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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

CHARLOTTE CHAPMAN,

1:08-cv-01904 SMS HC

Petitioner,

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

v.

[Doc. 1]

KINGS COUNTY 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 December 10, 2008. 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. United States, 982 F.2d 378, 379 (9th Cir. 1992); see also Stanley v. California Supreme Court, 21 F.3d 359, 360 (9th Cir. 1994). However, the chief officer in charge of state penal institutions

1 is also appropriate. Ortiz, 81 F.3d at 894; Stanley, 21 F.3d at 360. Where a petitioner is on  
2 probation or parole, the proper respondent is his probation or parole officer and the official in  
3 charge of the parole or probation agency or state correctional agency. Id.

4 In this case, petitioner names the Kings County Superior Court as Respondent. Although  
5 Petitioner was convicted in the Kings County Superior Court, the Court is not and cannot be  
6 considered the person having day-to-day control over Petitioner.

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

15 Accordingly, the Court HEREBY ORDERS:

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

25  
26 IT IS SO ORDERED.

27 **Dated:** January 8, 2009

/s/ Sandra M. Snyder  
UNITED STATES MAGISTRATE JUDGE