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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

STEPHEN DANIEL BLYMAN,

 Petitioner,

 v.

WARDEN,

 Respondent.

Case No. 1:14-cv-00836-LJO-BAM-HC

ORDER GRANTING PETITIONER'S
UNOPPOSED MOTION FOR A KELLY STAY
OF THE ACTION PENDING EXHAUSTION OF
STATE COURT REMEDIES (DOCS. 7, 8,
15) AND STAYING THE ACTION PENDING
FURTHER ORDER OF THE COURT

ORDER DEFERRING CONSIDERATION OF
PETITIONER'S MOTION FOR A RHINES
STAY (DOCS. 7, 8, 15)

ORDER DIRECTING PETITIONER TO FILE
PERIODIC STATUS REPORTS

Petitioner is a state prisoner proceeding pro se and in forma pauperis 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 through 304.

Pending before the Court are Petitioner's motions for a stay filed on June 16, 2014, July 7, 2014, and September 26, 2014. Although Respondent initially filed opposition to the motions on the same date the Court directed the filing of opposition, Respondent subsequently gave notice of non-opposition to a Kelly stay; it appears that Respondent maintains opposition to a Rhines stay.

1 I. Motion for a Stay

2 Petitioner seeks a stay pursuant to both Rhines v. Weber, 544
3 U.S. 269, 276 (2005) and Kelly v. Small, 315 F.3d 1063 (9th Cir.
4 2003).

5 A. Legal Standards

6 A district court has discretion to stay a petition which it may
7 validly consider on the merits. Rhines v. Weber, 544 U.S. at 276;
8 King v. Ryan, 564 F.3d 1133, 1138-39 (9th Cir. 2009), cert. den.,
9 558 U.S. 887. A petition may be stayed either under Rhines, or
10 under Kelly v. Small, 315 F.3d 1063 (9th Cir. 2003). King v. Ryan,
11 564 F.3d at 1138-41.

12 Under Rhines, the Court has discretion to stay proceedings;
13 however, this discretion is circumscribed by the Antiterrorism and
14 Effective Death Penalty Act of 1996 (AEDPA). Rhines, 544 U.S. at
15 276-77. In light of AEDPA's objectives, "stay and abeyance [is]
16 available only in limited circumstances" and "is only appropriate
17 when the district court determines there was good cause for the
18 petitioner's failure to exhaust his claims first in state court."
19 Id. at 277-78. A stay of a mixed petition pursuant to Rhines is
20 required only if 1) the petitioner has good cause for his failure to
21 exhaust his claims in state court; 2) the unexhausted claims are
22 potentially meritorious; and 3) there is no indication that the
23 petitioner intentionally engaged in dilatory litigation tactics.
24 Id.

25 A petition may also be stayed pursuant to the procedure set
26 forth by the Ninth Circuit in Kelly v. Small, 315 F.3d 1063 (9th
27 Cir. 2003). Under this three-step procedure: 1) the petitioner
28 files an amended petition deleting the unexhausted claims; 2) the

1 district court stays and holds in abeyance the fully exhausted
2 petition; and 3) the petitioner later amends the petition to include
3 the newly exhausted claims. See, King v. Ryan, 564 F.3d 1133, 1135
4 (9th Cir. 2009). However, the amendment is only allowed if the
5 additional claims are timely. Id. at 1140-41.

6 A stay under Rhines permits a district court to stay a mixed
7 petition and does not require that unexhausted claims be dismissed
8 while the petitioner attempts to exhaust them in state court. In
9 contrast, a stay pursuant to the three-step Kelly procedure allows a
10 district court to stay a fully exhausted petition, and it requires
11 that any unexhausted claims be dismissed. Jackson v. Roe, 425 F.3d
12 654, 661 (9th Cir. 2005). In this circuit it is recognized that the
13 Kelly procedure remains available after the decision in Rhines and
14 is available without a showing of good cause. King v. Ryan, 564
15 F.3d at 1140.

16 B. Analysis

17 Here, Respondent's non-opposition to Petitioner's application
18 for a Kelly stay appears to be based on the pendency of proceedings
19 in state court. It is uncertain, but it is possible that Petitioner
20 will receive relief in the state court proceedings or that
21 additional proceedings may render moot any dispute that is presently
22 before this Court concerning the proper scope of this action, the
23 presence or absence of good cause for a stay, or even the issues
24 raised in the claims already before the Court. The present petition
25 is fully exhausted, so Petitioner need not withdraw any claims in
26 order for a Kelly stay to take effect. Petitioner alleges that he
27 lacked access to his legal file for an extended period of time, so
28 the documentation that might be pertinent to a specific showing of

1 good cause appears to have been inaccessible to Petitioner at the
2 time of the initial requests for a stay.

3 A court has inherent power to control its docket and the
4 disposition of its cases with economy of time and effort for both
5 the court and the parties. Landis v. North American Co., 299 U.S.
6 248, 254-255 (1936); Ferdik v. Bonzelet, 963 F.2d 1258, 1260 (9th
7 Cir. 1992). Under the circumstances of the present case, the Court
8 exercises its discretion to grant Petitioner's application for a
9 Kelly stay but to defer consideration of Petitioner's showing of
10 good cause and/or entitlement to a Rhines stay until the Kelly stay
11 is lifted and the issue of good cause becomes pertinent to the
12 continuing proceedings.

13 Petitioner will be instructed to file status reports of his
14 progress through the state courts. Once the California Supreme
15 Court renders its opinion, provided the opinion is a denial of
16 relief, Petitioner must file an amended petition including all of
17 his exhausted claims. He is forewarned that claims may be precluded
18 as untimely if they do not comport with the statute of limitations
19 set forth in 28 U.S.C. § 2244(d).

20 II. Disposition

21 In accordance with the foregoing, it is ORDERED that:

22 1) Petitioner's motions for a stay of the proceedings are
23 GRANTED IN PART, and Petitioner is GRANTED a stay pursuant to Kelly
24 v. Small, 315 F.3d 1063 (9th Cir. 2003); and

25 2) Consideration of Petitioner's motion for a Rhines stay and
26 the issue of good cause is DEFERRED pending the stay; and

27 3) The proceedings are STAYED pending exhaustion of state
28 remedies; and

1 4) Petitioner is DIRECTED to file an initial status report of
2 his progress in the state courts no later than sixty (60) days after
3 the date of service of this order, and then to file periodic status
4 reports every ninety (90) days thereafter until exhaustion is
5 complete; and

6 5) No later than thirty (30) days after service of the final
7 order of the California Supreme Court, Petitioner MUST FILE an
8 amended petition in this Court including all exhausted claims.

9 Petitioner is forewarned that failure to comply with this order
10 will result in the Court's vacating the stay.

11
12 IT IS SO ORDERED.

13 Dated: February 12, 2015

/s/ Barbara A. McAuliffe
14 UNITED STATES MAGISTRATE JUDGE