



1 unexhausted claims, once exhausted, must be added back into the federal petition within the  
2 statute of limitations provided for by 28 U.S.C. § 2244(d)(1), however. King, 564 F.3d at 1140–  
3 41. Under that section, a one-year limitation period for seeking federal habeas relief begins to run  
4 from the latest of the date the judgment became final on direct review, the date on which a state-  
5 created impediment to filing is removed, the date the United States Supreme Court makes a new  
6 rule retroactively applicable to cases on collateral review or the date on which the factual  
7 predicate of a claim could have been discovered through the exercise of due diligence. 28 U.S.C.  
8 § 2241(d)(1). A federal habeas petition does not toll the limitations period under 28 U.S.C. §  
9 2244(d)(2). Duncan v. Walker, 533 U.S. 167 (2001).

10 Under Rhines v. Weber, 544 U.S. 269 (2005), a district court may stay a mixed petition in  
11 its entirety, without requiring dismissal of the unexhausted claims while the petitioner attempts to  
12 exhaust them in state court. King, 564 F.3d at 1139–40. Unlike the Kelly procedure, however,  
13 Rhines requires that the petitioner show good cause for failing to exhaust the claims in state court  
14 prior to filing the federal petition. Rhines, 544 U.S. at 277–78; King, 564 F.3d at 1139. In  
15 addition, a stay pursuant to Rhines is inappropriate where the unexhausted claims are “plainly  
16 meritless” or where the petitioner has engaged in “abusive litigation tactics or intentional delay.”  
17 Id.

18 Petitioner is directed to file a motion to stay. In this motion, petitioner must indicate  
19 whether he is seeking a stay pursuant to the procedures outlined in Kelly or Rhines.

20 Accordingly, IT IS HEREBY ORDERED that within thirty days of the date of this order,  
21 petitioner shall file a motion to stay this action; failure to file a motion to stay will result in a  
22 recommendation of dismissal of this action.

23 Dated: January 22, 2015

24   
25 \_\_\_\_\_  
26 KENDALL J. NEWMAN  
27 UNITED STATES MAGISTRATE JUDGE

28 Ger45.ord