

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-10123
Non-Argument Calendar

DEANDRE ARNOLD,
on behalf of Tymya Arnold,

Plaintiff-Appellant,

versus

CITY OF HAMPTON,
WAYNE JERNIGAN,
sued in his official and individual capacity,
OTANYA CLARKE,
in her individual and official capacity,
STACY COLEY,
sued in her official and individual capacity,
DERRICK AUSTIN,
in his official and individual capacity, et al.,

Defendants-Appellees,

KIM STEPHENS,
sued in her official and individual capacity, et al.,

Defendants.

Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 1:21-cv-04970-SEG

Before JORDAN, LUCK, and KIDD, Circuit Judges.

PER CURIAM:

Deandre Arnold, a pro se litigant, appeals from the district court’s orders denying his motions for leave to file electronically, for appointment of counsel, and for recusal. He also appeals its order dismissing his case effectively with prejudice under Federal Rule of Civil Procedure 41(b). Because the district court didn’t abuse its discretion in denying any of Arnold’s motions or in dismissing his case, we affirm.

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Arnold sued Henry County, the City of Hampton, a private probation agency, and fifteen state and local officials and judges, pleading ten claims under 42 U.S.C. section 1983 and state law. He alleged that, until December 7, 2021, various combinations of the defendants conspired to unlawfully fine and imprison him for a “stop sign violation,” delay one of his state-court appeals, deny him access to court records, sabotage his child-custody rights, and subject him to “slavery”—that is, his court-ordered probation. For those putative violations of his federal constitutional and state-law rights, he sought \$25 million in damages. He timely served seven

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defendants: the city, the agency, and five of the individuals. *See Arnold v. City of Hampton*, No. 1:21-cv-04970-SEG, 2023 WL 3243913, at *31 (N.D. Ga. Mar. 16, 2023). Only one individual answered the complaint—an appellate-court clerk against whom Arnold asserted two section 1983 claims and one state-law fraud claim, each for stalling his appeal by not acting on his papers. The rest of the served defendants moved to dismiss. Arnold opposed their motion.

In a ninety-one-page order, the district court dismissed Arnold’s claims against the city, the agency, and the four individuals who’d moved to dismiss. *See Id.* at *1–31. It allowed Arnold an opportunity to amend his complaint. But it also ordered him to show cause within twenty-one days why the unserved defendants shouldn’t be dismissed. *Id.* at *31. The district court warned Arnold that if he failed to timely amend, or if he failed to obey the local rules governing amendments, it’d dismiss his claims with prejudice. *Id.*

Arnold replied with two motions: one seeking leave to file electronically and one seeking to extend his deadline to amend his complaint and respond to the show-cause order. In his e-filing motion, Arnold claimed he couldn’t afford to “constant[ly] mail[] documents” and complained that mail was too slow and unreliable. The district court denied that motion. Even pro se litigants must bear their own litigation expenses, it explained. And although “[m]ailing documents admittedly may be inconvenient,” Arnold hadn’t “identified any problem that ha[d] occurred.” The district

court did, however, grant the extension motion, giving Arnold a total of forty-five days to comply.

But the extended amendment deadline came and went with no response from Arnold. The district court waited almost two weeks after the deadline ran before dismissing all the defendants—except the appellate-court clerk. It then ordered Arnold and that defendant to file their respective scheduling reports and discovery plans. *See* N.D. Ga. Civ. R. 16.2.

Instead of complying, Arnold filed a string of motions. He started by demanding that the district court enter partial final judgment as to the dismissed defendants so that he could appeal. *See* Fed. R. Civ. P. 54(b). The court denied that motion and again ordered Arnold to file his discovery plan. He responded to that order with another motion for partial final judgment, along with emergency motions to expedite the district court’s ruling and to stay the dismissal order pending appeal (even though he hadn’t appealed). The court denied those motions and, for the third time, ordered Arnold to file his discovery plan. The court gave him a deadline and warned him that his failure to comply with its pretrial instructions could mean sanctions. *See* N.D. Ga. Civ. R. 16.5 (“Failure to comply with the Court’s pretrial instructions may result in the imposition of sanctions, including dismissal of the case . . .”).

Only after the court’s deadline had run did Arnold seek more time to file his discovery plan. He stated that he “ha[d] material that he believe[d] w[ould] suffice as a proper discovery plan,” but that he was “not an attorney” and couldn’t afford an attorney to

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help him. Three days later, Arnold filed a nearly identical extension motion, adding a request that the district court appoint an attorney to help him draft a discovery plan. Before the defendant could respond, Arnold moved to appoint counsel, claiming that he needed help preparing a discovery plan and conducting discovery. But that same day, he also filed his proposed discovery plan—nearly three weeks after the court’s deadline. And then he filed a second motion to appoint counsel, again to help him prepare the discovery plan he’d already filed.

Hoping to move the case forward, the district court ordered the parties to attend a telephonic conference ten days later, on November 22, 2024. As before, it warned Arnold that it could dismiss his case if he failed to comply. But like the extended amendment deadline, the date of the conference came and went; Arnold didn’t appear. The district court thus ordered Arnold to show cause why it shouldn’t dismiss his case for skipping the conference. “Failure to respond to this order,” the court warned, “will result in dismissal of this case.” It also denied his first and second motions to appoint counsel, noting that Arnold had “shown himself capable of adequately presenting his arguments.” And, of course, Arnold had filed the very discovery plan for which he’d supposedly needed an attorney’s assistance.

Shortly after the district court issued its show-cause order, however, the district-court clerk’s office docketed three motions that Arnold had submitted two days before the conference. First,

Arnold again moved for leave to e-file, repeating—in another mailed filing—that he was financially unable to mail documents.

Second, he moved to recuse the district judge presiding over his case—two and a half years after she was assigned. Arnold alleged that the judge was biased because she’d denied several of his motions over a span of sixteen months. In February 2023, she’d denied his motion to appeal *in forma pauperis* in an unrelated habeas case he had before her, *see* Order at 1–3, *Arnold v. Broce*, No. 1:22-cv-04536 (N.D. Ga. Feb. 14, 2023), Dkt. No. 17 (the “*Broce* Order”). Two months later, in April 2023, she’d denied his first e-filing motion. Afterward, in June 2023, she finalized the dismissal of his claims against a defendant Arnold thought should have remained in the case. Finally, she’d denied his first motion for partial final judgment in September 2023, and the second in June 2024. He also complained that she’d delayed ruling on his motions to appoint counsel and ordered him to attend the conference in order to “assist some ongoing esoteric criminal scheme and/or to dissuade [his] appearance to impede this trial, if not obstruct it.”

Third, he moved to delay the conference. Although he mentioned that he wanted more time to prepare and find a court reporter, he repeated that, by ordering him to attend the conference, the district court was trying to involve him in an “esoteric criminal scheme.” He insisted that he could point to facts corroborating his accusations, but claimed that he “ha[d] no choice but to [be] vague for his safety and security” and to avoid “strategically assist[ing] the potential crimes being privately investigated.”

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For good measure, Arnold also moved a few days later to vacate the show-cause order. He argued that his recusal motion—which he’d submitted to the clerk’s office before the show-cause order issued—stripped the district court of authority to act until it was decided.

The district court issued an order setting a second conference in two weeks—this time in person. It noted that because the clerk’s office hadn’t docketed Arnold’s motions before the show-cause order issued, there’d been no opportunity to rule on his recusal motion. Even so, Arnold had “not [been] free to disregard the [c]ourt order requiring that he participate” in the first conference. And his failure to attend the second, it cautioned, “may result in sanctions, including the dismissal of the case.” In response, Arnold filed two more objections and motions, one of which sought to delay the second conference. Each repeated his claim that he could—but wouldn’t—adduce facts showing that the second conference was meant to entangle him in some criminal scheme.

Five days before the conference, the district court denied Arnold’s motion to delay and warned Arnold for at least the sixth time that his “[f]ailure to participate may result in sanctions, including the dismissal of the case.” It also denied Arnold’s recusal motion. As little as Arnold liked its rulings on his various motions, it explained, “a judge’s prior adverse rulings do not alone warrant disqualification.” Both decisions were mailed to Arnold the same day.

Arnold didn't appear at the second conference. Because Arnold had twice disregarded its conference orders, despite its warnings—and because, “[a]bsent [his] participation, the [c]ourt cannot proceed with this case”—the district court dismissed his case without prejudice under rule 41(b). It also denied as moot all pending motions. The district court issued its order on December 17, 2024, and the clerk entered judgment the next day—just over three years after the last harmful act alleged in his complaint.

II. DISCUSSION

Arnold argues that the district court erred when it (1) denied his e-filing motions; (2) denied his motions to appoint counsel; (3) denied his recusal motion; and (4) dismissed his case—effectively with prejudice—for failing to attend the second conference without exploring lesser sanctions. It didn't. As we'll explain, none of these rulings was an abuse of discretion.¹

The E-Filing Motions

Pro se litigants may file electronically “only if allowed by court order or by local rule.” Fed. R. Civ. P. 5(d)(3)(B)(i). Arnold sued in the Northern District of Georgia. That district's local rules forbid pro se litigants from filing electronically unless a judge “deem[s] [it] appropriate in the exercise of discretion, considering the need for the just, speedy, and inexpensive determination of

¹ Arnold also listed in his notice of appeal the order dismissing all but one of the defendants. But Arnold didn't brief why the dismissal of any defendant was erroneous, so he abandoned all argument relating to those issues. *Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 680–81 (11th Cir. 2014).

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matters pending before the court.” See N.D. Ga. Civ. R. App’x H at A7. We “review a district court’s application of local rules for an abuse of discretion.” *Mann v. Taser Int’l, Inc.*, 588 F.3d 1291, 1302 (11th Cir. 2009).

The district court didn’t abuse its discretion when it denied Arnold’s e-filing motions. Arnold generally complains about the expense and inconvenience of mailing. But a litigant’s right of access to the courts “is neither absolute nor unconditional.” *Miller v. Donald*, 541 F.3d 1091, 1096 (11th Cir. 2008) (citation modified). The district court was required to ensure only that Arnold’s access was “adequate, effective, and meaningful.” See *Chappell v. Rich*, 340 F.3d 1279, 1282 (11th Cir. 2003). And that’s what it did.

After all, Arnold was able to oppose the defendants’ motion to dismiss. He was able to file returns of service for some of the defendants. He was able to file no fewer than nineteen motions, notices, and objections in his case, thirteen of which bear on this appeal. He was able to file his proposed discovery plan. And despite the delayed docketing of Arnold’s recusal motion, the district court was able to rule on it. In sum, despite the inconvenience, Arnold managed to have his say in court. On this record, the district court reasonably concluded that e-filing wasn’t “appropriate” considering “the need for the just, speedy, and inexpensive determination” of Arnold’s case. See N.D. Ga. Civ. R. App’x H at A7.

On appeal, Arnold adds that denying his e-filing motions created a risk that he wouldn’t be able to appeal. But he was able to

appeal, and we're fully apprised of what happened before the district court. The district court was right that Arnold hadn't "identified any problem that ha[d] occurred."

The Appointment-of-Counsel Motions

There's "no constitutional right to counsel" in civil cases. *Bass v. Perrin*, 170 F.3d 1312, 1320 (11th Cir. 1999). Courts should appoint counsel in a civil case "only in exceptional circumstances," *id.*, like where the "facts and legal issues . . . are so novel or complex" that they "require the assistance of a trained practitioner," *Kilgo v. Ricks*, 983 F.2d 189, 193 (11th Cir. 1993) (citation modified). We review the denial of a motion to appoint counsel for an abuse of discretion. *Bass*, 170 F.3d at 1319.

To determine whether exceptional circumstances exist, courts may consider "(1) the type and complexity of the case; (2) whether the plaintiff is capable of adequately presenting his case; (3) whether the plaintiff is in a position to adequately investigate the case; (4) whether the evidence 'will consist in large part of conflicting testimony so as to require skill in the presentation of evidence and in cross examination'; and (5) whether the appointment of counsel would be of service to the parties and the court 'by sharpening the issues in the case, shaping the examination of witnesses, and thus shortening the trial and assisting in a just determination.'" *DeJesus v. Lewis*, 14 F.4th 1182, 1204 (11th Cir. 2021) (quoting *Ulmer v. Chancellor*, 691 F.2d 209, 213 (5th Cir. 1982)); see also *id.* at 1204 n.22 ("This Court has adopted the *Ulmer* factors."). The district court's discretion is "broad," *Bass*, 170 F.3d at 1320: "No

single factor is dispositive, but the totality of the circumstances may tip the balance in favor of appointing counsel,” *DeJesus*, 14 F.4th at 1204.

Considering the *Ulmer* factors, denying Arnold’s motions to appoint counsel wasn’t an abuse of discretion. First, what remained of Arnold’s case at the discovery phase can’t be characterized as complex. The district court dismissed all of Arnold’s claims except the three against the appellate-court clerk. Arnold thinks the clerk violated section 1983 and state tort law by not acting fast enough on his filings. These claims are “straightforward.” *See Bass*, 170 F.3d at 1320 (affirming denial of motion to appoint counsel). They’re based on a “discrete event,” and the defendant didn’t move to dismiss at all—let alone on the basis of any “legally complicated” issues related to the “elements” of any claim, *see DeJesus*, 14 F.4th at 1205 (same).

Second, as we explained, Arnold adequately litigated his case. Although he claimed to need an attorney to help him draft a discovery plan, he filed a proposed discovery plan anyway.

Third, there’s no reason Arnold couldn’t investigate his case on his own. Arnold’s claim is that the clerk delayed acting on his papers and that the delay was illegal. To establish that the clerk delayed, he must show a gap between when he submitted his papers and when the clerk acted on them. Presumably, Arnold knows when he submitted his papers (if that information isn’t on the papers themselves). When the clerk acted would be apparent from the court record; any discovery would simply try to elucidate

the clerk's motives. That Arnold didn't attempt to take that uncomplicated discovery doesn't mean that he needed the assistance of counsel.

Fourth, we can't say that this case would have required skills relating to the presentation of evidence or cross-examination. It seems to us that the evidence to be presented at trial wouldn't have "consist[ed] in large part of conflicting testimony." That there could be some conflicting testimony doesn't categorically necessitate the appointment of counsel. See *DeJesus*, 14 F.4th at 1205 (affirming denial of appointment where, although "[t]here was conflicting testimony," there was no indication that a lawyer "would have obtained better or different results"). But we needn't speculate. Arnold sought the appointment of an attorney only to assist him with discovery, a phase in which nothing is presented to, and no one is cross-examined before, a factfinder.

Fifth, and finally, appointing counsel wouldn't have sharpened the issues or otherwise assisted Arnold, the district court, or the defendant. Arnold, as we've already explained, didn't need the help. The court didn't reject Arnold's proposed discovery plan. And the clerk understood Arnold's claims well enough to answer them instead of moving to dismiss; evidently, she was prepared to begin discovery. The district court dismissed Arnold's case because he repeatedly refused to attend its conferences, not because of anything relating to discovery.

Instead of briefing any of the *Ulmer* factors, Arnold contends only that the district court should have mechanically accepted his

claim that he needed counsel to help him with discovery. But district courts should appoint counsel only in “exceptional circumstances,” *Bass*, 170 F.3d at 1320, and again, Arnold identifies nothing exceptional about his case. Moreover, that Arnold filed his proposed discovery plan belies his claimed need for help.

The Recusal Motion

Any judge “shall” disqualify herself from any proceeding in which her “impartiality might reasonably be questioned,” 28 U.S.C. § 455(a), or where she in fact has a “personal bias or prejudice concerning a party,” *id.* § 455(b)(1). We review a judge’s decision on a recusal motion for an abuse of discretion. *Murray v. Scott*, 253 F.3d 1308, 1310 (11th Cir. 2001).

A recusal motion under section 455 “must be filed within a reasonable time after the grounds for the motion are ascertained.” *Summers v. Singletary*, 119 F.3d 917, 921 (11th Cir. 1997). Whether recusal is appropriate generally “turns on whether an objective, disinterested, lay observer fully informed of the facts underlying the grounds on which recusal was sought would entertain a significant doubt about the judge’s impartiality.” *In re Moody*, 755 F.3d 891, 894 (11th Cir. 2014) (citation modified). “[J]udicial rulings alone almost never constitute a valid basis for a bias or partiality [recusal] motion.” *In re Equifax Inc. Customer Data Sec. Breach Litig.*, 999 F.3d 1247, 1272 (11th Cir. 2021) (quoting *Liteky v. United States*, 510 U.S. 540, 555 (1994)). Likewise, “judicial remarks . . . that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge.”

Liteky, 510 U.S. at 555. Remarks cross the line “if they reveal such a high degree of favoritism or antagonism as to make fair judgment impossible.” *Id.*

The district judge didn’t abuse her discretion when she denied Arnold’s recusal motion. In support of the motion, Arnold pointed almost solely to judicial rulings: the judge’s denial in a separate habeas case of his motion to appeal *in forma pauperis*, her denials in this case of his motions to e-file and for partial final judgment, her dismissal of his claims against one individual defendant, and her order that he attend the first conference. None of these rulings would cause an objective, disinterested observer to doubt the judge’s impartiality.

We approved two of these rulings on appeal. Start with the judge’s denial of Arnold’s motion to appeal *in forma pauperis*, in which she determined that Arnold’s appeal “lack[ed] an arguable basis in law or fact.” *See Broce* Order at 3. When Arnold appealed in that case and filed the same motion with us, we denied it for the same reasons. Order at 3, *Arnold v. Comm’r of Ga. Dep’t of Hum. Servs.*, No. 22-14223 (11th Cir. July 27, 2023), Dkt. No. 18-2 (“[A]n action is frivolous if it is without arguable merit either in law or fact. Here, Mr. Arnold has no non-frivolous arguments for appeal, as the district court properly determined” (citation modified)). And we just explained why the judge didn’t abuse her discretion in denying Arnold’s e-filing motion. An objective observer can’t entertain “significant doubt” about a judge’s impartiality when her rulings are affirmed or approved for the same reasons she sets out.

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Nor do we see anything dubious about the judge’s denials of Arnold’s motions for partial final judgment under rule 54(b) or her dismissal of his claims against one of the individual defendants. We ourselves have said that “only rarely” should a district court grant a rule 54(b) motion. *Scott v. Advanced Pharm. Consultants, Inc.*, 84 F.4th 952, 959 (11th Cir. 2023) (quoting *Ebrahimi v. City of Huntsville Bd. of Educ.*, 114 F.3d 162, 166 (11th Cir. 1997)). The denials of Arnold’s motions therefore aren’t inherently alarming. Plus, the judge’s denials set out her reasons and applied our case law. There’s no indication that she was motivated by anything untoward.

Likewise, as to the dismissal, the judge’s discussion of the claims against that defendant occupied a significant portion of her order. *Arnold*, 2023 WL 3243913, at *21–27. She scrutinized the complaint and applied our case law. *See id.* An objective observer would find nothing indicating bias in the judge’s approach to Arnold’s arguments.

That leaves the judge’s order directing Arnold to attend the first conference. Although that order wasn’t lengthy or detailed, it didn’t have to be. District courts have wide discretion in managing their dockets, *Smith v. Psychiatric Sols., Inc.*, 750 F.3d 1253, 1262 (11th Cir. 2014), including by scheduling case-management and status conferences. On top of that, the judge did nothing more than require Arnold’s remote attendance. He wouldn’t have had to leave his house. All he would have had to do was pick up the

phone. An objective observer would think that the judge was being solicitous of Arnold, not biased against him. And although Arnold has repeatedly accused the judge of trying to involve him in a criminal scheme, he's never presented a single corroborating fact.

Separately, Arnold said that the judge evinced bias against him by slow-rolling his motions. On appeal, he adds that she wrongly characterized some of his arguments as "frivolous." The first of these arguments is a nonstarter. Again, courts are afforded largely "unquestionable" authority to control their dockets. *Id.* That includes "broad discretion in deciding how best to manage the cases before them," *id.* (citation modified), which necessarily includes deciding to handle some matters before others. Nothing about the judge's exercise of her managerial discretion in this case suggests that she was biased against Arnold. His complaint about the word "frivolous" is also unavailing. We use the word "frivolous" to mean that an argument or claim has no arguable basis in law or fact. *E.g., Bilal v. Driver*, 251 F.3d 1346, 1349 (11th Cir. 2001). It's not personal invective, and using it certainly doesn't suggest that fairness is impossible. *See Liteky*, 510 U.S. at 555.

The Dismissal

"If[a] plaintiff fails to prosecute or to comply with [the Rules of Civil Procedure] or a court order, a defendant may move to dismiss the action or any claim against it." Fed. R. Civ. P. 41(b). In the same circumstances, a district court may sua sponte dismiss a case under either rule 41(b) or its inherent power to manage its docket. *Betty K Agencies, Ltd. v. M/V Monada*, 432 F.3d 1333, 1337

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(11th Cir. 2005). “We review [the] decision to dismiss a case for failure to comply with an order of the court for an abuse of discretion.” *Foudy v. Indian River Cnty. Sheriff’s Off.*, 845 F.3d 1117, 1122 (11th Cir. 2017).

Because a dismissal with prejudice is an “extreme sanction,” it may be imposed only when (1) the plaintiff engaged “in a clear pattern of delay or willful contempt” and (2) “lesser sanctions would not suffice.” *Betty K Agencies, Ltd.*, 432 F.3d at 1337–38. Although these findings are essential, they may be made implicitly. See *Zocaras v. Castro*, 465 F.3d 479, 484 (11th Cir. 2006) (affirming dismissal where the district court implicitly found that lesser sanctions would not suffice). They may also be inferred from the record. *Goforth v. Owens*, 766 F.2d 1533, 1535 (11th Cir. 1985) (“The record also supports an implicit finding that any lesser sanction than dismissal would not have served the interests of justice.”); see also *Phipps v. Blakeney*, 8 F.3d 788, 790 (11th Cir. 1993) (holding that “[n]o explanation on why lesser sanctions would not have worked was necessary” where the plaintiff “declared, after he had been flatly threatened with dismissal, that he ‘had no intention’ of appearing” at court-ordered discovery proceedings). We have recognized that “dismissal upon disregard of an order, especially where the litigant has been forewarned, generally is not an abuse of discretion.” *Moon v. Newsome*, 863 F.2d 835, 837 (11th Cir. 1989).

The district court dismissed Arnold’s case effectively with prejudice because Arnold is time-barred from refileing it. “Where a dismissal without prejudice has the effect of precluding a plaintiff

from refiling his claim due to the running of the statute of limitations, the dismissal is tantamount to a dismissal with prejudice.” *Emergency Recovery, Inc. v. Hufnagle*, 77 F.4th 1317, 1331 (11th Cir. 2023) (citation modified). Arnold’s remaining claims against the clerk sounded in section 1983 and in state tort law. “All constitutional claims brought under [section] 1983 are tort actions and, thus, are subject to the statute of limitations governing personal injury actions in the state where [they’re] brought.” *Boyd v. Warden, Holman Corr. Facility*, 856 F.3d 853, 872 (11th Cir. 2017). In Georgia, the statute of limitations for tort actions—including Arnold’s fraud claim—is two years. Ga. Code Ann. § 9-3-33 (2025). The district court dismissed Arnold’s case over a year after the statute of limitations for his claims expired; the latest act alleged in Arnold’s complaint took place on December 7, 2021, and the dismissal came on December 17, 2024. That means the statute of limitations bars Arnold from refiling, and the dismissal was “tantamount to [one] with prejudice.”

Even though the district court believed it was dismissing Arnold’s case without prejudice, its effectively-with-prejudice dismissal wasn’t an abuse of discretion. Both prongs of the test are satisfied. First, the district court identified two clear instances of willful disobedience of its orders. Arnold refused to attend the telephonic conference. Then, Arnold refused to attend the in-person conference. Both times, he’d been warned that his case could be dismissed if he didn’t comply. Even if the motions he filed before the first conference had been timely docketed, he had no reason to believe that the district court would grant any of them or cancel the

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conference. The court in fact denied Arnold's last-ditch motion to delay the second conference, five days ahead of the date, warning him to attend or face dismissal. But that made no difference; Arnold defied the court anyway. It's clear he did so willfully.

And the two instances the district court identified were just the latest in Arnold's record-spanning pattern of deliberate contempt. After the initial dismissal order, the court warned him that it'd dismiss his claims if he failed to timely amend his complaint. *See Arnold*, 2023 WL 3243913, at *31. But he didn't. The court ordered Arnold to file his discovery plan. But he didn't; he filed a motion instead. The court denied the motion and told him again to file his discovery plan. But he didn't. He just filed motions like before. The third time, the district court denied the motions and told Arnold to file his discovery plan by a set deadline, on pain of sanctions including dismissal. But he didn't—he let the deadline lapse and filed it weeks late. This wasn't mere negligence or confusion. *See Zocaras*, 465 F.3d at 483.

Second, the record supports the district court's implicit finding that lesser sanctions wouldn't suffice. The district court never expressly discussed lesser sanctions, but it clearly believed that the case couldn't proceed without Arnold's participation. That's what it said. The problem was that it had no tools left to compel that participation. It warned Arnold at least six times that his case could be dismissed if he refused to comply with its orders. Arnold simply continued litigating the case on his own terms. *See Moon*, 863 F.2d at 837 (“[D]ismissal upon disregard of an order, especially where

the litigant has been forewarned, generally is not an abuse of discretion.”).

Nor does it seem to us that lesser sanctions would have been effective here. Take monetary sanctions, for example. Those sanctions may be imposed on an indigent litigant. *See id.* at 837–38. But they must account for “the financial circumstances of the party being sanctioned,” *Martin v. Automobili Lamborghini Exclusive, Inc.*, 307 F.3d 1332, 1337 (11th Cir. 2002), and “it might be an abuse of discretion” for the court to dismiss the case if the plaintiff truly can’t pay, *Moon*, 863 F.2d at 838. Arnold wasn’t proceeding *in forma pauperis*, but he repeatedly told the court that he couldn’t afford even the cost of mailing. If Arnold was being truthful, it’s not clear that any monetary sanction would have been effective (or available). *Martin*, 307 F.3d at 1337 (“[S]anctions must never be hollow gestures[.] . . . A sanction which a party clearly cannot pay does not vindicate the court’s authority because it neither punishes nor deters.”). If he was lying, there’d have been even more reason to dismiss his case.

Not punishing Arnold’s contumacious behavior with dismissal would have left the case, the court, and the remaining defendant in an indefinite limbo. The court had no reason to believe that Arnold would drop his case. And it plainly didn’t believe that it could secure Arnold’s participation in a way that would allow the case to proceed. With ample support from the record, the court determined that dismissal was its only recourse. That determination was within its discretion.

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III. CONCLUSION

The district court didn't abuse its discretion in denying the e-filing motion, the appointment-of-counsel motions, or the recusal motion. Nor did it abuse its discretion in dismissing Arnold's case.

AFFIRMED.