

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

JACOB TEITELBAUM,

Plaintiff,

- against -

JUDA KATZ; CHAYA KATZ; JOEL TENNENBAUM;  
BLUMA TENNENBAUM; DAVID RUBENSTEIN;  
KIRYAS JOEL COMM AMBULANCE CRP; DISTRICT  
FAMILY COURT OF ORANGE COUNTY 9<sup>TH</sup> JUDICIAL  
DISTRICT; HON. ANDREW P. BIVONA; ATTY.  
MARIA PETRIZIO; CHILDREN'S RIGHTS SOCIETY  
OF ORANGE COUNTY; ATTY. KIM PAVLOVIC;  
ATTY JOHN FRANCIS X. BURKE; CHILD  
PROTECTIVE SERVICES OF ORANGE COUNTY;  
CHRISTINE BRUNET; ATTY. STEPHANIE BAZILEOR;  
JOHN DOES 1 THROUGH 95; JANE DOES 1-20;

Defendants.

Docket No. 12-CV-2858 (VB)

**REPLY MEMORANDUM OF LAW**  
**ON BEHALF OF MARIA A. PATRIZIO, ESQ. S/H/A ATTY. MARIA**  
**PETRIZIO IN SUPPORT OF HER MOTION TO DISMISS THE**  
**COMPLAINT AND AMENDED COMPLAINT**

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### PRELIMINARY STATEMENT

This Memorandum of Law is submitted on behalf of MARIA A. PATRIZIO, ESQ. s/h/a ATTY. MARIA PETRIZIO (hereinafter “Ms. Patrizio”) in reply to plaintiff’s “Answer in Opposition to Motion to Dismiss.” The Answer is addressed to “all defendants’ motions to dismiss.”

Plaintiff’s opposition does not dispute Ms. Patrizio’s assertion that she was a Legal Aid attorney representing plaintiff’s wife in the subject Family Court proceeding, and as such, was not a state actor and did not act under “color of state law” for liability under 42 U.S.C. § 1983. Rather, plaintiff argues that “defendants” entered into a conspiracy with state actors to violate plaintiff’s constitutional rights and, therefore, acted “under color of state law” for § 1983 purposes. It is notable that plaintiff’s opposition papers do not even mention Ms. Patrizio by name nor her alleged participation in the underlying Family Court proceeding.

As demonstrated in the Memorandum of Law and below, the Complaint and Amended Complaint fail to allege any facts suggesting an agreement between Ms. Patrizio and any of the other defendants, and especially the state actors, to deprive plaintiff of his constitutional rights. Factual, rather than conclusory, allegations are necessary to withstand a motion to dismiss

**LEGAL ARGUMENT**

**POINT I**

**THE COMPLAINT AND AMENDED COMPLAINT FAIL TO ALLEGE SUFFICIENT FACTS TO STATE A VALID CLAIM THAT MS. PATRIZIO CONSPIRED TO VIOLATE PLAINTIFF'S CONSTITUTIONAL RIGHTS. THEREFORE, AS A LEGAL AID ATTORNEY, MS. PATRIZIO DID NOT ACT UNDER "COLOR OF STATE " AND, THEREFORE, CANNOT BE LIABLE UNDER 42 U.S.C. § 1983**

Point I of Ms. Patrizio's Memorandum of Law sets forth the well-established case law that The Legal Aid Society is a private entity which does not "act under color of state law" for purposes of § 1983 liability. *See, generally, Lefcourt v. Legal Aid Society*, 445 F.2d 1150, 1157 (2d Cir. 1971). As gleaned from the Complaint and Amended Complaint and the exhibits, Ms. Patrizio, a staff attorney with The Legal Aid Society of Orange County, represented plaintiff's wife in the subject Family Court proceedings. Accordingly, based upon the case law, she did not "act under color fo state law."

Furthermore, Point I of our Memorandum of Law cites several cases which have held that law guardians appointed by the court are not state actors and cannot be held liable under 42 U.S.C. § 1983. *Elmasri v. England*, 111 F.Supp.2d 212 (EDNY 2000). While Ms. Patrizio did not act as a law guardian in the underlying Family Court proceeding, she did represent plaintiff's wife in that proceeding, and therefore, there is no reason why the same rule should not apply.

Plaintiff's opposing papers do not contest that Ms. Patrizio, as a Legal Aid attorney, was not a state actor. (As indicated above, the opposing papers do not even mention Ms. Patrizio by name.) Rather, plaintiff argues that any of the private individual defendants who conspire with the state actors to violate plaintiff's constitutional rights may themselves be subject to § 1983 liability. The fatal flaw in plaintiff's argument is that the Complaint and Amended Complaint fail to state a valid

conspiracy claim against Ms. Patrizio.

As indicated at Point II of Ms. Patrizio's Memorandum of Law, a Complaint alleging a conspiracy to violate civil rights is held to heightened pleadings standards, and to plead a conspiracy the Complaint must allege specific facts that defendants acted in concert to deprive plaintiff of his civil rights. *See, generally, Julian v. New York City Transit Authority*, 857 F.Supp. 242 (EDNY 1994), *aff'd* 52 F.3d 312 (2d Cir. 1995).

The Amended Complaint consists of 32 pages (without exhibits) which include 237 paragraphs. Only 11 paragraphs (137-138, 142-143, and 151-157) make any reference to Ms. Patrizio. These paragraphs allege essentially that Ms. Patrizio communicated with her client, plaintiff's wife, stating that plaintiff would never get custody of their children and that plaintiff's wife should separate from plaintiff to facilitate having her children returned to her custody and to avoid possible termination of her parental rights. The Amended Complaint is completely devoid of any allegations that Ms. Patrizio conspired with any of the other defendants, and in particular the state actor defendants, to deprive plaintiff of his constitutional rights. Rather, Counts I and II of the Amended Complaint state in conclusory fashion that all of the defendants cooperated with each other to deprive plaintiff of his constitutional rights under §§ 1983 and 1985, respectively. Such allegations are insufficient to avoid a 12(b)(6) dismissal. *Lewittes v. LBIS*, 2004 U.S. Dist. LEXIS 16320 (SDNY 2004), cited by plaintiff.

There are several Second Circuit cases dismissing a plaintiff's complaint against a court-appointed or Legal Aid attorney where the complaint contains merely conclusory allegations that the attorney conspired with state actors.

For instance, in *McGann v. Greenberg*, 1997 U.S. App. LEXIS 33847 (2d Cir. 1997), the

Court of Appeals affirmed the District Court's dismissal of plaintiff's complaint against a lawyer employed by The Legal Aid Society to defend the plaintiff in a criminal action. The District Court had found the plaintiff failed to demonstrate that the Legal Aid acted "under color of state law." Although plaintiff alleged that the attorney conspired with the District Attorney's Office, raising the possibility that The Legal Aid Society may have been acting under color of state law, the complaint contained mere conclusory allegations with no supporting factual averments, which is insufficient to state a conspiracy. For the same reasons, civil rights complaints were dismissed in *Braxton v. Brown*, 1997 U.S. Dist. LEXIS 21667 (EDNY 1997) involving a legal Aid attorney defending plaintiff in a criminal matter, and *Brown v. United State Supreme Court Justice William H. Rehnquist*, 2002 U.S. Dist. LEXIS 27771 (EDNY 2002) involving a court-appointed attorney.

Moreover, 12(b)(6) dismissals were granted in *McKnight v. Middleton*, 699 F.Supp.2d 507 (EDNY 2010) and *Bey v. State of New York*, 2012 U.S. Dist. LEXIS 136553 (EDNY 2012) involving court-appointed attorneys representing plaintiffs in Family Court proceedings. As stated in *Bey*:

However, the Court finds that [plaintiffs *pro se*] Mr. and Mrs. Bey have failed to state a cognizable claim for relief against [court-appointed attorney in Family Court child neglect proceeding] Defendant Cohen. The claims arising under Section 1983 fail because Defendant Cohen is not a state actor. See *Browdy v. Karpe*, 131 F. App'x 751, 753 (2d Cir. 2005) ("[C]ourt-appointed attorneys 'performing a lawyer's traditional functions as counsel' to a defendant do not act 'under color of state law' and, therefore, are not subject to suit under 42 U.S.C. § 1983." (quoting *Rodriguez*, 116 F.3d at 65-55)). And to the extent that Mr. and Mrs. Bey attempt to cure this defect by conclusorily alleging that Defendant Cohen conspired with state officials, "[a] merely conclusory allegation that a private [party] acted in concert with a state actor does not suffice to state a § 1983 claim against [1] private [party]." *Ciambrilio v. Cnty. of Nassau*, 292 F.3d 307, 324 (2d Cir. 2002) (citation omitted); accord *Browdy*, 131 F. App'x at 753.

## POINT II

### **THE *ROOKER-FELDMAN* DOCTRINE IS APPLICABLE**

The *Rooker-Feldman* precludes the District Court's review of State Court decisions when: (1) the Federal Court plaintiff lost in State Court; (2) the plaintiff alleges injuries caused by the State Court judgment; (3) the plaintiff invited District Court to review the objection of the State Court judgment; and (4) the State Court judgment was rendered before the District Court proceedings were commenced. *See, Yapi v. Kondratyeva*, 340 Fed. App'x 683 (2d Cir. 2009).

In this case, the *Rooker-Feldman* doctrine is clearly applicable. Plaintiff lost in the state Family Court proceeding, which rendered a finding of neglect against him and the removal of his children from his custody. By initiating this action in District Court, plaintiff seeks redress from his alleged injuries arising from the Family Court proceedings.

Contrary to the allegations of plaintiff, plaintiff's claims are "inextricably intertwined" with the Family Court proceeding. Accordingly, the *Rooker-Feldman* doctrine mandates dismissal of the action for lack of subject matter jurisdiction.

### **CONCLUSION**

For the reasons set forth above and in the Memorandum of Law in support of the motion, the Amended Complaint against Ms. Patrizio should be dismissed in its entirety.

Dated: New York, New York  
November 12, 2012

  
\_\_\_\_\_  
GREGG D. WEINSTOCK