UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

RANDOLPH E. GARAUX,

Plaintiff,

v.

CATE, et al.,

Defendants.

/

CASE NO. 1:10-cv-00146-SMS

ORDER DENYING PLAINTIFF'S MOTION FOR SERVICE OF PROCESS BY UNITED STATES MARSHALL AS PREMATURE

(Doc. 10.)

Plaintiff Randolph E. Garaux, is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the complaint upon which this action proceeds on January 29, 2010, and the court granted plaintiff leave to proceed in forma pauperis on February 3, 2010. Now pending before the court is plaintiff's request that the United States Marshal be directed to serve the complaint on defendants, filed March 30, 2010.

Plaintiff is advised that the court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2). "Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that . . . the action or appeal . . . fails to state a claim upon which relief may be granted." 28 U.S.C. § 1915(e)(2)(B)(ii).

The court will direct the United States Marshal to serve the complaint only after it has

determined that the complaint contains cognizable claims for relief against the named defendants. The court has not yet screened plaintiff's complaint, but will do so in due course. Until the court has screened the complaint, any request for service by the Marshal is premature and will be denied.

Accordingly, it is HEREBY ORDERED that plaintiff's Ex Parte Motion for Service of Process by United States Marshall, filed March 30, 2010, is DENIED.

IT IS SO ORDERED.

Dated: April 5, 2010

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE