

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 & official capacity,
DEP. WENDELBURG, individually,
DEP. THAO, individually,
DEP. LIGON, individually,
DEP. ELLEDGE, individually,
DEP. GIRARD, individual,
GRETCHEN SETTAMBRINGO, individual & official capacity,
TERRI WOOD, individual
MELINDA MOLLENDOR, individual,
DEP. LITWILER, individual & official capacity,
NANCY SIVAK, individual,
DEP. KRAUSE, individual,
DEP GALLEGOS, individual,
DEP. HUNT, individual,
SGT. CLARK, individual & 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,
DEP. HAMM, individual,
LT. WICKSTROM, individual & official,
LT. VIENOT, individual & official,
DEP. TERRY, individual,
DEP. C JONES, individual,
COUNTY OF APARAHOE,
DEP. VIGIL, individual,
SGT. NORDI, individual & official,
APARAHOE COUNTY SHERIFF DEPARTMENT, and

DEP. VINCENT, individual,
Defendants.

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

THIS MATTER is before the Court on Defendant County of Arapahoe's Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b) (ECF No. 121). The motion was referred to Magistrate Judge Kathleen M. Tafoya for a Recommendation by Order of Reference dated January 19, 2012. On August 8, 2012, Magistrate Judge Tafoya issued a Recommendation. Specifically, Magistrate Judge Tafoya recommends that the pending motion be granted and that the Defendant County of Arapahoe be dismissed from this case without prejudice. (ECF No. 180, Recommendation at 6). 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 6-7). I note that on August 27, 2012, Plaintiff filed a pleading entitled "Response and Objections to the Magistrate Judge's Findings and Recommendations," but having carefully reviewed that document, I find that the Plaintiff asserts no valid objections and, in fact, urges me to adopt the Magistrate Judge's recommendation. (ECF No. 181, Resp.).

In Magistrate Judge Tafoya's Recommendation, she properly found that pursuant to Colo. Rev. Stat. § 30-11-105, in all lawsuits or actions brought by or against a county,

“the name in which the county shall sue or be sued shall be, ‘The board of county commissioners of the county of’.” (Recommendation at 4). Magistrate Judge Tafoya further noted that the Tenth Circuit has held that Colo. Rev. Stat. § 30-11-105 provides “the exclusive method by which jurisdiction over a county can be obtained.” (Recommendation at 4). Thus, she concluded that since Plaintiff named the “County of Arapahoe” as a defendant, rather than the “Board of County Commissioners of Arapahoe County,” the County of Arapahoe is properly dismissed on this ground alone. (Recommendation at 5). Alternatively, while a “simple amendment to Plaintiff’s Third Amendment Complaint would easily cure this technical defect, ... Plaintiff has also named a number of defendants in their official capacities. Official-capacity suits are generally treated as a suit against the government entity of which the officer is an agent. ... As such, while it is sufficient to name as a defendant either the municipality itself or a municipal official in his or her official capacity, naming both is redundant.” (Recommendation at 5). Accordingly, Magistrate Judge Tafoya concluded that it would be “unnecessary to allow Plaintiff to amend his Third Amended Complaint to properly name the Board of County Commissioners of the County of Arapahoe as any claims against the Board would be redundant of his official-capacity claims.” (Recommendation at 6).

I now turn to Plaintiff’s “Response and Objections to the Magistrate Judge’s Findings and Recommendations,” filed August 27, 2012. Echoing Magistrate Judge Tafoya’s recommendation, Plaintiff requests that even if “this court agrees that the ‘County of Arapahoe’ should be stricken from the caption, that it allows Plaintiff’s suit to

proceed against the municipality, because Plaintiff has named a number of defendants in their official capacities” (Resp. at 3). According to the Recommendation, Plaintiff’s lawsuit against individual defendants in their official capacities will proceed. Thus, I find no valid objection to the Recommendation. Thus, 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 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 to dismiss should be granted and that the Defendant County of Arapahoe should be dismissed from this case without prejudice for the reasons stated in both the Recommendation and this Order.

Based on the foregoing, it is

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).

ORDERED that the Recommendation of United States Magistrate Judge Tafoya (ECF No. 180) is **AFFIRMED** and **ADOPTED**. It is

FURTHER ORDERED that the Defendant County of Arapahoe's Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b) (ECF No. 121) is **GRANTED**. In accordance therewith, it is

FURTHER ORDERED that the Defendant County of Arapahoe is **DISMISSED WITHOUT PREJUDICE** from this action. The Clerk of the Court shall amend the case caption to reflect this dismissal.

Dated: September 26, 2012

BY THE COURT:

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