

**FILED**  
UNITED STATES DISTRICT COURT  
DENVER, COLORADO

FEB 09 2018

JEFFREY P. COLWELL  
CLERK

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No: 17-cv-00884-CMA-STV

CHAYCE AARON ANDERSON

Plaintiff,

v.

CARA BOXBERGER in her individual capacity  
JASON SHUTTERS in his individual capacity.

Defendants.

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FORMAL OBJECTION TO MAGISTRATE JUDGE SCOTT T. VARHOLAK'S  
"RECOMMENDATION AND ORDER"

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HERE COMES, Chayce A. Anderson, "Pro Se" Plaintiff  
respectively requesting to file written objections to the magistrate  
judge's proposed findings and recommendations with the Clerk of the  
United States District Court for the District of Colorado. 28 U.S.C.  
§ 636(b)(1); Fed. R. Civ. P. 72(b); *Griego v. Padilla (In re Griego)*, 64 F.3d  
580, 583 (10<sup>th</sup> Cir. 1995).

ACCORDINGLY, within fourteen days after service of a copy of this  
Recommendation, any party may serve and file written objections.  
This Honorable Court may note Docket #'s (59, 65, 68) as "Mail Returned  
as Undeliverable" on 12/12/17, 12/19/17, & 01/16/18 respectively. This

establishes a pattern of lack of proper service. Regarding Docket # 67, Mr. Anderson filed a Notice with this Court to address this matter. HENCEFORTH, Magistrate Judge SCOTT T. VARHOLAK issued a MINUTE ORDER, noted as Docket # 69 on 01/22/18. Docket # 70 is the "Certificate of Service by Mail" on 01/22/18. Mr. Anderson was never formally served at Larimer County Jail, was rather served after his January 25<sup>th</sup>, 2018 transfer back to Arkansas Valley Correctional Facility (A.V.C.F.). A copy of all motions, including the "RECOMMENDATION AND ORDER" was not served in D.O.C. until January 26<sup>th</sup>, 2018. The fourteen day time period tolls on February 5<sup>th</sup>, 2018 when calculated from Docket # 70, but it tolls on February 9<sup>th</sup>, 2018 when calculated from date of Mr. Anderson's actual receiving a copy of the Order itself. AS WELL, on 01/29/18, Mr. Anderson was transferred from A.V.C.F. back to L.C.J. during the fourteen day window that presents an undue hardship on him. On 01/31/18, Mr. Anderson mailed a Second Notice to U.S.D.C. with a dated Coverpage that shows time of service within A.V.C.F.

THEREFORE, Mr. Anderson respectfully requests this most HONORABLE COURT to carefully consider the circumstances that interfered with timely service that were elements out of Mr. Anderson's control, and reasonably find this motion to be both timely made and reasonably necessary to best serve the interests of justice while properly preserving elements for any future applicable appeal process.

This general objection is meant to put the District Court on notice of the basis for the objection in order to properly preserve the objection for *de novo* review. 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. *United States v. 2121 East 30th Street*, 73 F.3d 1057, 1060 (10th Cir. 1996). Since failure to make timely objections may bar *de novo* review by the district judge of the magistrate's proposed findings and recommendations and will result in a waiver of the right to appeal from a judgment of the district court based on the proposed findings and recommendations of the magistrate judge. To prevent this from occurring, Mr. Anderson files the following written objections within the 14-Day window since the 01/26/17, the actual date Mr. Anderson received a copy of the order:

The first formal objection is to VARHOLAK's determination that Claim Four was previously dismissed by Judge BABCOCK. Claim Four is a newly discovered claim, being discovered only during the interim of the formal filing of the AMENDED PRISONER COMPLAINT (A.P.C.) and the formal filing of the SECOND AMENDED PRISONER COMPLAINT (S.A.P.C.). Claim Four was only discovered due to previously concealed Police Reports becoming readily available. BABCOCK never dismissed Claim Four, as Claim Four was never filed in the A.P.C. As well, Claim Four relates back to the A.P.C.

because it is unreasonable to expect a Plaintiff to set forth a claim, when actual knowledge of the claims existence did not arise, or reasonably become available, until after the filing of the A.P.C.

The second formal objection is to ~~Varh~~ VARHOLAK's recommendation of dismissal of Claim Three, noting that this claim was previously dismissed by BABCOCK. BABCOCK had noted that Mr. Anderson was never a "Federal Juvenile Delinquent," therefore the Federal Juvenile Delinquent Act (F.J.D.A.) or 18 U.S.C.S. §5038 does not provide a private right of Action. To quote VARHOLAK, "Judge Babcock previously dismissed this claim as legally frivolous because the statute cited by Plaintiff, 18 U.S.C. §5038, did not provide a private right of action. Plaintiff again references this statute in the Second Amended Complaint. To the extent Plaintiff argues that Colorado's juvenile sealing laws give Plaintiff a protected liberty interest, courts have rejected that argument." BABCOCK's dismissal was based on Mr. Anderson not being a Federal Juvenile Delinquent, and avoided addressing the Constitutional merits of the claim. Basing the dismissal on BABCOCK's previous dismissal is improper due to significant amending of the A.P.C. into a S.A.P.C. to cure the deficiency raised by BABCOCK. The Court's recommendation provides one sentence regarding Colorado's juvenile sealing laws, which is insufficient to analyze the Constitutional elements of

Claim Three itself, and ultimately allows the Court to sidestep or avoid the merits of the claim once again on ~~technicalities~~ a technicality.

To quote the S.A.P.C., "The 'AMENDED PRISONER COMPLAINT'<sup>18</sup> mentioned reference to 18 U.S.C.S. §5037, also known as the Federal Juvenile Delinquency Act (F.J.D.A.). Mr. Anderson would like to clarify this citation. Mr. Anderson's Juvenile case was never prosecuted Federally, but rather prosecuted at state level. The legal reference was meant in regard to the 'Supremacy Clause' of the U.S. Constitution, ringing clear that Federal Law runs supreme to State Law. The F.J.D.A. is virtually identical to Colorado State Law regarding Juvenile ~~Delinquent~~ Delinquency Proceedings. The similar Colorado law is called the Uniform Youthful Offender Act, also known as the youthful offender system... The arguable constitutional right is the constitutional right to protect one's own life, liberty, or property... Boxberger and Shuttles told unauthorized members of the public that Mr. Anderson was convicted of a crime that he was never convicted of! This inherently violated Mr. Anderson's substantial constitutional rights... The depiction of an adult member of society as having been convicted of a crime that he was never convicted of violates 'Due Process.'"

To further quote the S.A.P.C., "The 'Private Right of Actions'

Can be either explicitly or implicitly stated by statutes. An 'implied private right of action' can be acquired by implication by a District Attorney's intentional misstatements in required reports and required public hearings." "The United States Constitution guarantees due process when a person is to be deprived of life, liberty, or property. See *Templeton v. Gunter*, 16 F.3d 367, 369 (10th Cir. 1994). Absolutely NO deprivation of life, liberty, or property can be constitutionally-justified without first affording an individual the fundamental principle of due process." If this reasonable Court determines that Colorado's juvenile sealing laws do not give Mr. Anderson a protected liberty interest, not only would the Plaintiff object to this determination, but this objection rests primarily on the element of Constitutional rights afforded to Mr. Anderson as a result of the "Due Process" and "Equal Protection" clauses of the U.S. Constitution. No U.S. Citizen may be depicted as having been convicted of a crime without first being afforded proper "Due Process"...

WHEREHERE, the Plaintiff has provided an implied private right of action, and an explicitly privileged private right of action while providing the correct Colorado law to cure the F. J. D. A., with mention to "Due Process" and "Equal Protection" Federal Rights, Mr. Anderson would respectfully object to the dismissal of Claim Three.

The third formal objection is to VARHOLAK'S second additional reference to Claim Four. Mr. Anderson objects to "Judge Babcock previously dismissed Plaintiff's defamation claim against Defendant Boxberger because she was protected by absolute immunity." Referencing the first formal objection, BABCOCK never addressed the merits of Claim Four, as Claim Four was not filed until the S.A.P.C. This reference may apply to elements of Claim Six, but it does not apply to Claim Four.

The second subsection to this objection is addressed to the recommendation that Claim Four fails due to BABCOCK'S choice to dismiss a separate claim against a separate defendant. Noting that "defamation, by itself, is not actionable in a § 1983 claim." Claim Four is titled "Violation of 'Due Process' and 'Privacy Rights,' depicting Mr. Anderson's child as a by-product of stalking and rape." The recommendation fails to properly address these constitutional elements, but rather focuses only on the underlying elements of defamation of character, slander, or libel. As well, the S.A.P.C. mentions a "lasting damaging effect" within Claim Four, and presents "actual, compensable injuries" in the Preface / Introduction. The root main claim rests on violation of "Due Process" and of "Privacy Rights," since Mr. Anderson was depicted as having committing two criminal charges that he was never even charged with. This violates "Due Process," and caused actual damages in terms of

his relationship with his parents. I would go so far to allege that this action also violated my parents' substantial constitutional rights too. This raises additional grounds to Mr. Anderson's objection to the dismissal of Claim Four.

To quote VARHOLAK, "Unlike the allegations in the First Amended Complaint, it is not entirely clear from the Second Amended Complaint that Defendant Boxberger made her statements in the role of an advocate for the State. (Plaintiff alleging Defendant Boxberger "knowingly and intentionally slandered' him to his father and stepmother.) As a result, it is not clear that Defendant Boxberger would be absolutely immune from Claim Four. See *Rex v. Teeple*, 753 F.2d 840, 843 (10th Cir. 1985) ("A prosecutor is absolutely immune only for those activities intimately associated with initiating a ~~prosect~~ prosecution and presenting the State's case.")

Defendant Boxberger's actions are not protected by absolute prosecutorial immunity. She was not initiating a prosecution or presenting the State's case, as Mr. Anderson was never charged with any crime in connection to her statements. If the Court dismisses Claim Four, it is basically laying precedent that Boxberger's actions were appropriate. Please analyze the unreasonableness of her reckless actions, and for this reason Mr. Anderson's objection to the dismissal should stand.



The fourth formal objection is to VARHOLAK'S recommendations in connection to Claim Five. This claim was attempted to be set out in the original filings and the A.P.C. filings, and would object to the determination that Claim Five is a new claim. FURTHERMORE, Mr. Anderson would object to the statement "because the state charges forced Plaintiff to relive his past when Plaintiff was a victim of sexual assault." This objection arises due to the claim having nothing to do with current state charges. The claim is connected to long-ago settled 2009CR Juvenile case, not 15CR1466 case. The S.A.P.C. does not challenge the initiation and litigation of the state charges in 15CR1466. Boxberger's prosecutorial function is tied only to 15CR1466 or 16CR380. Claim Five cannot be barred for absolute immunity, when her actions were intentional wrongs that fell outside her role as an advocate of the state. As well, her actions played no feasible role in the initiating of the prosecution, or presenting the state's case in either 15CR1466 or 16CR380.

The title of Claim Five is "The Intentional Infliction of Duress, Re-living Long-Ago Settled Events of the Past." The tort of intentional infliction of emotional distress was committed when Defendants Boxberger and Shutters both dived headfirst into long-ago settled events of the past with the specific intent to cause Mr. Anderson physical, emotional, and psychological pain, trauma, or extended suffering.

Mr. Anderson is alleging that their discretionary choices were utilized intentionally to punish him for his past, in addition to the already satisfied terms and conditions, or applicable punishment, issued by the Judge in 2009CR. Shuttters and Boxberger wanted to inflict as much pain and suffering on Mr. Anderson, because they believed that Mr. Anderson got away with a crime. This is contrary to the Judge's determination, sentencing, and closing of 2009CR as DISMISSED WITH PREJUDICE.

This also violates Mr. Anderson's "Due Process" rights as he was punitively punished in excess of the original Judge's order, yet he was never afforded "Due Process."

Claim Five was filed in connection to reliving psychological trauma associated with 2009CR, his prior victimization as a child, and his past clinical suicide episodes. The defendant's actions were malicious, inflicted extreme psychological damage and mental anguish, and caused Mr. Anderson to be humiliated, ostracized and segregated.

For the above mentioned reasoning, Mr. Anderson would object to the dismissal of Claim Five.

The fifth formal objection (and final formal objection) is to VARHOLAK's recommendations in connection to Claim Six. Firstly, Claim Six was attempted to be set out in the

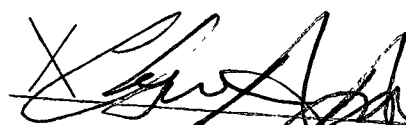
original filings and A.P.C. filings, and shouldn't be deemed a new claim, and Claim Six does relate back for this reason. This final objection would stress that Boxberger's actions at the bond reduction hearing rested outside her role as an advocate of the state. This Claim Six was however amended to focus on the specific sequence of events in connection to the materially false declaration.

This includes Boxberger's choice to endanger Mr. Anderson's life back in custody at the jail. Her actions led to him being "continually harrassed by other inmates in the facility who acquired false information from Boxberger's misstatements." This led to Mr. Anderson's person to be assaulted. It also left Mr. Anderson to be fearful for his life, and caused him to be left humiliated, suicidal, ostrasized and segregated from General Populations. This cause and effect was all created through Boxberger's fraudulent actions intentionally to cause Mr. Anderson pain and suffering.

For the above mentioned reasons, Mr. Anderson would object to the dismissal of Claim Six.

FINALLY, this motion is submitted humbily and graciously to this Honorable Court. In the event claims are dismissed, Mr. Anderson would request the claims be Dismissed without Prejudice. Otherwise, Mr. Anderson will DEFER to the sound and wise judgments of this Honorable Court.

Sincerely, 11  
Humbily Submitted This 5th Day of  
February, 2018.

  
02/05/18  
Cty #18-2033  
Doc #175290  
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