

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

RICHARD C. BEALS and CHERYL J.
BEALS

Plaintiffs,

vs.

UNITED STATES DEPARTMENT OF
JUSTICE and UNITED STATES
ATTORNEY'S OFFICE FOR THE
DISTRICT OF UTAH,

Defendants.

**ORDER ADOPTING REPORT AND
RECOMMENDATION**

Case No. 2:10-cv-787 CW SA

This case was assigned to United States District Court Judge Clark Waddoups, who then referred it to United States Magistrate Judge Samuel Alba under 28 U.S.C. § 636(b)(1)(B). On August 10, 2011, Judge Alba issued a Report and Recommendation (the "R & R"), recommending that this case be dismissed on a motion by the Defendants. The R & R stated four grounds as to why this action should be dismissed: sovereign immunity; the untimeliness of the complaint; issue preclusion; and claim preclusion.

Mr. Beals filed a timely objection to the R & R, which the court will address in this Order. The court notes that Mr. Beals is acting *pro se*, and as such his "pleadings are to be construed liberally and held to a less stringent standard than formal pleadings drafted by lawyers." *See Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir.1991). "At the same time, we do not believe it is the proper function of the district court to assume the role of advocate for the pro se litigant." *Id.*

Under 28 U.S.C. § 636(b)(1), “[a] judge of the court shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” Here, Mr. Beals does not make any objection to any particular portion or specified findings or recommendation of the R & R. Rather, Mr. Beals states several grounds for his objection. First, he states that he will be prejudiced because of misconduct in his divorce proceedings. Second, he states that he was wrongfully convicted for a crime long ago and his constitutional rights denied during that process. Third, he states he is not represented in this action and lacks legal skills. Finally, he asserts that the Department of Justice may have an open investigation involving him. He also acknowledges that his former spouse Cheryl Beals may need to be removed as a party. None of these objections directly meet any specific portion, finding, or recommendation made in the R & R. Further, to the extent that these objections could impliedly assign error to any portion, finding or recommendation of the R & R, Mr. Beals does not provide any authority or convincing argument that any part of the R & R was in error.

For these reasons, it is unclear that a *de novo* review is necessary here. The court, however, conducted such a review to be thorough. Upon such review, the court finds no error to any finding or recommendation of the R & R, which is correct in all respects. Accordingly, the court hereby APPROVES and ADOPTS Judge Alba’s Report and Recommendation.

In addition to the Defendants’ motion to dismiss, Mr. Beals has moved to stay this action. He does not make a compelling argument, however, why such a stay is warranted. Mr. Beals has also made a motion to compel. On review of that motion, the court finds that it is without merit.

CONCLUSION AND ORDER

For the foregoing reasons, the court ORDERS as follows:

The R & R (Dkt. No. 28) is APPROVED and ADOPTED as the Order of this court;
the Defendants' motion to dismiss (Dkt. No. 3) is GRANTED;
Mr. Beals' motion to compel (Dkt. No. 25) is DENIED; and
Mr. Beals' motion to stay (Dkt. No. 29) is DENIED.
SO ORDERED this 14th day of September, 2011.

BY THE COURT:



Clark Waddoups
United States District Judge