

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Mar 04, 2021

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JACOB J. MUNOZ,

Plaintiff,

v.

JORDAN BECK,

Defendant.

NO: 4:20-CV-5192-TOR

ORDER OF DISMISSAL

1915(g)

BEFORE THE COURT is Plaintiff's First Amended Complaint challenging the legal representation that he received in September 2016. ECF No. 11. Plaintiff, a prisoner at the Benton County Jail, is proceeding *pro se* and *in forma pauperis*. Defendant has not been served. Liberally construing the First Amended Complaint in the light most favorable to Plaintiff, the Court finds that he has failed to cure the deficiencies set forth in the Order to Amend or Voluntarily Dismiss Complaint. ECF No. 10.

1 Plaintiff accuses his court appointed counsel of inducing him to incriminate
2 himself and subjecting Plaintiff to double jeopardy in violation of the Fifth
3 Amendment. He claims that his attorney provided ineffective assistance of counsel
4 by failing to file documents Plaintiff wanted filed and failed to protect Plaintiff's
5 right to a speedy trial. Plaintiff brings this action only against Jordan Beck, his court
6 appointed counsel.

7 An attorney representing a criminal defendant does not act under color of state
8 law. *See Polk County v. Dodson*, 454 U.S. 312, 325 (1981), *holding limited on other*
9 *grounds by West v. Atkins*, 487 U.S. 42 (1988); *Miranda v. Clark County*, 319 F.3d
10 465,468 (9th Cir. 2003) (*en banc*) (even assuming a public defender who subpoenaed
11 no witnesses and mounted no defense provided deficient representation, he was
12 acting in the traditional lawyer role and would not be considered a state actor).
13 Consequently, Plaintiff has failed to state a claim upon which relief may be granted
14 under 42 U.S.C. § 1983. *See Leer v. Murphy*, 844 F.2d 628, 632-33 (9th Cir. 1988).

15 **ACCORDINGLY, IT IS ORDERED:**

16 1. The claims asserted in Plaintiff's First Amended Complaint, ECF No. 11, are

17 **DISMISSED with prejudice.**

18 2. This dismissal will count as a "strike" under 28 U.S.C. § 1915(g).

19 3. Plaintiff's *in forma pauperis* status is hereby **REVOKED**.

1 4. The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal of this
2 Order would not be taken in good faith and would lack any arguable basis in
3 law or fact.

4 5. The Clerk of Court is further directed to forward a copy of this Order to the
5 Office of the Attorney General of Washington, Criminal Justice Division.

6 **IT IS SO ORDERED.** The Clerk of Court is directed to enter this Order and
7 Judgment accordingly, forward copies to Plaintiff at his last known address, and
8 **CLOSE** the file.

9 **DATED** March 4, 2021.



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Thomas O. Rice
THOMAS O. RICE
United States District Judge