

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

STEVEN INGRAM,)	
)	Civil Action No. 2: 16-cv-1191
Plaintiff,)	
)	United States District Judge
v.)	David S. Cercone
)	
SUPERINTENDENT LANE and)	United States Magistrate Judge
C/O MILLER,)	Cynthia Reed Eddy
)	
Defendants.)	

REPORT AND RECOMMENDATION

On August 6, 2018, the Court entered an Order directing Plaintiff to show cause by August 21, 2018, why this case should not be dismissed for Plaintiff’s failure to prosecute and for Plaintiff’s non-compliance with Court Orders. (ECF No. 137). The Order was mailed to Plaintiff at his listed address of record and the Court has no reason to believe that Plaintiff did not receive the Order.

The time for responding to the Order to Show Cause has now passed. Therefore, consistent with the August 6, 2018, Order, and pursuant to *Poulis v. State Farm Fire & Cas. Co.*, 747, F.2d 863 (3d Cir. 1984), the undersigned recommends that the case be dismissed.

A district court has inherent power to dismiss a complaint, sua sponte, under Federal Rule of Civil Procedure 41(b) for a plaintiff’s failure to comply with an order of court. *Adams v. Trustees of New Jersey Brewery Employees’ Pension Trust Fund*, 29 F.3d 863, 871 (3d Cir. 1994) (“The Supreme Court affirmed, stating that a court could dismiss sua sponte under Rule 41(b).”); *Guyer v. Beard*, 907 F.2d 1424, 1429 (3d Cir. 1990). Furthermore, a court’s decision to dismiss for failure to prosecute is committed to the court’s sound discretion. *See Collinsgru v. Palmyra Bd. of Educ.*, 161 F.3d 225, 230 (3d Cir. 1998) (“We review for abuse of discretion a district court’s dismissal for

failure to prosecute pursuant to Rule 41(b).”), *abrogated on other grounds by Winkelman ex rel. Winkelman v. Parma City School Dist.*, 550 U.S. 516 (2007). In exercising that discretion, a district court should, to the extent applicable, consider the six factors identified in *Poullis v. State Farm Fire and Casualty Co.*, 747 F.2d 868 (3d Cir. 1984), when it levies the sanction of dismissal of an action for failure to obey discovery schedules, failure to prosecute, or to comply with other procedural rules. *Harris v. City of Philadelphia*, 47 F.3d 1311, 1330 n.18 (3d Cir. 1995).

In *Poullis*, the Court of Appeals for the Third Circuit set forth the following six factors to be weighed in considering whether dismissal is proper:

(1) the extent of the party’s personal responsibility; (2) the prejudice to the adversary caused by the failure to meet scheduling orders and respond to discovery; (3) a history of dilatoriness; (4) whether the conduct of the party or the attorney was willful or in bad faith; (5) the effectiveness of sanctions other than dismissal, which entails an analysis of alternative sanctions; and (6) the meritoriousness of the claim or defense.

Id. at 868. These factors must be balanced in determining whether dismissal is an appropriate sanction, although not all need to weigh in favor of dismissal before dismissal is warranted. *Hicks v. Feeney*, 850 F.2d 152 (3d Cir. 1988). Consideration of these factors follows.

1. The extent of the party’s personal responsibility.

Plaintiff is proceeding in this matter *pro se*. On July 10, 2018, due to Plaintiff’s release from incarceration, the Court ordered Plaintiff file a new motion to proceed in forma pauperis and to file a Notice with the Court indicating whether he intended to continue to pursue this action. Plaintiff was ordered to respond to the Order no later than July 27, 2018. (ECF No. 136). There is no indication that Plaintiff failed to receive the Order the Court mailed him. Plaintiff did not respond to this Order. The responsibility for his failure to comply is Plaintiff’s alone.

2. Prejudice to the adversary.

Plaintiff has prejudiced Defendants because his failure to respond to the Order motion has made it impossible for this Court or Defendants to know if Plaintiff intends to continue to pursue this case. Summary judgment motions were denied on July 10, 2018. By failing to respond to the Court's order, the case cannot be scheduled for trial.

3. A history of dilatoriness.

Plaintiff has made no effort to move this case forward and has ignored this Court's Orders of July 10, 2018, and August 6, 2018. This is sufficient evidence, in the Court's view, to indicate that Plaintiff does not intend to proceed with this case.

4. Whether the party's conduct was willful or in bad faith.

There is no indication on this record that Plaintiff's failure was the result of any excusable neglect. Thus, the conclusion that his failure is willful is inescapable.

5. Alternative sanctions.

Plaintiff is proceeding pro se, and thus, it is likely that any sanction imposing costs or fees upon him would be ineffective.

6. Meritorious of the claim or defense.

This factor favors neither Plaintiff nor Defendants as summary judgment motions were denied. Genuine issues of material fact exist; it is for a jury to decide these factual issues.

In summary, the majority of the *Poullis* factors weigh heavily in favor of dismissal.

Based on the discussion above, it is recommended that this action be dismissed without prejudice for failure to prosecute. Any party is permitted to file Objections to this Report and Recommendation to the assigned United States District Judge. In accordance with 28 U.S.C. § 636(b), Fed.R.Civ.P. 6(d) and 72(b)(2), and LCvR 72.D.2, Plaintiff, because he is a non-

electronically registered party, must file objections to this Report and Recommendation by **September 10, 2018**, and Defendants, because they are electronically registered parties, must file objections, if any, by **September 6, 2018**. The parties are cautioned that failure to file Objections within this timeframe “will waive the right to appeal.” *Brightwell v. Lehman*, 637 F.3d 187, 193 n. 7 (3d Cir. 2011).

Dated: August 22, 2018

s/Cynthia Reed Eddy
Cynthia Reed Eddy
U.S. Magistrate Judge

cc: STEVEN INGRAM
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(via U.S. First Class Mai)

Sandra A. Kozlowski
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(via ECF electronic notification)