

Objecting to a Magistrate Judge's Report and Recommendation

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An unpublished opinion from the Tenth Circuit Court of Appeals in January 2016 caught our eye because it collected various established preservation-of-error principles for objecting to a magistrate judge's report and recommendation in one place. *See Collins v. Colvin*, 2016 WL 66503 (10th Cir. Jan. 6, 2016) (unpublished). The take-away is that the need for proper objections to such a report and recommendation cannot be overstated. As the appellate court explained, “[t]he scope of our review ... is limited to the issues the claimant properly preserves in the district court and adequately presents on appeal,” and here the appellant “waived all issues that he did not raise in his objections to the R & R.”

Preservation Issues:

- “[A] party's objections to the magistrate judge's report and recommendation must be both timely and specific to preserve an issue for appellate review.”
- “[O]nly an objection that is sufficiently specific to focus the district court's attention on the factual and legal issues that are truly in dispute will advance the policies behind the Magistrate's Act that led us to adopt a waiver rule in the first instance.”
- Do not attempt to make your objections by incorporating earlier filings by reference. The courts often “disfavor briefing by incorporation,” and sometimes “such a broad statement is not sufficiently specific to preserve any arguments for review.”

Tips:

Remember to file timely and specific objections to a magistrate judge's report and recommendation in order to preserve issues for appellate review. In doing so, resist the temptation to adopt by reference earlier arguments made in the case. Spell those arguments out specifically again in your objections. Of course, if you are faced with having to make arguments on appeal that were not preserved through objections to the report and recommendation, be sure to argue plain error on appeal. Otherwise, even that exception will be waived. “[T]he failure to argue for plain error and its application on appeal ... surely marks the end of the road for a waived argument.”