

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

Civil Action No. 09-cv-00413-WYD-BNB

JOHN KENNETH,

Plaintiff,

v.

JACQUES A. MACHOL, JR.,

Defendant.

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

THIS MATTER is before the Court on the Recommendation of United States Magistrate Judge filed on June 11, 2009. The Recommendation is incorporated herein by reference. See 28 U.S.C. § 636(b)(1)(B); Fed. R. Civ. P. 72(b).

Magistrate Judge Boland recommends therein that this case be dismissed with prejudice pursuant to Fed. R. Civ. P. 41.1. See Recommendation at 2. He noted in connection with this recommendation that Plaintiff's Complaint was stricken because it failed to comply with Fed. R. Civ. P. 8 and D.C.COLO.LCivR 8.1A, and that Plaintiff failed to submit a revised complaint as ordered by Magistrate Judge Boland. *Id.* at 1. He then ordered Plaintiff to show cause pursuant to D.C.COLO.LCivR 41.1 on or before June 10, 2009, why the action should not be dismissed for failure to comply with the Local Rules, the Federal Rules of Civil Procedure, and an order of this Court. *Id.* at 2. Plaintiff did not file a response to the Show Cause Order. After considering the factors

mandated by *Ehrenhaus v. Reynolds*, 965 F.2d 916, 921 (10th Cir. 1992), Magistrate Judge Boland recommended that the case be dismissed with prejudice pursuant to Fed. R. Civ. P. 41(b). See Recommendation at 2-3.

Magistrate Judge Boland advised the parties that specific written objections were due within ten (10) days after service of the Recommendation. *Id.* at 3-4. Despite this advisement, Plaintiff did not file objections to the Recommendation. Instead, on June 19, 2009, Plaintiff filed a Certificate of Mailing indicating that Magistrate Judge Boland's Order to Show Cause and his Recommendation were refused for cause. (Doc. # 14). However, that filing fails to provide any specific objections to the Order to Show Cause or Recommendation, and the refusal for cause is not proper or lawful. Accordingly, I will treat the Recommendation as if no objections were filed to it.

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.

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).

Having reviewed the Recommendation, I am satisfied that there is no clear error on the face of the record. Dismissal with prejudice is a proper sanction in an appropriate case. See *Nasious v. Two Unknown B.I.C.E. Agents*, 492 F.3d 1158, 1161 (10th Cir. 2007). Magistrate Judge Boland considered the proper factors in deciding to dismiss the case with prejudice and I agree with him that Plaintiff's conduct demonstrates a lack of respect for the court and the judicial process. Further, I agree with him that given the history of the case and Plaintiff's noncompliance with the Rules and with court orders, a dismissal with prejudice is the only effective remedy. Accordingly, it is

ORDERED that the Recommendation of United States Magistrate Judge filed June 11, 2009, is **AFFIRMED and ADOPTED** and this case is **DISMISSED WITH PREJUDICE**.

Dated: June 30, 2009

BY THE COURT:

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