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**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA**

LEONARD JESSIE MITCHELL,

Petitioner,

v.

UNNAMED,

Respondent.

CV F 06-0387 AWI WMW HC

**ORDER DIRECTING
PETITIONER TO NAME
CORRECT RESPONDENT**

Petitioner is a state prisoner proceeding pro se on a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 in this court.

A petitioner seeking habeas corpus relief under 28 U.S.C. § 2254 must name the state officer having custody of him as the respondent to the petition. Rule 2 (a) of the Rules Governing § 2254 Cases; Ortiz-Sandoval v. Gomez, 81 F.3d 891, 894 (9th Cir. 1996); Stanley v. California Supreme Court, 21 F.3d 359, 360 (9th Cir. 1994). Normally, the person having custody of an incarcerated petitioner is the warden of the prison in which the petitioner is incarcerated because the warden has "day-to-day control over" the petitioner.

1 Brittingham v. United States, 982 F.2d 378, 379 (9th Cir. 1992); see, also, Stanley v.
2 California Supreme Court, 21 F.3d 359, 360 (9th Cir. 1994). However, the chief officer in
3 charge of state penal institutions is also appropriate. Ortiz, 81 F.3d at 894; Stanley, 21 F.3d at
4 360. Where a petitioner is on probation or parole, the proper respondent is his probation or
5 parole officer and the official in charge of the parole or probation agency or state correctional
6 agency. Id.

7 Petitioner's failure to name a proper respondent requires dismissal of his habeas
8 petition for lack of jurisdiction. Stanley, 21 F.3d at 360; Olson v. California Adult Auth.,
9 423 F.2d 1326, 1326 (9th Cir. 1970); see, also, Billiteri v. United States Bd. Of Parole, 541
10 F.2d 938, 948 (2nd Cir. 1976). However, in this case, the Court will give petitioner the
11 opportunity to cure his defect by amending the petition to name a proper respondent. See,
12 West v. Louisiana, 478 F.2d 1026, 1029 (5th Cir.1973), *vacated in part on other grounds*,
13 510 F.2d 363 (5th Cir.1975) (en banc) (allowing petitioner to amend petition to name proper
14 respondent); Ashley v. State of Washington, 394 F.2d 125 (9th Cir. 1968) (same).

15 Accordingly, Petitioner is hereby GRANTED thirty (30) days from the date of service
16 of this order to file a first amended petition in this case naming the correct Respondent.
17 Petitioner's failure to do so will result in findings and recommendations that this action be
18 dismissed.

19 IT IS SO ORDERED.

20 **Dated:** April 20, 2006
21 bl0dc4

/s/ William M. Wunderlich
22 UNITED STATES MAGISTRATE JUDGE
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