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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

EARL DOZIER,)	1:08-cv-01773-SMS
)	
Plaintiff,)	ORDER VACATING HEARING ON
v.)	PLAINTIFF'S COUNSEL'S MOTION TO
)	WITHDRAW AND DEEMING MOTION
MICHAEL J. ASTRUE,)	SUBMITTED ON THE PAPERS (DOC. 15)
COMMISSIONER OF SOCIAL)	
SECURITY,)	<u>Vacated Hearing Date:</u>
)	<u>September 25, 2009</u>
Defendant.)	<u>Time: 9:30 a.m.</u>
)	

ORDER GRANTING PLAINTIFF'S
COUNSEL'S MOTION TO WITHDRAW AS
ATTORNEY OF RECORD (DOC. 15)

ORDER GRANTING AN EXTENSION OF
TIME FOR THE FILING OF
PLAINTIFF'S BRIEF TO NO LATER
THAN November 10, 2009

ORDER DIRECTING THE CLERK TO
UPDATE THE DOCKET AND TO SERVE
THIS ORDER ON PLAINTIFF HIMSELF
AT THE ADDRESS SPECIFIED IN THIS
ORDER

Plaintiff is proceeding in forma pauperis and with counsel
with an action seeking judicial review of a final decision of the
Commissioner of Social Security (Commissioner) denying
Plaintiff's application for benefits. Pursuant to 28 U.S.C. §
636(c), both parties have consented to the Magistrate's
jurisdiction to conduct all proceedings, including ordering the

1 entry of judgment, and the case was assigned to the undersigned
2 Magistrate Judge by the order of District Judge Lawrence J.
3 O'Neill on December 8, 2008.

4 Pending before the Court is the motion of Laura Krank of the
5 Law Offices of Rohlfing & Kalagian, counsel for Plaintiff Earl
6 Dozier, to withdraw as counsel of record, which was filed and
7 served on August 19, 2009, along with declaration of Laura Krank
8 in support of the motion. On the same date a copy of the motion
9 was mailed to Plaintiff Earl Dozier at his last known address of
10 2559 South Lotus, Fresno, California 93706. No opposition was
11 filed by Defendant, and Plaintiff has not responded. The Court
12 has reviewed all the documents submitted in connection with the
13 motion.

14 I. Vacating the Hearing on Counsel's Motion to Withdraw

15 Pursuant to Rule 78-230(h) of the Local Rules of Practice
16 for the United States District Court, Eastern District of
17 California, the Court finds that the motion of Plaintiff's
18 counsel Laura Krank to withdraw as counsel for Plaintiff is a
19 matter that may appropriately be submitted upon the record and
20 briefs.

21 Accordingly, the hearing on the motion, presently set for
22 September 25, 2009, at 9:30 a.m., IS VACATED, and the motion IS
23 DEEMED SUBMITTED to the Court for decision.

24 II. The Motion to Withdraw as Attorney of Record

25 Moving counsel Laura Krank states that after undertaking
26 representation of Plaintiff in October 2008, and reviewing the
27 administrative record, counsel informed Plaintiff in early May
28 2008 in writing of her opinion that she could not pursue the case

1 on Plaintiff's behalf, and she informed Plaintiff that if
2 Plaintiff disagreed with counsel's opinion, Plaintiff could sign
3 a substitution of attorneys and seek other counsel. As of the
4 time the motion was filed, Plaintiff had signed the substitution
5 form but had not retained other counsel. (Decl. of Krank, ¶¶ 2-
6 4.)

7 On August 19, 2009, counsel mailed a copy of the motion to
8 Plaintiff at Plaintiff's last-known address, which is 2559 South
9 Lotus, Fresno, California 93706. The Court finds that Plaintiff's
10 address has been established within the meaning of Local Rule 83-
11 182(d). The Court further finds that withdrawing counsel gave
12 Plaintiff adequate notice of the instant motion.

13 The grounds of the motion are that after diligent research
14 of the issues, counsel has formed the opinion that she cannot
15 pursue the matter on Plaintiff's behalf and that to do so could
16 subject Plaintiff and counsel to sanctions under Rule 11. (Decl.
17 of Krank , Mot. p. 4.)

18 Local Rule 83-182 provides that an attorney may request
19 withdrawal if grounds exist pursuant to the Rules of Professional
20 Conduct of the State Bar of California. Cal. Rules of Prof.
21 Conduct, Rule 3-700(C) (1) (a) provides for withdrawal with the
22 permission of a tribunal if the client insists upon presenting a
23 claim or defense that is not warranted under existing law and
24 cannot be supported by good faith argument for an extension,
25 modification, or reversal of existing law. Fed. R. Civ. P.
26 11(b) (1) provides that by presenting to the Court a paper, an
27 attorney is certifying that to the best of the person's
28 knowledge, information, and belief, formed after an inquiry

1 reasonable under the circumstances, that the claims, defenses,
2 and other legal contentions therein are warranted by existing law
3 or by a nonfrivolous argument for the extension, modification, or
4 reversal of existing law or the establishment of new law. Cal.
5 Rules Prof. Conduct, Rule 3-700(C)(6) permits withdrawal if the
6 member believes in good faith in a proceeding pending before a
7 tribunal that the tribunal will find the existence of good cause
8 for withdrawal.

9 The Court finds and concludes that counsel has established
10 grounds for withdrawal. The motion to withdraw will be granted.

11 III. Extension of Time to File Plaintiff's Opening Brief

12 Local Rule 83-182(d) provides, "Leave to withdraw may be
13 granted subject to such appropriate conditions as the Court deems
14 fit." Counsel has requested that the Court grant Plaintiff time
15 to search for counsel and extend the time for filing Plaintiff's
16 opening brief, which is not yet due.

17 In order to permit Plaintiff to obtain counsel and to file
18 an opening brief, the Court will extend the deadline for its
19 filing until November 10, 2009.

20 The Court notes that upon counsel's withdrawal, Plaintiff
21 will be proceeding pro se and will be responsible for the timely
22 prosecution of the action even if Plaintiff fails to obtain new
23 counsel. A failure to comply with an order of the Court,
24 including the deadline for the filing of Plaintiff's opening
25 brief, will result in sanctions, including dismissal of this
26 action. Because Plaintiff is now proceeding pro se, the Court
27 will by separate order inform Plaintiff of requirements
28 concerning Social Security cases in this Court.

1 IV. Disposition

2 Accordingly, it IS ORDERED that

3 1) The hearing on counsel's motion to withdraw, presently
4 set for September 25, 2009, at 9:30 a.m., IS VACATED; and

5 2) The motion of Plaintiff's counsel, Laura Krank of the Law
6 Offices of Rohlfing & Kalagian, to withdraw as attorney of record
7 IS GRANTED; and

8 3) Plaintiff's opening brief SHALL BE FILED no later than
9 November 10, 2009; and

10 4) The Clerk SHALL UPDATE THE DOCKET to reflect Plaintiff's
11 pro se status and Plaintiff's address of 2559 South Lotus,
12 Fresno, California 93706, and SHALL SERVE this order upon
13 Plaintiff at that address.

14
15 IT IS SO ORDERED.

16 Dated: September 21, 2009

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE