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3 UNITED STATES DISTRICT COURT
4 WESTERN DISTRICT OF WASHINGTON
5 AT TACOMA

6 LANCE L. BADY,

7 Plaintiff,

No. C12-5930 RJB/KLS

8 v.

ORDER TO AMEND OR SHOW CAUSE

9 JUDGE BRIAN TOLLEFSON,

Defendant.

10 This matter has been referred to Magistrate Judge Karen L. Strombom pursuant to 28
11 U.S.C. § 636(b)(1), Local Rules MJR 3 and 4. Plaintiff has been granted leave to proceed *in*
12 *forma pauperis*. Presently before the Court for review is Plaintiff's proposed civil rights
13 complaint. ECF No. 4. The Court will not direct service of Plaintiff's complaint at this time
14 because it is deficient, as is explained in further detail below. Plaintiff will be given an
15 opportunity to amend his complaint.
16

17 **DISCUSSION**

18 Under the Prison Litigation Reform Act of 1995, the Court is required to screen
19 complaints brought by prisoners seeking relief against a governmental entity or officer or
20 employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint
21 or portion thereof if the prisoner has raised claims that are legally "frivolous or malicious," that
22 fail to state a claim upon which relief may be granted, or that seek monetary relief from a
23 defendant who is immune from such relief. 28 U.S.C. §§ 1915A(b)(1), (2) and 1915(e)(2); See
24 *Barren v. Harrington*, 152 F.3d 1193 (9th Cir. 1998).
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ORDER TO AMEND OR SHOW CAUSE- 1

1 A complaint is legally frivolous when it lacks an arguable basis in law or fact. *Neitzke v.*
2 *Williams*, 490 U.S. 319, 325 (1989); *Franklin v. Murphy*, 745 F.2d 1221, 1227-28 (9th Cir.
3 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
4 indisputably meritless legal theory or where the factual contentions are clearly baseless. *Neitzke*,
5 490 U.S. at 327. A complaint or portion thereof, will be dismissed for failure to state a claim
6 upon which relief may be granted if it appears the “[f]actual allegations . . . [fail to] raise a right
7 to relief above the speculative level, on the assumption that all the allegations in the complaint
8 are true.” See *Bell Atlantic, Corp. v. Twombly*, 127 S.Ct. 1955, 1965 (2007) (citations omitted).
9 In other words, failure to present enough facts to state a claim for relief that is plausible on the
10 face of the complaint will subject that complaint to dismissal. *Id.* at 1974.

12 Although complaints are to be liberally construed in a plaintiff’s favor, conclusory
13 allegations of the law, unsupported conclusions, and unwarranted inferences need not be
14 accepted as true. *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969). Neither can the court supply
15 essential facts that an inmate has failed to plead. *Pena*, 976 F.2d at 471 (quoting *Ivey v. Board of*
16 *Regents of Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982)). Unless it is absolutely clear that
17 amendment would be futile, however, a pro se litigant must be given the opportunity to amend
18 his complaint to correct any deficiencies. *Noll v. Carlson*, 809 F.2d 1446, 1448 (9th Cir. 1987).

20 Under Rule 8(a)(2) of the Federal Rules of Civil Procedure, “the complaint [must
21 provide] ‘the defendant fair notice of what the plaintiff’s claim is and the ground upon which it
22 rests.’” *Kimes v. Stone* 84 F.3d 1121, 1129 (9th Cir. 1996) (citations omitted). In addition, in
23 order to obtain relief against a defendant under 42 U.S.C. § 1983, a plaintiff must prove that the
24 particular defendant has caused or personally participated in causing the deprivation of a
25 particular protected constitutional right. *Arnold v. IBM*, 637 F.2d 1350, 1355 (9th Cir. 1981).

1 To be liable for “causing” the deprivation of a constitutional right, the particular defendant must
2 commit an affirmative act, or omit to perform an act, that he or she is legally required to do, and
3 which causes the plaintiff’s deprivation. *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978).

4 Plaintiff purports to sue Judge Brian Tollefson for failing to transfer his criminal case
5 from Pierce County Superior Court to an “Ecclesiastical Court.” ECF No. 4.

6 Plaintiff brings this action under 42 U.S.C. § 1983. To state a claim under 42 U.S.C. §
7 1983, a complaint must allege: (i) the conduct complained of was committed by a person acting
8 under color of state law and (ii) the conduct deprived a person of a right, privilege, or immunity
9 secured by the Constitution or laws of the United States. *Parratt v. Taylor*, 451 U.S. 527, 535,
10 101 S.Ct. 1908, 687 L.Ed.2d 420 (1981), *overruled on other grounds, Daniels v. Williams*, 474
11 U.S. 327 (1986). Section 1983 is the appropriate avenue to remedy an alleged wrong only if
12 both of these elements are present. *Haygood v. Younger*, 769 F.2d 1350, 1354 (9th Cir. 1985).

13 Plaintiff’s complaint fails to state a cognizable claim under § 1983. First, he has not
14 named a proper defendant. Judges are absolutely immune from liability for damages in civil
15 rights suits for judicial acts performed within their subject matter jurisdiction. *Stump v.*
16 *Sparkman*, 435 U.S. 349, 356 (1978); *Ashelman v. Pope*, 793 F.2d 1072, 1075 (9th Cir. 1986)
17 (en banc); *Schucker v. Rockwood*, 846 F.2d 1202, 1204 (9th Cir. 1988) (per curiam).

18 Even if Plaintiff were granted leave to amend his complaint to name a proper defendant,
19 the lawsuit here could not proceed because Plaintiff is attempting to challenge the propriety of
20 ongoing proceedings in Pierce County Superior Court. Generally, federal courts will not
21 intervene in a pending criminal proceeding absent extraordinary circumstances where the danger
22 of irreparable harm is both great and immediate. See *Younger v. Harris*, 401 U.S. 37, 45 46
23 (1971); see also *Fort Belknap Indian Community v. Mazurek*, 43 F.3d 428, 431 (9th Cir.1994),
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1 cert. denied, 116 S.Ct. 49 (1995) (abstention appropriate if ongoing state judicial proceedings
2 implicate important state interests and offer adequate opportunity to litigate federal constitutional
3 issues); *World Famous Drinking Emporium v. City of Tempe*, 820 F.2d 1079, 1082 (9th
4 Cir.1987)(Younger abstention doctrine applies when the following three conditions exist: (1)
5 ongoing state judicial proceeding; (2) implication of an important state interest in the proceeding;
6 and (3) an adequate opportunity to raise federal questions in the proceedings).

8 Only in the most unusual circumstances is a petitioner entitled to have the federal court
9 intervene by way of injunction or habeas corpus before the jury comes in, judgment has been
10 appealed from and the case concluded in the state courts. *Drury v. Cox*, 457 F.2d 764, 764 65
11 (9th Cir.1972). See *Carden v. Montana*, 626 F.2d 82, 83 84 (9th Cir.), *cert. denied*, 449 U.S.
12 1014 (1980). Extraordinary circumstances exist where irreparable injury is both great and
13 immediate, for example where the state law is flagrantly and patently violative of express
14 constitutional prohibitions or where there is a showing of bad faith, harassment, or other unusual
15 circumstances that would call for equitable relief. *Younger*, 401 U.S. at 46, 53-54.

17 There are no extraordinary circumstances here warranting intervention by this Court in
18 any ongoing state proceeding and, therefore, Plaintiff's claims are not cognizable under 42
19 U.S.C. § 1983.

20 Due to the deficiencies described above, the Court will not serve the complaint. Plaintiff
21 may file an amended complaint curing, if possible, the above noted deficiencies, or show cause
22 explaining why this matter should not be dismissed. If Plaintiff chooses to amend his complaint,
23 he must demonstrate how the conditions complained of have resulted in a deprivation of his
24 constitutional rights. The complaint must allege in specific terms how each named defendant is
25 involved. The amended complaint must set forth all of Plaintiff's factual claims, causes of
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1 action, and claims for relief. Plaintiff shall set forth his factual allegations **in separately**
2 **numbered paragraphs** and shall allege with specificity the following:

3 (1) the names of the persons who caused or personally participated in causing the
4 alleged deprivation of his constitutional rights;

5 (2) the dates on which the conduct of each Defendant allegedly took place; and

6 (3) the specific conduct or action Plaintiff alleges is unconstitutional.
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8 The amended complaint will operate as a complete substitute to the present complaint.

9 Therefore, reference to a prior pleading or another document is unacceptable – once Plaintiff
10 files an amended complaint, the original pleading or pleadings will no longer serve any function
11 in this case.

12 Plaintiff shall present his complaint on the form provided by the Court. The amended
13 complaint must be **legibly rewritten or retyped in its entirety**, it should be an original and not a
14 copy, it may not incorporate any part of the original complaint by reference, and it must be
15 clearly labeled the “Amended Complaint” and must contain the same cause number as this case.
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17 Plaintiff should complete all sections of the court’s form. Plaintiff may attach continuation
18 pages as needed but may not attach a separate document that purports to be his amended
19 complaint. **Plaintiff is advised that he should make a short and plain statement of claims**
20 **against the defendants. He may do so by listing his complaints in separately numbered**
21 **paragraphs. He should include facts explaining how each defendant was involved in the**
22 **denial of his rights.**
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24 The Court will screen the amended complaint to determine whether it contains factual
25 allegations linking each defendant to the alleged violations of Plaintiff's rights. The Court will
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1 not authorize service of the amended complaint on any Defendant who is not specifically linked
2 to the violation of Plaintiff's rights.

3 If Plaintiff decides to file an amended civil rights complaint in this action, he is cautioned
4 that if the amended complaint is not timely filed or if he fails to adequately address the issues
5 raised herein on or before **November 30, 2012**, the Court **will recommend dismissal of this**
6 **action as frivolous pursuant to 28 U.S.C. § 1915 and the dismissal will count as a "strike"**
7 **under 28 U.S.C. § 1915(g).** Pursuant to 28 U.S.C. § 1915(g), enacted April 26, 1996, a prisoner
8 who brings three or more civil actions or appeals which are dismissed on grounds they are
9 legally frivolous, malicious, or fail to state a claim, will be precluded from bringing any other
10 civil action or appeal in forma pauperis "unless the prisoner is under imminent danger of serious
11 physical injury." 28 U.S.C. § 1915(g).
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13 **The Clerk is directed to send Plaintiff the appropriate forms for filing a 42 U.S.C.**
14 **1983 civil rights complaint and for service. The Clerk is further directed to send a copy of**
15 **this Order and a copy of the General Order to Plaintiff.**
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18 **DATED** this 2nd day of November, 2012.

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21 Karen L. Strombom
22 United States Magistrate Judge
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