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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

GARY CASTERLOW-BEY,

Plaintiff,

v.

ANDREA JARMON, DEPARTMENT OF
ASSIGNED COUNSEL,

Defendants.

Case No. C17-5647-BHS-TLF

ORDER TO SHOW CAUSE OR
AMEND THE COMPLAINT

Plaintiff Gary Casterlow-Bey, proceeding *pro se* and *in forma pauperis*, filed a proposed civil rights complaint. The Court declines to serve the complaint because Mr. Casterlow-Bey has failed to state a claim for relief under 42 U.S.C. § 1983. However, the Court will give Mr. Casterlow-Bey an opportunity to show cause why his complaint should not be dismissed or to file an amended complaint to cure, if possible, the deficiencies noted herein.

DISCUSSION

Mr. Casterlow-Bey is suing his public defender, Andrea Jarmon, and the Department of Assigned Counsel (“DAC”) for alleged discrimination, slander, libel, and assault. First, the complaint Mr. Casterlow-Bey filed is deficient because the allegations flow from Ms. Jarmon’s representation of Mr. Casterlow-Bey as his public defender within the scope of her traditional function. Second, the complaint is deficient because the DAC is not a “person” and is therefore an improper defendant to be sued under § 1983.

1 Mr. Casterlow-Bey states that he is disabled. He asserts that due to his ex-felon status,
2 Ms. Jarmon “refused to pursue medical documentation to establish before the court [his] medical
3 condition.” Dkt. 1-1, p. 2. Ms. Jarmon allegedly stated to Mr. Casterlow-Bey that a jury would
4 not believe him, and that he would never win a case in court because “a police officer’s
5 credibility always trumps a liar, ex-convict in a wheelchair.” *Id.* Furthermore, Mr. Casterlow-
6 Bey alleges that Ms. Jarmon made sexual advances on him. She allegedly wrote her phone
7 number on a piece of paper and winked at him. Dkt. 1-1, p. 3. Mr. Casterlow-Bey fears that Ms.
8 Jarmon will use her connections and associations within the Pierce County law enforcement
9 community to force him to take a plea deal because he refuses her sexual advances. *Id.*

10 Mr. Casterlow-Bey’s complaint fails to state a cognizable claim under § 1983. To state a
11 claim under 42 U.S.C. § 1983, a complaint must allege: (i) the conduct complained of was
12 committed by a person acting under color of state law and (ii) the conduct deprived a person of a
13 right, privilege, or immunity secured by the Constitution or laws of the United States. *Parratt v.*
14 *Taylor*, 451 U.S. 527, 535 (1981), *overruled on other grounds, Daniels v. Williams*, 474 U.S.
15 327 (1986). Section 1983 is the appropriate avenue to remedy an alleged wrong only if both of
16 these elements are present. *Haygood v. Younger*, 769 F.2d 1350, 1354 (9th Cir. 1985).

17 Mr. Casterlow-Bey has not met the first prong. “[A] lawyer representing a client is not,
18 by virtue of being an officer of the court, a state actor ‘under color of state law’ within the
19 meaning of § 1983.” *Polk County v. Dodson*, 454 U.S. 312, 318 (1981). A state public defender
20 performing traditional lawyer functions is not a state actor. *Polk County*, 454 U.S. at 324-25;
21 *Miranda v. Clark County*, 319 F.3d 465, 468 (9th Cir. 2002). Here, Mr. Casterlow-Bey’s
22 allegations relate to Ms. Jarmon’s traditional functions as a public defender. The acts alleged by
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1 the plaintiff flow from Ms. Jarmon’s legal representation in Mr. Casterlow-Bey’s case, and
2 therefore she is not a state actor and cannot be sued under § 1983.

3 Additionally, Mr. Casterlow-Bey also names the DAC as a defendant, but this entity is
4 not a proper defendant in this action. In order to obtain relief against a defendant under 42 U.S.C.
5 § 1983, a plaintiff must prove that the particular defendant has caused or personally participated
6 in causing the deprivation of a particular protected constitutional right. *Arnold v. IBM*, 637 F.2d
7 1350, 1355 (9th Cir. 1981); *Sherman v. Yakahi*, 549 F.2d 1287, 1290 (9th Cir. 1977). The
8 plaintiff must set forth specific facts showing a causal connection between each defendant’s
9 actions and the harm allegedly suffered by plaintiff. *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th
10 Cir. 1980). In addition, defendants in a 42 U.S.C. § 1983 action cannot be held liable based on a
11 theory of respondeat superior or vicarious liability. *Polk County v. Dodson*, 454 U.S. 312, 325
12 (1981); *Bergquist v. County of Cochise*, 806 F.2d 1364, 1369 (9th Cir. 1986). “At a minimum, a
13 § 1983 plaintiff must show that a supervisory official at least implicitly authorized, approved, or
14 knowingly acquiesced in the unconstitutional conduct.” *Bellamy v. Bradley*, 729 F.2d 416, 421
15 (6th Cir. 1984), *cert. denied*, 469 U.S. 845 (1984). Here, Mr. Casterlow-Bey names the DAC but
16 fails to clearly state the alleged wrong-doing of the DAC.

17 Furthermore, Mr. Casterlow-Bey fails to allege that he suffered any actionable harm in
18 this case. He alleges only that he is “developing a conspiracy phobia as a result of this ordeal.”
19 Dkt. 1-1, p. 3-4. He alleges no other facts or circumstances regarding any conduct that deprived
20 him of a right, privilege, or immunity.

21 Ms. Jarmon’s conduct relates to functions traditionally performed by a public defender,
22 she is therefore not liable under § 1983. The DAC is not a proper defendant and Mr. Casterlow-
23 Bey has not alleged personal participation by the DAC. Mr. Casterlow-Bey must show cause
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1 why his claims against Ms. Jarmon and the DAC should not be dismissed for failure to state a
2 claim.

3 CONCLUSION

4 Due to the deficiencies described above, the Court will not serve the complaint. Plaintiff
5 may show cause why his complaint should not be dismissed or may file an amended complaint to
6 cure, if possible, the deficiencies noted herein, **on or before September 29, 2017**. If an amended
7 complaint is filed, it must be legibly rewritten or retyped in its entirety and contain the same case
8 number. Any cause of action alleged in the original complaint that is not alleged in the amended
9 complaint is waived. *Forsyth v. Humana, Inc.*, 114 F.3d 1467, 1474 (9th Cir. 1997), *overruled in*
10 *part on other grounds, Lacey v. Maricopa Cnty.*, 693 F.3d 896 (9th Cir. 2012).

11 The Court will screen the amended complaint to determine whether it states a claim for
12 relief cognizable under 42 U.S.C. § 1983. If the amended complaint is not timely filed or fails to
13 adequately address the issues raised herein, the undersigned will recommend dismissal of this
14 action as frivolous under 28 U.S.C. § 1915, and the dismissal will count as a “strike” under 28
15 U.S.C. § 1915(g). Plaintiff should be aware that a prisoner who brings three or more civil actions
16 or appeals that are dismissed on the grounds that they are legally frivolous, malicious, or fail to
17 state a claim, will be precluded from bringing any other civil action or appeal *in forma pauperis*,
18 “unless the prisoner is under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

19 The Clerk is directed to send plaintiff the appropriate forms for filing a 42 U.S.C. § 1983
20 civil rights complaint and for service, a copy of this Order and the *Pro Se* Information Sheet.

21 Dated this 1st day of September, 2017.

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23 Theresa L. Fricke
24 United States Magistrate Judge