

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION**

NOEL GENE LOOSEY

PLAINTIFF

3:10CV00069BSM HLJ

KATHERINE PRESCOTT, et al.

DEFENDANTS

ORDER

Plaintiff Noel Loosey, an inmate at the Izard County Jail, has been granted leave to proceed *in forma pauperis* this 42 U.S.C. § 1983 case.

Pursuant to 28 U.S.C. §§ 1915A(a) and 1915A(b)(1),(2), a complaint seeking relief against an officer or employee of a governmental entity must be screened, and must be dismissed if it is legally frivolous or malicious, or if it fails to state a claim or seek monetary relief from a defendant immune from such relief. The test for determining if an action is frivolous is whether the plaintiff can make a rational argument on the facts or law in support of his claim. A complaint should be dismissed for failure to state a claim upon which relief may be granted only if it appears that no set of facts support the claims entitling the plaintiff to relief. *See Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984).

The complaint herein fails to state a claim and must be dismissed because plaintiff fails to show that any of the defendants were acting under the color of state law. *See Griffin-El v. MCI Telecommunications Corp., et al.*, 835 F.Supp. 1114, 1118 (E.D.Mo. 1993) (to state a claim under 42 U.S.C. § 1983, one must allege that he was deprived of a Constitutional right by someone acting under color of state law). Plaintiff has sued

Katherine Prescott, his public defender, and Beverly C. Claunch, his public defender's supervisor. It is well established that a public defender does not act under color of state law when performing a lawyer's traditional functions as counsel to a defendant in a criminal proceeding. *Polk County v. Dodson*, 102 S.Ct. 445, 453 (1981).

Accordingly, pursuant to 28 U.S.C. §1915A(b)(1), the complaint herein is DISMISSED for failure to state a claim. This dismissal is considered a "strike" within the meaning of the Prison Litigation Reform Act (PLRA), 42 U.S.C. § 1997e. It is certified that an *in forma pauperis* appeal taken from this order and the accompanying judgment will be considered frivolous and not in good faith.

IT IS SO ORDERED this 15th day of April, 2010.


UNITED STATES DISTRICT JUDGE