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

HEVERD GUTIERREZ,

Petitioner,

No. 2:09-cv-0329 GEB KJN P

vs.

D.K. SISTO, Warden,

Respondent.

ORDER

_____ /

Petitioner is a state prisoner proceeding without counsel, with an appeal from the district court’s order denying the petition for writ of habeas corpus. On April 20, 2011, petitioner filed an objection to the bill for the appellate court filing fee, claiming the district court “issued petitioner [in] forma pauperis status due to [petitioner] paying the filing fee.” (Dkt. No. 26 at 1.) It appears that petitioner believes that payment of the initial filing fee in the district court also covers the appeal of his case to the Court of Appeals for the Ninth Circuit. Petitioner is mistaken. First, review of the instant docket reveals petitioner has not previously been granted leave to proceed in forma pauperis. Second, Rule 5(d) of the Federal Rules of Appellate Procedure requires the district court to collect, and parties to pay to the district court, the required fees for pursuing an appeal in an appellate court. Id.

Litigants who file an appeal in the Ninth Circuit are required to pay the \$455.00

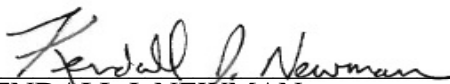
1 filing fee to the district court or risk dismissal of the appeal. However, if petitioner qualifies to
2 proceed in forma pauperis, petitioner may seek waiver of the filing fee. On the present record,
3 the court cannot discern whether petitioner is entitled to proceed in forma pauperis. See 28
4 U.S.C. §§ 1914(a); 1915(a). Therefore, petitioner will be provided the opportunity to either
5 submit the appropriate affidavit in support of a request to proceed in forma pauperis or submit
6 the appropriate filing fee. Petitioner is cautioned that failure to timely comply with this order
7 may result in the dismissal of his appeal.

8 In accordance with the above, IT IS HEREBY ORDERED that:

9 1. Petitioner shall submit, within fourteen days from the date of this order, an
10 affidavit in support of his request to proceed in forma pauperis or the \$455 appellate filing fee;
11 petitioner's failure to comply with this order will result in the dismissal of the appeal; and

12 2. The Clerk of the Court is directed to send petitioner a copy of the in forma
13 pauperis form used by this district.

14 DATED: May 3, 2011

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17 KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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