

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

JOHN VALENTE,

Plaintiff,

: Case No. 3:08-cv-225

- vs -

Magistrate Judge Michael R. Merz

UNIVERSITY OF DAYTON,

Defendant.

:

ORDER

This case is before the Court on Plaintiff's Notice to Court of Disputed Magistrate Jurisdiction (Doc. No. 84).

In the body of the Notice, Plaintiff appears to have confused the concepts of subject matter jurisdiction of this Court over the dispute between the parties and plenary magistrate judge authority to exercise this Court's jurisdiction under 28 U.S.C. § 636(c).

Plaintiff also notes that he was "prepared to argue that this case is not related to an earlier case between the same parties." He does not make that argument in this Notice. The earlier case in question is *Valente v. University of Dayton School of Law*, Case No. 3:07-cv-473. That case was dismissed without prejudice on Plaintiff's motion "on condition that any claims against the Defendants or either of them relating to the matters raised in this case be re-filed in this Court before the undersigned, in order to prevent forum shopping." (Dismissal Order, Doc. No. 56, in 3:07-cv-473). The instant case was filed approximately six months after the prior case was dismissed. On July 5, 2008, immediately after it was filed and nearly one year ago, Judge Rice referred it to the

undersigned under 28 U.S.C. § 636(c) upon finding that

1. the parties had unanimously consented to plenary magistrate judge jurisdiction in the prior case;
2. the prior case had been dismissed on the condition recited above; and
3. this new case met the condition of being related to the prior case as Plaintiff acknowledged at the outset of his Complaint.

It appears from the instant Notice that Plaintiff now contests those findings. However, Plaintiff's "Notice" is insufficient to preserve that objection, given that he has failed to contest the Order of Reference for a year, during which this case has been actively litigated.

28 U.S.C. § 636(c)(4) provides: "The court may, for good cause shown on its own motion or under extraordinary circumstances shown by any party, vacate a reference of a civil matter to a magistrate judge under this subsection." If Plaintiff wishes to have the Order of Reference vacated, he must file a motion under 28 U.S.C. § 636(c)(4) not later than July 10, 2009. His failure to do so will be deemed a waiver of any objection to the continued exercise of plenary magistrate judge jurisdiction in this case¹.

June 29, 2009.

s/ **Michael R. Merz**

United States Magistrate Judge

¹Of course, the Court recognizes that Plaintiff continues to argue that this particular magistrate judge is disqualified from hearing this case under 28 U.S.C. § 455. Indeed, Plaintiff has now argued in the Sixth Circuit, in his supplement to a petition for rehearing en banc in his mandamus action to remove the undersigned, that the undersigned is constitutionally disqualified from hearing this case under *Caperton v. A.T. Massey Coal Co., Inc.*, 173 L. Ed. 2d 1208 (2009).