

1 court-approved prisoner’s IFP application, instructions for completing it, and a return
2 envelope.

3 When more than thirty days had passed since the deficiency notice was sent to
4 plaintiff, the Court, by order filed November 13, 2009, dismissed the action without
5 prejudice. Judgment was entered that same date.

6 Plaintiff appealed. In a memorandum filed November 21, 2011, the Ninth Circuit
7 found plaintiff had properly filed a copy of his prisoner trust account statement on September
8 28, 2009 and had properly filed the remainder of his IFP application on October 8, 2009.
9 Accordingly, the Ninth Circuit vacated the judgment and remanded for further proceedings.
10 The mandate from the Ninth Circuit issued on December 20, 2011.

11 For the reasons discussed below, the Court finds plaintiff’s claims remain subject to
12 dismissal.

13 DISCUSSION

14 A. Standard of Review

15 Federal courts must engage in a preliminary screening of cases in which prisoners
16 seek redress from a governmental entity or officer or employee of a governmental entity. 28
17 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and dismiss
18 any claims that are frivolous, malicious, fail to state a claim upon which relief may be
19 granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at
20 1915A(b)(1),(2). Pro se pleadings must be liberally construed. Balistreri v. Pacifica Police
21 Dep’t., 901 F.2d 696, 699 (9th Cir. 1990).

22 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential
23 elements: (1) that a right secured by the Constitution or laws of the United States was
24 violated, and (2) that the alleged deprivation was committed by a person acting under the
25 color of state law. West v. Atkins, 487 U.S. 42, 48 (1988).

26 B. Legal Claims

27 The sole defendant in this action is an attorney, Keith Sugar (“Sugar”), who was
28 appointed to represent plaintiff in state habeas corpus proceedings. Plaintiff alleges that

1 Sugar delayed in obtaining trial transcripts, failed to file a supplemental state habeas petition,
2 and failed to provide plaintiff with copies of certain legal documents. As relief, plaintiff
3 seeks an order directing Sugar to return legal documents, provide copies of investigative
4 reports, and cease all work on plaintiff's behalf.

5 For purposes of § 1983, public defenders, as well as private lawyers appointed to
6 serve as counsel, do "not act under color of state law," because their loyalty is not to the
7 appointing authority but to their clients. Polk County v. Dodson, 454 U.S. 312, 318-19
8 (1981). Sugar thus was not acting under color of state law, and, consequently, plaintiff has
9 failed to state a claim against him. Because nothing plaintiff could allege would change this
10 fact, the claims will be dismissed without leave to amend.


11 **CONCLUSION**

12 For the foregoing reasons, the Court orders as follows:

- 13 1. Plaintiff's claims are hereby DISMISSED with prejudice.
- 14 2. The Clerk shall enter judgment for defendant and close the file.
- 15 3. The Clerk shall forward a copy of this order to the Ninth Circuit Court of Appeals.

16
17 IT IS SO ORDERED.

18 DATED: January 10, 2012

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20 MAXINE M. CHESNEY
United States District Judge