

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

JAMES H. SIMS,	CASE NO. 1:05-cv-01523 LJO DLB (PC)
Plaintiff,	ORDER DENYING REQUEST FOR
vs.	APPLICATION OF NON-PRISONER
	PROVISIONS IN LOCAL RULES
JEANNE WOODFORD, et al.,	(Doc. 63)
Defendants.	

---

Plaintiff James H. Sims, proceeding pro se, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. On March 12, 2009, defendants Escobar, Arnold, Guinn and Mendoza-Powers (“Defendants”) filed a request that Local Rule 78-230(m), which governs motions in prisoner cases, no longer apply in this case since Plaintiff is no longer incarcerated. Defendants make the request so that the parties may make oral argument on their motions, and in particular with respect to Defendants’ motion for summary judgment, filed April 24, 2009. Plaintiff has not filed a response to the request.

Local Rule 78-230 governs the court’s civil motion calendar and procedure. Rule 78-230(m) provides exceptions to the rule for motions in prisoner cases, defined as “cases wherein one party is incarcerated and proceeding in propria persona.” L.R. 78-230(m). The main exception to the rule is that motions in prisoner cases are “submitted upon the record without oral argument unless otherwise ordered by the Court.” Id.

1 At the time plaintiff's action was filed, plaintiff was incarcerated at a correctional institution and  
2 proceeding in propria persona. Therefore, the court designated the case as a prisoner case. On February  
3 6, 2006, plaintiff filed a notice of change of address, indicating that he was paroled. (Doc. 10.)

4 Defendants correctly observe that, due to plaintiff's change in custody, this case does not  
5 currently fit within the definition of a prisoner case as stated in Rule 78-230(m). However, it is this  
6 Court's customary practice that when a case is designated a prisoner case at the Court, the designation  
7 remain the same until the case is closed. In this instance, Defendants request that Local Rule 78-230(m)  
8 no longer apply so that the parties may make oral argument on summary judgment. The Court does not  
9 find that oral argument would be particularly helpful in this case. Because this matter is assigned to a  
10 magistrate judge pursuant to 28 U.S.C. §636(A), Defendants' request, if granted, would require oral  
11 argument initially before the Magistrate Judge, and then further oral argument before the District Judge  
12 to address any objections to the Findings and Recommendations issued, before the motion would be  
13 finally resolved. Allowing oral argument would not resolve this motion any more promptly than  
14 proceeding upon the record and upon the briefs on file.

15 Accordingly, IT IS HEREBY ORDERED that defendants' motion for the court to apply the non-  
16 prisoner provisions of the Local Rules to this action is DENIED.

17 IT IS SO ORDERED.

18 Dated: April 30, 2009

/s/ Dennis L. Beck  
UNITED STATES MAGISTRATE JUDGE

19  
20  
21  
22  
23  
24  
25  
26  
27  
28