

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

**CHRISTOPHER KNECHT
PLAINTIFF**

**CASE NO. 1:12CV763
HON. S. ARTHUR SPIEGEL**

v.

**CITY OF CINCINNATI, OHIO,
et al.,
DEFENDANTS.**

**PLAINTIFF'S OBJECTIONS TO MAGISTRATE'S REPORT AND
RECOMMENDATION; PLAINTIFF'S OBJECTION TO ASSIGNMENT OF A
MAGISTRATE JUDGE**

Comes the *pro se* plaintiff pursuant to Rule 72, Federal Rules of Civil Procedure, who objects to the Magistrate's Report and Recommendation (Doc. 21) for the reasons stated in the attached memorandum in support. Plaintiff also objects to the assignment of this case to a Magistrate and seeks judicial notice of his continuing objection of a Magistrate to this case.

Respectfully submitted,

Christopher Knecht


Plaintiff in Pro Se

Certificate of Service

A copy of the foregoing was sent electronically to counsel for the defendants at jessica.powell@cincinnati-oh.gov, this 31 day of July, 2013.

Christopher Knecht

MEMORANDUM IN SUPPORT

I. Introduction

This action has been pending since October, 2012, only to now receive a Report and Recommendation (“R&R”) (Doc. 21) four (4) days after it was issued, that addresses **the wrong complaint**. The Magistrate or clerk who actually prepared the R&R failed to take into consideration a very important piece of the puzzle; to-wit, the second amended complaint filed in this action (Doc. 14), and in turn the Court should *sua sponte* strike the Magistrate’s R&R.

If one viewed side by side the Report and Recommendation and the defendants’ motions to dismiss in this action it would be apparent they are nearly identical. Coupled with the reliance on the first complaint instead of the second, amended complaint, infers upon the plaintiff that no real time or consideration was given in this case despite it lingering for ten months now.

However, the Magistrate states, “[u]pon *careful review*, the undersigned finds that Plaintiff’s complaint lacks subject matter jurisdiction and fails to state a claim for relief” (Doc. 21 at pg.4) (emphasis added). In support, the Magistrate then states that plaintiff’s complaint fails to assert a federal question because, “... Plaintiff’s complaint asserts only that Defendants are in violation of the City of Cincinnati’s Charter, Articles I and IV, and R.C. § 149.40” and that, “... none of Plaintiff’s three causes of action identify any federal violations. He merely claims that Defendants have violated ‘clearly established law’” (*Id* at pg. 5) (citations omitted). A real review would have consisted of some originality instead of reciting defendants’ motions to dismiss under the auspices of a ‘careful review’.

Plaintiff’s original complaint contains three causes of action. His second, amended complaint contains **four** causes of action. The Magistrate concludes during this ‘careful review’, relying solely upon the original complaint, that “[s]uch conclusory allegations fail to establish a basis for

federal subject matter [sic] jurisdiction ...” and that “Plaintiff’s complaint fails to establish subject matter jurisdiction, thereby warranting dismissal.” *Id.* (citations omitted).

It’s not like this is just a clerical error; the Magistrate even makes reference to the amended complaint in the footnote of the R&R, and then states only, and in a broken, fragmented sentence that, “[c]onstrued liberally, it appears that Plaintiff is asserting that the City of Cincinnati is in violation of 28 C.F.R. 20.21” (Doc. 21 at pgs. 2-3). If this were the case, then why does the Magistrate state that plaintiff has failed to identify any federal law in which the defendants have violated but then turns around and includes in her R&R that “... it appears that Plaintiff is asserting that the City of Cincinnati is in violation of 28 C.F.R. 20.21”? Is not the Code of Federal Regulations a federal law?

The simple fact is that someone, either the Magistrate or her clerk, had the amended complaint available but instead used the original complaint as the basis for the recommendation that this case be dismissed. Plaintiff is not expert in litigation, but he surely could prepare a better, more intelligent and relevant R&R without riding shotgun on defendants’ pleadings and would have not included piecemeal sentencing referencing of the second amended complaint or a mere footnote containing vague information regarding the amended complaint and then say nothing more about it. As plaintiff has expressed, he is unemployed and would be more than happy to take over where the Magistrate’s clerk has failed. At least the Court would not have to worry about issues such as this in the future.

II. Argument

How is plaintiff to argue against a Report and Recommendation which doesn’t address the right complaint? It would be an exercise in futility. This isn’t an issue of a clerical error. It’s an issue of incompetency. Clerical errors don’t go in great detail over a issue (diversity) that a party didn’t even raise and expressively indicated as such. A clerical error doesn’t address state tort law when a party hasn’t even contemplated raising state claims by invoking the Court’s pendent jurisdiction. Incompetency does all that. A ‘careful’ review would have taken into consideration the entire case file containing **all** the complaints and pleadings submitted. A careful review

would have determined that making reference to the second amended complaint in a mere footnote probably meant that an amended complaint has been filed in this action, just like that foreign sentence on page 2-3 of the R&R which states that plaintiff must be alleging that defendants violated the Code of Federal Regulations while the Magistrate simultaneously contradicting that by alleging that plaintiff failed to provide **any** information **whatsoever** to support federal jurisdiction. That is plain ludicrous.

III. Conclusion

For the reason above, plaintiff moves the Court to *sua sponte* strike the Magistrate's Report and Recommendation. Plaintiff also objects, and seeks to have the Court take judicial notice of his continuing objection, to a Magistrate being assigned to this action for the obvious reasons.

If the Court refuses to remove the automatic assigned Magistrate, plaintiff seeks to have another, competent Magistrate assigned to this case for the purpose of issuing an R&R regarding the pending motions and pleadings before the Court or in the alternative the Court itself make a ruling based upon the right set of facts and deny defendants' motions to dismiss.

Respectfully submitted,

Christopher Knecht


Plaintiff in Pro Se