

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

KELLY ALICE KESSLER, ) 1:10-cv-0322-OWW-SMS-HC  
)  
Petitioner, ) ORDER DIRECTING RESPONDENT TO  
) MAKE AN APPEARANCE AND TO FILE  
v. ) OPPOSITION OR A STATEMENT OF NON-  
) OPPOSITION TO PETITIONER'S MOTION  
) FOR STAY AND ABEYANCE (Doc. 15)  
TINA HORNBEAK, Warden, et al., )  
) ORDER DIRECTING THE CLERK TO  
Respondents. ) SERVE THE PETITION AND MOTION ON  
) RESPONDENT  
\_\_\_\_\_ )

Petitioner is a state prisoner proceeding with the assistance of counsel with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The matter has been referred to the Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1) and Local Rules 302 and 304. Pending before the Court is Petitioner's motion to stay the action, filed on March 12, 2010.

I. Background

Petitioner alleges claims concerning her conviction in the Tuolumne County Superior Court of possession of a firearm and related offenses. Petitioner admits that with respect to some of

1 the claims, Petitioner has failed to exhaust state remedies.  
2 Petitioner has filed a protective petition because of uncertainty  
3 regarding a future determination of the timeliness of the  
4 Petitioner's claims.

5 The Court has not completed its initial screening of the  
6 petition, and Respondent has not been directed to order a  
7 response to the petition.<sup>1</sup> The Court seeks the input of  
8 Respondent with respect to Petitioner's motion for a stay.

9 Therefore, the Court will direct service upon Respondent of  
10 the petition and the motion to stay, and the Court will further  
11 direct Respondent to make an appearance for the limited purpose  
12 of permitting the Court to consider and determine the motion to  
13 stay.

## 14 II. Disposition

15 Accordingly, it is ORDERED that:

16 1) Respondent is DIRECTED to file no later than thirty days  
17 after the date of service of this order opposition to  
18 Petitioner's motion to stay the action, or a statement of non-  
19 opposition to the motion; and

20 2) The Clerk is DIRECTED to serve upon Respondent a copy of  
21 the petition (doc. 1) and Petitioner's motion for a stay (doc.  
22 15); and

23 3) Respondent is DIRECTED to make a limited appearance in  
24 this proceeding for the purpose of litigating the motion for a  
25 stay presently before the Court; and

26 4) Petitioner may file a reply to any opposition filed by  
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28 <sup>1</sup> Respondent did file a notice that she declined to proceed before a Magistrate Judge. (Doc. 16, filed March 12, 2010.)

Respondent no later than fourteen days after the date of service  
of any opposition.

IT IS SO ORDERED.

**Dated: July 16, 2010**

**/s/ Sandra M. Snyder**  
UNITED STATES MAGISTRATE JUDGE