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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

GEORGE HENDRICKS,

Plaintiff,

v.

JOHN MCNEISH,

Defendant.

Case No. C04-5354FDB

**ORDER DISMISSING FRIVOLOUS
COMPLAINT PURSUANT TO 28
U.S.C. § 1915**

Plaintiff, a state prisoner, alleges that Defendant, his trial attorney discriminated against him and violated his constitutional rights by not providing adequate representation. Plaintiff was advised of certain deficiencies with his § 1983 complaint against Defendant, a private party, who did not act under color of state law, and Plaintiff filed an amended complaint. Because the amended complaint does not present a § 1983 claim because Plaintiff's trial attorney did not act under color of state law, the Magistrate Judge recommends the Complaint be dismissed as frivolous.

Plaintiff filed objections to the Report and Recommendation arguing the liability of municipal agents and contending that Defendant's private duties conflicted with his public duties to his client, that Defendant is not immune where acts of the state could be construed as acts of Defendant and where Defendant performed administrative or investigative acts.

1 Plaintiff's contentions are incorrect. The Ninth Circuit addressed the issue of whether a
2 public defender was a state actor, and the Court explained:

3 The issue before us, however, is whether in providing inadequate representation to
4 this defendant, Rigsby was acting on behalf of the Clark County government, so as to
5 become a state actor within the meaning of § 1983. He was, no doubt, paid by
6 government funds and hired by a government agency. Nevertheless, his function was
7 to represent his client, not the interests of the state or county.

8 *Miranda v. Clark County, Nevada*, 319 F.3d 465, 468 (9th Cir. 2003). Plaintiff's contentions are
9 incorrect, and the Report and Recommendation will be adopted. NOW, THEREFORE,

10 IT IS ORDERED:

- 11 1. The Court adopts the Report and Recommendation;
- 12 2. Plaintiff's Complaint is DISMISSED as frivolous;
- 13 3. The clerk is directed to terminate this action pursuant to **28 U.S.C. § 1915(e)** and to
14 count this as a dismissal under **28 U.S.C. § 1915(g)**; and
- 15 4. The Clerk is directed to send copies of this Order to Plaintiff and to the Hon. J. Kelley
16 Arnold.

17 DATED this 4th day of October, 2004.

18 *S/ Franklin D. Burgess*
19 FRANKLIN D. BURGESS
20 UNITED STATES DISTRICT JUDGE
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