

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF  
NEW YORK

David Kirby III v. Graham Spicer and Patrick Hennessy

Kirby · No. 5:25-cv-324 (AMN/PJE) · Decided December 11, 2025

SUMMARY

The United States District Court for the Northern District of New York adopted a magistrate judge’s Report-Recommendation and dismissed David Kirby III’s 42 U.S.C. § 1983 complaint against attorneys Graham Spicer and Patrick Hennessy. The court held that the complaint failed to satisfy Federal Rule of Civil Procedure 8 and did not allege that the defendants acted under color of state law. The dismissal was with prejudice and without leave to amend, and the motion for appointment of counsel was dismissed as moot.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                       |
|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | United States District Court for the Northern District of New York                                                                                                                                                                                                                                                    |
| WRITING FOR THE COURT | Anne M. Nardacci                                                                                                                                                                                                                                                                                                      |
| JURISDICTION          | United States District Court for the Northern District of New York                                                                                                                                                                                                                                                    |
| DECIDED               | December 11, 2025                                                                                                                                                                                                                                                                                                     |
| DOCKET                | 5:25-cv-324 (AMN/PJE)                                                                                                                                                                                                                                                                                                 |
| DISPOSITION           | dismissed                                                                                                                                                                                                                                                                                                             |
| PROCEDURAL POSTURE    | The district court reviewed a magistrate judge's Report-Recommendation recommending dismissal of a pro se plaintiff's 42 U.S.C. § 1983 complaint and dismissal as moot of his motion for appointment of counsel. No party filed objections, so the court conducted clear-error review and adopted the recommendation. |
| STANDARD OF REVIEW    | When no specific objections to a magistrate judge's report-recommendation are filed, the district court reviews the recommendation for clear error. Properly preserved specific objections receive de novo review under 28 U.S.C. § 636(b)(1)(C).                                                                     |
| PRECEDENTIAL VALUE    | district court memorandum decision; precedential status not stated in the source                                                                                                                                                                                                                                      |
| PARTIES               | David Kirby III v. Graham Spicer, Patrick Hennessy                                                                                                                                                                                                                                                                    |

TOPICS

section 1983

pleadings

civil procedure

civil rights

constitutional law

## PRACTICE AREAS

civil procedure

civil rights

constitutional law

## QUESTIONS PRESENTED

1. Whether the magistrate judge's recommendation should be reviewed for clear error because no party filed specific objections.
2. Whether the Complaint satisfied Federal Rule of Civil Procedure 8 by providing a short and plain statement giving Defendants fair notice of the claims.
3. Whether the Complaint alleged that Defendants acted under color of state law, as required for liability under 42 U.S.C. § 1983.
4. Whether Plaintiff's motion for appointment of counsel should be dismissed as moot after dismissal of the Complaint.

## HOLDINGS

1. When no specific objections are filed, the district court reviews the magistrate judge's Report-Recommendation for clear error and may adopt it if no clear error appears on the face of the record.
2. The Complaint failed to satisfy Rule 8 because its conclusory Fifth and Sixth Amendment allegations lacked sufficient factual detail, context, and fair notice of the claims.
3. The Complaint failed to state a § 1983 claim because it did not allege facts showing that Defendants acted under color of state law; attorneys performing traditional functions as counsel are not liable under § 1983 on that basis alone.
4. The motion for appointment of counsel was dismissed as moot after the Complaint was dismissed.

## KEY QUOTATIONS

*“a short and plain statement of the claim showing that the pleader is entitled to relief.”* (Dkt. No. 10 at 6-8)

*“does not provide ‘fair notice of the claim[s] being asserted’ against Spicer and Hennessy or an adequate opportunity for Spicer and Hennessy to file an answer and ‘prepare an adequate defense.’”* (Dkt. No. 10 at 8)

*“fails to allege any facts suggesting that Spicer and Hennessy were acting under the color of state law and because Spicer and Hennessy were ‘performing [their] traditional functions as counsel to defendant during the alleged violation, [they] cannot be held liable pursuant to § 1983.’”* (Dkt. No. 10 at 11)

## FACTUAL BACKGROUND

David Kirby III, proceeding pro se, sued attorneys Graham Spicer and Patrick Hennessy under 42 U.S.C. § 1983, alleging violations of the Fifth and Sixth Amendments. The Complaint provided conclusory allegations and did not identify the proceedings in which Defendants allegedly represented Plaintiff, the nature of those

matters, or how their representation was ineffective. The Complaint also did not allege facts showing that the attorney defendants acted under color of state law.

**PROCEDURAL HISTORY**

Plaintiff commenced the action on March 12, 2025, alleging Fifth and Sixth Amendment violations. After an administrative closure for failure to pay the filing fee or apply to proceed in forma pauperis, the case was reopened after Plaintiff filed an IFP motion. Magistrate Judge Paul J. Evangelista granted IFP status, screened the Complaint under 28 U.S.C. § 1915, and recommended dismissal with prejudice and without leave to amend for failure to state a claim. Plaintiff's motion for appointment of counsel was also recommended for dismissal as moot. With no objections filed, the district court adopted the Report-Recommendation in its entirety.

**DISPOSITION**

dismissed

**CASES CITED**

- Petersen v. Astrue, 2 F. Supp. 3d 223, 228-29 (N.D.N.Y. 2012)
- Dezarea W. v. Comm’r of Soc. Sec., No. 21-cv-1138, 2023 WL 2552452, at \*1 (N.D.N.Y. Mar. 17, 2023)
- Canady v. Comm’r of Soc. Sec., No. 17-cv-367, 2017 WL 5484663, at \*1 n.1 (N.D.N.Y. Nov. 14, 2017)
- Govan v. Campbell, 289 F. Supp. 2d 289, 295 (N.D.N.Y. 2003)
- Haines v. Kerner, 404 U.S. 519, 520 (1972)
- Traguth v. Zuck, 710 F.2d 90, 95 (2d Cir. 1983)
- Machicote v. Ercole, No. 06-cv-13320, 2011 WL 3809920, at \*2 (S.D.N.Y. Aug. 25, 2011)
- Caldwell v. Petros, No. 22-cv-567, 2022 WL 16918287, at \*1 (N.D.N.Y. Nov. 14, 2022)
- Martin-Trigona v. D’Amato & Lynch, 559 F. Supp. 533, 535 (S.D.N.Y. 1983)
- Flores v. Graphtex, 189 F.R.D. 54, 55 (N.D.N.Y. 1999)
- Browdy v. Karp, 131 F. App’x 751, 753 (2d Cir. 2005) (summary order)
- Heck v. Humphrey, 512 U.S. 477 (1994)

**OPINION**

Kirby

PER CURIAM.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

DAVID KIRBY III,  
Plaintiff, v. 5:25-cv-324 (AMN/PJE)  
GRAHAM SPICER; PATRICK HENNESSY,  
Defendants.

APPEARANCES: OF

COUNSEL:

DAVID KIRBY, III

25-B-1877 Clinton Correctional Facility P.O. Box 2001 Dannemora, NY 12929 Plaintiff, pro se  
Hon. Anne M. Nardacci, United States District Judge:

## MEMORANDUM-DECISION AND ORDER

### I. INTRODUCTION

On March 12, 2025, David Kirby, III (“Plaintiff”) commenced this action pro se against Graham Spicer and Patrick Hennessy (“Defendants”) pursuant to 42 U.S.C. § 1983, alleging violations of his Fifth and Sixth Amendment rights. See Dkt. No. 1 (“Complaint”).<sup>1</sup> This Court ordered an administrative closure on March 14, 2025, because Plaintiff had not paid the filing fee or applied to proceed in forma pauperis (“IFP”). See Dkt. No. 3. Plaintiff filed a motion to proceed IFP on March 28, 2025, see Dkt. No. 5, and the Court ordered the case 1 Citations to court documents utilize the pagination generated by CM/ECF, the Court’s electronic filing system. reopened on the same day, see Dkt. No. 7. On August 28, 2025, Plaintiff moved for the Court to appoint him counsel. See Dkt. No. 9. This matter was referred to United States Magistrate Judge Paul J. Evangelista, who granted Plaintiff’s request to proceed IFP and reviewed the Complaint pursuant to 28 U.S.C. § 1915. Dkt. No. 10 at 2 (“Report-Recommendation”). On November 5, 2025, Magistrate Judge Evangelista recommended that this Court dismiss Plaintiff’s claim with prejudice and without leave to amend for failure to state a claim on which relief could be granted. *Id.* Pursuant to 28 U.S.C. § 636(b)(1), Magistrate Judge Evangelista advised that the parties had fourteen days within which to file written objections and that failure object to the Report-Recommendation within those fourteen days would preclude appellate review. *Id.* No party has filed objections, and the time for filing objections has expired. For the following reasons, the Court adopts the Report-Recommendation in its entirety.

### II. STANDARD OF REVIEW

This Court reviews de novo those portions of a magistrate judge’s report-recommendation that have been properly preserved with a specific objection. *Petersen v. Astrue*, 2 F. Supp. 3d 223, 228 (N.D.N.Y. 2012); 28 U.S.C. § 636(b)(1)(C). If no specific objections have been filed, this Court reviews a magistrate judge’s report-recommendation for clear error. See *Petersen*, 2 F. Supp. 3d at 229 (citing Fed. R. Civ. P. 72(b), Advisory Committee Notes: 1983 Addition). Similarly, if an objection simply rehashes arguments originally presented to the magistrate judge, this Court reviews the relevant portions of the report-recommendation for clear error. See *id.* at 228-29 & n.6 (collecting cases). “When performing such a ‘clear error’ review, ‘the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Dezarea W. v. Comm’r of Soc. Sec.*, No. 21-cv-1138, 2023 WL 2552452, at \*1 (N.D.N.Y. Mar. 17, 2023) (quoting *Canady v. Comm’r of Soc. Sec.*, No. 17-cv-367, 2017 WL 5484663, at \*1 n.1 (N.D.N.Y. Nov. 14, 2017)). “[I]n a pro se case, the court must view the submissions by a more lenient standard than that accorded to ‘formal pleadings drafted by lawyers.’” *Govan v. Campbell*,

289 F. Supp. 2d 289, 295 (N.D.N.Y. 2003) (quoting *Haines v. Kerner*, 404 U.S. 519, 520 (1972)) (additional citations omitted). The Second Circuit has held that courts are obligated to “make reasonable allowances to protect pro se litigants” from inadvertently forfeiting legal rights merely because they lack a legal education. *Id.* (quoting *Traguth v. Zuck*, 710 F.2d 90, 95 (2d Cir. 1983)). That said, “even a pro se party’s objections to a Report and Recommendation must be specific and clearly aimed at particular findings in the magistrate’s proposal[.]” *Machicote v. Ercole*, No. 06-cv-13320, 2011 WL 3809920, at \*2, (S.D.N.Y. Aug. 25, 2011) (citation omitted); accord *Caldwell v. Petros*, No. 22-cv-567, 2022 WL 16918287, at \*1 (N.D.N.Y. Nov. 14, 2022). After appropriate review, “the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C).

### III. DISCUSSION

Because no party has filed any objection to the Report-Recommendation, the Court reviews the Report-Recommendation for clear error. First, Magistrate Judge Evangelista recommended that the Court dismiss Plaintiff’s Complaint for failing to satisfy Rule 8 of the Federal Rules of Civil Procedure. See Dkt. No. 10 at 6-8. Rule 8 requires that a complaint include “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a). Here, Magistrate Judge Evangelista found that Plaintiff’s claims that Defendants violated his Fifth and Sixth Amendment rights are conclusory and do not include sufficiently detailed allegations or context. Dkt. No. 10 at 6-8. Regarding the Fifth Amendment, among other things, Plaintiff does not indicate how the Fifth Amendment might apply to Defendants, who are private actors. *Id.* at 6-7 (citing *Martin-Trigona v. D’Amato & Lynch*, 559 F. Supp. 533, 535 (S.D.N.Y. 1983) (“Plaintiff’s claim ignores the fundamental principle that the Fifth Amendment only concerns Federal government or other official action.”)). Likewise, as to the Sixth Amendment, while Plaintiff appears to bring an ineffective assistance of counsel claim against Defendants, he fails to identify, among other things, any matters in which Defendants represented him, the nature of those matters, or how Defendants’ representation was ineffective. Dkt. No. 10 at 7-8. Therefore, Magistrate Judge Evangelista found that Plaintiff’s complaint “does not provide ‘fair notice of the claim[s] being asserted’ against Spicer and Hennessy or an adequate opportunity for Spicer and Hennessy to file an answer and ‘prepare an adequate defense.’” *Id.* at 8 (quoting *Flores v. GraphTex*, 189 F.R.D. 54, 55 (N.D.N.Y. 1999)). Even if Plaintiff could cure the Complaint’s noncompliance with Rule 8, Magistrate Judge Evangelista found that Plaintiff could not show that Defendants were state actors subject to liability under § 1983. See Dkt. No. 10 at 8-11. Both Defendants are attorneys who, at most, represented Plaintiff in unspecified court proceedings. Dkt. No. 10 at 11; see also Dkt. No. 1 at 2. Therefore, because the Complaint “fails to allege any facts suggesting that Spicer and Hennessy were acting under the color of state law and because Spicer and Hennessy were ‘performing [their] traditional functions as counsel to defendant during the alleged violation, [they] cannot be held liable pursuant to § 1983.’” Dkt. No. 10 at 11 (quoting *Browdy v. Karp*, 131 F. App’x 751, 753 (2d Cir. 2005) (summary order)) (internal citations omitted).<sup>2 2</sup> In the

alternative, Magistrate Judge Evangelista recommended dismissing the Complaint without prejudice because it is likely precluded by *Heck v. Humphrey*, 512 U.S. 477 (1944). Dkt. No. 10 Finally, Magistrate Judge Evangelista recommended that the Court dismiss Plaintiff's motion for appointment of counsel as moot. See Dkt. No. 10 at 15-16. After reviewing the Report-Recommendation and considering Magistrate Judge Evangelista's findings, the Court finds no clear error in the Report-Recommendation. Accordingly, the Court adopts the Report-Recommendation in its entirety.

#### IV. CONCLUSION

Accordingly, the Court hereby ORDERS that the Report-Recommendation, Dkt. No. 15, is ADOPTED in its entirety; and the Court further ORDERS that Plaintiff's Complaint, Dkt. No. 1, be DISMISSED with prejudice and without leave to amend; and the Court further ORDERS that Plaintiff's motion for appointment of counsel, Dkt. No. 9, be DISMISSED as moot; and the Court further ORDERS that the Clerk serve a copy of this Order on all parties in accordance with the Local Rules. IT IS SO ORDERED. Dated: December 11, 2025 Owe) | . | Jaraaeer Albany, New York Anne M. Nardacci U.S. District Judge at 12-13. Because the Court finds no clear error in Magistrate Judge Evangelista's primary recommendation based on Rule 8, it dismisses the Complaint with prejudice.