EDMUND G. BROWN JR.
Attorney General

State of California
DEPARTMENT OF JUSTICE

1300 I STREET, SUITE 125
P.O. BOX 944255
SACRAMENTO, CA 94244-2550

Public: (916) 445-9555
Telephone: (916) 324-5374
Facsimile: (916) 322-8288
E-Mail: Christopher.Rench@doj.ca.gov

December 9, 2010

Supreme Court of the State of California
350 McAllister Street
San Francisco, CA 94102-4797

RE: *Supplemental Letter Brief*
Alfredo Gomez v. Super. Ct. of Lassen County, Case No. S179176

Dear Honorable Justices:

Petitioners Alfredo Gomez and Manuel Juarez challenge the authority of a superior court commissioner to summarily deny a petition for writ of habeas corpus. The Court of Appeal held that based on Code of Civil Procedure, section 259, subdivision (a)[1] and this Court's decision in *Rooney v. Vermont Investment Corporation* (1973) 10 Cal.3d 351, court commissioners could summarily deny a habeas petition or issue an order to show cause. The Court of Appeal further held that once an order to show cause issued, the petition had to be heard by a judge, unless the parties consented to a commissioner's jurisdiction. This Court has directed petitioners, and Warden Tom Felker (Warden), as the real party in interest, to provide supplemental briefing addressing section 259, subdivision (a) and *Rooney*. As discussed in his Answering Brief, the Warden is not adversely impacted by the Court of Appeal decision or petitioners' position because the Warden is not formally required to answer a habeas petition until an order to show cause issues. Regardless, as detailed below, under section 259 and *Rooney*, the judgment below should be affirmed. Discussion of the questions this Court posed in its November 10, 2010 order follow.

As a Matter of Statutory Interpretation, Does a Decision Whether to Summarily Deny a Petition for a Writ of Habeas Corpus or to Issue an Order to Show Cause Constitute an "Ex Parte" Matter within the Meaning of Code of Civil Procedure, Section 259, Subdivision (a)? If Not, to What Matters Does the Statute Apply?

Section 259, subdivision (a) states that a court commissioner shall have the power to "[h]ear and determine ex parte motions for orders and alternative writs and writs of habeas corpus in the superior court for which the court commissioner is appointed." In interpreting a

[1] All statutory references are to the Code of Civil Procedure, unless otherwise indicated.

statute, the Court's "primary goal is to determine and give effect to the underlying purpose of the law." *Goodman v. Lozano* (2010) 47 Cal.4th 1327, 1332. The "first step is to scrutinize the actual words of the statute, giving them a plain and commonsense meaning. If the words of the statute are clear, the court should not add to or alter them to accomplish a purpose that does not appear on the face of the statute or from its legislative history." (*Ibid.*, citations omitted). Thus, if the "language of a statute is not ambiguous, the plain meaning controls and resort to extrinsic sources to determine the Legislature's intent is unnecessary." (*Ste. Marie v. Riverside Co.* (2009) 46 Cal.4th 282, 288, citations omitted.)

Here, the decision to summarily deny a habeas petition or issue an order to show cause constitutes an "ex parte" matter. "Ex parte" plainly refers to motions or applications where only one side's position is formally before the Court. (See, e.g, *United Farm Workers of America v. Super. Ct.* (1975) 14 Cal.3d 902, 904 [ex parte restraining order is one issued without moving party providing reasonable notice to other side]; *Smith v. Campbell & Facciolla, Inc.* (1962) 202 Cal.App.2d 134, 137 [phrase ex parte generally refers to "preliminary appearances in court where one side only is represented."]; Black's Law Dict. (9th ed. 2009) ["ex parte motion" is a "motion made to the court without notice to the adverse party; a motion that the court considers and rules on without hearing from all sides."].) When a prisoner files a habeas petition, the court must review the petition and determine whether it states a prima facie case for relief. (*People v. Romero* (1994) 8 Cal.4th 728, 737.) The petition "serves primarily to launch the judicial inquiry into the legality of the restraints on the petitioner's personal liberty." (*Id.* at p. 738.) "If the court determines that the petition does not state a prima facie case for relief or that the claims are all procedurally barred, the court will deny the petition outright, such dispositions being commonly referred to as 'summary denials.'" (*Id.* at p. 737.) If, however, the court determines that the petition states a prima face case, the court must issue an order to show cause and require the person having custody of the petitioner to answer the petition. (*Ibid.*) Thus, at the time a court determines whether to summarily deny a habeas petition or issue an order to show cause, the court's decision is strictly an evaluation of the sufficiency of the petition. The respondent has not yet been required to answer the petition, and the court is not evaluating the respondent's contentions. Indeed, the Warden here did not appear in either of petitioners' actions before the commissioner denied their petitions. Accordingly, as the Court of Appeal found, the decision to summarily deny a habeas petition is an "ex parte" matter within the scope of section 259, subdivision (a).

Notably, in 1984, the Rules of Court were amended to allow a court to request an informal response from the respondent before summarily denying a habeas petition. (*Romero*, *supra*, 8 Cal.4th at pp. 741-742; Cal. Rules of Court, rule 4.551(b).) The informal response "is not a pleading" and does not constitute the respondent's answer to the petition. (*Romero*, *supra*, 8 Cal.4th at p. 741.) Rather, the informal response "performs a screening function" designed to aid the court in determining whether the petition should be summarily rejected. (*Id.* at p. 742.) Thus, while the informal response is not respondent's formal pleading, the matter is no longer "ex parte" because the court is considering the positions of both parties. Regardless, the Court of Appeal did not need to address the impact of the informal response process because the commissioner here did not request an informal response from the Warden. Thus, when the

commissioner denied petitioners' claims, the petitions constituted "ex parte" matters for purposes of section 259, subdivision (a).

Assuming that Section 259, Subdivision (a) Grants Commissioners the Authority to Summarily Deny a Habeas Corpus Petition or to Issue an Order to Show Cause, Did Commissioners Actually Exercise Such Authority Prior to the Adoption of Article VII, Section 22 of the California Constitution in 1966?

In *Rooney*, this Court recognized that the "scope of the subordinate judicial duties that may be properly assigned to court commissioners should be examined in the context of the powers that court commissioners had and were exercising in 1966," when article VII, section 22 of the state constitution was enacted. (*Rooney*, *supra*, 10 Cal.3d at p. 362.) The Court observed that as of 1966, commissioners were making "a most significant contribution to the reduction of the judicial workloads in the superior court." (*Id.* at p. 363.) The Warden does not have readily available access to historical records of the California courts and the past practices of court commissioners. Further, the Warden has not been able to locate information in caselaw and other legal databases reflecting whether—and how frequently—commissioners were summarily denying habeas petitions before 1966. The California Court Commissioners Association may have access to information which could definitively answer this question, and Lassen County, as respondent, may be able to speak to its historical practices regarding commissioners.

If Commissioners Did Have the Authority to Summarily Deny Habeas Corpus Petitions Prior to 1966, Can it Still be Argued in Light of *Rooney* that Such Authority Does Not Constitute a Subordinate Judicial Duty within the Meaning of Article VI, Section 22 of the California Constitution?

In *Rooney*, this Court considered whether a commissioner deciding an uncontested matter was properly characterized as a subordinate judicial duty. (10 Cal.3d at p. 366.)[2] The Court engaged in a thorough review of section 259 and the enactment of article VII, section 22 of the state constitution. Before the constitutional amendment, commissioners were given authority to "perform chamber business of the judges of the superior courts, to take depositions, and to perform such other business connected with the administration of justice as provided by law." (*Rooney*, *supra*, 10 Cal.3d at p. 361.) The constitutional amendment provided that the commissioners could "perform subordinate judicial duties." (*Ibid.*) The Court held that "[n]othing in the drafting and adoption of the constitutional provision indicates that the phrase 'subordinate judicial duties' should be interpreted as foreclosing or limiting court commissioners from exercising the powers which the Legislature had conferred on them prior to 1966." (*Id.* at p. 364.) And the Court concluded that the authority granted in section 259 was also consistent with legislation enacted after the constitutional revision, which indicated that the Legislature intended commissioners to continue performing judicial duties comparable to what they were

[2] At the time of the *Rooney* decision, section 259, subdivision (a)(6) governed uncontested proceedings. Subsequently, section 259 has been amended and the authority of commissioners to adjudicate uncontested matters is codified in subdivision (g).

performing before the amendment. (*Id.* at pp. 365-366.) Accordingly, the Court reviewed the statute as a whole and held that since "*all* the judicial powers that sections 259 and 259a authorized commissioners to exercise pursuant to the former constitutional provision can fairly be described as 'subordinate,' the [constitutional revision] was fully consistent with an intent to validate preexisting powers . . . ." (*Rooney*, *supra*, 10 Cal.3d at p. 364.)

Thus, while the Court in *Rooney* only specifically held that the powers of commissioners with respect to uncontested matters were a subordinate judicial duty, the Court considered all of the authority conferred to commissioners in section 259—including the power to hear and determine an ex parte petition for writ of habeas corpus—and expressly determined that each activity was properly deemed a subordinate judicial duty. (*Rooney*, *supra*, 10 Cal.3d at pp. 364-366.) Accordingly, assuming section 259, subdivision (a) grants commissioners the power to summarily deny a habeas petition, this Court in *Rooney* has already determined such authority is a subordinate judicial duty.

Have the Legal Consequences of a Summary Denial of a Habeas Corpus Petition, or the Legal Determinations Involved, Changed Since the Adoption of Article VI, Section 22 in Such a Manner as to Support a Conclusion that the Summary Denial of a Habeas Corpus Petition No Longer Constitutes a Subordinate Judicial Duty?

The legal determinations in summarily denying petition for writ of habeas corpus have not materially changed since 1966. This Court has made clear the current procedures for courts to summarily deny a petition or issue an order to show cause. (*Romero*, *supra*, 8 Cal.4th at pp. 737-742; *In re Clark* (1993) 5 Cal.4th 750, 769, fn. 9; *People v. Duvall* (1994) 9 Cal.4th 464, 473-479.) After a petition is filed, the reviewing court must determine whether the petitioner has stated a prima facie case for relief. (*Duvall*, *supra*, 9 Cal.4th at pp. 474-475.) The petitioner must plead his or her claims with particularity, and the court assumes the factual allegations of the petition are true. (*Ibid.*) If a prima facie case is shown, the court will issue an order to show cause and order the respondent to file a return; if not, the court will summarily deny the petition. (*Id.* at pp. 475-479.) These determinations are nearly identical to the procedures required before the constitutional amendment was enacted in 1966. (Pen. Code, § 1474; *Ex Parte Razutis* (1950) 35 Cal.2d 532, 535-536; *In re Sawin* (1949) 34 Cal.2d 300, 303-304; *In re Egan* (1944) 24 Cal.2d 323, 329-330; *In re Collins* (1907) 151 Cal. 340, 342-343; *In re Oxman* (1950) 100 Cal.App.2d 148, 150; *In re Kolbe* (1934) 139 Cal.App. 239, 240.)[3] And both before and after the 1966 constitutional provision, petitioners were entitled to counsel only on the issuing of an order to show cause. (*In re Clark*, *supra*, 5 Cal.4th at p. 780; *People v. Shipman* (1965) 62 Cal.2d 226, 231-232.)

---

[3] As noted above, since 1984, courts have the option of seeking an informal response from the respondent before deciding whether to deny the petition or issue an order to show cause. The informal response process, however, does not change the legal determination required by the court, namely whether the petition states a prima facie case for relief. (*Romero*, *supra*, 8 Cal.4th at pp. 741-742.)

Similarly, the legal consequences of a summary denial have not significantly changed. Both before and after the constitutional revision, a summary denial by the superior court was not appealable. Rather, a petitioner unsuccessful in superior court had and has the option of filing an original writ in either the Court of Appeal or this Court. (Pen. Code, §§ 1506-1507; *In re Hochenberg* (1970) 2 Cal.3d 870, 876; *Loustalot v. Super. Ct.* (1947) 30 Cal.2d 905, 913.) Thus, after the 1966 amendment, habeas petitioners are still entitled to pursue their claims in original writs to a higher court, and have this Court act as the final arbiter of their claims under California law. Therefore, there have not been significant changes in the legal consequences of, and determinations involved in, summarily denying a habeas petition or issuing an order to show cause since this Court's decision in *Rooney*.

Notably, the current Rules of Court require that any superior court "order denying a petition for writ of habeas corpus must contain a brief statement of the reasons for the denial." (Cal. Rules of Court, Rule 4.551(g).) A similar rule of court did not exist before 1966. Thus, commissioners now must provide written reasons when summarily denying a habeas petition. On federal habeas corpus review, the federal courts will "look through" unexplained denials by this Court and the Court of Appeal and deem such denials to be on the same grounds as the superior court's judgment. (*Ylst v. Nunnemaker* (1991) 501 U.S. 797, 802-04; 28 U.S.C. § 2254(d).) Accordingly, the reasons stated by the superior court in denying a federal claim have additional relevance, and in the event of an unexplained denial by the appellate court and this Court, a commissioner's findings will be the decision reviewed by federal courts.

Further, while the legal consequences of summary denials have not significantly changed, as the Court of Appeal noted, the realities of modern habeas practice place a large burden on superior courts, particularly the smaller counties which house many of the State's prisons. (*Gomez v. Super. Ct.* (2009) 102 Cal.Rptr.3d 93, 96.) Indeed, the California prison system is currently overcrowded and operating beyond capacity. (See *Cal. Correctional Peace Officers' Assn. v. Schwarzenegger* (2008) 163 Cal.App.4th 802, 809-811.) The effect of this increase in prison population on a superior court's ability to efficiently screen habeas petitions is compounded by the lack of limits on petitioners who continually abuse the habeas process, the absence of a clear timeliness rule for non-capital habeas petitioners, and the expanding scope of habeas review to include issues not implicating an inmate's fundamental rights or liberty. (See *In re Bittaker* (1997) 55 Cal.App.4th 1004, 1010-1011 [holding that vexatious litigant statute does not apply to habeas petitioners]; *Chaffer v. Prosper* (9th Cir. 2010) 592 F.3d 1046, 1048, fn. 1 [noting that this Court declined to answer a certified question to clarify the timeliness rule for habeas petitioners]; *Duvall, supra*, 9 Cal.4th at p. 470 [noting "the modern expansion of the availability of relief on habeas corpus."]; *In re Estevez* (2008) 165 Cal.App.4th 1445, 1460-1461, fn. 6 [unlike federal habeas practice, state habeas petitions may be directed "simply as to the circumstances under the which the prisoner is held."]; *In re Ferguson* (1961) 55 Cal.2d 663, 669 [habeas claim may relate "solely to a matter of prison administration."].) And while the scope and quantity of habeas petitions filed in superior courts continue to rise, the number of court commissioners and judicial officers remains stagnant. (See Judicial Council of California, 2010 Court Statistics Report, at pp. 56-57, Table 11 [showing a 56% increase in number of habeas

petitions filed in superior courts from 1999 to 2009] & Table 12 [reflecting number of authorized judicial positions from 1999 through 2009].)[4]

In sum, while the Warden is not adversely impacted by either the appellate decision or petitioners' position, given the Legislature's determination in section 259 and this Court's earlier holding in *Rooney*, the summary denial of a habeas petition or the issuance of an order to show cause is a subordinate judicial duty. Accordingly, the Court of Appeal properly found that the commissioner here had the authority to summarily deny Gomez and Juarez's petitions.

Sincerely,

CHRISTOPHER J. RENCH
Deputy Attorney General
State Bar No. 242001

For EDMUND G. BROWN JR.
Attorney General

CJR:

SA2010302225

[4] This information was obtained at http://www.courtinfo.ca.gov/reference/3_stats.htm.

DECLARATION OF SERVICE BY U.S. MAIL

Case Name:
No.: **S179176**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On December 9, 2010, I served the attached

Supplemental Letter Brief - December 9, 2010

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550, addressed as follows:

Michael Satris
Law Offices of Michael Satris
P. O. Box 337
Bolinas, CA 94924-0337
Attorney for Petitioners Alfredo Gomez

Court of Appeal of the State of California
Third Appellate District
621 Capitol Mall, 10th Floor
Sacramento, CA 95814

Superior Court of Lassen County
220 South Lassen Street
Susanville, CA 96130

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on December 9, 2010, at Sacramento, California.

Francina M. Stevenson
Declarant

Francina M. Stevenson
Signature

SA2010302225
AG Declaration of Service-Internal Mail (W).doc