

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

TIMOTHY W. HUGHES, No. CIV S-10-0144-CMK-P

Petitioner,

VS.

ORDER TO SHOW CAUSE

CALIFORNIA SUPREME COURT, et al.,

Respondents.

Petitioner, a state prisoner proceeding pro se, brings this petition for a writ of habeas corpus. Plaintiff has consented to Magistrate Judge jurisdiction pursuant to 28 U.S.C. § 636(c). No other party has been served or appeared in the action.

20 Petitioner is a state prisoner currently being housed at California State Prison,
21 Corcoran, which is located in Kings County. Cases arising in Kings County are generally
22 assigned to the Fresno Division of the United States District Court for the Eastern District of
23 California. See Local Rule 120(d). However, Petitioner is raising an issue relating to the
24 California Supreme Court, which sits in the City and County of San Francisco. Actions arising
25 in San Francisco are properly brought in the United States District Court for the Northern District
26 of California. As proper jurisdiction is questionable in this case, and due to the action requested,

1 a writ of mandamus, the undersigned finds it best to address the request as filed.

2 Petitioner has filed this action requesting this court issue a writ of mandamus
3 directing the California Supreme Court accept for filing his request for appointment of habeas
4 counsel and the memorandum of points and authorities in support thereof, which he attempted to
5 file on December 3, 2009, and again on December 21, 2009.

6 Under 28 U.S.C. § 1651(a), all federal courts may issue writs “in aid of their
7 respective jurisdictions” In addition, the district court has original jurisdiction under 28
8 U.S.C. § 1361 to issue writs of mandamus. That jurisdiction is limited, however, to writs of
9 mandamus to “compel an officer or employee of the United States or any agency thereof to
10 perform a duty” 28 U.S.C. § 1361 (emphasis added). It is also well-established that, with
11 very few exceptions specifically outlined by Congress, the federal court cannot issue a writ of
12 mandamus commanding action by a state or its agencies. See e.g. Demos v. U.S. Dist. Court for
13 Eastern Dist. of Wash., 925 F.2d 1160 (9th Cir. 1991). Where the federal court does have
14 jurisdiction to consider a petition for a writ of mandamus, such a writ may not issue unless it is to
15 enforce an established right by compelling the performance of a corresponding non-discretionary
16 ministerial act. See Finley v. Chandler, 377 F.2d 548 (9th Cir. 1967).

17 Here, Petitioner is not requesting an action of any officer or employee of the
18 United States or an agency thereof. Instead, Petitioner is requesting the court to compel a state
19 court to accept his filings. This court has no jurisdiction to do so under 28 U.S.C. § 1361.
20 Accordingly, Petitioner will be required to show cause why this action should not be dismissed
21 for lack of jurisdiction.

22 In addition, the undersigned notes that Petitioner has not paid the filing fee for this
23 action, nor has he submitted an application to proceed in forma pauperis. See 28 U.S.C.
24 §§ 1914(a), 1915(a). However, as the undersigned finds this case is properly dismissed, the
25 failure of Petitioner to resolve fees is inconsequential. In the event Petitioner responds to the
26 order to show cause, and attempts to proceed in this action, he will be required to resolve the fee

1 status. As such, Petitioner will be provided an application for leave to proceed in forma
2 pauperis. If Petitioner files a response to this order to show cause, he must also submit either a
3 completed application to proceed in forma pauperis, with the required certification, or pay the
4 appropriate filing fee.

5 Petitioner is warned that failure to comply with this order may result in the
6 dismissal of this action for lack of prosecution and failure to comply with court rules and orders.
7 See Local Rule 110.

8 Based on the foregoing, IT IS HEREBY ORDERED:

9 1. Petitioner shall show cause in writing, within 30 days of the date of this
10 order, why this action should not be dismissed for lack of jurisdiction;

11 2. Petitioner shall submit on the form provided by the Clerk of the Court,
12 within 30 days from the date of this order, a complete application for leave to proceed in forma
13 pauperis, or pay the appropriate filing fee; and

14 3. The Clerk of the Court is directed to send petitioner a new form
15 Application to Proceed In Forma Pauperis By a Prisoner.

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17 DATED: April 23, 2010

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19 CRAIG M. KELLISON
20 UNITED STATES MAGISTRATE JUDGE
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