

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-00462-CMA-MEH

FREDDY LEE SLACK,

Petitioner,

v.

SUSAN JONES, Warden, and
JOHN W. SUTHERS, Attorney General of the State of Colorado,

Respondents.

RECOMMENDATION ON MOTIONS TO DISMISS

Pending before the Court are Petitioner's Motion to File Appeals Case 09-1312 and Not Request to Reinstate My Case 09-cv-00462-ZLW [filed August 3, 2009; docket #43] and Motion Again [sic] Stop My Reinstate of Case 09-cv-00462-CMA-MEH, But to Pursue Notice of Appeals Case 09-1312 Immediately [filed August 3, 2009; docket #49]. The Court construes these motions as Petitioner's requests for voluntary dismissal of this case pursuant to Fed. R. Civ. P. 41(a)(2), so that he may pursue his appeal. *See* dockets #33 and #36. Therefore, the Court respectfully RECOMMENDS that the District Court **grant** Plaintiff's motions and dismiss this case without prejudice.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);

DATED this 28th day of August, 2009, in Denver, Colorado.

BY THE COURT:

A handwritten signature in black ink that reads "Michael E. Hegarty". The signature is fluid and cursive, with "Michael" and "E." being more formal, and "Hegarty" being more stylized.

Michael E. Hegarty
United States Magistrate Judge

Moore v. United States, 950 F.2d 656, 659 (10th Cir. 1991); *Niehaus v. Kansas Bar Ass'n*, 793 F.2d 1159, 1164 (10th Cir. 1986).