

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
WEST VIRGINIA

Michael Gardner v. Shane Peacock, Kim Johnson, and Carrie
Dehewen

Gardner · No. 5:26-cv-00120 · Decided May 5, 2026

SUMMARY

The court adopts a magistrate judge’s proposed findings and recommendation after no objections were filed. It denies the petitioner’s applications to proceed without prepayment of fees or costs, dismisses the complaint and amended complaint, and directs that the matter be dismissed from the docket.

CASE DETAILS

COURT	United States District Court for the Southern District of West Virginia
WRITING FOR THE COURT	W. Volk
JURISDICTION	United States District Court for the Southern District of West Virginia
DECIDED	May 5, 2026
DOCKET	5:26-cv-00120
DISPOSITION	dismissed
PROCEDURAL POSTURE	The district court reviewed a magistrate judge's proposed findings and recommendation concerning the petitioner's applications to proceed without prepayment of fees or costs and his original and amended complaints. No objections were filed.
STANDARD OF REVIEW	Absent specific objections, the district court need not conduct de novo review of the magistrate judge's factual or legal conclusions. General and conclusory objections also do not require de novo review. No objections were filed in this case.
PRECEDENTIAL VALUE	unknown
PARTIES	Michael Gardner v. Shane Peacock, Kim Johnson, Carrie Dehewen

TOPICS

civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the district court was required to conduct de novo review of the magistrate judge's PF&R when no objections were filed.
2. Whether the court should adopt the PF&R, deny the applications to proceed without prepayment of fees or costs, dismiss the original and amended complaints, and remove the matter from the docket.

HOLDINGS

1. The district court was not required to conduct de novo or other review of the portions of the PF&R to which no objections were made, and the petitioner's failure to file timely objections waived de novo review and the right to appeal those portions.
2. The court adopted the PF&R, denied the original and amended applications to proceed without prepayment of fees or costs, dismissed the original and amended complaints, and dismissed the matter.

KEY QUOTATIONS

“Failure to file timely objections constitutes a waiver of de novo review and the Petitioner’s right to appeal the Court’s order.”

“Accordingly, the Court ADOPTS the PF&R [ECF 8], DENIES the Application to Proceed Without Prepayment of Fees or Costs [ECF 1] and Amended Application to Proceed Without Prepayment of Fees or Costs [ECF 6], DISMISSES the Complaint [ECF 2] and Amended Complaint [ECF 7], and DISMISSES the matter.”

FACTUAL BACKGROUND

Michael Gardner filed an application to proceed without prepayment of fees or costs and a complaint, then filed amended versions of both documents. The magistrate judge recommended denying the fee applications and dismissing the original and amended complaints. Gardner filed no objections to the PF&R by the March 26, 2026 deadline.

PROCEDURAL HISTORY

Gardner filed an application to proceed without prepayment of fees or costs and a complaint on February 18, 2026, followed by amended filings on March 4, 2026. The matter was referred to Magistrate Judge Omar J. Aboulhosn, who issued a PF&R recommending denial of the fee applications and dismissal of the complaints. After the objection deadline passed without objections, the district court adopted the PF&R, denied both applications, dismissed both complaints, and dismissed the matter from the docket.

DISPOSITION

dismissed

CASES CITED

- Thomas v. Arn, 474 U.S. 140 (1985)
- United States v. De Leon-Ramirez, 925 F.3d 177, 181 (4th Cir. 2019)
- Snyder v. Ridenour, 889 F.2d 1363, 1366 (4th Cir. 1989)
- Orpiano v. Johnson, 687 F.2d 44, 47 (4th Cir. 1982)

OPINION

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF WEST VIRGINIA AT BECKLEY MICHAEL GARDNER, Petitioner, v. CIVIL ACTION NO. 5:26-cv-00120 SHANE PEACOCK and KIM JOHNSON and CARRIE DEHEWEN, Respondents. ORDER Pending are Plaintiff Michael Gardner's Application to Proceed Without Prepayment of Fees and Costs [ECF 1] and Complaint [ECF 2] both filed February 18, 2026, as well as his Amended Application to Proceed Without Prepayment of Fees and Costs [ECF 6] and Amended Complaint [ECF 7], both filed March 4, 2026.

This action was previously referred to the Honorable Omar J. Aboulhosn, United States Magistrate Judge, for submission of proposed findings and a recommendation ("PF&R"). Magistrate Judge Aboulhosn filed his PF&R on March 9, 2026. [See ECF 8]. Magistrate Judge Aboulhosn recommended that the Court deny the Application to Proceed Without Prepayment of Fees or Costs and Amended Application to Proceed Without Prepayment of Fees or Costs, dismiss the Complaint and Amended Complaint, and remove this matter from the docket.

[Id. at 8]. The Court need not review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. See Thomas v. Arn, 474 U.S. 140 (1985); see also 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." (emphasis added)).

Failure to file timely objections constitutes a waiver of de novo review and the Petitioner's right to appeal the Court's order. See 28 U.S.C. § 636(b)(1); see also United States v. De Leon- Ramirez, 925 F.3d 177, 181 (4th Cir. 2019) (Parties may not typically "appeal a magistrate judge's findings that were not objected to below, as § 636(b) doesn't require de novo review absent objection."); Snyder v. Ridenour, 889 F.2d 1363, 1366 (4th Cir.

1989). Further, the Court need not conduct de novo review when a party "makes general and conclusory objections that do not direct the Court to a specific error in the magistrate's proposed findings and recommendations." Orpiano v. Johnson, 687 F.2d 44, 47 (4th Cir. 1982). Objections in this case were due on March 26, 2026. No objections were filed.

Accordingly, the Court ADOPTS the PF&R [ECF 8], DENIES the Application to Proceed Without Prepayment of Fees or Costs [ECF 1] and Amended Application to Proceed Without Prepayment of Fees or Costs [ECF 6], DISMISSES the Complaint [ECF 2] and Amended Complaint [ECF 7], and DISMISSES the matter.

The Court directs the Clerk to transmit a copy of this Order to counsel of record and any unrepresented party. ENTER: May 5, 2026 ZeodN Va ©: W. Volk Chief United States District Judge