

These objections are hereby overruled. The distinction between Fed. R. Civ. P. 60(a)(3) and Rule 60(a)(1), as well as Plaintiff's disagreement with the First Circuit, are sufficient to avoid dismissal, given the history of this litigation. Dismissal stands, as well as the order. Michael D. Peterson v. 7-6-12

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

H. RICHARD AUSTIN,
St. Louis, Missouri
Plaintiff Pro Se

No. 12-cv-30109 MAP

v.

DOUGLAS G. PETERSON & ASSOCIATES,
Greenfield, Massachusetts

STEPHEN W. HOUGHTON,
Greenfield, Massachusetts
Defendants

2012 JUL -5 AM 27

PLAINTIFF'S RESPONSE TO
THE REPORT AND RECOMMENDATION FOR SUA SPONTE DISMISSAL

Plaintiff opposes dismissal for the following reasons:

1. In his Report the Magistrate disregards and does not mention the controlling fact the current action is brought pursuant to FRCP 60(d)(3) - "fraud on the court." The previous filing before this district court (*Austin V*) was a FRCP 60(d)(1) action for fraud inter parties. The pending Amended Complaint documents at length with clear and convincing evidence this separate claim that the federal court system was also a target of the fraudulent "scheme" perpetrated by these defendants and others during the initial action (*Austin I*). While the First Circuit's order (12/2/09) upholding the prior dismissal is relied on, that order only states that, ("Austin has failed to make out a viable claim under Rule 60(d)(1)." And ("Austin did not make a sufficient showing to warrant relief under Rule(d)(1).")

2. The Report places emphasis on the First Circuit's statement that ("he [Austin] has repeatedly filed duplicative lawsuits and can have no objective good faith expectation