

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

CLIFFORD SCHUETT,

Plaintiff

v.

STEVE SISOLAK, *et al.*

Defendants

Case No. 2:21-cv-00735-RFB-DJA

ORDER

On May 5, 2021, this Court issued an order directing Plaintiff to file a fully complete application to proceed *in forma pauperis* or pay the full \$402 filing fee on or before July 6, 2021. (ECF No. 3). On June 21, 2021, Plaintiff filed a response, a letter, and an incomplete application to proceed *in forma pauperis*. (ECF Nos. 5, 6, 7). In his filings, Plaintiff states that he has requested financial information from the prison on June 1, 2021, but he has not yet received the documents. (ECF No. 7 at 1.)

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. Thompson v. Hous. Auth. of City of Los Angeles, 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 Ghazali v. Moran, 46 F.3d 52, 53-54 (9th Cir. 1995) (affirming dismissal for noncompliance with local rule); Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (affirming dismissal for failure to comply with an order requiring amendment of complaint); Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); Malone v. U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987) (affirming dismissal for failure to comply with court order); Henderson v. Duncan, 779 F.2d 1421, 1424 (9th Cir. 1986) (affirming dismissal for lack of prosecution and failure to comply with

1 local rules).

2 In determining whether to dismiss an action for lack of prosecution, failure to obey
3 a court order, or failure to comply with local rules, the court must consider several factors:
4 (1) the public's interest in expeditious resolution of litigation; (2) the court's need to
5 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
6 disposition of cases on their merits; and (5) the availability of less drastic alternatives.
7 See Thompson, 782 F.2d at 831; Henderson, 779 F.2d at 1423-24; Malone, 833 F.2d at
8 130; Ferdik, 963 F.2d at 1260-61; Ghazali, 46 F.3d at 53.

9 Here, the Court finds that the first two factors, the public's interest in expeditiously
10 resolving this litigation and the Court's interest in managing the docket, weigh in favor of
11 dismissal. The third factor, risk of prejudice to Defendants, also weighs in favor of
12 dismissal, since a presumption of injury arises from the occurrence of unreasonable delay
13 in filing a pleading ordered by the court or prosecuting an action. See Anderson v. Air
14 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
16 dismissal discussed herein. Finally, a court's warning to a party that his failure to obey
17 the court's order will result in dismissal satisfies the "consideration of alternatives"
18 requirement. Ferdik, 963 F.2d at 1262; Malone, 833 F.2d at 132-33; Henderson, 779
19 F.2d at 1424. The Court's order requiring Plaintiff to file a fully complete application to
20 proceed *in forma pauperis* or pay the full \$402 filing fee on or before July 6, 2021
21 expressly stated: "IT IS FURTHER ORDERED that, if Plaintiff does not file a fully
22 complete application to proceed *in forma pauperis* with all three documents or pay the full
23 \$402 filing fee for a civil action on or before July 6, 2021, this case will be subject to
24 dismissal without prejudice for Plaintiff to refile the case with the Court, under a new case
25 number, when Plaintiff is has all three documents needed to file a complete application
26 to proceed *in forma pauperis* or pays the the full \$402 filing fee." (ECF No. 3 at 3).

27 Plaintiff states that on June 1, 2021, he has submitted a request for financial
28 information to the prison. (ECF No. 7 at 1.) Plaintiff should have submitted a complete

1 application to proceed *in forma pauperis* with his complaint. Barring that, he should have
2 submitted a request as soon as the Court ordered Plaintiff to file an application to proceed
3 *in forma pauperis*. Instead, Plaintiff waited almost a month before submitting his request
4 for financial documents.

5 Plaintiff had adequate warning that dismissal would result from noncompliance
6 with the Court's order to file a fully complete application to proceed *in forma pauperis* or
7 pay the full \$402 filing fee on or before July 6, 2021, and Plaintiff did not take timely steps
8 in order to comply with the Court's order. As the Court is dismissing this case without
9 prejudice, Plaintiff may initiate a new action once he receives all the necessary
10 documents to file a complete application to proceed *in forma pauperis*.

11 It is therefore ordered that this action is dismissed without prejudice based on
12 Plaintiff's failure to file a fully complete application to proceed *in forma pauperis* or pay
13 the full \$402 filing fee in compliance with this Court's order dated May 5, 2021. (ECF No.
14 3).

15 It is further ordered that the Clerk of Court will close the case and enter judgment
16 accordingly. No other documents may be filed in this now-closed case.

17
18 DATED: July 14, 2021.



20 UNITED STATES DISTRICT JUDGE