

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Philip A. Brimmer

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, and
LLOYD WAIDE, Major,

Defendants.

ORDER ACCEPTING MAGISTRATE JUDGE'S RECOMMENDATION

This matter is before the Court on the Recommendation of United States Magistrate Judge Boyd N. Boland [Docket No. 70], which recommends that this case be dismissed due to plaintiff's failure to keep the Court informed of plaintiff's current address. The Recommendation states that objections to the Recommendation must be filed within fourteen days after its service on the parties. *See also* 28 U.S.C. § 636(b)(1)(C). The Recommendation was served on December 1, 2010 at plaintiff's last known address. The Recommendation was returned as undeliverable [Docket No. 73].

On November 4, 2010 plaintiff filed a "Motion: Change of Address" [Docket No. 66], stating that he was "no longer in prison and [was] with only an e-mail address" and requesting to "communicate with the courts and defendants by E-Mail address." Magistrate Judge Boland denied the motion [Docket No. 71] and directed the Clerk of

the Court to provide instructions to plaintiff on the procedure to apply for permission to file electronically. The Clerk certified [Docket No. 72] that he furnished the information to plaintiff and also that he e-mailed Magistrate Judge Boland's Order [Docket No. 71] and the Recommendation [Docket No. 70] to plaintiff on December 2, 2010. Despite the fact that the Recommendation was emailed to the email address provided by plaintiff, plaintiff has failed to object to the Recommendation.

In the absence of an objection, the district court may review a magistrate judge's recommendation under any standard it deems appropriate. *Summers v. Utah*, 927 F.2d 1165, 1167 (10th Cir. 1991); *see also Thomas v. Arn*, 474 U.S. 140, 150 (1985) ("[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"). In this matter, I have reviewed the Recommendation to satisfy myself that there is "no clear error on the face of the record."¹ See Fed. R. Civ. P. 72(b), Advisory Committee Notes. Based on this review, I have concluded that the Recommendation is a correct application of the facts and the law. Accordingly, it is

ORDERED as follows:

1. The Recommendation of United States Magistrate Judge [Docket No. 70] is ACCEPTED.

¹This 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).

2. This case is dismissed pursuant to D.C.COLO.LCivR 41.1 for plaintiff's failure to keep the Court informed of his current address in violation of D.C.COLO.LCivR 10.1M.

3. Plaintiff's motion for preliminary injunction [Docket No. 39] is denied as moot.

DATED January 24, 2011.

BY THE COURT:

s/Philip A. Brimmer
PHILIP A. BRIMMER
United States District Judge