

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

Civil Action No. 12-cv-01735-WYD-CBS

THERESA L. DOWLING,

Plaintiff,

v.

XCEL ENERGY,

Defendant.

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

THIS MATTER is before the Court on Magistrate Judge Shaffer's Amended Recommendation [ECF No. 21].¹

Because plaintiff, Theresa L. Dowling, proceeds *pro se*, I referred this civil action to Magistrate Judge Shaffer. ECF No. 12. On October 10, 2012, Magistrate Judge Shaffer issued his Amended Recommendation [ECF No. 21] in which he states that this civil action should be dismissed without prejudice because Dowling failed to: (1) appear at the Preliminary Scheduling Conference; (2) comply with the Local Rules of Practice for the United States District Court for the District of Colorado; (3) comply with the FEDERAL RULES of CIVIL PROCEDURE; (4) prosecute this action; and, (5) respond to the Order To Show Cause [ECF No. 18]. Magistrate Judge Shaffer's Amended Recommendation [ECF No. 21] is incorporated herein by reference. See 28 U.S.C. §

¹ The Amended Recommendation [ECF No. 21] includes an "Advisement to the Parties" which was not included in the original Recommendation [ECF No. 20]. As such, the Amended Recommendation [ECF No. 21] is the operative document in this matter.

636(b)(1), Rule 72(b) of the FEDERAL RULES of CIVIL PROCEDURE, D.C.COLO.LCivR.
72.1.

Magistrate Judge Shaffer advised the parties that they had 14 days after service of a copy of his Amended Recommendation [ECF No. 21] to file objections. ECF No. 21, p. 4. As of Friday, February 14, 2014, no party has filed objections. Because the parties did not file objections, I am vested with discretion to review the Amended Recommendation [ECF No. 21] “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 Amended Recommendation [ECF No. 21] to “satisfy [my]self that there is no clear error on the face of the record.”² Advisory Committee Notes to FED. R. CIV. P. 72(b).

Having reviewed the Amended Recommendation [ECF No. 21], I am satisfied that there is no clear error on the face of the record. I find that Magistrate Judge Shaffer’s Amended Recommendation [ECF No. 21] is thorough, well-reasoned, and sound. Further, I agree that this civil action should be dismissed without prejudice for Dowling’s failure to: (1) appear at the Preliminary Scheduling Conference; (2) comply with the Local Rules of Practice for the United States District Court for the District of Colorado; (3) comply with the FEDERAL RULES of CIVIL PROCEDURE; (4) prosecute this

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).

action; and, (5) respond to the Order To Show Cause [ECF No. 18].

CONCLUSION

After careful consideration of the matter before this Court, it is
ORDERED that Magistrate Judge Shaffer's Amended Recommendation [ECF
No. 21] is **AFFIRMED** and **ADOPTED**, and this civil action is **DISMISSED WITHOUT
PREJUDICE**.

Dated: February 14, 2014.

BY THE COURT:

/s/ Wiley Y. Daniel
Wiley Y. Daniel
Senior U. S. District Judge