

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Christine M. Arguello**

Civil Action No. 09-cv-02166-CMA-KLM

TINA SOLANO,

Plaintiff,

v.

THE CITY AND COUNTY OF DENVER

Defendant.

**ORDER AFFIRMING AND ADOPTING MAY 14, 2010 RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE**

This matter is before the Court on the May 14, 2010 Recommendation by United States Magistrate Judge Kristen L. Mix (Doc. # 30).¹

On September 10, 2009, *pro se* Plaintiff Tina Solano filed a Title VII Complaint against the Denver Sheriff Department. (Doc. # 3.) Plaintiff alleges that the Denver Sheriff Department engaged in discriminatory training and testing practices at its academy. (*Id.* at 4.)

On November 19, 2009, the Denver Sheriff Department filed a Motion to Dismiss Pursuant to Rule 12(b)(2)(4)(5) and (6), Fed.R.Civ.P (Doc. # 10) for lack of personal jurisdiction because it is not an entity that can be subject to suit, insufficient service of process, and failure to state an actionable claim.

¹ On October 23, 2009, this case was referred to Magistrate Judge Mix to conduct all pre-trial and non-dispositive proceedings and issue recommendations on dispositive motions. (Doc. # 6).

At a Rule 16(b) Scheduling Conference on January 5, 2010, Magistrate Judge Mix ordered Plaintiff to file a Motion to Substitute “The City and County of Denver” as the defendant on or before January 15, 2010. (Doc. # 14 at 1.) Plaintiff complied with this Order on January 13, 2010 (Doc. # 16).²

On March 3, 2010, Denver Sheriff Department filed a Renewed Motion to Dismiss Complaint, re-asserting the bases for its original Motion to Dismiss and pointing to flaws in Plaintiff’s service of process on the defendant the City and County of Denver. (Doc. # 21.)

On April 19, 2010, newly-substituted defendant, the City and County of Denver, filed a Motion to Reconsider Order of April 14, 2010 (which Order substituted the City and County of Denver for the defendant). (Doc. # 27.)

As set forth in the Recommendation, Magistrate Judge Mix ordered³ that the Motion to Reconsider (Doc. # 27) be denied because it is “based on an erroneous premise that the Court has substituted the Denver Sheriff Department for the City and County of Denver.” (Doc. # 30 at 2.) Additionally, Magistrate Mix recommended the denial, on mootness grounds, of the Denver Sheriff Department’s Motion to Dismiss (Doc. # 10) and the City and County of Denver’s Renewed Motion to Dismiss (Doc. # 21). (*Id.*)

² The City and County of Denver was substituted as the Defendant on April 14, 2010. (Doc. # 26.)

³ A Magistrate Judge may issue orders on non-dispositive motions. Fed. R. Civ. P. 72(a); 28 U.S.C. § 636(b)(1)(A).

The Recommendation advised the parties that specific written objections were due within fourteen (14) days after being served with a copy of the Recommendation. (*Id.* at 2-3.) Despite this advisement, no objections to the Magistrate Judge's Recommendation were filed by either party.

"In the absence of timely objection, the district court may review a magistrate . . . [judge's] report under any standard it deems appropriate." *Summers v. Utah*, 927 F.2d 1165, 1167 (10th Cir. 1991) (citing *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.").

Applying this standard, the Court concludes that Magistrate Judge Mix's thorough and comprehensive analyses and recommendations are sound and that there is no clear error on the face of the record. See Fed. R. Civ. P. 72. The Court agrees that the aforementioned motions should be denied. Accordingly, it is

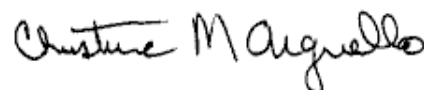
ORDERED THAT the Recommendation of United States Magistrate Judge Kristen L. Mix (Doc. # 30), filed May 14, 2010, is AFFIRMED and ADOPTED.

Therefore, it is ORDERED that:

- Denver Sheriff Department's Motion to Dismiss Pursuant to Rule 12(b)(2)(4)(5) and (6), Fed.R.Civ.P. (Doc. #10) is DENIED AS MOOT; and
- Denver Sheriff Department's Renewed Motion to Dismiss Complaint (Doc. #21) is DENIED AS MOOT

DATED: June 23, 2010

BY THE COURT:



CHRISTINE M. ARGUELLO
United States District Judge