

1

2

3

4

5

6

7

8

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

9

10

11

12

RICHARD I. FINE,)

No. CV 09-1914-GW(CW)

13

Petitioner,)

ORDER REQUIRING RESPONSE TO
PETITION FOR WRIT OF HABEAS CORPUS
(28 U.S.C. § 2254)

14

v.)

15

SHERIFF OF LOS ANGELES COUNTY,)

16

Respondent.)

17

18

Petitioner, who is in custody at Los Angeles County Jail under
order of the Superior Court, has filed a petition for writ of habeas
corpus. **IT IS ORDERED** as follows:

20

21

1. The clerk shall (a) serve copies of the petition and this
order on Respondent by delivering them to an authorized agent of the
Sheriff of Los Angeles County, and to the Appellate Division of the
Office of the District Attorney for Los Angeles County; and (b) serve
a copy of this order on Petitioner.

25

26

2. Respondent shall file a response to the petition within
fourteen (14) days from the filing date of this order, and shall lodge
with the court copies of all pertinent documents. See Rules 4 and 5

28

1 of the Rules Governing Section 2254 Cases in the United States
2 District Courts, 2004 revision (cited as "28 foll. § 2254"). This
3 response may be either an answer or a motion to dismiss. Id.

4 3. An answer must address both the merits of all grounds for
5 relief asserted in the petition, and any applicable procedural issues
6 (such as the one-year statute of limitations at 28 U.S.C. § 2244(d),
7 or the exhaustion requirement at 28 U.S.C. § 2254(b)-(c)). See Rule
8 5, 28 foll. § 2254. If Respondent waives or concedes the issue of
9 exhaustion, Respondent shall so state, expressly, in the answer. See
10 Rule 5, id.; 28 U.S.C. § 2254(b)(3). Once an answer has been filed
11 the court will set a deadline for Petitioner's reply.

12 4. Alternatively, Respondent may file a motion to dismiss on
13 grounds other than the merits of Petitioner's claims, such as failure
14 to exhaust state remedies or untimeliness. If Respondent moves to
15 dismiss, the court will set a deadline for Petitioner's opposition.

16 5. If the court denies a motion to dismiss it will set a
17 deadline for Respondent's further response. The court may issue
18 further orders, as appropriate, at any time.

19 6. If Respondent contends that the petition should properly be
20 brought under 28 U.S.C. § 2241, rather than 28 U.S.C. § 2254,
21 Respondent shall so state in responding to the petition.

22
23 Dated: April 7, 2009

24 /s/
25 CARLA M. WOEHRLE
26 United States Magistrate Judge
27
28

1 cc: Richard I. Fine
2 BK# 1824367
3 Twin Towers Correctional Facility
4 450 Bauchet Street
5 Los Angeles, CA 90012

6 Leroy D. Baca, Sheriff
7 Los Angeles County Sheriff's Department
8 4700 Ramona Blvd.
9 Monterrey Park 91754-2169

10 Los Angeles County District Attorney's Office
11 Appellate Division, Attn of Irene Wakabayashi
12 320 W. Temple St. Rm. 540
13 Los Angeles CA 90012
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28