

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-02498-REB-MEH

GIOVANNI LARATTA,

Plaintiff,

v.

SUSAN JONES, and
JIM BROWN,

Defendants.

RECOMMENDATION TO MODIFY CASE AND TRIAL SCHEDULE

Michael E. Hegarty, United States Magistrate Judge.

This matter comes before the Court *sua sponte*. This Court held a conference with the parties this morning, which was scheduled to be a Final Pretrial Conference. However, upon discussion with the parties and review of the docket, this Court finds it necessary to recommend modification of the case and trial schedules to allow full litigation of the pending claims.¹

On September 13, 2010, Judge Blackburn issued an order adopting this Court's

¹Be advised that all parties shall have fourteen (14) 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 fourteen (14) 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); *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).

recommendation to grant in part and deny in part the Defendants' Motion to Dismiss and the Plaintiff's Motion for Leave to File an Amended Complaint. Docket #82. Specifically, Judge Blackburn dismissed Plaintiff's claims against Defendants Allen and Zavares and Plaintiff's claim against Defendant Susan Jones regarding application of CDOC Administrative Regulation 850-6, but denied the motion to dismiss Plaintiff's First Amendment claim against Defendant Susan Jones pertaining to the "implementation adjustment" and "operational memorandum." *Id.* at 3. In addition, Judge Blackburn granted Plaintiff's request to amend his Complaint concerning his claims regarding the "implementation adjustment" and "operational memorandum," and granted Plaintiff's request to add a claim against Defendant Jim Brown. *Id.* at 3-4.

Following Judge Blackburn's order, this Court directed Plaintiff to file a First Amended Complaint consistent with the order on or before September 24, 2010. Docket #84. Plaintiff sought an extension of time within which to file the amended complaint, but the Court denied the motion for lack of good cause. Docket #96. The Plaintiff then tendered a First Amended Prisoner Complaint Consistent with Order on October 13, 2010. Docket #99.

The Court reviewed the pleading and heard argument on whether it should accept for filing the First Amended Complaint. Although the pleading was filed out of time without permission of the Court, this Court finds that the pleading is consistent with Judge Blackburn's order and alleges only those claims allowed to proceed in this matter. Defendants' primary argument concerning filing of the pleading is its timing with respect to current case and trial schedules.

Defendants informed the undersigned that, if the Court were to accept for filing Plaintiff's First Amended Complaint, Defendants would withdraw the pending Motion for Summary Judgment (docket #76), which addresses claims and parties that are no longer pending in this matter.

However, Defendants request that they be allowed time within which to file a renewed motion for summary judgment on the claims alleged in the First Amended Complaint.

Therefore, based on the foregoing and in the interests of justice, economy and efficiency, the Court RECOMMENDS the following:

1. The District Judge **accept** for filing the tendered First Amended Prisoner Complaint Consistent With Order;

2. The Defendants file an answer or other response to the First Amended Complaint pursuant to Fed. R. Civ. P. 15(a);

3. The dispositive motions deadline be **extended** to a date 30 days from the date of the District Court's order on this recommendation;

4. A Final Pretrial Conference be scheduled before this Court 60 days from the date of the modified dispositive motions deadline; and

4. The Trial Preparation Conference scheduled for December 3, 2010 and the Jury Trial scheduled for December 13, 2010 be **vacated and rescheduled** to times and dates consistent with Judge Blackburn's calendar.

Respectfully submitted this 18th day of October, 2010, in Denver, Colorado.

BY THE COURT:



Michael E. Hegarty
United States Magistrate Judge