

1 U.S. 509, 518-22 (1982)).

2 Before dismissing a mixed petition containing both exhausted and unexhausted claims the
3 court is generally required to provide petitioner with “the choice of returning to state court to
4 exhaust his claims or of amending or resubmitting the habeas petition to present only exhausted
5 claims to the district court.” *Id.*; *see also Rhines*, 544 U.S. at 278; *Tillema v. Long*, 253 F.3d 494,
6 503 (9th Cir. 2001) (court must provide *habeas corpus* litigant with opportunity to amend mixed
7 petition by striking unexhausted claims). Mr. Blanks requests the Court to stay this action while he
8 returns to state court to exhaust his previously unexhausted claims. The mandate in Mr. Blanks’
9 case was entered by the Washington Court of Appeals on July 17, 2008 (Dkt. # 18, Exh. 9). He
10 may file a personal restraint petition seeking to exhaust such unexhausted claims no more than one
11 year after the mandate issued. *See* RCW 10.73.090. Mr. Blanks still has sufficient time to seek
12 collateral review at the state level.
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14 **B. Petitioner’s Motion for Stay**

15 A district court may issue a stay and abeyance for a mixed petition under very limited
16 circumstances, *i.e.*, if the petitioner can show good cause for failure to exhaust; if his claims are
17 potentially meritorious; and, if he has not engaged in intentionally dilatory litigation tactics.
18 *Rhines*, 544 U.S. at 277. If the petitioner makes such a showing, the district court should exercise
19 its discretion to stay his petition to permit exhaustion. *Id.* On the other hand, if the court
20 determines that stay and abeyance is inappropriate, the court should allow the petitioner to delete
21 the unexhausted claims and to proceed with the exhausted claims if dismissal of the entire petition
22 would unreasonably impair the petitioner’s right to obtain federal relief. *Id.*; *see also Lundy*, 455
23 U.S. at 520. A petitioner can always amend the petition to delete the unexhausted claims, rather
24 than returning to state court to exhaust all of his claims. *Id.*
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27 The Court finds that a stay and abeyance is not appropriate as Mr. Blanks has not shown
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