

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DWIGHT R. DeLEE,

Plaintiff,

v.

5:20-CV-0549
(GTS/ATB)

STATE OF NEW YORK; SYRACUSE POLICE DEP'T;
POST STANDARD; SYRACUSE.COM; PUBLISHERS
OF NY CLS DESK EDITION GILBERT'S,

Defendants.

APPEARANCES:

DWIGHT R. DeLEE
Plaintiff, Pro Se
711 North McBride Street, Floor 2
Syracuse, New York 13203

GLENN T. SUDDABY, Chief United States District Judge

DECISION and ORDER

Currently before the Court, in this *pro se* civil rights action filed by Dwight R. DeLee ("Plaintiff") against the five above-captioned entities, is United States Magistrate Judge Andrew T. Baxter's Report-Recommendation recommending that Plaintiff's Complaint be dismissed in part with prejudice, dismissed in part without prejudice to refile in state court, and conditionally dismissed unless he successfully amends it. (Dkt. No. 4.) Plaintiff has not submitted an objection to the Report-Recommendation, and the deadline by which to do so has expired. (*See generally* Docket Sheet.)

After carefully reviewing the relevant papers herein, including Magistrate Judge Baxter's thorough Report-Recommendation, the Court can find no clear-error in the Report-

Recommendation. Magistrate Judge Baxter employed the proper standards, accurately recited the facts, and reasonably applied the law to those facts. As a result, the Report-Recommendation is accepted and adopted in its entirety with two slight modifications (regarding the nature of a dismissal and the procedure for filing an Amended Complaint).¹

ACCORDINGLY, it is

ORDERED that Magistrate Judge Baxter's Report-Recommendation (Dkt. No. 4) is **ACCEPTED** and **ADOPTED** in its entirety; and it is further

ORDERED that Plaintiff's claim against State of New York is **DISMISSED without prejudice** to refiling in the appropriate state court (e.g., the New York State Court of Claims); and it is further

ORDERED that Plaintiff's claim against the Syracuse Police Department is **DISMISSED with prejudice** but, to the extent that the claim may be liberally construed as being asserted against the City of Syracuse, that claim **shall be DISMISSED with prejudice** without further Order of the Court **unless, within THIRTY (30) DAYS** of the date of this Decision and Order, Plaintiff files an **Amended Complaint** correcting the pleading defects in that claim identified in the Report-Recommendation; and it is further

ORDERED that Plaintiff's claims against the Post Standard, Syracuse.com, and the Publishers of NY CLS Desk Edition Gilbert's are **DISMISSED without prejudice** to refiling in the appropriate state court (e.g., in the form of claims for defamation, libel, or slander); and it is

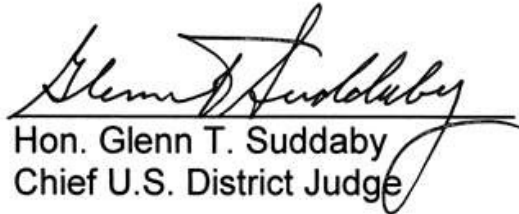
¹ Instead of being dismissed with "leave to amend" (as specified in Dkt. No. 4, at 13), Plaintiff's claim against the City of Syracuse is conditionally dismissed (i.e., it shall be dismissed without further Order of the Court, unless Plaintiff successfully amends it within thirty days). Moreover, instead of filing a "proposed amended complaint" (as specified in Dkt. No. 4, at 14, n.10), Plaintiff shall file a signed Amended Complaint.

further

ORDERED that, should Plaintiff file an Amended Complaint against the City of Syracuse, such Amended Complaint must be filed within **THIRTY (30) DAYS** of the date of this Decision and Order, and such Amended Complaint must be a complete pleading that does not incorporate by reference or rely on any portion of his original Complaint but that supercedes and replaces the original Complaint in its entirety; and it is further

ORDERED that, should Plaintiff timely file an Amended Complaint, it will be referred to Magistrate Judge Baxter for his review.

Dated: July 27, 2020
Syracuse, New York


Hon. Glenn T. Suddaby
Chief U.S. District Judge