

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

RICHARD MCGRAIL,

Petitioner,

**9:08-cv-111
(GLS/RFT)**

v.

**SUPERINTENDENT, Collins Corr.
Facility,**

Respondent.

APPEARANCES:

OF COUNSEL:

FOR THE PETITIONER:

RICHARD MCGRAIL
Petitioner, *Pro Se*
Last Known Address:
Mohawk Correctional Facility
P.O. Box 8451
Rome, New York 13440

FOR THE RESPONDENT:

HON. ERIC T. SCHNEIDERMAN
New York State Attorney General
120 Broadway
New York, New York 10271

THOMAS B. LITSKY, ESQ.

**Gary L. Sharpe
District Court Judge**

DECISION AND ORDER

The court cannot locate *pro se* petitioner Richard McGrail. Accordingly, it considers *sua sponte* McGrail's noncompliance with this District's Local Rules by failing to notify the court of his current address and by not prosecuting his action.

On January 30, 2008, Richard McGrail filed a habeas corpus petition with the Western District of New York and the case was transferred to the Northern District of New York under seal. *See Dkt. No. 1.* On March 28, 2008, an order was issued granting the plaintiff's *in forma pauperis* application. At that time, he was advised of his obligation to adhere to the Federal and Local Rules even though he was a *pro se* litigant. *See Dkt. No. 5.* This district has expended considerable effort in order to familiarize *pro se* litigants with those Rules by reminding them of their obligations in various documents and orders mailed to them, and by preparing a Pro Se Handbook that is easily accessible. *See* <http://www.nynd.uscourts.gov>. In fact, copies of the Handbook have been provided to all prison libraries in the Northern District.

In relevant part, Local Rule ("L.R.") 10.1(b) provides:

All ... pro se litigants must immediately notify the court of

any change of address. The notice of change of address is to be filed with the clerk of the court and served on all other parties to the action. The notice must identify each and every action for which the notice shall apply.... (emphasis in original).

In turn, L.R. 41.2(b) provides that the “[f]ailure to notify the Court of a change of address in accordance with L.R. 10.1(b) may result in the dismissal of any pending action.”

In fact, while this litigation has been pending, McGrail has acknowledged this obligation on two occasions by filing a notices of change of address. *See Dkt. No. 9 and 28.*

L.R. 41.2(b) mirrors Rule 41(b) of the Federal Rules of Civil Procedure, which affords the court discretionary authority to dismiss an action because of the failure to prosecute or to comply with any order of the court. *Link v. Wabash R.R. County Indep. Sch. Dist.*, 370 U.S. 626 (1962); *see also, Lyell Theater Corp. v. Loews Corp.*, 628 F. 2d 37 (2d Cir. 1982).

On November 14, 2011, the court issued a Report-Recommendation recommending that the petition for a writ of habeas be denied. That because the Court finds Petitioner has not made a substantial showing of the denial of a constitutional right pursuant to 28 U.S.C. 2253(c)(2), no certificate of appealability should issue with respect

to any of Petitioner's claims. See *Dkt. No.* 30. On November 28, 2011, the court ascertained from DOCCS Inmate Locator that the petitioner was transferred to Mohawk Correctional Facility. A copy of the Report-Recommendation was sent to the petitioner at his new address. On December 7, 2011, the court further ascertained from DOCCS Inmate Locator that the petitioner was released on parole.

For the orderly disposition of cases, it is essential that litigants honor their continuing obligation to keep the court informed of address changes.

Michaud v. Williams, 98cv1141, 1999 WL 33504430, at *1 (N.D.N.Y. Nov. 5, 1999) (citing *Fenza v. Conklin*, 177 F.R.D. 126 (N.D.N.Y. 1998) (Pooler, then D.J.)). As Judge Pooler has observed:

It is neither feasible nor legally required that the clerks of the district courts undertake independently to maintain current addresses on all parties to pending actions. It is incumbent upon litigants to inform the clerk of address changes, for it is manifest that communications between the clerk and the parties or their counsel will be conducted principally by mail. In addition to keeping the clerk informed of any change of address, parties are obliged to make timely status inquiries. Address changes normally would be reflected by those inquiries if made in writing.

Dansby v. Albany County Corr. Staff, 95cv1525, 1996 WL 172699, at *1 (N.D.N.Y. Apr. 10, 1996) (citations omitted)).

As a matter of course, courts in this district have dismissed actions when litigants have failed to abide by either the Local Rules or orders related to address changes, and have subsequently failed to prosecute their actions. See *Williams v. Faulkner*, 95cv741, 1998 WL 278288 (N.D.N.Y. May 20, 1998); *Dansby*, 1996 WL 172699, at *1; *Fenza*, 177 F.R.D. at 126; cf. *Michaud*, 1999 WL 33504430, at *1.

Although the court concludes that it would be an appropriate exercise of discretion to dismiss McGrail's action at this juncture for failure to notify the court of his address change or to prosecute his action, it nonetheless affords him an additional fourteen days to comply.

According, it is hereby

ORDERED that McGrail be granted **FOURTEEN (14)** days from the date of the filing of this order to submit his current address to the court, or verify that his mailing address is as listed in the caption of this order, and it is further

ORDERED that if McGrail fails to comply, the court will *sua sponte* dismiss this action for failure to notify the court of his address change, for failure to prosecute and for the reasons articulated in the Report-Recommendation; and it is further

ORDERED that the Clerk serve copies of this Order on the parties at the addresses listed in the caption.

SO ORDERED.

**Dated: December 28, 2011
Albany, New York**


Gary L. Sharpe
Chief Judge
U.S. District Court