

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

MICHAEL D. BENSON,

Plaintiff,

v.

CASE NO. 18-3178-SAC

**TOPEKA POLICE DEPARTMENT,
et al.,**

Defendants.

MEMORANDUM AND ORDER

Plaintiff brings this *pro se* civil rights action pursuant to 42 U.S.C. § 1983. The Court granted Plaintiff leave to proceed in forma pauperis. (Doc. 7.) On September 18, 2018, the Court entered a Memorandum and Order and Order to Show Cause (“MOSC”) (Doc. 9) ordering Plaintiff to show cause by October 18, 2018, why this case should not be dismissed due to the deficiencies discussed in the MOSC. The Court’s Order was mailed to Plaintiff at his current address of record and was returned as undeliverable, with a notation that Plaintiff was no longer at the facility. (Doc. 11.) The Court’s Local Rules provide that “[e]ach attorney or pro se party must notify the clerk in writing of any change of address or telephone number. Any notice mailed to the last address of record of an attorney or pro se party is sufficient notice.” D. Kan. Rule 5.1(c)(3). Plaintiff has failed to provide the Court with a Notice of Change of Address.

Rule 41(b) of the Federal Rules of Civil Procedure “authorizes a district court, upon a defendant’s motion, to order the dismissal of an action for failure to prosecute or for failure to comply with the Federal Rules of Civil Procedure or ‘a court order.’” *Young v. U.S.*, 316 F. App’x 764, 771 (10th Cir. 2009) (citing Fed. R. Civ. P. 41(b)). “This rule has been interpreted as

permitting district courts to dismiss actions *sua sponte* when one of these conditions is met.” *Id.* (citing *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630–31 (1962); *Olsen v. Mapes*, 333 F.3d 1199, 1204 n.3 (10th Cir. 2003)). “In addition, it is well established in this circuit that a district court is not obligated to follow any particular procedures when dismissing an action *without prejudice* under Rule 41(b).” *Young*, 316 F. App’x at 771–72 (citations omitted).

Plaintiff has failed to provide the Court with a Notice of Change of Address and failed to file a response to the Court’s Order to show cause within the allowed time.

IT IS THEREFORE ORDERED THAT this matter is dismissed without prejudice under Fed. R. Civ. P. 41(b).

IT IS SO ORDERED.

Dated in Topeka, Kansas, on this 23rd day of October, 2018.

s/ Sam A. Crow
Sam A. Crow
U.S. Senior District Judge