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

DAVID M. WALTON,

Petitioner,

No. CIV S-09-1384 LKK EFB P

vs.

SACRAMENTO DISTRICT COURT,

Respondent.

ORDER

_____ /

Petitioner, a state prisoner proceeding without counsel, seeks a writ of habeas corpus. *See* 28 U.S.C. § 2254. On November 2, 2009, petitioner paid the filing fee.¹

The court requires all petitions for writ of habeas corpus be filed on the proper form which is provided by this court. L.R. 190(b); *see also* Rule 2(c)-(d), Rules Governing Section 2254 Cases. Petitioner is hereby notified that in order for this court to review his May 19, 2009 application, he must refile his petition on the proper form. Furthermore, although petitioner may submit a separate memorandum to support his petition for relief, the court's application form must contain all relevant claims, and must provide the court with all necessary information. *See*

¹ The court will therefore vacate its October 16, 2009 findings and recommendations, which recommended that this action be dismissed on the ground that petitioner had not paid the filing fee or filed a completed in forma pauperis application. The court will also deny petitioner's motion to proceed in forma pauperis as unnecessary.

1 L.R. 190(e); Rule 2(c), Rules Governing Section 2254 Cases.

2 Additionally, a petitioner seeking a writ of habeas corpus must name as respondent the
3 person having custody over him. 28 U.S.C. § 2242; Rule 2(a), Rules Governing Section 2254
4 Cases. This person ordinarily is the warden of the facility where petitioner is confined. *See*
5 *Stanley v. California Supreme Court*, 21 F.3d 359, 360 (9th Cir. 1994). Petitioner names as
6 respondent the “Sacramento District Court,” which does not have custody over petitioner.
7 Petitioner has not named the proper respondent.

8 Accordingly, it is ORDERED that:

- 9 1. The October 16, 2009 findings and recommendations are vacated;
- 10 2. Petitioner’s November 2, 2009 motion to proceed in forma pauperis is denied as
11 unnecessary;
- 12 3. The May 19, 2009 petition is dismissed with leave to file an amended petition naming
13 the proper respondent within 30 days of the date of this order;
- 14 4. Any amended petition must be filed on the form employed by this court and must state
15 all claims and prayers for relief on the form. It must bear the case number assigned to this action
16 and must bear the title “Amended Petition”;
- 17 5. Petitioner is cautioned that failure to file an amended petition pursuant to this order
18 may result in a recommendation that this action be dismissed; and
- 19 6. The Clerk of the Court is directed to send petitioner the court’s form for application
20 for writ of habeas corpus.

21 Dated: December 21, 2009.


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE