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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KENNARD LEE DAVIS,
Plaintiff,
v.
JAMES WALKER, et al.,
Defendants.

No. 2:08-cv-0593 KJM DB P

KENNARD LEE DAVIS,
Plaintiff,
v.
JAMES WALKER, et al.,
Defendants.

No. 2:10-cv-2139 KJM DB P

ORDER

Plaintiff is a state prisoner proceeding in forma pauperis with civil rights actions under 42 U.S.C. § 1983. Plaintiff is proceeding in both actions through a guardian ad litem, Ronnie Tolliver, who was appointed in October 2014. See ECF Nos. 40; 81.¹ Since then, plaintiff has

¹ Throughout this order, unless otherwise noted, citations to documents filed in the court's Electronic Case Filing (ECF) system are first to the record in Case No. 2:08-cv-0593 KJM DB and second to the record in Case No. 2:10-cv-2139 KJM DB.

1 filed several pro se motions in each of the above actions; none of the motions has been presented
2 to the court by plaintiff's guardian ad litem.² Following appointment of the guardian ad litem,
3 plaintiff has twice been instructed that he may not file documents on his own behalf. *See* ECF
4 Nos. 88, 101; 144, 157. Those orders are confirmed. *See* Fed. R. Civ. P. 17(c)(2); *see also*
5 *AT&T Mobility, LLC v. Yeager*, 143 F.Supp.3d 1042 (E.D. Cal. 2015).

6 Since September 22, 2016, plaintiff has filed several new pro se motions for appointment
7 of counsel in each of these cases. ECF Nos. 111, 112, 116, 134, 137; 168, 169, 178, 195. The
8 court has twice appointed counsel for plaintiff in these actions, and twice subsequently granted
9 motions to withdraw. ECF Nos. 45, 71; 96, 127. As noted, plaintiff is now proceeding through a
10 guardian ad litem and all motions for court orders on plaintiff's behalf must be presented through
11 the guardian ad litem. For this reason, plaintiff's pro se motions for appointment of counsel will
12 be denied.

13 Plaintiff also has filed several pro se motions concerning the authority of the magistrate
14 judge to preside over this action. ECF Nos. 106, 117, 124; 162, 173, 182. Because these motions
15 have not been presented through the guardian ad litem, plaintiff's pro se motions concerning the
16 authority of the magistrate judge will be denied. However, in view of this court's decision to file
17 an answer in response to an order from the Ninth Circuit Court of Appeals, *see* ECF Nos. 126;
18 185, and the Circuit court's March 2, 2017 order, ECF Nos. 131;190, the court will withdraw the
19 reference to the magistrate judge pending compliance with this court's May 18, 2017 order, ECF
20 Nos. 132; 191, and until further order of the court.

21 Plaintiff has filed several pro se motions seeking reconsideration of various orders entered
22 in these actions. ECF Nos. 105, 119; 161, 163, 175. These motions also will be denied as not
23 presented through the guardian ad litem.

24 On May 18, 2017, this court issued an order directing plaintiff's mental health clinician to
25 file a report on the current status of plaintiff's mental health and referred the matter to the court's
26

27 ² These motions filed by plaintiff will be referred to as pro se motions. Mr. Tolliver is not a
28 lawyer; the court will, as appropriate, consider appointment of counsel for Mr. Tolliver at a
subsequent stage of these proceedings. *See Yeager, infra*.

1 Pro Bono Coordinator to confirm arrangements for appointment of a medical expert as provided
2 by Federal Rule of Evidence 706. ECF Nos. 132; 191. This order was issued as part of the
3 court's efforts to take all available steps to move these cases forward as required by order of the
4 Ninth Circuit. ECF Nos. 35; 75. On May 30, 2017, plaintiff filed objections to that order. ECF
5 Nos. 135; 193. Plaintiff's objections are overruled.

6 On May 25, 2017, plaintiff filed a pro se motion for a medical evaluation. ECF Nos. 133;
7 192. In accordance with the May 18, 2017 order, the court anticipates appointment of a medical
8 expert to conduct an independent medical examination of plaintiff. Plaintiff's pro se motion,
9 again filed in violation of prior court orders, will be denied.

10 On June 1, 2017, defendants filed in each case requests for an extension of time to
11 respond to the court's May 18, 2017 order. ECF Nos. 136; 194. The court has granted those
12 requests by separate orders. ECF Nos. 139, 196. Defendants shall continue to keep the court
13 informed of any change in plaintiff's housing. *See* ECF Nos. 132; 191.

14 Finally, following receipt of the information required by the court's May 18, 2017 order,
15 appointment of an independent medical examiner, and receipt of a report from that examiner, the
16 court will determine what further steps are required. Plaintiff's guardian ad litem, Mr. Tolliver, is
17 informed that his participation is required by court order and will be necessary to a full and just
18 disposition of this action. By this order, the court will direct Mr. Tolliver to complete and return
19 the attached notice, confirming that he has received this order and confirming his current address
20 of record by writing it in the space provided on the notice.

21 In accordance with the above, IT IS HEREBY ORDERED that:

- 22 1. Plaintiff's motions for appointment of counsel filed in Case No. 2:08-cv-0593 KJM
23 DB, ECF Nos. 111, 112, 116, 134, and 137, are denied;
- 24 2. Plaintiff's motions for appointment of counsel filed in Case No. 2:10-cv-2139 KJM
25 DB, ECF Nos. 168, 169, 178 and 195, are denied;
- 26 3. The reference of the above-captioned cases to the assigned magistrate judge is
27 withdrawn until further order of court;

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4. Plaintiff's motions regarding the authority of the magistrate judge filed in Case No. 2:08-cv-0593 KJM DB, ECF Nos. 106, 117 and 124, are denied;
5. Plaintiff's motions regarding the authority of the assigned magistrate judge filed in Case No. 2:10-2139 KJM DB, ECF Nos. 162, 173 and 182, are denied;
6. Plaintiff's motions for reconsideration filed in Case No. 2:08-cv-0593, ECF Nos. 105 and 119, are denied;
7. Plaintiff's motions for reconsideration filed in Case No. 2:10-cv-2139 KJM DB, ECF Nos. 161, 163 and 175, are denied;
8. Plaintiff's motion for medical evaluation filed in Case No. 2:08-cv-0593 KJM DB, ECF No. 133, is denied;
9. Plaintiff's motion for medical evaluation filed in Case No. 2:10-cv-2139 KJM DB, ECF No. 192, is denied; and
10. Plaintiff's guardian ad litem, Ronnie Tolliver, is directed to complete and return the attached notice to the court by mail within twenty-one days from the date of this order.

DATED: June 19, 2017.


UNITED STATES DISTRICT JUDGE

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No. 2:10-cv-2139 KJM DB P

NOTICE OF SUBMISSION

I, Ronnie Tolliver, confirm that I have received the district court's order. I further confirm that my address of record is:

DATED:

Guardian Ad Litem for
Plaintiff Kennard Davis