

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

RICHARD C. ACORD,  
Petitioner,  
v.  
THE STATE OF CALIFORNIA,  
Respondent.

) Case No.: 1:16-cv-01657-JLT (HC)  
)  
) ORDER DISMISSING PETITION FOR WRIT OF  
) HABEAS CORPUS  
)  
) ORDER DIRECTING CLERK OF COURT TO  
) ENTER JUDGMENT AND CLOSE CASE  
)  
) ORDER DECLINING ISSUANCE OF  
) CERTIFICATE OF APPEALABILITY  
)

On December 13, 2016, the Court conducted a preliminary review of the petition. The Court determined that Petitioner had failed to provide sufficient information to state a claim, failed to establish standing, failed to demonstrate exhaustion of state remedies, and failed to name a proper respondent. The petition was dismissed and Petitioner was directed to file an amended petition within thirty days. Over thirty days have passed and Petitioner has failed to comply. The Court notes that the order served on Petitioner was returned by the U.S. Postal Service as “Undeliverable (Unable to Forward – Refused).” Therefore, the petition will be **DISMISSED.**<sup>1</sup>

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<sup>1</sup> On November 10, 2016, Petitioner consented to the jurisdiction of the Magistrate Judge.

## **DISCUSSION**

Local Rule 110 provides that “[f]ailure of counsel or of a party to comply with these Rules or with any order of the Court may be grounds for 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. 1986). A court may dismiss an action with prejudice, based on a party’s failure to prosecute an action, failure to obey a court order, or failure to comply with local rules. See, e.g., Ghazali v. Moran, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance with local rule); Ferdik v. Bonzelet, 963 F.2d 1258, 1260-1261 (9th Cir. 1992) (dismissal for failure to comply with an order requiring amendment of complaint); Carey v. King, 856 F.2d 1439, 1440-1441 (9th Cir. 1988) (dismissal for failure to comply with local rule requiring pro se plaintiffs to keep court apprised of address).

In determining whether to dismiss an action for lack of prosecution, the court must consider several factors: (1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the Respondents; (4) the public policy favoring disposition of cases on their merits; and, (5) the availability of less drastic alternatives. Ghazali, 46 F.3d at 53; Ferdik, 963 F.2d at 1260-1261.

Here, the Court finds that the public's interest in expeditiously resolving this litigation and the Court's interest in managing the docket weigh in favor of dismissal, as this case has been pending since November 2, 2016. The third factor, risk of prejudice to Respondent, also weighs in favor of dismissal, since a presumption of injury arises from the occurrence of unreasonable delay in prosecuting an action. Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor -- public policy favoring disposition of cases on their merits -- is greatly outweighed by the factors in favor of dismissal discussed herein. Finally, a court's warning to a party that failure to obey the court's order will result in dismissal satisfies the "consideration of alternatives" requirement. Ferdik, 963 F.2d at 1262. The Court's order dated December 13, 2016, expressly stated: "**Petitioner is forewarned that his failure to comply with this Order may result in an Order of Dismissal or a Recommendation that the petition be dismissed pursuant to Local Rule 110.**" (Doc. 6, p. 6)

1 (emphasis in original). Thus, Petitioner had adequate warning that dismissal would result from his  
2 noncompliance with the Court's order.

3 **CERTIFICATE OF APPEALABILITY**

4 In addition, the Court declines to issue a certificate of appealability. A state prisoner seeking a  
5 writ of habeas corpus has no absolute entitlement to appeal a district court's denial of his petition, and  
6 an appeal is only allowed in certain circumstances. Miller-El v. Cockrell, 537 U.S. 322, 335-336  
7 (2003). The controlling statute in determining whether to issue a certificate of appealability is 28  
8 U.S.C. § 2253, which provides as follows:

9 (a) In a habeas corpus proceeding or a proceeding under section 2255 before a  
10 district judge, the final order shall be subject to review, on appeal, by the court of appeals for  
the circuit in which the proceeding is held.

11 (b) There shall be no right of appeal from a final order in a proceeding to test the  
12 validity of a warrant to remove to another district or place for commitment or trial a person  
charged with a criminal offense against the United States, or to test the validity of such  
13 person's detention pending removal proceedings.

14 (c)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal  
may not be taken to the court of appeals from—

15 (A) the final order in a habeas corpus proceeding in which the detention  
complained of arises out of process issued by a State court; or

16 (B) the final order in a proceeding under section 2255.

17 (2) A certificate of appealability may issue under paragraph (1) only if the applicant has  
18 made a substantial showing of the denial of a constitutional right.

19 (3) The certificate of appealability under paragraph (1) shall indicate which specific  
issue or issues satisfy the showing required by paragraph (2).

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21 If a court denies a petitioner's petition, the court may only issue a certificate of appealability  
22 when a petitioner makes a substantial showing of the denial of a constitutional right. 28 U.S.C. §  
23 2253(c)(2). To make a substantial showing, the petitioner must establish that "reasonable jurists could  
24 debate whether (or, for that matter, agree that) the petition should have been resolved in a different  
25 manner or that the issues presented were 'adequate to deserve encouragement to proceed further.'"   
26 Slack v. McDaniel, 529 U.S. 473, 484 (2000) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 (1983)).

27 In the present case, the Court finds that Petitioner has not made the required substantial  
28 showing of the denial of a constitutional right to justify the issuance of a certificate of appealability.

1 Reasonable jurists would not find the Court's determination that Petitioner is not entitled to federal  
2 habeas corpus relief debatable, wrong, or deserving of encouragement to proceed further. Thus, the  
3 Court DECLINES to issue a certificate of appealability.

4 **ORDER**

5 For the foregoing reasons, the Court **ORDERS**:

6 1. The action is **DISMISSED** for failure to obey the Court's orders and failure to prosecute;  
7 2. The Clerk of Court is DIRECTED to enter judgment and close the case; and  
8 3. The Court DECLINES to issue a certificate of appealability.

9 This terminates this action in its entirety.

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11 IT IS SO ORDERED.

12 Dated: January 17, 2017

13 /s/ Jennifer L. Thurston  
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UNITED STATES MAGISTRATE JUDGE