

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA**

Derek Matthew Wisham,)	
)	
Petitioner,)	ORDER
)	
vs.)	
)	
Colby Braun, Warden,)	Case No. 1:17-cv-263
)	
Respondent.)	

On January 12, 2018, petitioner filed notice of change of address in which he advised: “I will get released from prison on the 14th. I will still be on probation for two years after the 14th. And be on sex offender registration [sic] probation for life.” (Doc. No. 10). He also filed what the court construes as a motion to substitute his probation officer, Rick Hoekstra, North Dakota Attorney General Wayne Stenehjem and anyone who may have custody of him in the future as named respondents.

Rule 2 of the Rules Governing Section 2254 Cases provides the following in relevant part:

(a) Current Custody; Naming the Respondent. If the petitioner is currently in custody under a state court judgment, the petition must name as respondent the state officer who has custody.

(b) Future Custody; Naming the Respondents and Specifying the Judgment. If the petitioner is not in custody--but may be subject to future-custody--under the state-court judgment being contested, the petition must name as respondents both the officer who has current custody and the attorney general of the state where the judgment was entered. The petition must ask for relief from the state-court judgment being contested.

Rule 2(a) and (b), Rules Governing Section 2254 Cases.

The Advisory Committee Notes to Rule 2 provide examples of proper respondents depending upon the situation. For example, in an instance when the petitioner is on probation or parole due to

the state judgment that he is attacking, it instructs that the “named respondents shall be the particular probation or parole officer responsible for supervising the [petitioner] and the official in charge of the parole or probation agency, or the state correctional agency, as appropriate.” Rule 2(b), 28 U.S.C. § 2254 Advisory Committee Note.

As petitioner is no longer confined at the North Dakota Staten Penitentiary, Warden Braun is no longer a proper respondent. See Carroscosa v. Hauck, No. 15–5956, 2015 WL 13427753, at *1 (D.N.J. August 5, 2015). Rather, it would appear that Rick Hoekstra, petitioner’s probation officer, and Leann Bertch, Director of the North Dakota Department of Corrections and Rehabilitation, are the proper respondents given petitioner’s current status.

Accordingly, the court **VACATES** its order dated January 16, 2018 (Doc. No. 12) and **GRANTS IN PART** petitioner’s motion (Doc. No. 11). Probation Officer Rick Hoekstra and Leann Bertsch, Director of the North Dakota Department of Corrections and Rehabilitation, shall be substituted as the named respondents in this matter.

IT IS SO ORDERED.

Dated this 19th day of January, 2018.

/s/ Charles S. Miller, Jr.
Charles S. Miller, Jr., Magistrate Judge
United States District Court