UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

KENNARD LEE DAVIS, Plaintiff, v. JAMES WALKER, et al., Defendants.	No. 2:08-cv-0593 KJM DB P
KENNARD LEE DAVIS, Plaintiff, v. JAMES WALKER, et al., Defendants.	No. 2:10-cv-2139 KJM DB P ORDER

Plaintiff is a state prisoner proceeding in forma pauperis with civil rights actions under 42 U.S.C. § 1983. Plaintiff is proceeding in both actions through a guardian ad litem, Ronnie Tolliver, who was appointed in October 2014. *See* ECF Nos. 40; 81.[1] Since then, plaintiff has

[1] Throughout this order, unless otherwise noted, citations to documents filed in the court's Electronic Case Filing (ECF) system are first to the record in Case No. 2:08-cv-0593 KJM DB and second to the record in Case No. 2:10-cv-2139 KJM DB.

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filed several pro se motions in each of the above actions; none of the motions has been presented to the court by plaintiff's guardian ad litem.[2] Following appointment of the guardian ad litem, plaintiff has twice been instructed that he may not file documents on his own behalf. *See* ECF Nos. 88, 101; 144, 157. Those orders are confirmed. *See* Fed. R. Civ. P. 17(c)(2) ; *see also AT&T Mobility, LLC v. Yeager*, 143 F.Supp.3d 1042 (E.D. Cal. 2015).

Since September 22, 2016, plaintiff has filed several new pro se motions for appointment of counsel in each of these cases. ECF Nos. 111, 112, 116, 134, 137; 168, 169, 178, 195. The court has twice appointed counsel for plaintiff in these actions, and twice subsequently granted motions to withdraw. ECF Nos. 45, 71; 96, 127. As noted, plaintiff is now proceeding through a guardian ad litem and all motions for court orders on plaintiff's behalf must be presented through the guardian ad litem. For this reason, plaintiff's pro se motions for appointment of counsel will be denied.

Plaintiff also has filed several pro se motions concerning the authority of the magistrate judge to preside over this action. ECF Nos. 106, 117, 124; 162, 173, 182. Because these motions have not been presented through the guardian ad litem, plaintiff's pro se motions concerning the authority of the magistrate judge will be denied. However, in view of this court's decision to file an answer in response to an order from the Ninth Circuit Court of Appeals, *see* ECF Nos. 126; 185, and the Circuit court's March 2, 2017 order, ECF Nos. 131;190, the court will withdraw the reference to the magistrate judge pending compliance with this court's May 18, 2017 order, ECF Nos. 132; 191, and until further order of the court.

Plaintiff has filed several pro se motions seeking reconsideration of various orders entered in these actions. ECF Nos. 105, 119; 161, 163, 175. These motions also will be denied as not presented through the guardian ad litem.

On May 18, 2017, this court issued an order directing plaintiff's mental health clinician to file a report on the current status of plaintiff's mental health and referred the matter to the court's

[2] These motions filed by plaintiff will be referred to as pro se motions. Mr. Tolliver is not a lawyer; the court will, as appropriate, consider appointment of counsel for Mr. Tolliver at a subsequent stage of these proceedings. *See Yeager*, *infra*.

Pro Bono Coordinator to confirm arrangements for appointment of a medical expert as provided by Federal Rule of Evidence 706. ECF Nos. 132; 191. This order was issued as part of the court's efforts to take all available steps to move these cases forward as required by order of the Ninth Circuit. ECF Nos. 35; 75. On May 30, 2017, plaintiff filed objections to that order. ECF Nos. 135; 193. Plaintiff's objections are overruled.

On May 25, 2017, plaintiff filed a pro se motion for a medical evaluation. ECF Nos. 133; 192. In accordance with the May 18, 2017 order, the court anticipates appointment of a medical expert to conduct an independent medical examination of plaintiff. Plaintiff's pro se motion, again filed in violation of prior court orders, will be denied.

On June 1, 2017, defendants filed in each case requests for an extension of time to respond to the court's May 18, 2017 order. ECF Nos. 136; 194. The court has granted those requests by separate orders. ECF Nos. 139, 196. Defendants shall continue to keep the court informed of any change in plaintiff's housing. *See* ECF Nos. 132; 191.

Finally, following receipt of the information required by the court's May 18, 2017 order, appointment of an independent medical examiner, and receipt of a report from that examiner, the court will determine what further steps are required. Plaintiff's guardian ad litem, Mr. Tolliver, is informed that his participation is required by court order and will be necessary to a full and just disposition of this action. By this order, the court will direct Mr. Tolliver to complete and return the attached notice, confirming that he has received this order and confirming his current address of record by writing it in the space provided on the notice.

In accordance with the above, IT IS HEREBY ORDERED that:

1. Plaintiff's motions for appointment of counsel filed in Case No. 2:08-cv-0593 KJM DB, ECF Nos. 111, 112, 116, 134, and 137, are denied;
2. Plaintiff's motions for appointment of counsel filed in Case No. 2:10-cv-2139 KJM DB, ECF Nos. 168, 169, 178 and 195, are denied;
3. The reference of the above-captioned cases to the assigned magistrate judge is withdrawn until further order of court;

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4. Plaintiff's motions regarding the authority of the magistrate judge filed in Case No. 2:08-cv-0593 KJM DB, ECF Nos. 106, 117 and 124, are denied;
5. Plaintiff's motions regarding the authority of the assigned magistrate judge filed in Case No. 2:10-2139 KJM DB, ECF Nos. 162, 173 and 182, are denied;
6. Plaintiff's motions for reconsideration filed in Case No. 2:08-cv-0593, ECF Nos. 105 and 119, are denied;
7. Plaintiff's motions for reconsideration filed in Case No. 2:10-cv-2139 KJM DB, ECF Nos. 161, 163 and 175, are denied;
8. Plaintiff's motion for medical evaluation filed in Case No. 2:08-cv-0593 KJM DB, ECF No. 133, is denied;
9. Plaintiff's motion for medical evaluation filed in Case No. 2:10-cv-2139 KJM DB, ECF No. 192, is denied; and
10. Plaintiff's guardian ad litem, Ronnie Tolliver, is directed to complete and return the attached notice to the court by mail within twenty-one days from the date of this order.

DATED: June 19, 2017.

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

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KENNARD LEE DAVIS, Plaintiff, v. JAMES WALKER, et al., Defendants.	No. 2:10-cv-2139 KJM DB P NOTICE OF SUBMISSION

I, Ronnie Tolliver, confirm that I have received the district court's order. I further confirm that my address of record is:

DATED:

_____
Guardian Ad Litem for
Plaintiff Kennard Davis