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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

LEONARD P. SIMENTAL,

1:09-cv-02077-DLB (HC)

Petitioner,

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

v.

[Doc. 1]

ON HABEAS CORPUS,

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 on November 30, 2009. 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 does not name a Respondent. Petitioner is currently in the custody
5 of the California Correctional Institution, Tehachapi, and the proper respondent would be the
6 Warden of that facility. Petitioner's failure to name a proper respondent requires dismissal of his
7 habeas petition for lack of jurisdiction. Stanley, 21 F.3d at 360; Olson v. California Adult Auth.,
8 423 F.2d 1326, 1326 (9th Cir. 1970); see also Billiteri v. United States Bd. Of Parole, 541 F.2d
9 938, 948 (2d Cir. 1976). However, in this case, the Court will give petitioner the opportunity to
10 cure his defect by amending the petition to name a proper respondent. See, West v. Louisiana,
11 478 F.2d 1026, 1029 (5th Cir.1973), *vacated in part on other grounds*, 510 F.2d 363 (5th
12 Cir.1975) (en banc) (allowing petitioner to amend petition to name proper respondent); Ashley v.
13 State of Washington, 394 F.2d 125 (9th Cir. 1968) (same).

14 Accordingly, the Court HEREBY ORDERS:

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

24 IT IS SO ORDERED.

25 **Dated: April 19, 2010**

/s/ Dennis L. Beck
26 UNITED STATES MAGISTRATE JUDGE