

1 showing of good cause. Respondent argues, however, that a stay should not be granted
2 because, once petitioner's new claims are exhausted, petitioner will not be able to amend his
3 petition to add them, for the asserted reason that such claims are untimely and do not relate
4 back to the claims in the original petition.

5 At this stage of the proceedings, a determination as to the timeliness of any newly
6 exhausted claims would be premature. In particular, petitioner, in support of his motion for a
7 stay, asserts a number of reasons for his inability to exhaust the claims by an earlier date,
8 which reasons arguably might provide grounds for a finding that some or all of the claims are
9 timely filed. See 28 U.S.C. § 2244(d)(1)-(2) (providing for delayed commencement and
10 statutory tolling of one-year limitations period); Holland v. Florida, 130 S. Ct. 2549, 2560
11 (2010) (holding one-year limitations period subject to equitable tolling in appropriate cases).
12 Further, the state courts' rulings on petitioner's new claims may benefit the Court in its
13 determination as to whether the requested amendment should be permitted. Consequently,
14 the Court finds it prudent to wait to address the issues of timeliness and relation back until
15 petitioner has exhausted his state remedies and moved to amend his petition with the newly
16 exhausted claims.

17 Accordingly, the Court will grant the motion to stay the petition, and petitioner's
18 pending request to amend the petition to add the new claims will be denied without prejudice.
19 In order to ensure that the instant proceedings are not unduly delayed by the stay, petitioner
20 shall, within thirty days of the date this order is filed and every thirty days thereafter, file
21 with the Court and serve on respondent a status report detailing the progress of petitioner's
22 state court proceedings. Thereafter, petitioner shall, within thirty days of exhausting the
23 unexhausted claims, move to reopen this action, lift the stay, and amend the petition to add
24 the new claims.

25 B. Motion for Appointment of Counsel

26 Petitioner has filed a motion for appointment of counsel to represent him in this
27 action. The Sixth Amendment's right to counsel does not apply in habeas actions. Knaubert
28 v. Goldsmith, 791 F.2d 722, 728 (9th Cir.), cert. denied, 479 U.S. 867 (1986). Pursuant to

1 statute, however, a district court is authorized to appoint counsel to represent a habeas
2 petitioner whenever “the court determines that the interests of justice so require and such
3 person is financially unable to obtain representation.” See 18 U.S.C. § 3006A(a)(2)(B).

4 Here, petitioner’s exhausted claims have been adequately presented in the petition and
5 the interests of justice do not otherwise require the appointment of counsel while the petition
6 is stayed. Accordingly, petitioner’s motion for appointment of counsel will be denied
7 without prejudice.

8 C. Motion for Leave to Conduct Discovery

9 Petitioner moves for leave to conduct discovery in order to procure evidence relevant
10 to his unexhausted claims. A habeas petitioner, unlike the usual civil litigant in federal court,
11 is not entitled to discovery as a matter of ordinary course. See Bracy v. Gramley, 520 U.S.
12 899, 904 (1997). Rather, the Rules Governing Habeas Corpus Cases Under Section 2254
13 provide that a “party shall be entitled to invoke the processes of discovery available under the
14 Federal Rules of Civil Procedure if, and to the extent that, the judge in the exercise of his
15 discretion and for good cause shown grants leave to do so, but not otherwise.” See Rule 6(a)
16 of Rules Governing Habeas Corpus Cases Under Section 2254. Before deciding whether a
17 petitioner is entitled to discovery under Rule 6(a), the district court must first identify the
18 essential elements of the underlying claim, and must then determine whether the petitioner
19 has shown “good cause” for appropriate discovery to prove his claim. See Bracy, 520 U.S. at
20 904. Good cause for discovery under Rule 6(a) is shown “where specific allegations before
21 the court show reason to believe that the petitioner may, if the facts are fully developed, be
22 able to demonstrate that he is . . . entitled to relief . . .” Id. at 908-09 (internal quotation and
23 citation omitted).

24 Here, the Court has granted petitioner’s motion to stay the instant proceedings, and,
25 consequently, discovery in the instant federal action is premature; rather, petitioner’s first
26 effort to obtain discovery should be in state court. Accordingly, petitioner’s motion for leave
27 to conduct discovery will be denied without prejudice.

28

1 D. Motion for Sanctions

2 Petitioner moves for sanctions under Rule 11 of the Federal Rules of Civil Procedure,
3 based on (1) alleged misrepresentations made by respondent's counsel in response to
4 petitioner's requests for blood test results; and (2) respondent's counsel's belated provision
5 of such evidence to petitioner. The Court finds the motion without merit.

6 Pursuant to Rule 11, sanctions may be imposed where an attorney has made written
7 representations to the court that violate the provisions of Rule 11(b). See Fed. R. Civ. P.
8 11(c). Here, the parties' written communications concerning petitioner's access to blood test
9 results were informal, and no written representations regarding such were made to the court
10 by respondent's counsel. Consequently, the Court finds Rule 11 inapplicable to the alleged
11 misrepresentations.

12 Further, Rule 11 is inapplicable to petitioner's contention that respondent's counsel
13 did not timely provide petitioner with the requested blood test results, as Rule 11 does not
14 apply to discovery violations. See Fed. R. Civ. P. 11(d). Instead, the applicable rule is Rule
15 37, under which the district court in which an action is pending may issue sanctions against a
16 party who fails to obey an order to provide or permit discovery, or who otherwise fails to
17 properly respond to discovery requests or participate in framing a discovery plan. See Fed.
18 R. Civ. P. 37(b)-(f). Petitioner, however, is not entitled to sanctions against respondent's
19 counsel under Rule 37, as petitioner did not move for a court order to provide or permit
20 discovery, and the parties were not engaged in formal discovery at the time of the asserted
21 delay in providing the blood test results.

22 Based on the above, petitioner's motion for sanctions will be denied.

23 **CONCLUSION**

24 For the foregoing reasons, the Court orders as follows:

25 1. Petitioner's motion to stay the petition is hereby GRANTED and the above-titled
26 action is hereby STAYED; no further proceedings shall take place herein until petitioner
27 files, within thirty days of exhausting the unexhausted claims, a motion to reopen as
28 described above.

1 2. Petitioner's request to file an amended petition is hereby DENIED without
2 prejudice.

3 3. Petitioner's motions for appointment of counsel and leave to conduct discovery are
4 hereby DENIED without prejudice.

5 4. Petitioner's motion for sanctions is hereby DENIED.

6 5. Petitioner shall, within thirty days of the date this order is filed and every thirty
7 days thereafter until the claims are exhausted, file with the Court and serve on respondent a
8 status report detailing the progress of petitioner's state court proceedings.

9 6. The Clerk shall Administratively Close the file pending the stay of this action.

10 This order terminates Docket Nos. 78, 84, 86, 89 and 90.

11 IT IS SO ORDERED.

12 DATED: January 19, 2011



MAXINE M. CHESNEY
United States District Judge