

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION**

JOSH ROBINSON,	)	
	)	
Plaintiff,	)	
vs.	)	Case No. 1:13-cv-1059-TWP-MJD
	)	
MELISSA WINKLER-YORK,	)	
	)	
Defendant.	)	

**Entry and Order Dismissing Action**

**A.**

This matter is before the Court on Plaintiff Josh Robinson's Complaint for damages and request to proceed *in forma pauperis*. The assessment of even a partial initial filing fee is not feasible at this time. Therefore, the request to proceed *in forma pauperis* [Dkt. 2] is **GRANTED**.

**B.**

Plaintiff Robinson is confined at an Indiana state prison. In the present action, brought pursuant to 42 U.S.C. § 1983, Robinson has sued the attorney he hired to represent him in an action for post-conviction relief challenging his conviction in an Indiana state court. He seeks both compensatory and punitive damages.

Robinson's lawsuit is brought pursuant to 42 U.S.C. § 1983. To state a claim under § 1983, a plaintiff must allege the violation of a right secured by the Constitution or laws of the United States and must show that the alleged deprivation was committed by a person acting under color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

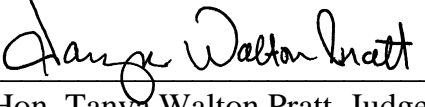
The necessary element of state action is absent as to Robinson's claim. Under authority established for more than a generation, private counsel does not act under color of state law when representing a client in a criminal proceeding, whether the defendant was privately retained or paid by public funds. *See Polk County v. Dodson*, 454 U.S. 312, 324 (1981) (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 case). In this Circuit an allegation of state involvement is necessary to state a claim under § 1985(3) if "the federal right relied upon is one requiring an element of state action." *Cohen v. Illinois Institute of Technology*, 581 F.2d 658, 663-64 (7th Cir. 1978), cert. denied, 439 U.S. 1135, 99 S.Ct. 1058, 59 L.Ed.2d 97 (1979). As such, the complaint must be **DISMISSED** for failure to state a claim.

**II.**

Judgment consistent with this Entry shall now issue.

IT IS SO ORDERED.

Date: 08/12/2013

  
\_\_\_\_\_  
Hon. Tanya Walton Pratt, Judge  
United States District Court  
Southern District of Indiana

Distribution:

JOSH ROBINSON  
174914  
MIAMI CORRECTIONAL FACILITY  
Inmate Mail/Parcels  
3038 West 850 South  
BUNKER HILL, IN 46914