

1                                    IN THE UNITED STATES DISTRICT COURT  
2                                    FOR THE NORTHERN DISTRICT OF CALIFORNIA

3 AARON ASHLEY,

No. C 11-01192 CW (PR)

4                                    Petitioner,

ORDER DIRECTING PETITIONER TO  
FILE COMPLETED 28 U.S.C. § 2254  
HABEAS PETITION FORM; AND  
DIRECTING HIS PAYMENT OF FILING  
FEE OR FILING OF IN FORMA  
PAUPERIS APPLICATION

5                                    v.

6 TIM VIRGA, Acting Warden,

7                                    Respondent.  
8 \_\_\_\_\_/

9                                    Petitioner, a prisoner of the State of California, filed with  
10 the Court a document entitled, "Request for Appointment of  
11 Counsel," in the instant case, which was opened as a habeas corpus  
12 action. The Court's docket reveals that Petitioner has never filed  
13 a federal habeas petition in this or any other federal district  
14 court. As such, he has no federal habeas corpus petition pending.  
15 Without an actual petition, this action cannot proceed.

16                                    On March 14, 2011, the Court received another document from  
17 Petitioner entitled, "Request for Appointment of Counsel and  
18 Declaration of Indigency."<sup>1</sup> He expresses his intention to file a  
19 habeas petition, but he claims to have a "disability covered under  
20 the Americans with Disabilities Act . . . [which] makes it hard for  
21 [him] to read, write and understand material regarding [his] case."  
22 (Pet'r Mar. 14, 2011 Mot. for Atty. at 2.) Therefore, he is  
23 seeking appointment of counsel to assist him in litigating his  
24 claims. If Petitioner wishes to pursue his habeas claims and he  
25 \_\_\_\_\_

26  
27 <sup>1</sup> When Petitioner first filed this action, he named "Cheryl  
28 Plier" as Respondent. In his March 14, 2011 motion, he names "T.  
Virga" as Respondent. Under Rule 2(a) of the Rules Governing  
Habeas Corpus Cases Under Section 2254, the proper respondent is  
Tim Virga, the acting warden at the California State Prison -  
Sacramento, where Petitioner is incarcerated.

1 has already completely exhausted his state judicial remedies, he  
2 may file a habeas petition using the attached form. If he does so,  
3 the Court will review it, if it appears that Petitioner states  
4 cognizable claims for relief, the Court will consider Petitioner's  
5 request for appointment of counsel.

6 No later than thirty (30) days from the date of this Order,  
7 Petitioner shall file with the Court the attached 28 U.S.C. § 2254  
8 habeas petition form, completed in full, including the state  
9 post-conviction relief he has sought and any claims he seeks to  
10 raise in federal court. Finally, he should clearly write in the  
11 correct caption and case number for this action, C 11-01192 CW  
12 (PR).

13 In addition, Petitioner has not paid the requisite \$5.00  
14 filing fee or filed an application for leave to proceed in forma  
15 pauperis (IFP). The Court cannot conduct an initial review of this  
16 matter until Petitioner has either paid the filing fee or completed  
17 an IFP application. See 28 U.S.C. § 1915(a) (a party is permitted  
18 to file a civil action in federal court without prepayment of fees  
19 or security if he makes an affidavit that he is unable to pay such  
20 fees or give security therefor). Accordingly, Petitioner shall pay  
21 the requisite \$5.00 filing fee in this action no later than thirty  
22 (30) days from the date of this Order. He shall include with his  
23 payment a clear indication that it is for the above-referenced case  
24 number, C 11-01192 CW (PR). In the event that Petitioner is unable  
25 to pay the filing fee, he shall submit an IFP application, trust  
26 account statement and certificate of funds no later than thirty  
27 (30) days from the date of this Order.

28

1           If Petitioner fails to file a completed § 2254 habeas petition  
2 form and fails to pay the filing fee or file the requisite IFP  
3 application within the thirty-day deadline, the case will be closed  
4 for failure to prosecute under Rule 41(b) of the Federal Rules of  
5 Civil Procedure. See Link v. Wabash R.R., 370 U.S. 626, 633 (1962)  
6 (pursuant to Rule 41(b), a district court may on its own motion,  
7 dismiss an action for failure to prosecute or to comply with a  
8 court order); see also Malone v. United States Postal Serv., 833  
9 F.2d 128, 133 (9th Cir. 1987) (the district court should afford the  
10 litigant prior notice before dismissing for failure to prosecute).

11           The Clerk of the Court shall send Petitioner a blank § 2254  
12 habeas petition form and a blank prisoner IFP application form.

13           IT IS SO ORDERED.

14 Dated: 3/31/2011



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CLAUDIA WILKEN  
UNITED STATES DISTRICT JUDGE

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1 UNITED STATES DISTRICT COURT  
2 FOR THE  
3 NORTHERN DISTRICT OF CALIFORNIA

4 AARON ASHLEY,  
5 Plaintiff,

Case Number: CV11-01192 CW

**CERTIFICATE OF SERVICE**

6 v.

7 HERYL PLILER et al,  
8 Defendant.

9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District  
10 Court, Northern District of California.

11 That on March 31, 2011, I SERVED a true and correct copy(ies) of the attached **and a blank**  
12 **§ 2254 habeas petition form and a blank prisoner IFP application form**, by placing said  
13 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing  
14 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery  
15 receptacle located in the Clerk's office.

16 Aaron Ashley AA3143  
17 B-1-223  
18 CSP-Sacramento  
19 P.O. Box 290066  
20 Represa, CA 95671-0066

21 Dated: March 31, 2011

22 Richard W. Wieking, Clerk  
23 By: Nikki Riley, Deputy Clerk  
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