

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

JAMES R. BRISCOE III,  
Plaintiff,  
v.  
D. ADAMS, et al.,  
Defendants.

CASE NO. 1:07-cv-00320- AWI- MJS- PC  
ORDER DENYING MOTION TO STAY  
(Doc. 81)

Plaintiff is a former Fresno County Jail inmate proceeding pro se and in forma pauperis in a civil rights action pursuant to 42 U.S.C. § 1983. Pending before the Court is plaintiff’s motion for a stay of the proceedings. Defendant Fresno County opposes the motion.<sup>1</sup>

This action was initiated by civil complaint filed by plaintiff’s retained counsel. Discovery has proceeded, and the dispositive motion filing deadline is September 8, 2010.

On December 24, 2009, counsel for plaintiff filed a motion to withdraw as counsel of record. By order dated March 18, 2010, the motion was granted. Plaintiff now proceeds pro se. On February 26, 2010, plaintiff filed a notice of change of address which indicated he had been released from the Fresno County Jail. His April 1, 2001 motions seeks to stay this action “until he is either released from Fresno County Jail or until plaintiff obtains an attorney to replace [former] attorney

---

<sup>1</sup> The California Department of Corrections and Rehabilitation defendants have not filed a response to the motion.

1 of record.” (Mot. 1:23.)

2 “The district court has broad discretion to stay proceedings as an incident to its power to  
3 control its own docket.” Clinton v. Jones, 520 U.S. 681, 707 (1997)(citing Landis v. North  
4 American Co., 299 U.S. 248, 254 (1936). “The proponent of the stay bears the burden of  
5 establishing its need.” Id. at 706. The Court considers the following factors when ruling on a  
6 request to stay proceedings: (1) the possible damage which may result from the granting of a stay;  
7 (2) the hardship or inequity which a party may suffer in being required to go forward, and (3) the  
8 orderly course of justice, measured in terms of the simplifying or complicating of issues, proof, and  
9 questions of law which could be expected to result from a stay. Filtrol Corp. V. Kelleher, 467 F.2d  
10 242, 244 (9<sup>th</sup> Cir. 1972)(quoting CMAX, Inc. v. Hall, 300 F.2d 265, 268 (9<sup>th</sup> Cir. 1962).

11 The Ninth Circuit Court of Appeal has held that “The district court’s indefinite stay of all  
12 proceedings is tantamount to a denial of due process. Simply because a person is incarcerated does  
13 not mean that he is stripped of free access to the courts and the use of legal process to remedy civil  
14 wrongs.” Wimberly v. Rogers, 557 F.2d 671, 673 (9<sup>th</sup> Cir. 1997). Further, in considering a stay  
15 order, the court should “balance the length of any stay against the strength of the justification given  
16 for it.” Young v. I.N.S., 208 F.3d 1116, 1119 (9<sup>th</sup> Cir. 2000).

17 Plaintiff requests a stay on the grounds that he is seeking counsel and had been having  
18 difficulty litigating his case while incarcerated. As noted, plaintiff is no longer incarcerated. That  
19 he has not yet retained replacement counsel does not justify a stay. The Court has pending before  
20 it hundreds of civil rights actions brought by incarcerated pro se litigants. There are not here any  
21 exceptional circumstances to justify the appointment of counsel, Wilborn, 789 F.2d at 1331(citation  
22 omitted), and plaintiff has shown no justification for staying this action while he continues to seek  
23 replacement counsel. As the instigator of this action, he is responsible for prosecuting it. He has  
24 known for more than five months that his previous attorney wished to withdraw, and he has had  
25 more than two months since withdrawal was approved by the court to seek new representation.  
26 There is no reason to believe that further delay would be any more productive. However, it would  
27 frustrate schedules previously set and defendants’ rights to move the charges against them to some  
28 resolution.

1           Accordingly, IT IS HEREBY ORDERED that plaintiff's motion for an indefinite stay in  
2 order to retain counsel shall be, and hereby is, DENIED.

3  
4  
5  
6 IT IS SO ORDERED.

7 Dated: June 7, 2010

*/s/ Michael J. Long*  
UNITED STATES MAGISTRATE JUDGE