

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ALASKA

Jorbert Benjamin Polty v. Melisa Goldstein, et al.

Case No. 3:26-cv-000157-SLG (D. Alaska May 12, 2026) · No. 3:26-cv-000157-SLG · Decided May 12, 2026

SUMMARY

The United States District Court for the District of Alaska dismisses Jorbert Benjamin Polty’s civil rights action against his appointed defense attorney and the Public Defender Agency. The court holds that defense counsel did not act under color of state law, and that ineffective-assistance, requests for new counsel, and related state-law claims cannot proceed in this action. The dismissal is without leave to amend and counts as a strike under 28 U.S.C. § 1915(g).

CASE DETAILS

|                       |                                                                                                                                                                                                                |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | United States District Court for the District of Alaska                                                                                                                                                        |
| WRITING FOR THE COURT | Sharon L. Gleason                                                                                                                                                                                              |
| JURISDICTION          | United States District Court for the District of Alaska                                                                                                                                                        |
| DECIDED               | May 12, 2026                                                                                                                                                                                                   |
| DOCKET                | 3:26-cv-000157-SLG                                                                                                                                                                                             |
| DISPOSITION           | dismissed                                                                                                                                                                                                      |
| PROCEDURAL POSTURE    | The district court screened a self-represented prisoner's civil rights complaint under 28 U.S.C. §§ 1915(e) and 1915A and dismissed it without leave to amend.                                                 |
| STANDARD OF REVIEW    | Statutory screening under 28 U.S.C. §§ 1915(e)(2)(B) and 1915A; dismissal is required when the complaint is frivolous or malicious, fails to state a claim, or seeks monetary relief from an immune defendant. |
| PRECEDENTIAL VALUE    | unpublished                                                                                                                                                                                                    |
| PARTIES               | Jorbert Benjamin Polty v. Melisa Goldstein, Public Defender Agency                                                                                                                                             |

TOPICS

- prisoners rights
- section 1983
- federal habeas corpus
- post-conviction relief
- civil procedure

PRACTICE AREAS

- Civil rights
- Prisoner litigation
- Federal jurisdiction
- Criminal procedure
- Post-conviction relief

## QUESTIONS PRESENTED

1. Whether claims against an appointed criminal defense attorney and the Public Defender Agency are actionable under 42 U.S.C. § 1983 when based on counsel's traditional functions as criminal defense counsel.
2. Whether claims for ineffective assistance of counsel or appointment of new counsel may be pursued in a § 1983 civil rights action.
3. Whether the asserted state-law claims could proceed in federal court through supplemental or diversity jurisdiction.
4. Whether the complaint should be dismissed without leave to amend because amendment would be futile.
5. Whether the dismissal qualifies as a strike under 28 U.S.C. § 1915(g).

## HOLDINGS

1. Criminal defense attorneys, whether retained or appointed, do not act under color of state law when performing their traditional functions as defense counsel; therefore, Plaintiff's claims against Attorney Goldstein and the Public Defender Agency were not cognizable under § 1983.
2. Claims alleging ineffective assistance of counsel or seeking a new defense attorney must be raised in the state criminal case, through state post-conviction relief, or through a federal habeas petition after available state remedies have been exhausted; they cannot be brought in a civil rights action.
3. The intentional-infliction-of-emotional-distress and legal-malpractice claims could not proceed because there was no cognizable federal claim for supplemental jurisdiction and the complaint did not satisfy diversity jurisdiction.
4. The complaint was dismissed without leave to amend because amendment would be futile.
5. The dismissal for failure to state a plausible claim counts as a strike under 28 U.S.C. § 1915(g).

## KEY QUOTATIONS

*“criminal defense attorneys, whether retained or appointed, do not act under color of state law when performing their traditional functions as defense counsel.”* (Discussion)

*“This dismissal counts as a “strike” under 28 U.S.C. § 1915(g), which may limit Plaintiff’s ability to bring future civil rights cases in federal court.”* (Order ¶ 2)

## FACTUAL BACKGROUND

Jorbert Benjamin Polty, a self-represented prisoner, sued his appointed criminal defense attorney, Melisa Goldstein, and the Public Defender Agency. He alleged that Goldstein had failed to communicate with him for several weeks while representing him in ongoing state criminal proceedings. He also appeared to seek relief related to ineffective assistance of counsel, appointment of new counsel, intentional infliction of emotional distress, and legal malpractice.

## PROCEDURAL HISTORY

Plaintiff filed a civil rights action against his appointed criminal defense attorney and the Public Defender Agency, alleging that counsel failed to communicate with him during ongoing state criminal proceedings. After screening the complaint under the Prison Litigation Reform Act, the court concluded that the federal claims were not cognizable under § 1983, that the state-law claims lacked an available jurisdictional basis, and that amendment would be futile. The court dismissed the action, assessed a strike under 28 U.S.C. § 1915(g), denied pending motions as moot, and directed the Clerk to enter final judgment and close the case.

## DISPOSITION

dismissed

## CASES CITED

- Karim-Panahi v. Los Angeles Police Dep't, 839 F.2d 621, 623 (9th Cir. 1988)
- Noll v. Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987)
- Schreiber Distributing Co. v. Serv-Well Furniture Co., 806 F.2d 1393, 1401 (9th Cir. 1986)
- Miranda v. Clark County, Nevada, 319 F.3d 465 (9th Cir. 2003)
- Polk County v. Dodson, 454 U.S. 312, 325 (1981)
- Huffman v. Lindgren, 81 F.4th 1016 (9th Cir. 2023)
- Jones v. Bock, 549 U.S. 199, 204 (2007)
- Ray v. Lara, 31 F.4th 692, 701 (9th Cir. 2022)
- Andrews v. Cervantes, 493 F.3d 1047, 1056 (9th Cir. 2007)
- Andrews v. Cervantes, 493 F.3d 1047, 1053 (9th Cir. 2007)

## OPINION

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ALASKA JORBERT BENJAMIN POLTY, Plaintiff, Case No. 3:26-cv-000157-SLG v. MELISA GOLDSTEIN, et al., Defendants. ORDER OF DISMISSAL On April 10, 2026, self-represented prisoner Jorbert Benjamin Polty (“Plaintiff”) filed this case against Melisa Goldstein and the Public Defender Agency.<sup>1</sup> Plaintiff alleges that Attorney Goldstein was appointed to represent him in his ongoing state court criminal proceedings but has failed to communicate with him for several weeks.<sup>2</sup> The Court has now screened Plaintiff’s Complaint in accordance with 28 U.S.C. §§ 1915(e) and 1915A.

**SCREENING STANDARD** Under the Prison Litigation Reform Act, a federal district court must screen complaints brought by prisoners seeking relief against a governmental entity or 1 Docket 1. 2 Docket 1 at 4. officer or employee of a governmental entity.<sup>3</sup> In this screening, a district court shall dismiss a complaint at any time if the court determines that the complaint: (i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief.<sup>4</sup> Before a court may dismiss any portion of a complaint, a court must provide a self-represented plaintiff with a statement of the deficiencies in

the complaint and an opportunity to file an amended complaint, unless to do so would be futile.<sup>5</sup> Futility exists when “the allegation of other facts consistent with the challenged pleading could not possibly cure the deficiency.”<sup>6</sup> DISCUSSION Plaintiff’s claims against Attorney Goldstein and the Public Defender Agency cannot proceed in a civil rights action under Section 1983 because criminal defense attorneys, whether retained or appointed, do not act under color of state law when performing their traditional functions as defense counsel.<sup>7</sup> To the extent 3 28 U.S.C. §§ 1915, 1915A.

4 28 U.S.C. § 1915(e)(2)(B). 5 *Karim-Panahi v. Los Angeles Police Dep’t*, 839 F.2d 621, 623 (9th Cir. 1988); see also *Noll v. Carlson*, 809 F.2d 1446, 1448 (9th Cir.1987) (“Without the benefit of a statement of deficiencies, the pro se litigant will likely repeat previous errors.”). 6 *Schreiber Distributing Co. v. Serv-Well Furniture Co.*, 806 F.2d 1393, 1401 (9th Cir.

1986) (citation omitted). 7 *Miranda v. Clark County, Nevada*, 319 F.3d 465 (2003). See also *Polk County v. Dodson*, Plaintiff seeks to pursue an ineffective assistance of counsel claim against Attorney Goldstein or obtain new counsel in his state criminal case, such claims must be raised in his state criminal case, or through a petition for post-conviction relief in the state court, or on a petition for habeas corpus in this Court but only after all available state court remedies have been exhausted.

A claim of ineffective assistance of counsel or request for a new defense attorney cannot be brought in a civil rights action. Similarly, to the extent Plaintiff seeks to bring a claim for intentional infliction of emotional distress or legal malpractice, such claims arise under state law and must typically proceed in state court. A state law claim may only proceed in federal court if the claim is supplemental to a cognizable federal claim,<sup>8</sup> of which there are none in this case, or if the federal court has diversity jurisdiction over the case, which requires that the plaintiff be a citizen of a different state than all the defendants, and that the amount in controversy exceeds \$75,000.<sup>9</sup> Here, neither requirement is met.

For the foregoing reasons, Plaintiff’s claims must be dismissed. Because amendment would be futile, this case is dismissed without leave to amend.<sup>10</sup> This dismissal counts as a “strike” under 28 U.S.C. § 1915(g), 454 U.S. 312, 325 (1981) (holding that “a public defender does not act under ‘color of state law,’ within meaning of Civil Rights Act, when performing a lawyer’s traditional functions as counsel to a defendant in a criminal proceeding”).

8 See 28 U.S.C. § 1367. 9 See 28 U.S.C. § 1332(a). 10 *Huffman v. Lindgren*, 81 F.4th 1016 (9th Cir. 2023) (affirming dismissal without leave to which may limit Plaintiff’s ability to bring future civil rights cases in federal court. THE THREE STRIKES RULE The Prison Litigation Reform Act requires that a self-represented prisoner receive a “strike” when a case he has filed in federal court is dismissed “as frivolous, malicious, or fails to state a claim upon which relief may be granted[.]”<sup>11</sup> The “three strikes” provision was “designed to filter out the bad claims and facilitate

consideration of the good.”<sup>12</sup> Once a prisoner-plaintiff has accumulated three strikes, he is prohibited from bringing any other civil rights cases in federal court without prepaying the full filing fee unless he makes “plausible allegations” that, at the time he filed the complaint, he is under imminent danger of serious physical injury, and that danger must fairly traceable to the unlawful conduct of the defendants alleged in the complaint and redressable by the Court.<sup>13</sup> Imminent danger requires an allegation that a harm is “ready to take place” or “hanging threateningly over one's head.”<sup>14</sup> It cannot be triggered solely by complaints of past injury or generalized fears of possible future harm.<sup>15</sup> amend based on judicial immunity).

11 28 U.S.C. § 1915(g). 12 *Jones v. Bock*, 549 U.S. 199, 204 (2007). 13 28 U.S.C. § 1915(g); see also *Ray v. Lara*, 31 F.4th 692, 701 (9th Cir. 2022) (adopting nexus test). 14 *Andrews v. Cervantes*, 493 F.3d 1047, 1056 (9th Cir. 2007). 15 *Id.* at 1053 (“The exception's use of the present tense, combined with its concern only with the initial act of ‘bring[ing]’ the lawsuit, indicates to us that the exception applies if the IT IS THEREFORE ORDERED: 1.

This case is DISMISSED for failing to state a plausible claim. 2. This dismissal counts as a “strike” under 28 U.S.C. § 1915(g), which may limit Plaintiff’s ability to bring future civil rights cases in federal court. 3. All pending motions are DENIED as moot. 4.

The Clerk shall issue a final judgment and close this case. DATED this 12th day of May, 2026, at Anchorage, Alaska. /s/ Sharon L. Gleason SHARON L. GLEASON UNITED STATES DISTRICT JUDGE danger existed at the time the prisoner filed the complaint.”).