

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Joni M. Roth v. AIG, et al.

Roth v. AIG · No. 2:24-cv-1124-TLN-CKD (PS) · Decided December 17, 2025

SUMMARY

The United States Magistrate Judge recommends that Joni M. Roth be found legally incompetent to prosecute her diversity action pro se and that Kelli Grande be appointed as her guardian ad litem. The document also recommends a 60-day stay of proceedings on the merits, including a pending motion for summary judgment, and warns that the claims may be dismissed for failure to prosecute if counsel does not appear.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	United States Magistrate Judge
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	December 17, 2025
DOCKET	2:24-cv-1124-TLN-CKD (PS)
DISPOSITION	other
PROCEDURAL POSTURE	Findings and recommendations by a United States magistrate judge concerning plaintiff's competency to proceed without counsel, appointment of a guardian ad litem, and a stay of merits proceedings, including a pending summary-judgment motion.
STANDARD OF REVIEW	The court applied Federal Rule of Civil Procedure 17(b)(1) to determine the governing procedural law and looked to California law for the competency standard. The recommendation was subject to district-judge review under 28 U.S.C. § 636(b)(1).
PRECEDENTIAL VALUE	nonprecedential

TOPICS

- guardianship procedure
- guardian ad litem
- civil procedure
- motion for reconsideration
- insurance

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether plaintiff was legally incompetent to prosecute her civil claims without counsel under Federal Rule of Civil Procedure 17(c) and applicable California competency standards.
2. Whether Kelli Grande should be appointed guardian ad litem for plaintiff.
3. Whether proceedings on the merits, including the pending motion for summary judgment, should be stayed for 60 days to protect plaintiff's interests.
4. Whether a non-attorney guardian ad litem may personally exercise plaintiff's right to proceed pro se.
5. Whether Grande's request for reconsideration and compliance with Rule 17(c) was properly before the magistrate judge.

HOLDINGS

1. A party who lacks the capacity to understand the nature or consequences of the proceeding or who cannot assist counsel in preparing the case is incompetent under the applicable competency standard. Based on the competency hearing and medical information, Roth was legally incompetent to prosecute the action pro se.
2. The court should appoint Kelli Grande as guardian ad litem for Roth for purposes of the action because Roth was incompetent to proceed pro se and Grande was suitable to protect Roth's interests.
3. Appointment as guardian ad litem does not give a non-attorney the right to represent the incompetent party pro se or extend the party's personal right to proceed without counsel.
4. The court should stay further proceedings on the merits, including the pending motion for summary judgment, for 60 days after any order adopting the recommendations.
5. Grande's request for reconsideration and compliance with Rule 17(c) was disregarded because it was not properly before the magistrate judge.

KEY QUOTATIONS

"The undersigned finds plaintiff has become legally incompetent to prosecute her claims pro se." (at 2)

"However, the right to proceed without counsel is personal to plaintiff as the litigant and does not extend to Ms. Grande if appointed as a non-attorney guardian ad litem." (at 2-3)

"The undersigned will also recommend a stay of proceedings on the merits, including defendant's motion for summary judgment, for 60 days." (at 3)

FACTUAL BACKGROUND

Joni Roth was pursuing contract and fraud claims concerning an annuity without counsel after her attorney withdrew. At a competency hearing, Roth stated that she was confused and did not understand who was in charge, and the court found that she did not appear to understand the nature of her claims or the defenses at issue. A letter from Roth's doctor indicated that cognitive impairment and memory problems prevented her from

sitting for a deposition. Kelli Grande, Roth's granddaughter and durable power of attorney, appeared with Roth and was proposed as guardian ad litem.

PROCEDURAL HISTORY

Plaintiff proceeded pro se in a diversity action asserting breach of contract and fraud concerning an annuity. After plaintiff's former counsel withdrew, Kelli Grande filed a notice requesting a competency determination and guardian ad litem appointment. Following a competency hearing, the magistrate judge recommended that plaintiff be found incompetent to prosecute the action pro se, that Grande be appointed guardian ad litem, and that merits proceedings be stayed for 60 days. The magistrate judge also disregarded Grande's separate request for reconsideration as not properly before the court, subject to review by the assigned district judge under 28 U.S.C. § 636(b)(1).

DISPOSITION

other

CASES CITED

- In re County of Orange, 784 F.3d 520, 523-24 (9th Cir. 2015)
- In re Jessica G., 93 Cal. App. 4th 1180, 1186 (2001)
- Stoner v. Santa Clara County Office of Education, 502 F.3d 1116, 1127 (9th Cir. 2007)
- Berrios v. New York City Housing Authority, 564 F.3d 130, 134 (2d Cir. 2009)
- United States v. 30.64 Acres of Land, More or Less, Situated in Klickitat County, State of Washington, 795 F.2d 796, 805 (9th Cir. 1986)
- Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998)
- Martinez v. Ylst, 951 F.2d 1153, 1156-57 (9th Cir. 1991)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
CALIFORNIA 10 11 JONI M. ROTH No. 2:24-cv-1124-TLN-CKD (PS) 12 Plaintiff, 13 v.
ORDER AND 14 AIG, et al., FINDINGS AND RECOMMENDATIONS 15 Defendants. 16 17
Plaintiff Joni Roth currently proceeds without counsel in this diversity jurisdiction action 18
asserting breach of contract and fraud in connection with an annuity.

For the reasons set forth 19 below, the undersigned recommends plaintiff be found incompetent to
pursue her claims pro se, 20 Kelli Grande be appointed guardian ad litem for plaintiff, and a 60-
day stay be entered as to 21 further proceedings on the merits, including the motion for summary
judgment filed by defendant 22 Corebridge Financial, Inc., on October 14, 2025.1 23 On August
26, 2025, non-party Kelli Grande filed a “Notice and Disclosure” suggesting a 24 finding of
incompetence and appointment of a guardian ad litem under Rule 17(c) of the Federal 25 Rules of
Civil Procedure is warranted because of plaintiff’s cognitive decline.

(ECF No. 37.) The 26 complaint indicates Ms. Grande is plaintiff's Durable Power of Attorney (ECF No. 1 at 11.) 27 28 1 A stay of proceedings on the merits, if entered, does not prevent settlement proceedings. 1 On August 28, 2025, the district judge assigned to this case granted plaintiff's former 2 attorney's motion to withdraw as counsel. (ECF No. 38.)

To date, new counsel has not appeared 3 for plaintiff. 4 On November 20, 2025, the undersigned held a competency hearing via videoconference 5 for the purpose of determining plaintiff's competency to proceed pro se. (ECF No. 48.)

The 6 procedure for determining competency is set by federal law, but the court looks to state law for 7 competency standards. See Fed. R. Civ. P. 17(b)(1); *In re County of Orange*, 784 F.3d 520, 523- 8 24 (9th Cir. 2015).

Under California law, a party is incompetent if he or she lacks the capacity to 9 understand the nature or consequences of the proceeding or is unable to assist counsel in the 10 preparation of the case. *In re Jessica G.*, 93 Cal. App. 4th 1180, 1186 (2001). Upon due inquiry 11 and the information gleaned at the competency hearing, it appears plaintiff is legally incompetent 12 to prosecute her claims pro se.

13 Plaintiff Joni Roth appeared personally at the hearing, accompanied by her granddaughter, 14 Kelli Grande, and husband, Dean Roth. Plaintiff was responsive to questioning and 15 communicated coherently. Plaintiff stated she is confused and concerned about this case and does 16 not know who is in charge. Plaintiff expressed a lack of full understanding about the nature and 17 purpose of the competency proceeding.

It further does not appear plaintiff understands the nature 18 of her claims or the defenses substantively at issue in this case. The court also has before it a 19 letter from plaintiff's doctor regarding plaintiff's inability to sit for a deposition "secondary to her 20 cognitive impairment and memory problem." (ECF No. 40 at 15.) 21 Minor defects in cognitive abilities may not render a litigant incapable of providing 22 rational assistance to her attorney.

Here, though, plaintiff currently proceeds without the 23 assistance of counsel. The undersigned finds plaintiff has become legally incompetent to 24 prosecute her claims pro se. The court should appoint a guardian ad litem or issue another 25 appropriate order to protect plaintiff's interests. See Fed. R. Civ. P. 17(c)(2). 26 Kelli Grande, who appeared alongside plaintiff, would be a suitable guardian ad litem.

As 27 set forth, Ms. Grande is plaintiff's granddaughter and stated she already serves as plaintiff's 28 representative as Durable Power of Attorney. However, the right to proceed without counsel is 1 personal to plaintiff as the litigant and does not extend to Ms. Grande if appointed as a non- 2 attorney guardian ad litem. See *Stoner v. Santa Clara County Office of Educ.*, 502 F.3d 1116, 3 1127 (9th Cir.

2007); *Berrios v. New York City Hous. Auth.*, 564 F.3d 130, 134 (2nd Cir. 2009). 4 Nevertheless, a guardian ad litem is authorized to act on behalf of the incompetent party, make 5 decisions in the course of specific litigation, and make binding contracts for the retention of 6 counsel and expert witnesses and settlement of the case. *United States v. 30.64 Acres of Land, 7 More or Less, Situated in Klickitat Cnty., State of Wash.*, 795 F.2d 796, 805 (9th Cir.

1986). 8 The undersigned will recommend the assigned district judge declare plaintiff legally 9 incompetent to prosecute this case pro se and appoint Kelli Grande as plaintiff's guardian ad 10 litem for purposes of this case.

The undersigned will also recommend a stay of proceedings on the 11 merits, including defendant's motion for summary judgment, for 60 days. Plaintiff should be 12 warned that her claims will be subject to dismissal for failure to prosecute if no appearance of 13 counsel has been filed at the conclusion of the 60-day stay. See *Berrios*, 564 F.3d at 134 (a party 14 in a civil case has no constitutionally guaranteed right to the assistance of counsel).

15 Finally, on December 11, 2025, Ms. Grande filed a document styled as "Request for 16 Reconsideration and Compliance with Mandatory Duty under Fed. R. Civ. P. 17(c)." (ECF No. 17 49.) To the extent Ms. Grande requests relief from the undersigned related to this case, the 18 undersigned disregards the filing as not properly before the court. 19 In accordance with the above, IT IS ORDERED as follows: 20 1.

The undersigned disregards Ms. Grande's request for relief (ECF No. 49) as not 21 properly before the court. 22 2. The Clerk of the Court shall serve a copy of these findings and recommendations on 23 Kelli Grande by email to kelli.g45@yahoo.com. 24 In addition, IT IS RECOMMENDED as follows: 25 1. Plaintiff Joni Roth be found legally incompetent to prosecute this case pro se within the 26 meaning of Rule 17(c) of the Federal Rules of Civil Procedure.

27 2. Kelli Grande be appointed as guardian ad litem for plaintiff in this action. 28 //// 1 3. This case be stayed as to further proceedings on the merits for a period of 60 days from 2 || the date of any order adopting these findings and recommendations. 3 4. Plaintiff be warned that her claims will be subject to dismissal for failure to prosecute 4 || 1 no appearance of counsel has been filed at the conclusion of any stay.

5 5. The Clerk of the Court be directed to serve a copy of any order adopting or rejecting 6 || these findings and recommendations on Kelli Grande by email to kelli.g45@yahoo.com. 7 These findings and recommendations are submitted to the United States District Judge 8 || assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14) 9 || days after being served with these findings and recommendations, any party may file written 10 || objections with the court and serve a copy on all parties.

Such a document should be captioned 11 || “Objections to Magistrate Judge’s Findings and Recommendations.” Any reply to the objections 12 || shall be served on all parties and filed with the court within seven (7) days after service of the 13 || objections.

The parties are advised that failure to file objections within the specified time may 14 || waive the right to appeal the District Court’s order. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 15 || 1998); *Martinez v. Ylst*, 951 F.2d 1153, 1156-57 (9th Cir. 1991). 16 | Dated: December 17, 2025 / ae □□ / a Ly a 18 UNITED STATES MAGISTRATE JUDGE 19 30 8, roth24ev1 124.gal 21 22 23 24 25 26 27 28