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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

SHANNON WILLIAMS,  
Plaintiff,  
v.  
CHRISTOPHER BAKER and UNITED STATES,  
Defendants.

Case No. 1:16-cv-01540-ADA-HBK (PC)  
ORDER DENYING MOTION FOR  
SUBSTITUTE COUNSEL OR TO PROCEED  
PRO SE<sup>1</sup>  
(Doc. No. 141)

Pending before the Court is Plaintiff’s “Motion for Substitute Counsel or to Proceed Pro Se.” (Doc. No. 141, “Motion”). Plaintiff’s Counsel did not file a response. For the reasons set forth below, the undersigned denies Plaintiff’s Motion.

**BACKGROUND AND SUMMARY OF MOTION**

Plaintiff initiated this action by filing a pro se prisoner civil rights action pursuant to 42 U.S.C. § 1983. (Doc. No. 1). On October 28, 2019, Plaintiff filed a Motion for Appointment of Counsel, in part because the Court directed him to file a brief on the applicability to this case of *Ziglar v. Abbasi*, 137 S. Ct. 1843, 1854 (2017), and Plaintiff was unable to access certain relevant legal documents due to his detention in the security housing unit (“SHU”). (Doc. No. 66). On February 7, 2020, the previously assigned magistrate judge found appointment of counsel to be

<sup>1</sup> This matter was referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302 (E.D. Cal. 2022).

1 warranted for the limited purpose of addressing whether Plaintiff's remaining Eighth Amendment  
2 allegations stated a claim upon which relief may be granted in light of *Ziglar*. (See Doc. No. 69).  
3 On March 4, 2020, the magistrate judge appointed Carter White and the UC Davis King Hall  
4 Civil Rights Clinic as Plaintiff's counsel for the limited purpose of briefing on the proper  
5 application of *Ziglar* to this case. (Doc. No. 70 at 1-2 ¶ 1). The representation was ordered to  
6 conclude upon the Court issuing an order whether Plaintiff's complaint stated a claim in light of  
7 *Ziglar*. (*Id.* at 2 ¶ 2). Upon issuing such an order, the previous magistrate directed Plaintiff's  
8 counsel to file a notice indicating whether they wished to continue the representation. (Doc. No.  
9 82 at 16). Counsel subsequently filed a Notice indicating they intended to continue the  
10 representation. (Doc. No. 83).

11 On July 19, 2023, Plaintiff filed the instant Motion. (Doc. No. 141). In it, he asserts that  
12 his Counsel has failed to investigate important issues in his case, file motions requested by  
13 Plaintiff, depose certain witnesses, and respond to more than 20 of Plaintiff's emails. (See  
14 *generally id.*). These failures have caused a break down and loss of trust in the attorney-client  
15 relationship. (*Id.* at 11). Plaintiff's counsel did not file any response.

#### 16 **APPLICABLE LAW AND ANALYSIS**

17 Withdrawal of counsel is governed by the Rules of Professional Conduct of the State Bar  
18 of California, and the Local Rules of Practice for the United States District Court, Eastern District  
19 of California. See L.R. 182; *L.S. ex rel. R.S. v. Panama Buena Vista Union Sch. Dist.*, 2012 WL  
20 3236743, at \*1 (E.D. Cal. Aug. 6, 2012).

21 The California Rules of Professional Conduct provide that if the rules of a court require  
22 permission for an attorney to withdraw, the attorney may not withdraw from employment in a  
23 proceeding without the permission of such court. Cal. R. Prof. Conduct 1.16(c). In addition,  
24 counsel must take reasonable steps to avoid prejudicing the rights of the client, including  
25 providing notice, allowing time for the client to employ other counsel, and complying with  
26 applicable laws and rules. Cal. R. Prof. Conduct 1.6(d). Mandatory withdrawal is required where  
27 the lawyer knows or reasonably should know that the client "is bringing an action, conducting a  
28 defense, asserting a position in litigation, or taking an appeal, without probable cause and for the

1 purpose of harassing or maliciously injuring any person;” “the representation will result in  
2 violation of these rules or of the State Bar Act;” “the lawyer’s mental or physical condition  
3 renders it unreasonably difficult to carry out the representation effectively; or the client  
4 discharges the lawyer.” Cal. R. Prof. Conduct 1.6(a). Grounds for permissive withdrawal exist  
5 when “the client by other conduct renders it unreasonably difficult for the lawyer to carry out the  
6 representation effectively.” Cal. R. Prof. Conduct 1.6(b)(4).

7 The Local Rules provide that an attorney who has appeared on behalf of a client may not  
8 withdraw, leaving the client in propria persona, without leave of court upon noticed motion, along  
9 with notice to the client and all other parties who have appeared. L.R. 182(d). The attorney is  
10 also required to “provide an affidavit stating the current or last known address or addresses of the  
11 client and the efforts made to notify the client of the motion to withdraw.” *Id.* Likewise,  
12 California’s Rules of Court require notice of a motion to withdrawal to be served on the client and  
13 other parties who have appeared in the action. Cal. R. Court 3.1362(d).

14 Here, the Court has not received a Motion to Withdraw from Plaintiff’s counsel. Without  
15 such motion, filed in compliance with the applicable Local Rules and Rules of Court, the Court  
16 may not permit the withdrawal of Plaintiff’s counsel. Thus, to the extent Plaintiff wishes to  
17 discharge his Counsel and proceed pro se, he must direct his Counsel to file an appropriate  
18 motion. The Court will then evaluate the motion after considering the applicable factors,  
19 including (1) the reasons for withdrawal, (2) prejudice that may be caused to other litigants, (3)  
20 harm caused to the administration of justice, and (4) delay to the resolution of the case caused by  
21 withdrawal.” *L.S. ex rel. R.S.*, 2012 WL 3236743, at \*2 (citing *Canandaigua Wine Co., Inc. v.*  
22 *Moldauer*, 2009 U.S. Dist. LEXIS 4238, at \*4 (E.D. Cal. Jan. 13, 2009)); accord *Kassab v. San*  
23 *Diego Police Dep’t*, 2008 WL 251935, at \*1 (S.D. Cal. Jan. 29, 2008). Additionally, “[l]eave to  
24 withdraw may be granted subject to such appropriate conditions as the Court deems fit.” L.R.  
25 182(d).

26 To the extent Plaintiff’s Motion seeks appointment of new Counsel, the Motion is denied  
27 as premature and because Plaintiff has not made a showing of exceptional circumstances. A  
28 litigant does not have a constitutional right to appointed counsel in 42 U.S.C. § 1983 civil rights

1 actions. *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). Pursuant to 28 U.S.C. §  
2 1915(e)(1), “[t]he court may request an attorney to represent any person unable to afford  
3 counsel.” The previous magistrate judge assigned counsel finding the exceptional circumstances  
4 presented by Plaintiff’s detention in the SHU and the new U.S. Supreme Court case law affecting  
5 Plaintiff’s case. (*See* Doc. No. 69); *see also Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009).  
6 Preliminarily, the Court does not find that Plaintiff’s disagreements with Counsel constitute  
7 exceptional circumstances to warrant appointment of new counsel.

8 If Plaintiff elects nevertheless to discharge his counsel and seek new counsel, the Court  
9 cautions Plaintiff that further appointment of counsel is not guaranteed, and indeed highly  
10 unlikely at this stage of the proceedings absent a new demonstration of exceptional  
11 circumstances. *See Palmer*, 560 F.3d at 970. If Plaintiff elects to discharge his Counsel, he may  
12 well be required to continue prosecuting this case without assistance of counsel.

13 Accordingly, it is **ORDERED**:

14 Plaintiff’s Motion for Substitute Counsel or to Proceed Pro Se (Doc. No. 141) is  
15 DENIED.

16  
17 Dated: November 3, 2023

  
HELENA M. BARCH-KUCHTA  
UNITED STATES MAGISTRATE JUDGE