

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 08-cv-01192-LTB-MEH

SCOTT R. LOBATO,

Plaintiff,

v.

DAN COUGAR, Acting Rio Grande Sheriff, in his individual capacity, *et al.*,

Defendants.

RECOMMENDATION ON DEFENDANT HOWARD'S MOTION TO DISMISS

Michael E. Hegarty, United States Magistrate Judge.

Pending before the Court is a Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(6) filed by Defendant Bobby Howard ("Motion") [docket #35], which was converted to a Motion for Summary Judgment under Fed. R. Civ. P. 56 [docket #53]. Pursuant to 28 U.S.C. § 636(b)(1)(A) and D.C. Colo. L.Civ.R 72.1.C, the Motion has been referred to this Court for recommendation.

In light of the District Court's grant of the Stipulated Motion to Dismiss Defendant Howard

Only filed February 2, 2009, the Court recommends that the Motion be **denied as moot**.¹

¹Be advised that all parties shall have ten (10) days after service hereof to serve and file any written objections in order to obtain reconsideration by the District Judge to whom this case is assigned. Fed. R. Civ. P. 72. The party filing objections must specifically identify those findings or recommendations to which the objections are being made. The District Court need not consider frivolous, conclusive or general objections. A party's failure to file such written objections to proposed findings and recommendations contained in this report may bar the party from a *de novo* determination by the District Judge of the proposed findings and recommendations. *United States v. Raddatz*, 447 U.S. 667, 676-83 (1980); 28 U.S.C. § 636(b)(1). Additionally, the failure to file written objections to the proposed findings and recommendations within ten (10) days after being served with a copy may bar the aggrieved party from appealing the factual findings of the Magistrate Judge that are accepted or adopted by the District Court. *Thomas v. Arn*, 474 U.S. 140, 155 (1985); *Moore v. United States*, 950 F.2d

Dated at Denver, Colorado, this 3rd day of February, 2009.

BY THE COURT:

s/Michael E. Hegarty

Michael E. Hegarty

United States Magistrate Judge

656, 659 (10th Cir. 1991); *Niehaus v. Kansas Bar Ass'n*, 793 F.2d 1159, 1164 (10th Cir. 1986).