

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Magistrate Judge Boyd N. Boland

Civil Action No. 09-cv-02687-PAB-BNB

ERIC MARSHALL,

Plaintiff,

v.

KEVIN MILYARD, Warden,
MICHAEL NEGLEY, Captain,
TWEETEN, Lieutenant,
JOHN DOE, MORKERT, Lieutenant,
BELCHER, Sergeant,
JOHN CHAPDELINE, Associate Warden,
ARISTEDES W. ZAVARAS, Executive Director, and
LLOYD WAIDE, Major,

Defendants.

RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

This matter arises on a paper filed by the plaintiff titled **Summary Judgement Under Rule 56** [Doc. #22, filed 02/10/2010] (the “Motion”). The Motion is frivolous, and I respectfully RECOMMEND that it be DENIED.

The plaintiff seeks summary judgment in his favor because “20 days has passed from the commencement of this action and the granting of service took place on 12-18-09 which the defendants has now failed to respond to the civil complaint.” *Motion*, p. 1. The plaintiff filed his Prisoner Complaint (the “Complaint”) on November 17, 2009 [Doc. #3]. On December 18, 2009, the district judge ordered the United States Marshal to serve the defendants [Doc. #11]. On December 21, the defendants filed a Waiver of Service and Summons [Doc. #13]. Therefore, the defendants have 60 days--not 20 days-- to file a responsive pleading. Fed. R. Civ. P.

12(a)(1)(A)(ii). Moreover, judgment based on failure to plead or otherwise defend is governed by Rule 55, Fed. R. Civ. P., not Rule 56.

I respectfully RECOMMEND that the Motion [Doc. # 22] be DENIED.

Dated February 18, 2010.

BY THE COURT:

s/ Boyd N. Boland
United States Magistrate Judge