

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Chief Judge Wiley Y. Daniel

Civil Action No. 10-cv-02022-WYD-KMT

WYATT T. HANDY, JR.,

Plaintiff,

v.

CHIEF DIGGINS, individual & official capacity,
MAJOR V. CONNORS, individual & official capacity,
CHAPLAIN SCOTT, individual & official capacity,
MR. BURRIS, individual & official capacity, and
PANEL OF ISLAMIC CLERICS, individual & official capacity,

Defendants.

**ORDER AFFIRMING AND ADOPTING RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

THIS MATTER is before the Court in connection with the Recommendation of United States Magistrate Judge issued on September 5, 2012. It is recommended therein by Magistrate Judge Tafoya that the case be dismissed without prejudice pursuant to Fed. R. Civ. P. 4(m) against the Panel of Islamic Clerks for lack of service. (Recommendation at 2.)

The Recommendation was issued after Plaintiff's failure to respond to the Court's Order to Show Cause entered July 16, 2012. That Order asked Plaintiff to show cause why his claims against the Panel of Islamic Clerics should not be dismissed without prejudice pursuant to Rule 4(m) for lack of service. Plaintiff failed to respond to the Order to Show Cause, and the Panel of Islamic Clerics have yet to be served despite

the fact that more than 120 days have passed since Plaintiff's Third Amended Prisoner Complaint was filed in this matter. (See Recommendation at 1-2.) Further, Plaintiff has failed to provide the Court with the proper information to locate the Panel of Islamic Clerics so that the Court can issue and serve process on his behalf. See 28 U.S.C. § 1915(d).

Magistrate Judge Tafoya advised the parties that written objections were due within fourteen (14) days after service of the Recommendation, and that the objections must be timely and specific in order to preserve an issue for de novo review.

(Recommendation at 2-3.) Despite this advisement, and despite the fact that the Clerk's Office of this Court mailed another copy of the Recommendation to Plaintiff at his request on September 19, 2012, no objections were filed to the Recommendation.

No objections having been filed, I am vested with discretion to review the Recommendation "under any standard [I] deem[] appropriate." *Summers v. Utah*, 927 F.2d 1165, 1167 (10th Cir. 1991); see also *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"). Nonetheless, though not required to do so, I review the Recommendation to "satisfy [my]self that there is no clear error on the face of the record."¹ See Fed. R. Civ. P. 72(b) Advisory Committee Notes. Having reviewed the Recommendation, I am satisfied that there is no clear error on the face of

¹ Note, this 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).

the record. I agree with Magistrate Judge Tafoya that dismissal without prejudice is proper as to Defendant the Panel of Islamic Clerks pursuant to Fed. R. Civ. P. 4(m) for lack of service. Accordingly, it is

ORDERED that the Recommendation of United States Magistrate Judge dated September 5, 2012 (ECF No. 222) is **AFFIRMED AND ADOPTED**. In accordance therewith, it is

ORDERED that the Panel of Islamic Clerks is **DISMISSED WITHOUT PREJUDICE** from this case, and shall hereafter be taken off the caption.

Dated: October 9, 2012

BY THE COURT:

s/ Wiley Y. Daniel
Wiley Y. Daniel
Chief United States District Judge