

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

Civil Action No. 11-cv-00581-WYD-KMT

WYATT T. HANDY JR.,

Plaintiff,

v.

SGT. CUMMINGS, Individual and Official Capacity,
DEP. WENDELBURG, Individually,
DEP. THAO, Individually,
DEP. LIGON, Individually,
DEP. ELLEDGE, Individually,
DEP. GIRRARD, Individually,
MRS. GRETCHEN, Individual Capacity,
WOOD, Official Capacity,
MRS. MOLLENDOR, Individually,
DEP. LITWILER Individually,
NANCY, Individual and Official Capacity,
DEP. MORRISSON, Individual,
DEP. KRAUS, Individual,
DEP. GALLEGOS, Individual,
DEP. HUNT, Individual, and
SGT. CLARK, Individual and Official Capacity,
SGT. DOIZAKI, individual & official capacity,
DEP. EMERSON, individual,
DEP KLEINHEKSEL, individual,
SHERIFF GRAYSON ROBINSON, individual & official capacity,
CAPT. SAUTER, individual & official capacity,
LT. WHITIKER, individual & official capacity,
SGT. RANKIN, individual & official capacity,
DEP. FREEMAN, individual,
DEP. LONGFELLOW, individual, and
DEP. HAMM, individual,

Defendants.

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

THIS MATTER is before the Court on Plaintiff's "Motion for Court to Order Jail Officials to Allow the Plaintiff to Have His Legal Materials or in the Alternative Appoint Counsel to Represent Him at the Defendants [sic] Expense" (Doc. No. 37), filed May 16, 2011. The motion was referred to Magistrate Judge Kathleen M. Tafoya for a Recommendation by Order of Reference dated April 22, 2011. Magistrate Judge Tafoya issued a Recommendation on September 12, 2011. Specifically, Magistrate Judge Tafoya recommends that the pending motion be granted and that Plaintiff's Title VII termination claim and his state law claim for violation of the Colorado Anti-Discrimination Act be dismissed denied as moot in light of Plaintiff's release from custody. (ECF No. 106, Recommendation at 2-5.) The Recommendation is incorporated herein by reference. See 28 U.S.C. § 636(b)(1)(B), Fed. R. Civ. P. 72(b).

Magistrate Judge Tafoya advised the parties that written objections were due within fourteen (14) days after service of a copy of the Recommendation. (Recommendation at 5-6.) Despite this advisement, no objections were filed to the Recommendation.¹ 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

¹ I note that at some point during the service of the Recommendation on the Plaintiff, Plaintiff was released from custody. On September 22, 2011, Plaintiff notified the Court of his address change. Thus, on October 13, 2011, the Clerk of the Court issued a Certificate of Service by Mail of the Recommendation at Plaintiff's new address. Accordingly, I calculated the 14-day period for filing written objections to the Recommendation from the date the Certificate of Service was issued, which was October 28, 2011. No objections have been filed to date.

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."² 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 the record. I find that Magistrate Judge Tafoya's Recommendation is thorough, well reasoned and sound. I agree with Magistrate Judge Tafoya that the pending motion should be denied as moot for the reasons stated in both the Recommendation and this Order.

Based on the foregoing, it is

ORDERED that the Recommendation of United States Magistrate Judge Tafoya (ECF No. 106) is **AFFIRMED** and **ADOPTED**. In accordance therewith, it is

FURTHER ORDERED that Plaintiff's "Motion for Court to Order Jail Officials to Allow the Plaintiff to Have His Legal Materials or in the Alternative Appoint Counsel to Represent Him at the Defendants [sic] Expense" (Doc. No. 37) is **DENIED AS MOOT**.

Dated: December 12, 2011

BY THE COURT:

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

² 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).