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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

NATE WHITE,

Plaintiff,

v.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

No. 2:13-cv-0626-KJN

ORDER

On May 30, 2014, the court dismissed this action pursuant to Federal Rule of Civil Procedure 41(b) for failure to complete service of process and comply with court orders. (ECF No. 34.)¹ Thereafter, on June 5, 2014, plaintiff, now proceeding without counsel, filed a motion for reconsideration of the order dismissing the case. (ECF No. 36.)

Plaintiff essentially contends that the requirements for serving the Commissioner of Social Security were not fully or properly explained in the Federal Rules of Civil Procedure, by the Clerk of Court, and/or by the court; and that he had merely inadvertently failed to include a copy of the Certified Mail Receipt with his prior proof of service on the Commissioner. (See ECF No. 33.) Having now submitted the actual Certified Mail Receipt to the court, plaintiff claims that it would be unjust to punish him for “missing an unexplained detail in the process of serving the

¹ The protracted procedural history of this case and the reasons for the Rule 41(b) dismissal have been previously outlined in great detail (ECF Nos. 26, 34) and need not be repeated here.

1 Commissioner.” (ECF No. 36 at 1.) Plaintiff’s arguments are unpersuasive for two primary
2 reasons.

3 First, plaintiff’s claim that the requirements for serving the Commissioner were never
4 fully or properly explained to him is devoid of merit. As an initial matter, it is plaintiff’s own
5 duty to familiarize himself with the requirements for serving the Commissioner of Social Security
6 under the Federal Rules of Civil Procedure, and Clerk’s Office employees are not permitted to
7 dispense legal advice. Eastern District Local Rule 183(a) provides, in part:

8 Any individual representing himself or herself without an attorney
9 is bound by the Federal Rules of Civil or Criminal Procedure, these
10 Rules, and all other applicable law. All obligations placed on
11 “counsel” by these Rules apply to individuals appearing in propria
12 persona. Failure to comply therewith may be ground for dismissal,
13 judgment by default, or any other sanction appropriate under these
14 Rules.

12 See also King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987) (“Pro se litigants must follow the
13 same rules of procedure that govern other litigants”) (overruled on other grounds). Nonetheless,
14 because the court was cognizant of plaintiff’s *pro se* status, the court’s May 8, 2014 order
15 granting plaintiff an additional 14 days to complete service of process specifically referred
16 plaintiff to the court’s previous January 8, 2014 order outlining in detail how to accomplish
17 service of process on the Commissioner² and expressly directed the Clerk of Court to serve a
18 copy of that prior order on plaintiff. (ECF No. 32 at 3-4.) The court’s records reflect that the
19 court’s January 8, 2014 order (ECF No. 16) was indeed served on plaintiff by mail on May 8,
20 2014, along with additional copies of the process documents and the May 8, 2014 order. Because
21 plaintiff responded to the court’s May 8, 2014 order by filing a further proof of service on May
22 20, 2014 (ECF No. 33), there is no question that plaintiff received the packet of orders and
23

24 ² The January 8, 2014 order, which at that time was directed to plaintiff’s former counsel after his
25 numerous defective attempts at service of process, outlined the specific entities to be served, their
26 addresses, and the methods of service required, by reference to the applicable provisions of the
27 Federal Rules of Civil Procedure. (ECF No. 16 at 1-2.) Apart from mailing the process
28 documents itself, which the court obviously cannot do for a litigant, the court is at a loss as to
how this information could have been conveyed in a clearer fashion. The only reasonable
inference that can be drawn is that neither plaintiff’s former counsel nor plaintiff himself had
actually read the court’s orders.

1 process documents from the Clerk of Court. As such, plaintiff cannot credibly claim that the
2 court did not inform him of the requirements for serving the Commissioner with process. In any
3 event, even if he did not receive any guidance from the court, it is plaintiff's obligation to
4 familiarize himself with the applicable procedural requirements.

5 Second, even if the court were to now consider the Certified Mail Receipt attached to the
6 motion for reconsideration, that receipt does not demonstrate that service of process was properly
7 accomplished. The Certified Mail Receipt indicates that plaintiff served certain documents on the
8 Commissioner at a Richmond, California address. (ECF No. 36 at 4.) That address is not one of
9 the three addresses at which the Commissioner must be served as required by the Federal Rules of
10 Civil Procedure and as outlined in detail in the court's prior orders. (See ECF No. 16 at 1-2.)
11 Therefore, even at this late juncture, plaintiff has yet to properly complete service of process on
12 the Commissioner.

13 To summarize, plaintiff's former counsel failed to properly complete service of process
14 despite several extensions and instructional orders from the court. Nonetheless, upon plaintiff's
15 counsel's termination, the court did not fault plaintiff for the shortcomings of his prior counsel,
16 and instead provided plaintiff himself with another opportunity to complete service of process
17 (along with appropriate instruction as to how to accomplish the service of process). However,
18 when plaintiff himself then also failed to complete service of process, the court dismissed the
19 case, because, at some point, leniency must give way to considerations of limited court resources,
20 fairness to other compliant litigants, and consistent enforcement of the court's rules and orders.

21 "Reconsideration is appropriate if the district court (1) is presented with newly discovered
22 evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is
23 an intervening change in controlling law." School Dist. No. 1J, Multnomah County v. ACandS,
24 Inc., 5 F.3d 1255, 1263 (9th Cir. 1993). None of these factors, or any other unusual
25 circumstances warranting reconsideration, are present here.

26 Accordingly, IT IS HEREBY ORDERED that:

- 27 1. Plaintiff's motion for reconsideration (ECF No. 36) is denied.

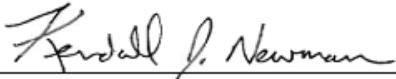
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2. No further motions or requests for reconsideration will be entertained, and any such future filings will be summarily disregarded in this already-closed case.

IT IS SO ORDERED.

Dated: June 9, 2014


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE