

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO

Dean M. Rieck v. Alfred Sanchez and Kim Stewart

Rieck · No. CIV 25-0066 JB/JHR · Decided March 16, 2026

SUMMARY

The United States District Court for the District of New Mexico adopts a magistrate judge's proposed findings and recommended disposition in Dean M. Rieck's pro se civil-rights action. The court grants the defendants' motion to dismiss, denies the motion for leave to file a surreply, and dismisses the complaint without prejudice because the plaintiff failed to plead exhaustion of state-level remedies.

OPINION

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO
DEAN M. RIECK, Plaintiff, v. No. CIV 25-0066 JB/JHR ALFRED SANCHEZ, and KIM STEWART, Defendants. MEMORANDUM OPINION AND ORDER ADOPTING MAGISTRATE JUDGE'S PROPOSED FINDINGS AND RECOMMENDED DISPOSITION
THIS MATTER comes before the Court on the Magistrate Judge's Proposed Findings and Recommended Disposition, filed on March 2, 2026 (Doc.

21)("PFRD"). The Honorable Jerry Ritter, United States Magistrate Judge for the United States District Court for the District of New Mexico, recommends the Court grant Defendants' Motion to Dismiss, filed April 14, 2025 (Doc. 8)("Motion to Dismiss"), and deny Plaintiff's Motion for Leave to File Surreply, filed June 12, 2025 (Doc. 12)("Motion for Leave").

The PFRD notifies Plaintiff that he fails to state a claim for a Fourteenth Amendment due process violation because he did not exhaust state-level remedies before seeking federal relief. See PFRD at 4-5. Magistrate Judge Ritter recommends granting Plaintiff thirty days to file an amended complaint pleading exhaustion of state-level remedies and, if he did not comply, then to dismiss the matter.

See PFRD at 5. The PFRD advises Plaintiff that he has fourteen days from its service in which to file written objections. See PFRD at 6. The PFRD is mailed to Plaintiff's address of record -- 1555 W. Picacho Ave. Apt. 6, Las Cruces, NM 88005 -- on March 3, 2026. See Return Address at 1, filed March 9, 2026 (Doc. 22).

On March 9, 2026, it was returned as undeliverable and unable to be forwarded. See Return Address at 1. Even as a pro se litigant, Plaintiff has a continuing obligation to alert the Court in writing to any change in mailing address. Local Rule 83.6 instructs that "[a]ll attorneys of record and parties appearing pro se have a continuing duty to notify the Clerk, in writing, of any change

in their firm name, mailing addresses, telephone numbers, facsimile numbers, or electronic addresses.” D.N.M LR-83.6.

Plaintiff’s non-compliance with this rule has prevented him from receiving the PFRD and lodging any timely objections thereto. LAW REGARDING OBJECTIONS TO PROPOSED FINDINGS AND RECOMMENDATIONS District courts may refer dispositive motions to a Magistrate Judge for a recommended disposition. See Fed. R. Civ. P. 72(b)(1) (“A magistrate judge must promptly conduct the required proceedings when assigned, without the parties’ consent, to hear a pretrial matter dispositive of a claim or defense....”).

Rule 72(b)(2) governs objections: “Within 14 days after being served with a copy of the recommended disposition, a party may serve and file specific written objections to the proposed findings and recommendations.” Fed. R. Civ. P. 72(b)(2).

Finally, when resolving objections to a Magistrate Judge’s proposal, “[t]he district judge must determine de novo any part of the magistrate judge’s disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.” Fed.

R. Civ. P. 72(b)(3). Similarly, 28 U.S.C. § 636 provides: 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. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.

The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions. 28 U.S.C. § 636(b)(1). “The filing of objections to a magistrate’s report enables the district judge to focus attention on those issues -- factual and legal -- that are at the heart of the parties’ dispute.” *United States v. One Parcel of Real Prop., With Bldgs., Appurtenances, Improvements, and Contents*, 73 F.3d 1057, 1059 (10th Cir.1996)(“One Parcel”)(quoting *Thomas v. Arn*, 474 U.S. 140, 147 (1985)).

As the United States Court of Appeals for the Tenth Circuit notes, “the filing of objections advances the interests that underlie the Magistrate’s Act, including judicial efficiency.” *One Parcel*, 73 F.3d at 1059 (citing *Niehaus v. Kan. Bar Ass’n*, 793 F.2d 1159, 1165 (10th Cir. 1986); *United States v. Walters*, 638 F.2d 947, 950 (6th Cir. 1981)).

The Tenth Circuit holds “that a party’s objections to the magistrate judge’s report and recommendation must be both timely and specific to preserve an issue for de novo review by the district court or for appellate review.” *One Parcel*, 73 F.3d at 1060. “To further advance the policies behind the Magistrate’s Act, [the Tenth Circuit], like numerous other circuits, have adopted ‘a firm waiver rule’ that ‘provides that the failure to make timely objections to the

magistrate's findings or recommendations waives appellate review of both factual and legal questions.” *One Parcel*, 73 F.3d at 1059.

In addition to requiring specificity in objections, the Tenth Circuit states that “[i]ssues raised for the first time in objections to the magistrate judge's recommendation are deemed waived.” *Marshall v. Chater*, 75 F.3d 1421, 1426 (10th Cir. 1996). See *United States v. Garfinkle*, 261 F.3d 1030, 1031 (10th Cir. 2001)(“In this circuit, theories raised for the first time in objections to the magistrate judge's report are deemed waived.”).

In an unpublished opinion, the Tenth Circuit states that “the district court correctly held that [a petitioner] had waived [an] argument by failing to raise it before the magistrate.” *Pevehouse v. Scibana*, 229 Fed. Appx. 795, 796 (10th Cir. 2007).

In *One Parcel*, the Tenth Circuit, in accord with other Courts of Appeals, expands the waiver rule to cover objections that are timely but too general. See *One Parcel*, 73 F.3d at 1060. The Supreme Court of the United States -- in the course of approving the United States Court of Appeals for the Sixth Circuit's use of the waiver rule -- notes: It does not appear that Congress intended to require district court review of a magistrate's factual or legal conclusions, under a *de novo* or any other standard, when neither party objects to those findings.

The House and Senate Reports accompanying the 1976 amendments do not expressly consider what sort of review the district court should perform when no party objects to the magistrate's report. See S.Rep. No. 94-625, pp. 9-10 (1976)(hereafter Senate Report); H.R.Rep. No. 94-1609, p. 11 (1976), U.S.Code Cong. & Admin. News 1976, p. 6162 (hereafter House Report).

There is nothing in those Reports, however, that demonstrates an intent to require the district court to give any more consideration to the magistrate's report than the court considers appropriate. Moreover, the Subcommittee that drafted and held hearings on the 1976 amendments had before it the guidelines of the Administrative Office of the United States Courts concerning the efficient use of magistrates.

Those guidelines recommended to the district courts that “[w]here a magistrate makes a finding or ruling on a motion or an issue, his determination should become that of the district court, unless specific objection is filed within a reasonable time.” See *Jurisdiction of United States Magistrates*, Hearings on S. 1283 before the Subcommittee on Improvements in Judicial Machinery of the Senate Committee on the Judiciary, 94th Cong., 1st Sess., 24 (1975)(emphasis added)(hereafter Senate Hearings).

The Committee also heard Judge Metzner of the Southern District of New York, the chairman of a Judicial Conference Committee on the administration of the magistrate system, testify that he personally followed that practice. See *id.*, at 11 (“If any objections come in,... I review [the record] and decide it. If no objections come in, I merely sign the magistrate's order.”).

The Judicial Conference of the United States, which supported the de novo standard of review eventually incorporated in § 636(b)(1)(C), opined that in most instances no party would object to the magistrate's recommendation, and the litigation would terminate with the judge's adoption of the magistrate's report. See Senate Hearings, at 35, 37. Congress apparently assumed, therefore, that any party who was dissatisfied for any reason with the magistrate's report would file objections, and those objections would trigger district court review.

There is no indication that Congress, in enacting § 636(b)(1)(C), intended to require a district judge to review a magistrate's report to which no objections are filed. It did not preclude treating the failure to object as a procedural default, waiving the right to further consideration of any sort.

We thus find nothing in the statute or the legislative history that convinces us that Congress intended to forbid a rule such as the one adopted by the Sixth Circuit. *Thomas v. Arn*, 474 U.S. at 150-52 (emphasis in original).

The Tenth Circuit also notes, “however, that ‘[t]he waiver rule as a procedural bar need not be applied when the interests of justice so dictate.’” *One Parcel*, 73 F.3d at 1060 (quoting *Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991)) (“We join those circuits that have declined to apply the waiver rule to a pro se litigant's failure to object when the magistrate's order does not apprise the pro se litigant of the consequences of a failure to object to findings and recommendations.”).

Cf. *Thomas v. Arn*, 474 U.S. at 154 (noting that, while “[a]ny party that desires plenary consideration by the Article III judge of any issue need only ask,” a failure to object “does not preclude further review by the district judge, sua sponte or at the request of a party, under a de novo or any other standard”).

In *One Parcel*, the Tenth Circuit notes that the district judge decides sua sponte to conduct a de novo review despite the objections’ lack of specificity, but the Tenth Circuit deems the issues waived on appeal, because waiver advances the interests underlying the waiver rule. See 73 F.3d at 1060-61 (citing cases from other Courts of Appeals where district courts elect to address merits despite potential application of waiver rule, but Courts of Appeals opt to enforce waiver rule).

Where a party files timely and specific objections to the Magistrate Judge's PFRD, on “dispositive motions, the statute calls for a de novo determination, not a de novo hearing.” *United States v. Raddatz*, 447 U.S. 667, 674 (1980). “[I]n providing for a ‘de novo determination’ rather than de novo hearing, Congress intended to permit whatever reliance a district judge, in the exercise of sound judicial discretion, chose to place on a magistrate judge's proposed findings and recommendations.” *United States v. Raddatz*, 447 U.S. at 676, (quoting 28 U.S.C. § 636(b) and citing *Mathews v. Weber*, 423 U.S. 261, 275 (1976)).

The Tenth Circuit requires a “district court to consider relevant evidence of record and not merely review the magistrate judge's recommendation” when conducting a de novo review of a party's timely, specific objections to the magistrate judge's report.

In *re Griego*, 64 F.3d 580, 583-84 (10th Cir. 1995). “When objections are made to the magistrate's factual findings based on conflicting testimony or evidence... the district court must, at a minimum, listen to a tape recording or read a transcript of the evidentiary hearing.” *Gee v. Estes*, 829 F.2d 1005, 1008-09 (10th Cir. 1987). A district court must “clearly indicate that it is conducting a de novo determination” when a party objects to the Magistrate Judge's report “based upon conflicting evidence or testimony.” *Gee v. Estes*, 829 F.2d at 1009.

On the other hand, a district court fails to meet the requirements of 28 U.S.C. § 636(b)(1) when it indicates that it gave “considerable deference to the magistrate's order.” *Ocelot Oil Corp. v. Sparrow Indus.*, 847 F.2d 1458, 1464 (10th Cir. 1988). A district court need not, however, “make any specific findings; the district court must merely conduct a de novo review of the record.” *Garcia v. City of Albuquerque*, 232 F.3d 760, 766 (10th Cir.

2000). “[T]he district court is presumed to know that de novo review is required. Consequently, a brief order expressly stating the court conducted de novo review is sufficient.” *Northington v. Marin*, 102 F.3d 1564, 1570 (10th Cir. 1996)(citing *In re Griego*, 64 F.3d at 583- 84). “[E]xpress references to de novo review in its order must be taken to mean it properly considered the pertinent portions of the record, absent some clear indication otherwise.” *Bratcher v. Bray-Doyle Indep.*

Sch. Dist. No. 42, 8 F.3d 722, 724 (10th Cir. 1993). The Tenth Circuit holds that a district court properly conducts a de novo review of a party's evidentiary objections when the district court's “terse” order contains one sentence for each of the party's “substantive claims” and does “not mention his procedural challenges to the jurisdiction of the magistrate to hear the motion.” *Garcia v. City of Albuquerque*, 232 F.3d at 766.

The Tenth Circuit explains that brief district court orders that “merely repeat[] the language of § 636(b)(1) to indicate its compliance” are sufficient to demonstrate that the district court conducts a de novo review: It is common practice among district judges in this circuit to make such a statement and adopt the magistrate judges' recommended dispositions when they find that magistrate judges have dealt with the issues fully and accurately and that they could add little of value to that analysis.

We cannot interpret the district court's statement as establishing that it failed to perform the required de novo review. In *re Griego*, 64 F.3d at 584. Notably, because “Congress intended to permit whatever reliance a district judge, in the exercise of sound judicial discretion, chose to place on a magistrate's proposed findings and recommendations,” *United States v. Raddatz*, 447

U.S. at 676 (emphasis omitted), a district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate,” 28 U.S.C. § 636(b)(1).

See *Bratcher v. Bray-Doyle Indep. Sch. Dist. No. 42*, 8 F.3d at 724-25 (holding that the district court's adoption of the Magistrate Judge's “particular reasonable-hour estimates” is consistent with the de novo determination that 28 U.S.C. § 636(b)(1) and *United States v. Raddatz* require). Where no party objects to the Magistrate Judge's PFRD, the Court reviews, as a matter of course and in the interests of justice, the Magistrate Judge's recommendations.

In *Pablo v. Soc. Sec. Admin.*, No. CIV 11-0132 JB/ACT, 2013 WL 1010401 (D.N.M. February 27, 2013)(Browning, J.), the plaintiff fails to respond to the Magistrate Judge's PFRD, and thus waives his right to appeal the recommendations, but the Court nevertheless conducts a review. See 2013 WL 1010401, at *1, *4.

The Court generally does not, however, “review the PFRD de novo, because the parties have not objected thereto, but rather review[s] the recommendations to determine whether they are clearly erroneous, arbitrary, obviously contrary to law, or an abuse of discretion.” *Pablo v. Soc. Sec. Admin.*, 2013 WL 1010401, at *4.

The Court, thus, does not determine independently what it would do if the issues had come before the Court first, when there is no objection, but rather adopts the PFRD where ““the Court cannot say that the Magistrate Judge's recommendation... is clearly erroneous, arbitrary, obviously contrary to law, or an abuse of discretion.”” *Pablo v. Soc. Sec. Admin.*, 2013 WL 1010401, at *3 (quoting *Workheiser v. City of Clovis*, No. CIV 12- 0485 JB/GBW, 2012 WL 6846401, at *3 (D.N.M.

December 28, 2012)(Browning, J.). See *Alexandre v. Astrue*, No. CIV 11-0384 JB/SMV, 2013 WL 1010439, at *4 (D.N.M. February 27, 2013)(Browning, J.)(“The Court rather reviewed the findings and recommendations... to determine if they are clearly erroneous, arbitrary, obviously contrary to law, or an abuse of discretion.

The Court determines that they are not, and will therefore adopt the PFRD.”); *Trujillo v. Soc. Sec. Admin.*, No. CIV 12-1125 JB/KBM, 2013 WL 1009050, at *5 (D.N.M. February 28, 2013) (Browning, J.)(adopting the proposed findings and conclusions, and noting: “The Court did not review the ARD de novo, because Trujillo has not objected to it, but rather reviewed the... findings and recommendation to determine if they are clearly erroneous, arbitrary, obviously contrary to law, or an abuse of discretion, which they are not.”).

This review, which is deferential to the Magistrate Judge's work when there is no objection, nonetheless provides some review in the interest of justice, and seems more consistent with the waiver rule's intent than no review at all or a full- fledged review.

Accordingly, the Court considers this standard of review appropriate. See *Thomas v. Arn*, 474 U.S. at 151 (“There is nothing in those Reports, however, that demonstrates an intent to require the district court to give any more consideration to the magistrate's report than the court considers appropriate.”).

The Court is reluctant to have no review at all if its name is going at the bottom of the order adopting the Magistrate Judge's PFRD. ANALYSIS The Court carefully reviews the PFRD and the Complaint. The Court did not conduct a de novo review, because the parties have not objected to the PFRD. Rather, the Court reviews Magistrate Judge Ritter's findings and recommendation to determine if they are “clearly erroneous, arbitrary, contrary to law, or an abuse of discretion.” The Court determines that they are not.

Accordingly, the Court will adopt the recommendations. IT IS ORDERED that: (i) the Magistrate Judge's Proposed Findings and Recommended Disposition, filed March 2, 2026 (Doc. 21), is adopted; (ii) Defendant's Motion to Dismiss, filed April 14, 2025 (Doc. 8), is granted; (iii) Plaintiff's Motion for Leave to File Surreply, filed June 12, 2025 (Doc. 12), is denied; (iv) Plaintiff's Complaint, filed January 23, 2025 (Doc.

1), is dismissed without prejudice; and (v) a separate Final Judgment will be entered.

UNITED STATES DISTRICT JUDGE Counsel and
parties: Dean M. Rieck Las Cruces, New Mexico Plaintiff Pro Se Daniel J. Macke Macke Law &
Policy, LLC Albuquerque, New Mexico Attorney for the Defendant