

1 of the complaint, if the complaint “is frivolous, malicious, or fails to state a claim upon which
2 relief may be granted,” or “seeks monetary relief from a defendant who is immune from such
3 relief.” *Id.* § 1915A(b).

4 A pro se plaintiff, like other litigants, must satisfy the pleading requirements of Rule 8(a)
5 of the Federal Rules of Civil Procedure. Rule 8(a)(2) “requires a complaint to include a short and
6 plain statement of the claim showing that the pleader is entitled to relief, in order to give the
7 defendant fair notice of what the claim is and the grounds upon which it rests.” *Bell Atl. Corp. v.*
8 *Twombly*, 550 U.S. 544, 554, 562-563 (2007) (citing *Conley v. Gibson*, 355 U.S. 41 (1957)).

9 While the complaint must comply with the “short and plain statement” requirements of Rule 8,
10 its allegations must also include the specificity required by *Twombly* and *Ashcroft v. Iqbal*, 556
11 U.S. 662, 679 (2009).

12 To avoid dismissal for failure to state a claim a complaint must contain more than “naked
13 assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause of
14 action.” *Twombly*, 550 U.S. at 555-557. In other words, “[t]hreadbare recitals of the elements of
15 a cause of action, supported by mere conclusory statements do not suffice.” *Iqbal*, 556 U.S. at
16 678.

17 Furthermore, a claim upon which the court can grant relief must have facial plausibility.
18 *Twombly*, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads factual
19 content that allows the court to draw the reasonable inference that the defendant is liable for the
20 misconduct alleged.” *Iqbal*, 556 U.S. at 678. When considering whether a complaint states a
21 claim upon which relief can be granted, the court must accept the allegations as true, *Erickson v.*
22 *Pardus*, 551 U.S. 89 (2007), and construe the complaint in the light most favorable to the
23 plaintiff, *see Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974).

24 **III. Screening Order**

25 The court has reviewed plaintiff’s complaint (ECF No. 1) pursuant to § 1915A and finds it
26 must be dismissed without leave to amend. Plaintiff claims that her court-appointed attorney in
27 state court is pushing for a competency hearing over plaintiff’s objections. She refers to her
28 attorney as a “surrogate prosecutor” and alleges that he is stripping her of a right to a jury in her

1 criminal trial. ECF No. 1 at 4. She seeks damages and an order barring him from further
2 representing her. This court cannot provide plaintiff with the relief she seeks and this action will
3 therefore be dismissed.

4 First, plaintiff's court-appointed attorney cannot be sued under § 1983. To state a claim
5 under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right secured by
6 the Constitution or laws of the United States was violated, and (2) that the alleged violation was
7 committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S. 42, 48
8 (1988). "[A] public defender does not act under color of state law when performing a lawyer's
9 traditional functions as counsel to a defendant in a criminal proceeding." *See Polk County v.*
10 *Dodson*, 454 U.S. 312, 325 (1981). Because plaintiff's claims are based on defendant's allegedly
11 poor representation of plaintiff in a criminal case, defendant was not acting under color of state
12 law, and plaintiff cannot bring a claim for damages against him pursuant to § 1983. Furthermore,
13 any potential claim for legal malpractice does not come within the jurisdiction of the federal
14 courts. *Franklin v. Oregon*, 662 F.2d 1337, 1344 (9th Cir. 1981).

15 Second, this court may not interfere with the state court's criminal proceedings or
16 otherwise provide plaintiff with the injunctive relief she seeks. As a matter of comity, federal
17 courts may not enjoin pending state criminal proceedings where there is an adequate opportunity
18 to raise the federal question at issue, except under extraordinary circumstances. *Younger v.*
19 *Harris*, 401 U.S. 37, 49, 53 (1971); *H.C. ex rel. Gordon v. Koppel*, 203 F.3d 610, 613 (9th Cir.
20 2000). Although plaintiff claims that the trial judge is "prejudiced" (ECF No. 1 at 5), she has not
21 shown that the state court does not afford her "an opportunity to raise [her] constitutional claims"
22 or that exceptional circumstances warrant this court's interference with the pending state
23 prosecution. *Id.* at 49.

24 For these reasons, plaintiff's complaint must be dismissed without leave to amend. *See*
25 *Gardner v. Martino*, 563 F.3d 981, 990 (9th Cir. 2009); *Silva v. Di Vittorio*, 658 F.3d 1090, 1105
26 (9th Cir. 2011) ("Dismissal of a pro se complaint without leave to amend is proper only if it is
27 absolutely clear that the deficiencies of the complaint could not be cured by amendment."
28 (internal quotation marks omitted)); *Doe v. United States*, 58 F.3d 494, 497 (9th Cir. 1995) ("[A]

1 district court should grant leave to amend even if no request to amend the pleading was made,
2 unless it determines that the pleading could not be cured by the allegation of other facts.”).

3 Accordingly, IT IS HEREBY ORDERED that:

- 4 1. Plaintiff’s request to proceed in forma pauperis (ECF Nos. 5, 6, 8, 10) is granted.
- 5 2. Plaintiff shall pay the statutory filing fee of \$350. All payments shall be collected
6 in accordance with the notice to the Butte County Sheriff filed concurrently
7 herewith.
- 8 3. This action is dismissed pursuant to 28 U.S.C. § 1915A.

9 DATED: September 7, 2017.

10 
11 EDMUND F. BRENNAN
12 UNITED STATES MAGISTRATE JUDGE
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28