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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANTONIO ESPINOZA,  
  
                            Petitioner,  
  
                    v.  
  
WARDEN,  
  
                            Respondent.

No. 2:94-cv-1665 KJM DB P

ORDER

Petitioner is a state prisoner proceeding through counsel with a petition for a writ of habeas corpus under 28 U.S.C. §2254. Pending before the court is petitioner’s counsel’s motion to have petitioner declared incompetent and for the appointment of a guardian ad litem. (ECF No. 309.) This court previously determined that the first step in considering counsel’s motion is a hearing to provide petitioner notice of the motion. (See ECF No. 320.)

On December 4, 2023, the undersigned held that notice hearing at the California Medical Facility where petitioner is currently incarcerated. Petitioner and his counsel, Lissa Gardner, appeared.<sup>1</sup> The undersigned informed petitioner of his counsel’s motion, questioned him about his understanding of the motion, and answered petitioner’s questions.

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<sup>1</sup> Respondent informed the court previously that they take no position on petitioner’s counsel’s motion and respondent’s counsel did not participate in the hearing.

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This court finds the appropriate next step in considering counsel’s motion is the appointment of a neutral mental health expert to evaluate petitioner’s present competence under Federal Rule of Civil Procedure 17. To that end, counsel for the parties shall meet and confer to attempt to identify an appropriate neutral mental health expert to propose to the court.

Accordingly, IT IS HEREBY ORDERED that on or before December 29, 2023, the parties shall file a joint statement in which they either propose a neutral mental health expert to evaluate petitioner’s competence for purposes of his counsel’s motion or describe their differences in failing to agree on such an expert.

Dated: December 4, 2023



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DEBORAH BARNES  
UNITED STATES MAGISTRATE JUDGE

DB:9  
DB prisoner inbox/capital/Espinoza.propose expert