

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Chief Judge Wiley Y. Daniel

Civil Action No. 09-cv-00050-WYD-MEH

ADAM KARTIGANER,

Plaintiff,

v.

BRUCE NEWMAN, In his Official Capacity of Sheriff of Huerfano County, Colorado,
LARRY BALDONADO, In his Official Capacity of Police Chief of Walsenburg, Colorado,
DEREK PETERS, In his Official Capacity of Police Officer of Walsenburg, Colorado,
JOE BERNAL, In his Official Capacity of Police Officer of Walsenburg, Colorado,

Defendants.

**ORDER AFFIRMING AND ADOPTING RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE**

THIS MATTER is before the Court on the Defendants' Motion to Dismiss Complaint, or in the alternative, Motion for Summary Judgment as to Defendant Newman (docket #14), filed April 21, 2009. The motion was referred to Magistrate Judge Michael E. Hegarty for a Recommendation by Order of Reference dated February 26, 2009. Magistrate Judge Hegarty issued a Recommendation on July 1, 2009. Specifically, Magistrate Judge Hegarty recommended that the pending motion be denied as moot and that the Defendants be ordered to file an answer or other response to the Amended Complaint in accordance with Fed. R. Civ. P. 15(a). (Recommendation at 3.) The Recommendation is incorporated herein by reference. See 28 U.S.C. § 636(b)(1)(B), Fed. R. Civ. P. 72(b).

Magistrate Judge Hegarty advised the parties that written objections were due

within ten (10) days after service of a copy of the Recommendation. (Recommendation at 1-2.) Despite this advisement, no objections were filed to the Recommendation. No objections having been filed, I am vested with discretion to review the Recommendation “under any standard [I] deem[] appropriate.” *Summers v. Utah*, 927 F.2d 1165, 1167 (10th Cir. 1991); see also *Thomas v. Arn*, 474 U.S. 140, 150 (1985) (stating that “[i]t does not appear that Congress intended to require district court review of a magistrate's factual or legal conclusions, under a de novo or any other standard, when neither party objects to those findings”). Nonetheless, though not required to do so, I review the Recommendation to “satisfy [my]self that there is no clear error on the face of the record.”¹ See FED. R. CIV. P. 72(b) Advisory Committee Notes.

Having reviewed the Recommendation, I am satisfied that there is no clear error on the face of the record. I find that Magistrate Judge Hegarty’s Recommendation is thorough, well reasoned and sound. I agree with Magistrate Judge Hegarty that the pending motion should be denied as moot and that the Defendants should be ordered to file an answer or other response to the Amended Complaint in accordance with Fed. R. Civ. P. 15(a) for the reasons stated in both the Recommendation and this Order.

Based on the foregoing, it is

ORDERED that the Recommendation of United States Magistrate Judge Hegarty (docket #25), filed July 1, 2009, is **AFFIRMED** and **ADOPTED**.

In accordance therewith, it is

¹ Note, this standard of review is something less than a “clearly erroneous or contrary to law” standard of review, FED. R. CIV. P. 72(a), which in turn is less than a de novo review, FED. R. CIV. P. 72(b).

FURTHER ORDERED that the Defendants' Motion to Dismiss Complaint, or in the alternative, Motion for Summary Judgment as to Defendant Newman (docket #14), filed April 21, 2009, is **DENIED AS MOOT**. It is

FURTHER ORDERED that the Defendants shall file an answer or other response to the Amended Complaint in accordance with Fed. R. Civ. P. 15(a).

Dated: September 18, 2009

BY THE COURT:

s/ Wiley Y. Daniel
Wiley Y. Daniel
Chief United States District Judge