

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**AT BECKLEY**

TOUSSAINT N. KIRKLAND,

Plaintiff,

v.

CIVIL ACTION NO. 5:24-cv-00350

BECKLEY APPALACHIAN HOSPITAL,

Defendant.

**MEMORANDUM OPINION AND ORDER**

Pending are Plaintiff Toussaint N. Kirkland's (1) Motion to Proceed Without Prepayment of Fees and Costs [ECF 7], filed August 9, 2024, (2) Amended Complaint [ECF 6 and 8], filed August 9, 2024, (3) Motion for Change of Venue [ECF 11], filed October 21, 2024, and (4) Motion to Change Venue from Southern District of West Virginia to Maryland District Court [ECF 14], filed December 16, 2024.

**I.**

Mr. Kirkland instituted this action on July 12, 2024, alleging that Defendant Beckley Appalachian Hospital misdiagnosed him, causing life-threatening injuries. [ECF 1]; *see also* [ECF 6 and 8]. The case was previously referred to the Honorable Omar J. Aboulhosn, United States Magistrate Judge, for submission of proposed findings and a recommendation (“PF&R”). [ECF 2]. Magistrate Judge Aboulhosn filed his PF&R on August 19, 2024. [ECF 9]. Magistrate Judge Aboulhosn recommended the Court deny Plaintiff’s Motion to Proceed Without Prepayment of Fees and Costs [ECF 7], dismiss the Plaintiff’s Amended Complaint [ECF 6 and 8], and remove

the matter from the Court’s docket. [ECF 9 at 8]. Mr. Kirkland timely filed his objection on August 29, 2024. [ECF 10].

## II.

The Court need not review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140 (1985); *see also* 28 U.S.C. § 636(b)(1) (“A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations *to which objection is made.*” (emphasis added)).

“Importantly, objections need not be novel to be sufficiently specific.” *Elijah v. Dunbar*, 66 F.4th 454, 460 (4th Cir. 2023). “[T]o preserve for appeal an issue in a magistrate judge’s report, a party must object to the finding or recommendation on that issue with sufficient specificity so as reasonably to alert the district court of the true ground for the objection.” *United States v. Midgette*, 478 F.3d 616, 622 (4th Cir. 2007). “If the grounds for objection are clear, district court judges must consider them de novo, or else run afoul of both § 636(b)(1) and Article III.” *Elijah*, 66 F.4th at 460. Further, the Court need not conduct de novo review when a party “makes general and conclusory objections that do not direct the Court to a specific error in the magistrate’s proposed findings and recommendations.” *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982).

## III.

Mr. Kirkland alleges he was misdiagnosed by Beckley Appalachian Hospital “[which] caused . . . life [threatening] injuries . . . .” [ECF 6 at 4]. He further alleges “Beckley Appalachian Hospital showed [Deliberate] Indifference . . . .” [Id. at 5]. Although not specifically

alleged, Magistrate Judge Aboulhosn construed Mr. Kirkland's claim as one under 42 U.S.C. § 1983. [ECF 9 at 6].

After an exhaustive review, Magistrate Judge Aboulhosn concluded subject matter jurisdiction was lacking inasmuch as (1) complete diversity was absent, and (2) Beckley Appalachian Hospital and its agents were not acting "under color of law" so as to give rise to a § 1983 claim. [*Id.* at 5–7].

In his objections, Mr. Kirkland emphasizes he was "living in West Virginia at a federal institution . . ." [*Id.* at 2]. That point does not impair the magistrate judge's analysis.

#### IV.

Accordingly, the Court **ADOPTS** the PF&R [ECF 9], **DENIES** Plaintiff's Motion to Proceed without Prepayment of Fees and Costs [ECF 7], **DISMISSES** Plaintiff's Amended Complaint [ECF 6 and 8], and **DISMISSES** the matter. Further, Plaintiff's Motion for Change of Venue [ECF 11] and Motion to Change Venue from Southern District of West Virginia to Maryland District Court [ECF 14] are **DENIED AS MOOT**.

The Court directs the Clerk to transmit a copy of this Order to any counsel of record and any unrepresented party.

ENTER: March 10, 2025



A handwritten signature in black ink that reads "Frank W. Volk".

Frank W. Volk  
Chief United States District Judge