

DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

LARRY WILLIAMS,

Plaintiff,

v.

**MR. PEETS DEREK
SUPERIOR COURT OF THE V.I.,**

Defendant.

1:25-cv-00018-WAL-EAH

TO: Larry Williams, Pro Se

REPORT & RECOMMENDATION

THIS MATTER comes before the Court following the March 31, 2025 lodging of a complaint filed by Plaintiff Larry Williams, a prisoner appearing pro se, Dkt. No. 1, and the docketing of two Court Orders, issued on May 1, 2025 and July 14, 2025, directing the Clerk's Office to furnish Mr. Williams with a copy of the District Court's instructions for proceeding in forma pauperis ("IFP") in a civil rights action, the IFP application, as well as other documents. Dkt. Nos. 3, 6. Mr. Williams has not responded to either Order and has not paid the filing fee or submitted an IFP application. Accordingly, the Court recommends that this case be dismissed without prejudice.

BACKGROUND

In March 2025, Mr. Williams submitted a Complaint pursuant to 42 U.S.C. § 1983 on this Court's Prisoner Civil Rights Complaint form. Dkt. No. 1. The Court "lodged" the complaint, rather than filing it, pending disposition of motion to proceed IFP. *Id.* Mr. Williams named "Mr. Peets Derek, Court Reporter Supervisor, Superior Court of the Virgin Islands" as

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the Defendant, and indicated the events giving rise to his claim occurred on February 13, 2025. *Id.* He explained that, since 2023, he had been filing motions in the Superior Court requesting his entire trial transcript (apparently for conviction on a Virgin Islands charge or charges). In a May 2024 Order, a Superior Court Judge directed that Mr. Williams be sent a copy of his transcript but he never received it. In December, another Superior Court Judge ordered that Mr. Williams be sent his transcript immediately, but he never received it. In February 2025, the second judge ordered an administrative review and “the court” learned that Mr. Williams had not been provided with his transcripts from the Court Reporter Supervisor, Defendant Peets Derek. *Id.* at 3. Mr. Williams indicated he was bringing claims under the First, Second, Fifth and Eighth Amendment for mental stress, cruel and unusual punishment, emotional pain and suffering, and expenditure of various fees. He sought \$1,000,000 in damages, as well as a “plea deal” and “vacate charges.” *Id.* at 4.

Although Mr. Williams checked a box on the complaint form stating that he had included full payment of the \$405.00 district court civil filing fee, no such payment was included with the complaint. *Id.* at 6. Nor did Mr. Williams file an application and affidavit to proceed *in forma pauperis* (“IFP”) under 28 U.S.C. § 1915, which permits a prisoner to commence a civil suit in federal court without prepayment of fees.

In addition to his complaint, Mr. Williams filed a “Motion to Proceed” on his § 1983 claim in which he repeated facts mentioned in his complaint. Attached to the Motion to

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Proceed was a copy of a Motion to Proceed In Forma Pauperis that he had filed in Superior Court in August 2023 seeking production of his trial transcript. Dkt. No. 2-1.

On May 1, 2025, because Mr. Williams had not submitted the filing fee or an IFP application, the Court issued an Order directing the Clerk's Office to provide Mr. Williams with a copy of the Court's IFP application and instructed him to fill it out if he wished to proceed without prepaying the entire filing fee. Dkt. No. 3. The Order set a May 30, 2025 deadline for Mr. Williams to comply, and noted in bold print that "[f]ailure to comply with this Order may result in the dismissal of this case." Dkt. No. 3. The Court sent Mr. Williams the Order and attachments via certified mail, return receipt requested. *Id.* & Dkt. No. 4. The Court received the certified mail return receipt on May 22, 2025 showing that a prison official had signed for Mr. Williams on May 9, 2025. Dkt. No. 5.

The Court received no payment or in forma pauperis application from Mr. Williams by the May 30, 2025 deadline or any time thereafter.

Accordingly, on July 11, 2025, the Court issued another Order in which it informed Mr. Williams that before it recommended to the District Judge that this case be dismissed for failure to pay the filing fee and/or failure to prosecute and comply with Court Orders, it would provide him a final opportunity to submit the filing fee or an IFP application so that the case could proceed. Dkt. No. 6. It directed the Clerk's Office to again furnish Mr. Williams with a copy of the Court's instructions for proceeding IFP in a civil rights action, and an IFP motion form. The Order set an August 8, 2025 deadline for him to comply, and concluded, in

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bold type, that “[f]ailure to comply with this Order will result in a recommendation to the District Judge that this case be dismissed.” *Id.* The Court sent Mr. Williams a copy of the Order and attachments via certified mail, return receipt requested, on July 14, 2025. *Id.* & Dkt. No. 7. The Court received the certified mail return receipt on August 11, 2025 showing that a prison official had signed for Mr. Williams on August 1, 2025. Dkt. No. 8. That is the last item on the docket.

DISCUSSION

Pursuant to statute, “The clerk of each district court shall require the parties instituting any civil action, suit or proceeding in such court, whether by original process, removal or otherwise, to pay a filing fee of \$350[.]” 28 U.S.C. § 1914(a). A prisoner who “brings a civil action . . . in forma pauperis, . . . shall be required to pay the full amount of a filing fee.” 28 U.S.C. § 1915(b)(1). Such prisoners, however, are permitted to satisfy payment of the filing fee through partial payments. 28 U.S.C. § 1915(b)(1) & (2).¹ Here, Mr. Williams—a prisoner—did not pay the filing fee when he filed his complaint, and did not submit an IFP application showing that he did not have the resources to pay the entire fee at once, which could permit the Court to ascertain whether he could pay the fee from his prisoner account in installments. The Court therefore issued two Orders informing him that he had to either

¹ A prisoner granted leave to proceed in forma pauperis is obligated to pay the entire filing fee regardless of the outcome of the proceeding and is not entitled to the return of any payments made toward the fee. *Brown v. Falvey*, No. 22-cv-5861, 2023 WL 2384461, at *3 (D.N.J. Mar. 6, 2023). If a prisoner is granted IFP status, he or she is required to pay the \$350.00 filing fee in installments.

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pay the filing fee or fill out the IFP application so his case could proceed, enclosing in each mailing a copy of the District Court of the Virgin Islands' IFP application and instructions. Mr. Williams received the mail, as persons at his correctional facility signed for the documents. But both deadlines in those Orders passed without any response from Mr. Williams.

Courts have taken two courses of action when confronted with a prisoner-plaintiff who has neither paid the filing fee nor submitted a motion to proceed IFP. On the one hand, courts have dismissed cases without prejudice on that basis. On the other hand, courts have assessed the factors under *Poulis v. State Farm Fire & Casualty Co.*, 747 F.2d 863, 868 (3d Cir. 1984), and dismissed cases without prejudice for failure to prosecute. Out of an abundance of caution, this Court will consider both options that lead to the same end result: a recommendation to the District Judge that this matter be dismissed without prejudice.

I. Dismissal without Prejudice

Numerous district courts have dismissed complaints/cases for failure to pay the filing fee or failure to file an IFP application, without further analysis, when the plaintiff is a pro se prisoner or non-prisoner. *See, e.g., Shingara v. Northumberland Co. Tax & Assessment Off.*, No. 4:24-CV-1799, 2025 WL 1345249, at *4 (M.D. Pa. Jan. 16, 2025), *report and recommendation adopted*, 2025 WL 1337550 (M.D. Pa. Feb. 5, 2025) (recommending dismissal of non-prisoner plaintiffs' complaint without prejudice for failure to pay the filing fee or submit proper IFP applications; recommendation adopted by district judge); *Newman v. Delaware*, 24-cv-0607, 2025 WL 1262368, at *2 n.3 (D. Del. May 1, 2025) (citing numerous cases filed

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by same pro se plaintiff where complaint had been dismissed for failure to pay filing fee or move to proceed in forma pauperis); *Parker v. Harrisburg City*, No. 1:17-CV-653, 2017 WL 3015880, at *2 (M.D. Pa. June 7, 2017), *report and recommendation adopted*, 2017 WL 3008583 (M.D. Pa. July 14, 2017) (recommending that a pro se prisoner's complaint be dismissed without prejudice because he did not file a completed IFP application after being provided an opportunity to do so; recommendation adopted by district judge); *cf. Banks v. Roe*, No. 17-cv-0038, 2025 WL 2306221, at *4 (D.V.I. Aug. 11, 2025) (adopting R&R as modified and dismissing pro se prisoner's complaint based on his ineligibility to proceed IFP and his failure to pay the requisite filing fee). The Third Circuit has upheld dismissal on this basis. *See Lindsey v. Roman*, 408 F. App'x 530, 532 (3d Cir. 2010) (concluding district court did not abuse its discretion in dismissing pro se prisoner's civil action for failure to either pay the filing fee or file a completed IFP application).

Accordingly, based on this body of case law, the Court recommends that the District Judge dismiss this case without prejudice for Mr. Williams's failure to pay the filing fee or submit an application to proceed *in forma pauperis*.

II. Dismissal Without Prejudice for Failure to Prosecute

Case law also reveals a significant number of cases where district courts have dismissed complaints without prejudice for failure to prosecute/comply with Court Orders when a plaintiff neither pays the filing fee nor submits a proper IFP application. *See, e.g., Harris v. Solane*, No. 24-cv-0069, 2025 WL 438206, at *1 (W.D. Pa. Jan. 8, 2025)

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(recommending dismissal of pro se prisoner's complaint for failure to prosecute for failure to pay the initial partial filing fee). The Third Circuit has affirmed such dismissals. *See Rizvi v. Md. Dep't of Soc. Servs.*, 791 F. App'x 288, 289–90 (3d Cir. 2019) (affirming district court order dismissing complaint without prejudice for failure to prosecute where plaintiff's IFP application was denied and plaintiff did not timely pay filing fee); *Rohn v. Johnston*, 415 F. App'x. 353, 355 (3d Cir. 2011) (affirming District Court's dismissal for failure to prosecute where plaintiff did not pay the filing fee nor submit the required affidavit of poverty supporting the in forma pauperis motion).

A district court's authority to dismiss an action *sua sponte* for failure to prosecute or comply with a court order is derived from both Rule 41(b) of the Federal Rules of Civil Procedure and its inherent power and responsibility to manage its “own affairs so as to achieve the orderly and expeditious disposition of cases.” *Qadr v. Overmyer*, 642 F. App'x 100, 102 (3d Cir. 2016) (per curiam). Whether to dismiss an action for failure to prosecute rests in the sound discretion of the district court and will not be disturbed absent an abuse of that discretion. *Emerson v. Thiel Coll.*, 296 F.3d 184, 190 (3d Cir. 2002) (citation modified).

Although that discretion is broad, it is guided by the factors set forth in *Poulis*, 747 F.2d at 868: (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

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alternative sanctions; and (6) the meritoriousness of the claim or defense. No single *Poulis* factor is dispositive, and not all of those factors need to be satisfied in order to dismiss a complaint. *Briscoe v. Klaus*, 538 F.3d 252, 263 (3d Cir. 2008) (citation modified). Rather, a court must “properly consider and balance” each of the factors based on the record. *Hildebrand v. Allegheny Cnty.*, 923 F.3d 128, 132 (3d Cir. 2019) (citation modified). Courts should nevertheless be mindful of the policy favoring disposition of cases on the merits and regard dismissal as a “last resort.” *Id.* at 138.

The Court first considers the extent to which the dilatory party is personally responsible for the sanctionable conduct. *See Adams*, 29 F.3d at 873. Because Mr. Williams is proceeding pro se, he is solely responsible for his own conduct, including his failure to either pay the filing fee to commence an action or comply with the requirements to proceed IFP. He is also responsible for his failure to respond to the Court's Orders. *Colon v. Karnes*, No. 11-cv-1704, 2012 WL 383666, at *3 (M.D. Pa. Feb. 6, 2012) (“Plaintiff is proceeding pro se, and thus is responsible for his own actions.”). After filing the complaint five months ago, and having failed to respond to two Court Orders, the Court concludes that he does not intend to comply with the Court's directives. Accordingly, the first *Poulis* factor supports dismissal.

Relevant considerations concerning second *Poulis* factor include “the irretrievable loss of evidence, the inevitable dimming of witnesses’ memories[,] the excessive and possibly irremediable burdens or costs imposed on the opposing party,” *Adams*, 29 F.3d at 874, and “the burden imposed by impeding a party's ability to prepare effectively a full and complete

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trial strategy.” *Ware v. Rodale Press, Inc.*, 322 F.3d 218, 222 (3d Cir. 2003). The Clerk’s Office has “lodged” this complaint; it has neither been filed on the docket nor served on the Defendant such that the Defendant has not been prejudiced by any delays. *See Parker v. Graci*, 2017 WL 5986469, at *2 (M.D. Pa. Nov. 2, 2017). Nevertheless, Williams’s delay prevents the Defendant from timely investigating and assessing the claims and marshalling evidence and information to respond, which results in at least some prejudice to the Defendant. *See Mack v. United States*, 2019 WL 1302626, at *1 (M.D. Pa. Mar. 21, 2019) (“[F]ailure to communicate clearly prejudices the Defendants who seek a timely resolution of the case.”). This factor is therefore neutral.

The third *Poulis* factor weighs in favor of dismissal. Mr. Williams has failed to engage with the Court and failed to take the necessary actions to pursue his claims. Despite being warned that failure to comply with the Court Orders may and would result in a recommendation that this matter be dismissed, he has failed to advance his case. His five-month period of inaction is enough to establish a history of dilatoriness.

In determining whether the fourth *Poulis* factor, “willfulness” is present, the inquiry is whether the dilatory party’s conduct “involves intentional or self-serving behavior.” *Adams*, 29 F.3d at 874. While it is difficult to evaluate willfulness on the present limited record, there is nothing on the docket to suggest that Mr. Williams did not receive the Court’s Orders, given that the Court’s certified mail return receipt forms have been signed for at his correctional facility, nor has he offered any explanation for his failure to comply with the

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Court's instructions. Accordingly, the record indicates that Mr. Williams has knowingly and intentionally adopted the course of inaction that has resulted in the Court recommending dismissal of his action.

The fifth factor addresses the effectiveness of sanctions other than dismissal. It is well-established that alternative, monetary sanctions are ineffective where the plaintiff is indigent. *See, e.g., Brennan v. Clouse*, 2012 WL 876228, at *3 (W.D. Pa. Mar. 14, 2012) (“Alternative sanctions, such as monetary penalties, are inappropriate as sanctions with indigent pro se parties.”). Although the Court has no knowledge whether Mr. Williams is indigent, it is likely that, as an imprisoned, pro se litigant, he does not have the resources to pay the filing fee in one payment—particularly since he filed an IFP application in state court to pay for his transcripts. Dkt. No. 2-3 at 1. Thus, this factor weighs in favor of dismissal. *See Whitney v. Barkley*, No. 10-cv-1705, 2011 WL 1230351, at *2 (W.D. Pa. Feb. 9, 2011) (“Plaintiff is proceeding pro se and has not responded to the Court's order, and it is not clear that any sanction other than dismissal will properly redress Plaintiff's refusal to comply.”).

Finally, the Court must consider the potential merit of Mr. Williams's claims. The standard for a Rule 12(b)(6) motion to dismiss is used in determining whether a claim is meritorious on the sixth *Poulis* prong. *Poulis*, 747 F.2d at 869-70. Mr. Williams's § 1983 complaint seeks a transcript from his state court criminal proceeding, where two state judges have directed that the transcript be provided but he has not received it, as well as damages. While courts have upheld § 1983 claims premised on an inmate's failure to receive

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transcripts, based on an access to the courts theory of liability, *see Bounds v. Smith*, 430 U.S. 817, 822 (1977), it is unclear from the allegations in the complaint the role that the Defendant played in the failure to provide the transcripts to Mr. Williams. A defendant in a civil rights action must have personal involvement in the alleged wrongs, and a plaintiff cannot predicate liability under § 1983 on a respondeat superior basis. *Rode v. Dellarciprete*, 845 F.2d 1195, 1207 (3d Cir. 1988). Given the fact that this action is in its infancy, the Court will give Mr. Williams the benefit of the doubt that he may be able to state a claim. But at this point, this *Poulis* factor does not weigh for or against dismissal.

In this Court's view, the first, third, fourth, and fifth *Poulis* factors favoring dismissal outweigh the remaining factors which are neutral at best. *See Hildebrand*, 923 F.3d at 132 ("None of the *Poulis* factors is alone dispositive, and . . . not all of the factors need to be satisfied to justify dismissal of a complaint for lack of prosecution."). Simply put, this case cannot proceed without Plaintiff paying the filing fee or submitting a motion to proceed in forma pauperis, and his failure to take these basic steps over several months indicates that dismissal, without prejudice, is appropriate. *See e.g., Rohn*, 415 F. App'x. at 355.

Accordingly, the Court recommends that the District Judge dismiss this action without prejudice for failure to prosecute and comply with Court Orders.

RECOMMENDATION

Accordingly, for the reasons set forth above, the Court respectfully **RECOMMENDS** that the Defendant's Complaint, Dkt. No. 1, be **DISMISSED WITHOUT PREJUDICE**.

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Any objections to this Report and Recommendation must be filed in writing within fourteen (14) days of receipt of this notice, 28 U.S.C. § 636(b)(1), and must “specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis of such objection.” LRCi 72.3. Failure to file objections within the specified time shall bar the aggrieved party from attacking such Report and Recommendation before the assigned District Court Judge. *See, e.g., Thomas v. Arn*, 474 U.S. 140 (1985).

The Clerk of Court shall provide a copy of this R&R to LARRY WILLIAMS by certified mail, return receipt requested.

ENTER:

Dated: August 14, 2025

/s/ Emile A. Henderson III
EMILE A. HENDERSON III
U.S. MAGISTRATE JUDGE