

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

ERNEST SYLVESTER BUSH, JR.,  
Plaintiff,

v.

THOMAS MOONEY,  
Defendant.

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CIVIL ACTION NO. PJM-09-2941

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**MEMORANDUM OPINION**

On November 5, 2009, the Court received Plaintiff's civil rights complaint filed pursuant to 42 U.S.C. § 1983. Plaintiff complains that his privately retained defense attorney failed to adequately represent him during his state court criminal proceedings. He seeks compensatory damages. Paper No. 1. Plaintiff's Motion for Leave to Proceed in Forma Pauperis shall be granted. However, upon review of the instant action, the Court concludes that it shall be dismissed. *See Neitzke v. Williams*, 490 U.S. 319, 328 (1989); *see also Denton v. Hernandez*, 504 U.S. 25, 27 (1992); *Cochran v. Morris*, 73 F.3d 1310, 1316 (4th Cir. 1996); *Nasim v. Warden*, 64 F.3d 951, 953 (4th Cir. 1995).

Essential to sustaining an action under § 1983 are the presence of two elements. Specifically, the Plaintiff must demonstrate that: (1) he suffered a deprivation of "rights, privileges or immunities secured by the Constitution and laws" of the United States; and (2) the act or omission causing the deprivation was committed by a person acting under color of law. *West v. Atkins*, 487 U.S. 42, 48 (1988). Because there is no allegation that Defendant Mooney acted under color of law the claim against him is subject to dismissal. *See Polk County v. Dodson*, 454 U.S. 312 (1981); *Hall v. Quillen*, 631 F.2d 1154 (4th Cir. 1980) (holding that there is no state action in the conduct of public defenders and attorneys appointed by the State of Maryland.) At most, the actions about which Plaintiff complains, i.e. that Mr. Mooney failed to properly represent him in his criminal proceedings, sounds in tort. Therefore, while Plaintiff may have a state court forum within which to maintain his claim against Mooney, inasmuch as the instant complaint does not present a federal question or a civil rights deprivation it is not subject to federal court review.

November 18, 2009

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/s/  
PETER J. MESSITTE  
UNITED STATES DISTRICT JUDGE