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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

MICHAEL E. SPREADBURY,

Plaintiff,

v.

BITTERROOT PUBLIC LIBRARY,
CITY OF HAMILTON, LEE
ENTERPRISES, INC., and BOONE
KARLBERG P.C.

Defendants.

Cause No. CV-11-064-M-DWM-JCL

**DEFENDANT BOONE
KARLBERG P.C.'S RESPONSE
TO PLAINTIFF'S OBJECTION TO
FINDINGS AND
RECOMMENDATION OF U.S.
MAGISTRATE JUDGE**

INTRODUCTION

On July 21, 2011, the U.S. Magistrate Judge entered Findings and Recommendation that the motion to dismiss of Defendant Boone Karlberg P.C. (“Boone”) be granted and Plaintiff’s motion for partial summary judgment on his claims against Boone be denied. [Doc. 67.] This responds to Plaintiff’s Objection, dated August 2, 2011, to the Findings and Recommendation. Rule 72(b)(2), Fed. R. Civ. P. It would be an abuse of discretion to reject or modify the recommendation of the U.S. Magistrate Judge. Plaintiff’s objections are simply without merit.

DISCUSSION

Rule 72(b)(2), Fed. R. Civ. P., requires a party to file “specific written objections to the proposed findings and recommendations.” The derogatory and conclusory arguments in Plaintiff’s objection do not satisfy the standard in the procedural rule. Rule 72(b)(2), Fed. R. Civ. P.; *see also Parkinson v. U.S.*, 175 F. Supp. 2d 1233, 1240-41 (D. Idaho 2001). At most, Plaintiff simply identifies his claims and allegations and urges that they be resolved in his favor. *Spencer v. Bouchard*, 449 F.3d 721, 725 (6th Cir. 2006). As such, Plaintiff’s objection and argument should be rejected by the Court.

Setting this aside, all of the statements which Plaintiff alleges to be defamation by Boone were made in pleadings or documents filed in the Montana courts. [Doc. 37, pp. 4-7; Doc. 67.] Plaintiff's objection does not demonstrate otherwise. Statements in pleadings and court documents are absolutely privileged. *Montana Bank of Circle, N.A. v. Ralph Meyers & Son, Inc.*, 769 P.2d 1208, 1213 (Mont. 1989). Further, Plaintiff's construction of MCA § 27-1-804 is erroneous. Instead, the U.S. Magistrate Judge properly construed and applied the law. [Doc. 67, pp. 9-11.]

Next, Plaintiff has not demonstrated why Boone's alleged acts, omissions or statements qualify as state action or a conspiracy under 42 U.S.C. § 1983. [Doc. 67, pp. 12-17.] For example, representing clients in court does not amount to state action or participation in an alleged conspiracy. *Miranda v. Clark County, Nevada*, 319 F.3d 465, 468 (9th Cir. 2003); *Schucker v. Rockwood*, 846 F.2d 1202, 1205 (9th Cir. 1988). Here, Plaintiff has not pointed to any specific facts or allegations supporting state action or his conspiracy claim against Boone. [Doc. 67, pp. 14-15.]

Also, while Plaintiff complains about his prior criminal proceedings, he has not pointed to any facts or allegations that Boone was involved in the filing or prosecution of those charges. [Doc. 67, p. 20.] Further, the public record clearly

shows that Plaintiff was charged with and convicted of trespass. An order of protection was granted and affirmed on appeal. In addition, Plaintiff did, in fact, plead no contest to the felony intimidation of Defendant Roddy, and now, the felony intimidation charge has been affirmed on appeal by the Montana Supreme Court. [Doc. 12, Exhs. A-D; Doc. 14.] *See also State v. Spreadbury*, 2011 MT 176 (Mont., Jul. 26, 2011) (subject to revision or withdrawal prior to publication). These court determinations belie Plaintiff's conclusory allegations of peaceful assembly and Plaintiff's allegations that Boone improperly imputed criminal conduct to Plaintiff.

Plaintiff alleges Boone imputed that Plaintiff acted as "public law enforcement." [Plaintiff's Objection, 8/2/11, p. 5.] However, Plaintiff again does not support his objection with any specificity. Rule 72(b)(2), Fed. R. Civ. P.) In any event, Plaintiff has, in fact, clearly claimed on multiple occasions that he "holds clearance by FBI" and has an association with the Department of Justice. [See, e.g., Exhs. 1 and 2 to Boone Motion to Dismiss Reply, 5/19/11.] That aside, Plaintiff has not demonstrated why a fair and true citation to his own words amounts to defamation or other alleged wrongful conduct. *See, e.g., MCA* § 27-1-804(2).

In summary, Plaintiff's objections are not supported by the law or the record. Simply because multiple courts have rejected Plaintiff's allegations in favor of evidence and legal authority presented by Boone and other attorneys on behalf of clients does not establish a legal claim or wrongful conduct against Boone. It does not establish a grand conspiracy.

CONCLUSION

Plaintiff's objections to the Findings and Recommendation of the U.S. Magistrate Judge should be rejected. Instead, the recommendation that Boone's Motion to Dismiss Plaintiff's claims against it should be granted. Also, the recommendation that Plaintiff's partial summary judgment motion be denied on his claims against Boone should be accepted. Plaintiff's objections are not specific, and they are without merit in any event. Fundamentally, Plaintiff should take a serious and objective look at his own conduct.

DATED this 4th day of August, 2011.

/s/ William L. Crowley
William L. Crowley
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Bitterroot Public Library, City of
Hamilton and Boone Karlberg P.C.

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 7(d)(2)(E), Local Rules of the United States District Court, District of Montana, I hereby certify that the textual portion of the foregoing brief uses a proportionally spaced Times New Roman typeface of 14 point; is double spaced; and contains approximately 738 words, excluding the parts of the brief exempted by L.R. 7(d)(2)(E).

DATED this 4th day of August, 2011.

/s/ William L. Crowley
William L. Crowley
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CERTIFICATE OF SERVICE

I hereby certify that, on the 4th day of August, 2011, a copy of the foregoing document was served on the following persons by the following means:

 1 CM/ECF

 Hand Delivery

 2 Mail

 Overnight Delivery Service

 Fax

 E-Mail

1. Clerk, U.S. District Court
2. Michael E. Spreadbury
 700 South Fourth Street
 Hamilton, MT 59840

/s/ William L. Crowley
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