

UNITED STATES DISTRICT COURT
 DISTRICT OF MINNESOTA
 08-CV-5184 (JMR/JJG)

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|-------------------|---|-------|
| Darnell McDaniels |) | |
| |) | |
| v. |) | ORDER |
| |) | |
| Olmsted County |) | |

This matter is before the Court for consideration of the Report and Recommendation issued by the Honorable Jeanne J. Graham, United States Magistrate Judge, on May 29, 2009 [Docket No. 18]. Plaintiff, acting pro se, filed objections pursuant to Local Rule 72.2. While the objections were tardy-received, the Court has considered them.

Based on a de novo review of the record, the Court adopts the Magistrate's Report and Recommendation.

The Court also considers issuance of a certificate of appealability. Tiedeman v. Benson, 122 F.3d 518, 522 (8th Cir. 1997). A certificate of appealability will issue if petitioner has made a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Based on the files, pleadings, and proceedings herein, the Court concludes that the issue of counsel's alleged conflict of interest is "debatable among reasonable jurists" and merits further proceedings. Flieger v. Delo, 16 F.3d 878, 882-83 (8th Cir. 1994) (citing Lozada v. Deeds, 498 U.S. 430, 432 (1991)). Therefore, a certificate of appealability will issue concerning this question. No other question may be appealed.

Accordingly, IT IS ORDERED that:

1. Plaintiff's petition for a writ of habeas corpus is denied. [Docket No. 1.]
2. This action is dismissed with prejudice.
3. A certificate of appealability will issue as to the question of counsel's alleged conflict of interest.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: July 1, 2009

s/ JAMES M. ROSENBAUM
JAMES M. ROSENBAUM
United States District Judge