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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

W. C. SPIVEY, III,)	1:12-cv-00206-SKO-HC
)	
Petitioner,)	ORDER DIRECTING PETITIONER TO
)	FILE A SIGNED AND DATED
v.)	VERIFICATION OF THE PETITION NO
)	LATER THAN THIRTY (30) DAYS AFTER
)	SERVICE OF THIS ORDER
M. McDONALD, Warden,)	
)	
Respondent.)	
)	
)	

Petitioner is a state prisoner proceeding pro se and in forma pauperis with a petition pursuant to 28 U.S.C. § 2254. The matter has been referred to the Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1) and Local Rules 302 and 303. Pending before the Court is the petition, which was filed on February 13, 2012.

I. Screening the Petition

Rule 4 of the Rules Governing § 2254 Cases in the United States District Courts (Habeas Rules) requires the Court to make a preliminary review of each petition for writ of habeas corpus. The Court must summarily dismiss a petition "[i]f it plainly appears from the petition and any attached exhibits that the

1 petitioner is not entitled to relief in the district court....”
2 Habeas Rule 4; O’Bremski v. Maass, 915 F.2d 418, 420 (9th Cir.
3 1990); see also Hendricks v. Vasquez, 908 F.2d 490 (9th Cir.
4 1990). Habeas Rule 2(c) requires that a petition 1) specify all
5 grounds of relief available to the Petitioner; 2) state the facts
6 supporting each ground; and 3) state the relief requested.
7 Notice pleading is not sufficient; rather, the petition must
8 state facts that point to a real possibility of constitutional
9 error. Rule 4, Advisory Committee Notes, 1976 Adoption;
10 O’Bremski v. Maass, 915 F.2d at 420 (quoting Blackledge v.
11 Allison, 431 U.S. 63, 75 n.7 (1977)). Allegations in a petition
12 that are vague, conclusory, or palpably incredible are subject to
13 summary dismissal. Hendricks v. Vasquez, 908 F.2d 490, 491 (9th
14 Cir. 1990).

15 Further, the Court may dismiss a petition for writ of habeas
16 corpus either on its own motion under Habeas Rule 4, pursuant to
17 the respondent's motion to dismiss, or after an answer to the
18 petition has been filed. Advisory Committee Notes to Habeas Rule
19 8, 1976 Adoption; see, Herbst v. Cook, 260 F.3d 1039, 1042-43
20 (9th Cir. 2001).

21 II. Lack of a Verification

22 A review of the petition shows that although Petitioner
23 respectfully submitted and signed the petition (pet. 6.),
24 Petitioner did not date the petition. Thus, the petition was not
25 verified within the meaning of 28 U.S.C. § 1746.¹

26
27 ¹Title 28 U.S.C. § 1746 provides:
28 Wherever, under any law of the United States or
under any rule, regulation, order, or requirement

1 Title 28 U.S.C. § 2242 provides in pertinent part:

2 Application for a writ of habeas corpus shall
3 be in writing signed and verified by the person
4 for whose relief it is intended or by someone
5 acting in his behalf.

6 Likewise, Rule 2 of the Rules Governing Section 2254 Cases in the
7 United States District Courts (Habeas Rules) expressly requires
8 that the petition "be signed under penalty of perjury by the
9 petitioner or by a person authorized to sign it for the
10 petitioner under 28 U.S.C. § 2242." Habeas Rule 2(c)(5).

11 If a petition is insufficient, the rules direct the Clerk to
12 file the petition, and the Court may then require the petitioner
13 to submit a corrected petition that conforms to Rule 2(c).

14 Habeas Rule 3(b); Habeas Rule 2, Advisory Committee Comment, 2004

15 made pursuant to law, any matter is required or
16 permitted to be supported, evidenced, established,
17 or proved by the sworn declaration, verification,
18 certificate, statement, oath, or affidavit, in
19 writing of the person making the same (other
20 than a deposition, or an oath of office, or an
21 oath required to be taken before a specified
22 official other than a notary public), such
23 matter may, with like force and effect, be
24 supported, evidenced, established, or proved
25 by the unsworn declaration, certificate,
26 verification, or statement, in writing of
27 such person which is subscribed by him, as
28 true under penalty of perjury, and dated, in
substantially the following form:

(1) If executed without the United States:
"I declare (or certify, verify, or state)
under penalty of perjury under the laws
of the United States of America that
the foregoing is true and correct. Executed
on (date).

(Signature)".

(2) If executed within the United States, its
territories, possessions, or commonwealths:
"I declare (or certify, verify, or state)
under penalty of perjury that the foregoing
is true and correct. Executed on (date).

(Signature)".

1 Amendments.

2 In light of the difficulty in having Petitioner submit a new
3 habeas corpus petition, Petitioner will be given an opportunity
4 to submit a document stating that he submitted the petition to
5 the Court and verifying its contents to be true under penalty of
6 perjury of the laws of the United States. Petitioner must date
7 the document and sign the document under penalty of perjury; the
8 document should contain an original signature. Petitioner will
9 be granted thirty (30) from the date of service of this order to
10 comply with the Court's directive. Further screening of the
11 petition will be suspended pending receipt of the verification.

12 Petitioner is forewarned that failure to comply with a Court
13 order will result in dismissal of the petition pursuant to Local
14 Rule 110.

15 Accordingly, it is ORDERED that:

16 1) Petitioner is GRANTED thirty (30) days from the date of
17 service of this order in which to file a signed verification of
18 the petition in compliance with this order.

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20 IT IS SO ORDERED.

21 **Dated:** February 20, 2012

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE

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