

**UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA**

<p>PAUL T. STAVENJORD,</p>)	
)	
Petitioner,)	3:08-cv-00223 JWS
)	
vs.)	ORDER AND OPINION
)	
JOSEPH D. SCHMIDT,)	[Re: Motion at docket 7]
)	
Respondent.)	
)	

At docket 7 respondent moved to dismiss Paul T. Stavenjord’s petition for a writ of habeas corpus. Stavenjord responded at docket 10, and his response was treated as a motion to amend, which was ultimately granted. Thereafter, based on the record, the magistrate judge filed a report recommending that the motion to dismiss should be granted as to Stavenjord’s Fourth Amendment claim, but that his claim based on ineffective assistance of counsel should remain for determination. No party filed any objections to this recommendation.

This court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate.” 28 U.S.C. § 636(b)(1). When reviewing a magistrate judge’s recommendations in a case such as this one, this court conducts *de novo* review of all recommended conclusions of law, and any recommended findings of fact to which objections have been taken. Recommended findings of fact as to which no objection has been taken are reviewed for clear error. Having applied those standards of review, this court finds that the recommended findings of fact and conclusions of law are correct in all material respects.

This court adopts Magistrate Judge Smith's recommendations. Based thereon, the motion at docket 7 is **GRANTED** in part and **DENIED** in part as follows:

- (1) Stavenjord's Fourth Amendment claim is **DISMISSED** with prejudice;
- (2) Stavenjord's ineffective assistance of counsel claim shall proceed.

The ineffective assistance of counsel claim remains on referral to Magistrate Judge Smith.

DATED at Anchorage, Alaska, this 23rd day of July 2009.

/s/ JOHN W. SEDWICK
UNITED STATES DISTRICT JUDGE