

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

MARIO RIVERA, JR.,

Plaintiff,

v.

CASE NO. 13-3128-SAC

TIMOTHY A. FRIEDEN,

Defendants.

MEMORANDUM AND ORDER

This matter is a civil rights action filed pursuant to 42 U.S.C. § 1983 by a prisoner in state custody. Plaintiff submitted the initial partial filing fee as directed, and the court grants leave to proceed in forma pauperis.¹

Plaintiff claims the sole defendant, his criminal defense attorney, failed to provide him with constitutionally adequate representation. By its earlier order, the court advised plaintiff this claim is subject to dismissal because a defense attorney does not act under color of state law within the meaning of § 1983. See *Briscoe v. LaHue*, 460 U.S. 325, 329 n. 6 (1983) and *Barnard v. Young*, 720 F.2d 1188, 1189 (10th Cir. 1983). The court has examined the plaintiff's response to that order but finds no basis to conclude that this matter should not be dismissed. A criminal defense attorney is not a proper defendant to a civil rights action under § 1983. See *Polk County v. Dodson*, 454 U.S. 312, 324-25 (1981) (holding that a public defender does not act under color of state law when representing a defendant).

¹ Plaintiff will be required to pay the balance of the \$350.00 filing fee in installments calculated pursuant to 28 U.S.C. § 1915(b) (2).

IT IS, THEREFORE, BY THE COURT ORDERED plaintiff's motion for leave to proceed in forma pauperis (Doc. 2) is granted. Collection action shall continue pursuant to 28 U.S.C. § 1915(b)(2) until plaintiff satisfies the \$350.00 filing fee.

IT IS FURTHER ORDERED this matter is dismissed for failure to state a claim upon which relief can be granted.

Copies of this order shall be transmitted to the plaintiff and to the finance office of the facility where he is incarcerated.

IT IS SO ORDERED.

DATED: This 26th day of November, 2013, at Topeka, Kansas.

S/ Sam A. Crow
SAM A. CROW
U.S. Senior District Judge