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

JOSE MONTEVERDE,)	No. C 09-00407 JW (PR)
Petitioner,)	ORDER DENYING REQUEST FOR SUBPOENA; EXTENDING TIME FOR PETITIONER TO FILE TRAVERSE
vs.)	
SHEILA MITCHELL,)	
Respondent.)	
_____)	(Docket No. 20)

Petitioner, a state convict currently on probation, filed a pro se petition for a writ of habeas corpus under 28 U.S.C. § 2254 challenging his state conviction. On October 8, 2009, petitioner filed a request for a subpoena to public institutions, including the Palo Alto Medical Foundation, the Internal Revenue Service, and Bank of America. (Docket No. 20.)

The request is DENIED without prejudice. Petitioner may compel a person who is not a party to this action to produce documents for inspection and copying pursuant to a subpoena duces decum. See Fed. R. Cip. P. 34(c), 45(a). In order to do so, petitioner must fill out the subpoena forms provided by the clerk of the Court and must ensure that each person is served with the subpoena by a non-party. Petitioner must tender to each person “the fees for one day’s attendance and the

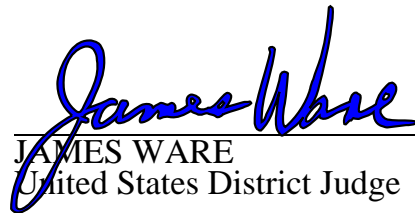
1 mileage allowed by law.” Fed. R. Civ. P. 45(b)(1). The current requisite fee for
2 each person is forty dollars per day, see 28 U.S.C. § 1821(b). These requirements
3 do not apply to a request for production of documents from one party to any other
4 party. See Fed. R. Civ. P. 34(a).

5 The Court will consider ordering the United States Marshal to serve a
6 subpoena duces tecum on a non-party if petitioner submits to the Court a completed
7 subpoena form and the requisite fee. The form must describe the items to be
8 produced with reasonable particularity and designate a reasonable time, place and
9 manner for their production. See Fed. R. Civ. P. 34(b).

10 Respondents filed an answer on the merits to the Court’s Order to Show
11 Cause on September 11, 2009. The Order to Show Cause directed Petitioner to file a
12 response to the answer, if he wished to do so, by filing a traverse with the court and
13 serving it on respondent within thirty days of his receipt of the answer. (See Docket
14 No. 5.) On September 23, 2009, petitioner filed a letter with this Court declaring his
15 innocence. (Docket No. 19.) It is unclear whether petitioner filed this document as
16 a response to respondent’s answer. In the interest of justice, the Court will extend
17 the time for petitioner to file a traverse. Petitioner shall file a traverse, if he wishes,
18 **no later than thirty (30) days** from the date this order is filed.

19 The Clerk is instructed to send petitioner four blank subpoena forms along
20 with this Order.

21
22 DATED: October 27, 2009



JAMES WARE
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

JOSE MONTEVERDE,
Petitioner,

Case Number: CV09-00407 JW

CERTIFICATE OF SERVICE

v.

SHEILA MITCHELL,
Respondent.

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

That on 11/3/2009, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Jose Monteverde
1075 Space Park Way
No. 51
Mountain View, Ca 94043

Dated: 11/3/2009

Richard W. Wiekling, Clerk
/s/ By: Elizabeth Garcia, Deputy Clerk