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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

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Donald Montgomery,

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No. CV 10-2621-PHX-RCB (ECV)

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Plaintiff,

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**ORDER**

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vs.

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Charles Krull, et al.,

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Defendants.

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On December 6, 2010, Plaintiff Donald Montgomery, who is confined in the Arizona State Prison Complex-Tucson in Tucson, Arizona, filed a *pro se* civil rights Complaint pursuant to 42 U.S.C. § 1983 and an Application to Proceed *In Forma Pauperis*. In a December 14, 2010 Order, the Court denied the deficient Application to Proceed and gave Plaintiff 30 days to either pay the filing fee or file a complete Application to Proceed *In Forma Pauperis*.

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On January 5, 2011, Plaintiff filed a second Application to Proceed *In Forma Pauperis*. In a January 14, 2011 Order, the Court granted the second Application to Proceed and dismissed the action. In his Complaint, Plaintiff had raised claims against two members of the Maricopa County Public Defender's Office. The Court dismissed those claims because a public defender representing a criminal defendant does not act under color of state law, which is a prerequisite for a § 1983 claim. Plaintiff had also raised claims against two members of the Maricopa County Attorney's Office. The Court dismissed those claims

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1 because the prosecutors were protected by absolute immunity. Because the defects in  
2 Plaintiff's Complaint could not be remedied, the Court dismissed the Complaint with  
3 prejudice and did not give Plaintiff an opportunity to amend his Complaint. The Clerk of  
4 Court entered Judgment on January 14, 2011.

5 On January 28, 2011, Plaintiff filed a "Motion to Continue to File an Objection to  
6 Dismissal" (Doc. 10). Plaintiff seeks additional time to "clarify [the] foundation of his  
7 claims." Additional time is unnecessary because, as the Court has already determined, the  
8 defects in Plaintiff's Complaint cannot be remedied. Thus, the Court will deny the Motion.

9 **IT IS ORDERED:**

10 (1) Plaintiff's "Motion to Continue to File an Objection to Dismissal" (Doc. 10)  
11 is **denied**.

12 (2) This case must remain closed.

13 (3) The docket shall reflect that the Court certifies, pursuant to 28 U.S.C.  
14 § 1915(a)(3) and Federal Rules of Appellate Procedure 24(a)(3)(A), that any appeal of this  
15 decision would not be taken in good faith.

16 DATED this 4th day of February, 2011.

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21 Robert C. Broomfield  
22 Senior United States District Judge  
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