

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

Civil Action No. 11-cv-00644-WYD-KMT

WYATT T. HANDY JR.,

Plaintiff,

v.

DR. COHEN, Individual and Official Capacity;
ELAINE MEYER, Individual and Official Capacity; and
DR. R. FISH, Individual and Official Capacity,

Defendants.

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

THIS MATTER is before the Court on Plaintiff's failure to respond to the court's Order to Show Cause, [ECF No. 45], filed October 12, 2011. This matter was assigned to United States Magistrate Judge Tafoya for a recommendation by Order on Plaintiff's Motion for Reassignment dated June 6, 2011 [ECF No. 19]. Magistrate Judge Tafoya issued a Recommendation on November 8, 2011 [ECF No. 46]. The Recommendation is incorporated herein by reference. See 28 U.S.C. § 636(b)(1), Fed. R. Civ. P. 72(b), D.C.COLO.LR. 72.1.

Magistrate Judge Tafoya recommends that the claims against Defendants Fish and Cohen be dismissed without prejudice pursuant to Fed. R. Civ. P. 4(m) for lack of service. As Magistrate Judge Tafoya explains, on March 15, 2011, Plaintiff filed a Prisoner Complaint [ECF No. 1] against Defendants Fish and Cohen. However, the initial summons' for these defendants were returned unexecuted and now more than 120

days have passed since the Amended Prisoner Complaint was filed. Plaintiff has not responded to the Order to Show Cause to provide further information about Defendants Fish and Cohen. Accordingly, Magistrate Judge Tafoya finds Plaintiff has failed to provide good cause for his failure to timely serve Defendants Fish and Cohen, permitting dismissal without prejudice under Fed. R. Civ. P. 4(m).

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 7.) Despite this advisement, 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 the record. I find that Magistrate Judge Tafoya’s Recommendation is thorough, well-reasoned and sound. I agree with Magistrate Judge Tafoya that Plaintiff’s claims against Defendants Fish and Cohen should be dismissed without prejudice

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).

pursuant to Fed. R. Civ. P. 4(m). Based on the foregoing, it is

ORDERED that the Recommendation of United States Magistrate Judge Tafoya [ECF No. 46] is **AFFIRMED** and **ADOPTED**. In accordance therewith, it is

FURTHER ORDERED that Plaintiff's claims against Defendants Fish and Cohen should be dismissed without prejudice pursuant to Fed. R. Civ. P. 4(m) for lack of service.

Dated: December 21, 2011

BY THE COURT:

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