

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE

STEVEN J. HUARD :  
 :  
 v. : C.A. No. 08-120S  
 :  
 ESSEX COUNTY CORRECTIONAL :  
 CENTER, et. al. :

**REPORT AND RECOMMENDATION**

Lincoln D. Almond, United States Magistrate Judge

This matter is presently before the Court on a Motion to Dismiss (Document No. 51) filed by Defendant Martha Coakley, a Motion to Dismiss filed by Defendant Harold W. Clarke (Document No. 69) and a Motion for Judgment on the Pleadings filed by Defendants Correctional Medical Services, Inc., Wayne Ward and Dr. Bradford Noll (Document No. 72). Plaintiff Steven Huard (“Plaintiff”), failed to file an objection to any of the Motions.

The Motions have been referred to me for preliminary review, findings and recommended disposition. See 28 U.S.C. § 636(b)(1)(B); LR 72.1. I have determined that no hearing is necessary. After reviewing the parties’ memoranda and the Local Rules of this Court, I recommend that Defendants’ Motions to Dismiss (Document Nos. 51, 69 and 72) be GRANTED.

Local Rule 7.1(b) states that objections to motions must be filed within ten days of service, or within thirty days of a summary judgment motion. The Rule also provides, “[t]he Court shall deem waived any objection not filed in accordance with this rule.” LR 7.1(b). In this matter, Defendant Coakley’s Motion to Dismiss was filed on January 30, 2009, thus any objection was due on or before February 13, 2009. Defendant Clarke’s Motion to Dismiss was filed on February 27,

2009, and any objection was due on or before March 13, 2009. Finally, Defendants Correctional Medical Services, Inc., Wayne Ward and Dr. Bradford Noll filed their Motion on April 1, 2009, and any objection was due on or before April 15, 2009. Because Plaintiff did not file an objection to any of these three motions, I recommend that the Motions be GRANTED.

Additionally, on March 30, 2009, the District Court granted Defendant Stephen Monier's Motion to Dismiss "absent opposition." See Endorsed Order dated March 30, 2009. Defendant Monier now moves to clarify the District Court's Text Order to determine if the Court granted a portion of the Motion on Fed. R. Civ. P. 56 grounds, or pursuant to Fed. R. Civ. P. 12(b). See Document No. 73. After reviewing the relevant submissions, I recommend that the District Court find that Defendant Monier's Motion to Dismiss was dismissed for failure to state a claim under Fed. R. Civ. P. 12(b)(6). Accordingly, the District Court is not obligated to make any findings of fact in support of its Text Order disposing of Plaintiff's claims against Defendant Monier.

### **Conclusion**

For the reasons discussed above, I recommend that Defendants' Motions to Dismiss (Document Nos. 51, 69 and 71) be GRANTED. Additionally, I recommend that the District Court clarify that Defendant Monier's Motion to Dismiss was previously granted pursuant to Fed. R. Civ. P. 12(b).

Any objection to this Report and Recommendation must be specific and must be filed with the Clerk of the Court within ten (10) days of its receipt. See Fed. R. Civ. P. 72(b); LR Cv 72. Failure to file specific objections in a timely manner constitutes waiver of the right to review by the District Court and the right to appeal the District Court's decision. See United States v. Valencia-

Copete, 792 F.2d 4, 6 (1<sup>st</sup> Cir. 1986); Park Motor Mart, Inc. v. Ford Motor Co., 616 F.2d 603, 605 (1<sup>st</sup> Cir. 1980).

/s/ Lincoln D. Almond  
LINCOLN D. ALMOND  
United States Magistrate Judge  
May 21, 2009