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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

DANIEL TREGLIA,

CV F 07-00693 AWI SMS HC

Petitioner,

ORDER TO SHOW CAUSE WHY PETITION
SHOULD NOT BE DISMISSED FOR LACK
OF JURISDICTION

v.

TUOLOMNE SUPERIOR COURT,

Respondent.

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

Petitioner filed the instant petition for writ of habeas corpus on May 7, 2007, in the United States District Court for the Eastern District of California, Sacramento Division. By order of May 9, 2007, the petition was transferred to this Court.

The Court has conducted a preliminary review of the Petition and finds it is without jurisdiction to hear the case as Petitioner has named an improper respondent.

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. Brittingham v.

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

6 In this case, Petitioner names Tuolomne Superior Court, as Respondent. Although
7 Petitioner was convicted in the Tuolomne County Superior Court, it is not the person having day-
8 to-day control over Petitioner.

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

17 Accordingly, the Court HEREBY ORDERS:

- 18 1. Petitioner SHALL SHOW CAUSE why the Petition should not be dismissed by
19 AMENDING the Petition to name a proper respondent within thirty (30) days of
20 the date of service of this order. To comply with this directive petitioner need
21 only submit a pleading titled "Amendment to Petition" in which he amends the
22 petition to name a proper respondent. As noted above, that individual is the
23 person having day to day custody over petitioner - usually the warden of the
24 institution where he is confined. The Amendment should be clearly and boldly
25 captioned as such and include the case number referenced above, and be an
26 original signed under penalty of perjury.

27 IT IS SO ORDERED.

28 **Dated:** May 17, 2007

/s/ Sandra M. Snyder

UNITED STATES MAGISTRATE JUDGE

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