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6 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

7 WILLIAM ERIC ARNETTE,

8 Plaintiff,

9 v.

10 STATE OF WASHINGTON, KING COUNTY,

11 Defendants.

Case No. C17-451 JLR-BAT

**ORDER DECLINING SERVICE  
AND GRANTING LEAVE TO  
AMEND**

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13 William Eric Arnette, a pro-se prisoner incarcerated at the Washington Corrections  
14 Center (WCC), submitted a 42 U.S.C. § 1983 complaint against the State of Washington and  
15 King County. The Court **DECLINES** to serve the complaint because, as discussed in more  
16 detail below, the complaint contains numerous deficiencies. However, the Court **GRANTS** Mr.  
17 Arnette leave to file an amended complaint by **May 26, 2017**.

18 **BACKGROUND**

19 Mr. Arnette alleges that his assigned counsel, who was related to the judge in his criminal  
20 case, provided ineffective assistance of counsel and violated his right to conflict free counsel by  
21 failing to properly advise him as to his plea. Mr. Arnette also claims that his right to a speedy  
22 trial was violated and that his case should have gone to trial in January 2017. Dkt. 4-1. Mr.  
23 Arnette asks the Court to help him file a lawsuit. *Id.*

ORDER DECLINING SERVICE AND GRANTING LEAVE TO  
AMEND - 1

1 **DISCUSSION**

2 An inmate such as plaintiff may bring an action for violation of his constitutional rights  
3 under 42 U.S.C. § 1983 if he can show that (1) a state actor (2) violated his constitutional rights.  
4 *Gibson v. United States*, 781 F.2d 1334, 1338 (9th Cir. 1986). However, based on the facts  
5 alleged in his complaint, Mr. Arnette fails to state a viable claim for relief under § 1983.

6 **A. Criminal Plea/Conviction**

7 Mr. Arnette seeks relief in this § 1983 action for conduct that led to his conviction.  
8 However, he has not alleged that the conviction has been invalidated.

9 When a person confined by government is challenging the very fact or duration of his  
10 physical imprisonment, and the relief he seeks will determine that he is or was entitled to  
11 immediate release or a speedier release from that imprisonment, his sole federal remedy is a writ  
12 of habeas corpus. *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973). To recover damages for an  
13 alleged unconstitutional conviction or imprisonment, or for other harm caused by actions whose  
14 unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that  
15 the conviction or sentence has been reversed on direct appeal, expunged by executive order,  
16 declared invalid by a state tribunal authorized to make such determination, or called into  
17 question by a federal court's issuance of a writ of habeas corpus, 28 U.S.C. § 2254. *Heck v.*  
18 *Humphrey*, 512 U.S. 477, 486-87 (1994).

19 In addition, prisoners in state custody who wish to challenge their confinement in federal  
20 court by a petition for writ of habeas corpus are first required to exhaust state judicial remedies,  
21 either on direct appeal or through collateral proceedings, by presenting the highest state court  
22 available with a fair opportunity to rule on the merits of each and every issue they seek to raise in  
23 federal court. *See* 28 U.S.C. § 2254(b)(c); *Granberry v. Greer*, 481 U.S. 129, 134 (1987); *Rose*

1 *v. Lundy*, 455 U.S. 509 (1982); *McNeeley v. Arave*, 842 F.2d 230, 231 (9<sup>th</sup> Cir. 1988).

2 State remedies must be exhausted except in unusual circumstances. *Granberry, supra*, at  
3 134. If state remedies have not been exhausted, the district court must dismiss the petition.  
4 *Rose, supra*, at 510; *Guizar v. Estelle*, 843 F.2d 371, 372 (9<sup>th</sup> Cir. 1988). As a dismissal solely  
5 for failure to exhaust is not a dismissal on the merits, *Howard v. Lewis*, 905 F.2d 1318, 1322-23  
6 (9<sup>th</sup> Cir. 1990), it is not a bar to returning to federal court after state remedies have been  
7 exhausted.

8 Thus, claims relating to Mr. Arnette’s criminal conviction are not yet cognizable § 1983  
9 claims and he must show cause why his claims should not be dismissed.

10 **B. State of Washington and King County as Defendants**

11 In addition, plaintiff has failed to name proper parties to his complaint. Neither a state  
12 nor its officials acting in their official capacities are “persons” within the meaning of § 1983.  
13 *Will v. Michigan Department of State Police*, 491 U.S. 58, 71 (1989). States and state agencies  
14 are immune from suit in federal court under the Eleventh Amendment unless a state expressly  
15 waives its constitutional immunity. *Alden v. Maine*, 527 U.S. 706 (1999). The State of  
16 Washington has not waived its Eleventh Amendment immunity. *Whiteside v. State of*  
17 *Washington*, 534 F.Supp. 774 (E.D. Wash. 1982). Therefore, the State of Washington cannot be  
18 named as a defendant.

19 Although King County may be sued under § 1983, to hold such a municipality liable, a  
20 plaintiff must show the municipality itself violated his rights or that it directed its employee(s) to  
21 do so. *Bd. of County Comm’rs of Bryan County v. Brown*, 520 U.S. 397, 404 (1994). Under this  
22 theory of liability, the focus is on the “policy statement, ordinance, regulation, or decision  
23 officially adopted and promulgated by [the municipality’s] Officers.” *City of St. Louis v.*

1 *Praprotnik*, 485 U.S. 112, 121 (1988) (quoting *Monell*, 436 U.S. at 690). A local governmental  
2 unit may not be held responsible for the acts of its employees under a respondeat superior theory  
3 of liability. See *Monell v. Dept. of Soc. Servs.*, 436 U.S. 658, 694 (1978). Thus, to sue a local  
4 governmental entity, a plaintiff must allege facts showing that any constitutional deprivation he  
5 suffered was the result of a custom or policy of the local governmental unit. *Id.* There are no  
6 such allegations contained in Mr. Arnette's complaint.

7 Finally, Mr. Arnette is advised that a state public defender performing traditional lawyer  
8 functions is not a state actor for purposes of Section 1983. See, e.g., *French v. Carlson*, 368  
9 Fed.Appx. 839 (9<sup>th</sup> Cir. 2010).

#### 10 CONCLUSION

11 The Court **DECLINES** to serve the complaint which as discussed above is deficient.  
12 The Court realizes Mr. Arnette is proceeding pro se. Thus rather than simply dismissing the  
13 action, the Court grants him permission to file an amended complaint to cure the above-  
14 mentioned deficiencies by **May 24, 2017**. The amended complaint must carry the same case  
15 number as this one. **If no amended complaint is timely filed, the Court will recommend that**  
16 **this matter be dismissed under 28 U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim on**  
17 **which relief can be granted.**

18 DATED this 28th day of April, 2017.

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BRIAN A. TSUCHIDA  
United States Magistrate Judge