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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TRESSA J. MORRISON,

Petitioner,

2: 08 - cv - 3032 - MCE TJB

vs.

DEBORAH L. PATRICK,

Respondent.

ORDER

_____ /

This proceeding arises from a petition for writ of habeas corpus brought under 28 U.S.C. § 2254. Petitioner was appointed counsel in January 2009. On June 28, 2010, Petitioner filed her traverse. In that filing, Petitioner admitted that many of her arguments within the amended federal habeas petition were unexhausted in the state courts. (See Pet'r's Traverse at p. 2.) Petitioner stated that she had not yet filed an exhaustion petition in state court as her investigation was not yet complete on those claims. (See id. at p. 2-3.) Petitioner noted that once her investigation into those claims were complete, she would promptly exhaust those claims in state court and request that this petition be stayed while those claims were analyzed by the state court.

On November 22, 2010 (the same day that this matter was transferred to the undersigned), Petitioner filed a "status report." (Dkt. No. 39.) In that "status report," Petitioner stated that the

1 factual investigation on the new claims had been completed. Since that filing by Petitioner on
2 November 22, 2010, nothing else has been filed in this action.

3 Because the federal habeas petition includes both exhausted and unexhausted claims, it is
4 deemed a “mixed” petition. See Rhines v. Weber, 544 U.S. 269, 271 (2005). In Rhines, the
5 United States Supreme Court found that a stay and abeyance of a mixed federal habeas petition
6 should be available only in the limited circumstances where: (1) good cause is shown for failure
7 to having first exhausted the claim in state court; (2) the claim at issue potentially has merit; and
8 (3) that there has been no indication that the petitioner has been intentionally dilatory in pursuing
9 the litigation. See id. at 277-78. If the Petitioner wishes to stay this action, the Petitioner must
10 file a motion addressing the Rhines factors, including a showing of good cause for failing to
11 exhaust several of her claims as stated in the amended federal habeas petition.¹

12 Accordingly, IT IS HEREBY ORDERED that:

- 13 1. Petitioner shall be granted twenty-eight (28) days from the date of this Order to
14 file a Rhines motion to stay and abey the amended federal habeas petition pending
15 state court exhaustion of the unexhausted arguments found within the amended
16 federal habeas petition; and
- 17 2. Should Petitioner decide not to file a Rhines motion to stay and abey the amended
18 federal habeas petition, Petitioner shall inform the court within twenty-eight (28)
19 days of this Order of that decision. Should Petitioner decline to file a motion for
20 stay and abeyance, the unexhausted claims will be deemed stricken from the
21 amended habeas petition.

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26 ¹ Nothing precludes Petitioner from acting immediately to exhaust her unexhausted
claims in state court while her Rhines motion is pending in federal court.

1 DATED: January 3, 2011

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TIMOTHY J BOMMER
UNITED STATES MAGISTRATE JUDGE