

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)