

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Philip A. Brimmer

Civil Action No. 08-cv-01279-PAB-MJW

PAUL DESCHAINE,

Plaintiff,

v.

S. MC LAUGHLIN, Dr., MD,
ARISTEDES W. ZAVARAS, and
PAUL L. VOTH,

Defendants.

ORDER ACCEPTING THE RECOMMENDATION OF THE MAGISTRATE JUDGE

This matter comes before the Court on the Recommendation of United States Magistrate Judge (“the Recommendation”) [Docket No. 70], which recommends that the Court grant defendant McLaughlin’s Motion to Dismiss, or in the Alternative, Motion for Summary Judgment [Docket No. 46] and deny plaintiff’s Motion for Leave to File an Amended Complaint [Docket No. 57]. By minute order dated August 27, 2009 [Docket No. 78], the Court granted plaintiff until September 14, 2009 to file objections to the Recommendation. Plaintiff filed objections [Docket No. 80] on September 15, 2009. The Court will deem such objections to be timely.

Where a party timely files objections to a magistrate judge’s recommended adjudication of a dispositive motion, the Court reviews the objected-to portion of the recommendation *de novo*. Fed.R.Civ.P. 72(b). The magistrate judge recommended that I deny plaintiff’s motion to amend. Plaintiff objects, stating that the issues involved

represent a pattern of wrongdoing. Upon conducting a *de novo* review of the relevant materials, I agree with the magistrate judge's well-supported conclusion that amendment is not appropriate and that, in order to attempt to obtain relief on his new claims, plaintiff must do so in a separate action.

The magistrate judge also recommends that I grant summary judgment to defendant Dr. McLaughlin due to plaintiff's failure to exhaust his administrative remedies pursuant to the Prison Litigation Reform Act. In response, plaintiff contends, as he did in his response to the underlying motion, that he was obstructed in his exhaustion efforts. The magistrate judge made clear in his Recommendation the problem with unsubstantiated assertions. The magistrate judge alerted the plaintiff to the fact that he would not be able to rely solely on assertions in his filings to establish obstruction by prison personnel. However, rather than correcting this deficiency by providing evidence of his purported exhaustion efforts, plaintiff's objection simply reiterates the previous allegations.

Therefore, having conducted a *de novo* review of the Recommendation, the complaint, the briefing surrounding the motion and the objection, and the relevant case law, I hereby accept the magistrate judge's Recommendation for the reasons stated here and within the Recommendation itself. Accordingly, it is

ORDERED that the Recommendation of United States Magistrate Judge [Docket No. 70] is ACCEPTED. Plaintiff's motion for leave to file an amended complaint [Docket No. 57] is DENIED. Defendant McLaughlin's motion to dismiss, or in the alternative, for summary judgment [Docket No. 46] is treated as a motion for summary judgment and GRANTED. It is further

ORDERED that any Final Judgment entered upon resolution of all claims against all parties in this case shall include judgment in favor of defendant McLaughlin and against the plaintiff.

DATED March 9, 2010.

BY THE COURT:

s/Philip A. Brimmer
PHILIP A. BRIMMER
United States District Judge