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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ESTATE OF LESLEE P. LAFFOON, and)
CHRYSTIAN ANTONIO GUTIERREZ, a)
minor,)
)
Plaintiffs,)
)
v.)
)
ADAM CHRISTIANSON, DOCTORS)
MEDICAL CENTER OF MODESTO,)
CORRECT CARE SOLUTIONS,)
STANISLAUS COUNTY SHERIFF-)
CORONER,)
)
Defendants.)
_____)

1:11-cv-00255 AWI GSA

**ORDER DENYING PETITION FOR
APPOINTMENT OF GUARDIAN AD
LITEM WITHOUT PREJUDICE**

(Docket No. 2)

**ORDER ADDRESSING STANDING OF
THE ESTATE OF LESLEE P. LAFFOON**

On February 15, 2011, Antonio Gutierrez filed a complaint for damages in this Court on behalf of the Estate of Leslee P. Laffoon and Chrystian Antonio Gutierrez, a minor. The complaint asserts seven¹ causes of action, arising, in part, pursuant to Title 42 of the United States Code section 1983. (Doc. 1.) That same date, a Petition for Appointment of Guardian ad

¹The complaint actually presents two “sixth” causes of action, therefore, there are a total of seven claims asserted. (See Doc. 1 at 9-10.)

1 Litem was filed. The petition seeks to appoint Antonio Gutierrez as guardian ad litem for his
2 minor son Chrystian Antonio Gutierrez. (Doc. 2.) For the reasons that follow, the petition is
3 DENIED without prejudice.

4 DISCUSSION

5 A plaintiff must have capacity to sue. “Capacity” refers to a party’s personal right to
6 litigate in federal court. *See* Fed.R.Civ.P. Rule 17(b). Similar to federal law, California law
7 requires that minors or incompetents cannot sue in their own names, or defend an action brought
8 against them. Instead, litigation ordinarily must be conducted through a guardian, conservator of
9 the estate, or guardian ad litem. *See* Cal. Fam. Code, § 6601; Cal. Civ. Proc. § 372. A purpose
10 of the guardian ad litem is to protect the minor’s interests in the litigation. *Williams v. Superior*
11 *Court*, 54 Cal.Rptr.3d 13 (App. 4 Dist. 2007). Typically, the next friend or guardian ad litem
12 who sues on behalf of a minor is that minor’s parent. *Gonzalez v. Reno*, 212 F.3d 1338, 1351-53
13 (11th Cir. 2000).

14 However, a non-attorney parent or guardian cannot bring a lawsuit in federal court on
15 behalf of a minor or incompetent without retaining a lawyer. This is so because the minor’s right
16 to trained legal assistance is greater than the parent’s right to appear pro se. *See Johns v. County*
17 *of San Diego*, 114 F.3d 874, 876 (9th Cir. 1997).

18 Here, the petition to appoint Antonio² as guardian ad litem for minor Chrystian cannot be
19 granted because Antonio may not bring an action in federal court on Chrystian’s behalf without
20 retaining an attorney. In the event an attorney is retained to represent Chrystian’s interests, this
21 Court is not adverse to appointing Chrystian’s father, Antonio, as his guardian in the future.

22 Next, the Court notes that Antonio has also filed the complaint on behalf of the Estate of
23 Leslee P. Laffoon. (*See* Doc. 1.) However, a probate or trust estate is not a legal entity. It is
24 simply a collection of assets and liabilities. As such, it has no capacity to sue. Any litigation

25
26 ²To avoid confusion, because Antonio and Chrystian share a surname, the Court will refer
27 to them by their first names. No disrespect is intended.

1 must be maintained by the executor or administrator of the estate who is the real party in interest.
2 *Blue Ridge Ins. Co. v. Stanewich*, 1421 F.3d 1145, 1150 (9th Cir. 1998); *Karras v. Teledyne*
3 *Industries, Inc.*, 191 F.Supp.2d 1162, 1170-73 (S.D. Cal. 2002) (“An estate or trust is not a legal
4 entity and is without capacity to sue”); *Tanner v. Best*, 40 Cal.App.2d 442, 445, 104 P.2d
5 1084 (1940); *see also* Local Rule 183(a) (“A corporation *or other entity* may appear only by an
6 attorney”).

7 Therefore, the only party capable of bringing suit on behalf of the Estate of Leslee P.
8 Laffoon is the executor or administrator of the estate. Even assuming for the sake of argument
9 that Antonio is the executor of the estate, he could not act as both counsel for Chrystian and as
10 the real party in interest for the estate.

11 Antonio is strongly encouraged to seek the assistance of an attorney as the legal issues
12 addressed herein may be complicated for a nonattorney.

13 **ORDER**

14 The Petition for Appointment of Guardian ad Litem is DENIED without prejudice to re-
15 filing the petition at a later date when Chrystian is represented by an attorney.

16 Additionally, because the standing issues raised herein must be addressed as outlined
17 above, the Clerk of the Court is directed to refrain from issuing any summons at this time.

18 Finally, Antonio SHALL file a written status report with this Court, **no later than March**
19 **31, 2011**, addressing these issues. Specifically, Antonio shall advise the Court of his efforts to
20 retain an attorney to represent Chrystian’s interests, as well as the representative status of the
21 Estate of Leslee P. Laffoon.

22
23 IT IS SO ORDERED.

24 **Dated: February 22, 2011**

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE