

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

4
5 HORACE E. ASHLEY, JR.,

No. C 13-0918 YGR (PR)

6 Petitioner,

**ORDER OF DISMISSAL WITH LEAVE
TO AMEND; AND INSTRUCTIONS TO
CLERK**

7 v.

8 DOLLY MATTEUCCI,

9 Respondent.

10 This case was commenced when Petitioner, who is currently being held in custody at the
11 Napa State Hospital ("NSH"), filed a federal habeas corpus petition form. He has paid the \$5.00
12 filing fee.

13 However, it is unclear exactly what Petitioner is challenging in his petition. The Court
14 cannot fairly evaluate the petition in its present state, nor can the Court be certain that he intended to
15 file a 28 U.S.C. § 2254 petition at all. In his petition, Petitioner states that he was convicted of
16 "assault with a deadly weapon" on an unspecified date. (Pet. at 2.) He adds that he was "forced to
17 testify against himself" and "denied [his] right to trial by jury." (*Id.* at 6.) However, he also seems
18 to allege that his constitutional rights were violated by NSH Executive Director Dolly Matteucci,
19 who denied his right to refuse "psychotropic [sic] medication" on an unspecified date. (*Id.* at 4-5.)

20 Accordingly, the Court will dismiss the petition with leave to amend and allow Petitioner an
21 opportunity to file either a proper 28 U.S.C. § 2254 petition on the enclosed habeas form or a proper
22 42 U.S.C. § 1983 complaint on the enclosed civil rights form.

23 If Petitioner chooses to file a 28 U.S.C. § 2254 petition, he must clearly state his grounds for
24 relief and whether he is challenging his criminal conviction and sentence, the conditions of his
25 confinement, or the execution of his sentence. He must also set out how he has exhausted his
26 claims, that is, what he did to present them first to the highest state court available, which is the
27 Supreme Court of California.
28

1 If Petitioner chooses to file a 42 U.S.C. § 1983 complaint, Petitioner is particularly directed
2 to name as defendants each person who caused a violation of his constitutional rights and explain
3 what each person did to cause the violation. Liability under § 1983 arises only upon a showing of
4 personal participation by the defendant. *See Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989).
5 There is no *respondeat superior* liability under § 1983, i.e., no liability under the theory that a
6 supervisor is responsible for the actions or omissions of his or her subordinate. *See Leer v. Murphy*,
7 844 F.2d 628, 634 (9th Cir. 1988) (liability may be imposed on individual defendant under § 1983
8 only if plaintiff can show that defendant proximately caused deprivation of federally protected
9 right). The Court further notes that the filing fee for a civil rights action is \$350.00. Before this
10 action may proceed as a civil rights action, Petitioner must pay the \$350.00 filing fee, or file another
11 application for leave to proceed IFP with supporting documents, no later than **twenty-eight (28)**
12 **days** from the date of this Order.¹ He shall include with his payment or with his IFP application a
13 clear indication that it is for the above-referenced case number, Case No. C 13-0918 YGR (PR).

14 CONCLUSION

15 1. The instant petition is DISMISSED with leave to amend within **twenty-eight (28)**
16 **days** from the filing date of this Order. Petitioner shall file either a civil rights complaint on the
17 enclosed complaint form or a first amended petition on the enclosed habeas form, as set forth below.
18 **Failure to do so within the twenty-eight-day deadline shall result in dismissal of this action**
19 **without prejudice.**

20 2. Petitioner must write the case number for this action -- Case No. C 13-0918 YGR
21 (PR) -- on the form and complete all sections of the form. Petitioner shall take care to write clearly
22 and legibly, so that the Court can read what he writes.

23 If Petitioner chooses to file an amended habeas petition, it must include the words
24 "AMENDED PETITION" on the first page. The amended petition shall be on the Court's form for
25 habeas petitions, a copy of which is enclosed with Petitioner's copy of this Order.

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27
28 ¹ Because Petitioner originally filed this case as a habeas corpus action, the filing fee was \$5.00. He has paid the full filing fee, as mentioned above. If he chooses to proceed with this case as civil rights action, he must pay the full \$350.00 filing fee for civil rights actions.

