitioner must advise the court of a change in address or face dismissal of the action. The third
12 factor, risk of prejudice to Respondents, also weighs in favor of dismissal, since a presumption of
13 injury arises from the occurrence of unreasonable delay in prosecuting an action. Anderson v.
14 Air West, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor -- public policy favoring
15 disposition of cases on their merits -- is greatly outweighed by the factors in favor of dismissal
16 discussed herein. Finally, given the Court’s inability to communicate with Petitioner based on
17 his failure to keep the Court apprised of his current address, no lesser sanction is feasible.
18 Therefore, the petition should be dismissed without prejudice.

19 **II.**

20 **RECOMMENDATION**

21
22 Accordingly, IT IS HEREBY RECOMMENDED that Petitioner’s petition for writ of
23 habeas corpus be DIMISSED WITHOUT PREJUDICE.

24 This Findings and Recommendation is submitted to the assigned United States District
25 Court Judge, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304 of the Local
26 Rules of Practice for the United States District Court, Eastern District of California. Within
27 thirty (30) days after service of the Findings and Recommendation, Petitioner may file written
28 objections with the court and serve a copy on all parties. Such a document should be captioned

1 “Objections to Magistrate Judge’s Findings and Recommendation.” The assigned District Judge
2 will then review the Magistrate Judge’s ruling pursuant to 28 U.S.C. § 636(b)(1)(C). Petitioner
3 is advised that failure to file objections within the specified time may result in the waiver of
4 rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v.
5 Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

6
7 IT IS SO ORDERED.

8 Dated: July 8, 2015


UNITED STATES MAGISTRATE JUDGE

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