

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Robert E. Blackburn**

Civil Case No. 08-cv-01355-REB-KMT

STEVEN WILSON, aka PAUL RATEAU,

Plaintiff,

v.

CATHY HOLST, Manager, Office of Correctional Legal Services,

Defendant.

**ORDER REJECTING RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Blackburn, J.

The matters before me are (1) the **Recommendation of United States Magistrate Judge** [#103]¹ filed December 22, 2010; and (2) plaintiff's **Motion To Return the Appellate Question Back to the Magistrate Judge for Further Fact Finding Related to the Additional Pleadings Attached Herein and the Addendum of December 17, 2010** [#117] filed February 7, 2011. I respectfully reject the recommendation and grant the motion to re-refer plaintiff's **Motion for Enlargement of Time** [#71] filed November 2, 2009, to the magistrate judge for further consideration.

The facts and procedural history of this case are set forth in detail in the magistrate judge's recommendation and need not be repeated here. Based on those

¹ “[#103]” is an example of the convention I use to identify the docket number assigned to a specific paper by the court's case management and electronic case filing system (CM/ECF). I use this convention throughout this order.

facts, the magistrate judge recommends that plaintiff's motion for enlargement of time, construed as a motion to reopen the time for filing an appeal pursuant to Fed.R.App.P. 4(a)(6), be denied. In that connection, the magistrate judge noted that plaintiff's motion for enlargement of time was filed Monday, November 2, 2009, two business days past the Thursday, October 29, 2009, deadline. More particularly, the magistrate judge found that plaintiff was not entitled to the benefit of the prisoner mailbox rule because his belatedly-filed declaration did "not set forth the date Plaintiff mailed his motion." (**Recommendation** at 4 n.1.) *See Price v. Philpot*, 420 F.3d 1158, 1165 (10th Cir. 2005).

However, in **Plaintiff's Amended and Clarified Declaration of November 2, 2010** [#122] filed February 11, 2011, plaintiff avers that he placed the motion for enlargement of time in the prison mail system on October 23, 2009 (*id.* ¶ 11 at 4), which would place him safely within the seven-day window of Fed.R.App.P. 4(a)(6)(B). Thus, I find and conclude that this matter should be remanded to the magistrate judge for further consideration in light of these newly revealed facts. The magistrate judge certainly is free to consider whether plaintiff's belated declaration, as well as his belated amendment, are efficacious, as well as any other matters bearing on resolution of the motion.

THEREFORE, IT IS ORDERED as follows:

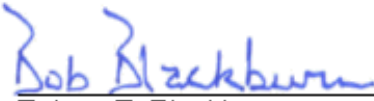
1. That the **Recommendation of United States Magistrate Judge** [#103] filed December 22, 2010, is respectfully **REJECTED**;
2. That plaintiff's **Motion To Return the Appellate Question Back to the**

Magistrate Judge for Further Fact Finding Related to the Additional Pleadings Attached Herein and the Addendum of December 17, 2010 [#117] filed February 7, 2011, is **GRANTED**; and

3. That plaintiff's **Motion for Enlargement of Time** [#71], filed November 2, 2009, is **REFERRED** to the magistrate judge for further findings consistent with this order.

Dated February 23, 2011, at Denver, Colorado.

BY THE COURT:


Robert E. Blackburn
United States District Judge