

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 * * *

4 RYAN WOOD,

5 Plaintiff,

6 v.

7 CLARK W. PATRICK, *et al.*,

8 Defendants.
9

Case No. 2:16-cv-00538-APG-PAL

**ORDER ACCEPTING REPORT AND
RECOMMENDATION**

(ECF No. 3)

10 On March 16, 2017, Magistrate Judge Leen entered a Report of Findings and
11 Recommendation recommending that I dismiss plaintiff Ryan Wood's complaint with prejudice
12 because Wood is asserting claims under 42 U.S.C. § 1983 against his criminal defense attorneys,
13 who are not state actors. ECF No. 3. Wood did not file an objection. Thus, I am not obligated to
14 conduct a de novo review of the report and recommendation. 28 U.S.C. § 636(b)(1) (requiring
15 district courts to "make a de novo determination of those portions of the report or specified
16 proposed findings to which objection is made"); *United States v. Reyna-Tapia*, 328 F.3d 1114,
17 1121 (9th Cir. 2003) (en banc) ("the district judge must review the magistrate judge's findings
18 and recommendations de novo *if objection is made*, but not otherwise" (emphasis in original)).

19 Judge Leen correctly states that Wood's criminal defense attorneys are not state actors
20 when acting as court-appointed defense counsel. *Miranda v. Clark Cnty., Nev.*, 319 F.3d 465, 466
21 (9th Cir. 2003) (citing *Polk Cnty. v. Dodson*, 454 U.S. 312 (1981)). There are circumstances
22 when a private actor's conduct may be fairly attributable to the government. *See Franklin v. Fox*,
23 312 F.3d 423, 445 (9th Cir. 2002). But Wood does not assert any facts to suggest his defense
24 attorneys' conduct is attributable to the state.

25 I therefore will accept Judge Leen's recommendation that I dismiss Wood's § 1983 claims
26 with prejudice, but this dismissal is without prejudice to any state law claims Wood may seek to
27 assert in another forum. Without a viable § 1983 claim, Wood does not allege a basis for this
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1 court to exercise subject matter jurisdiction in this case. From the face of the complaint, it
2 appears diversity jurisdiction is lacking because both Wood and his attorneys are Nevada citizens.
3 ECF No. 1-1.

4 IT IS THEREFORE ORDERED that Judge Leen's Report of Findings and
5 Recommendation (**ECF No. 3**) is **accepted**. The complaint (ECF No. 1-1) is dismissed with
6 prejudice with respect to Woods' claims under 42 U.S.C. § 1983, but without prejudice as to any
7 state law claims Woods may assert in another forum. The clerk of court is instructed to close this
8 case.

9 DATED this 10th day of April, 2017.

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12 ANDREW P. GORDON
13 UNITED STATES DISTRICT JUDGE
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