

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Thomas v. Aguirre

Thomas · No. 1:24-cv-00281-KES-SKO · Decided May 23, 2025

SUMMARY

The United States District Court for the Eastern District of California denied Plaintiff Edward Thomas’s motion for a Rhines stay, concluding that such a stay is not appropriate in a civil rights action under 42 U.S.C. § 1983. The court granted Thomas a 60-day extension from service of the order to file a third amended complaint and cautioned that failure to comply could result in dismissal.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Sheila K. Oberto
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	May 23, 2025
DOCKET	1:24-cv-00281-KES-SKO
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff, proceeding pro se in a 42 U.S.C. § 1983 civil rights action, moved for a stay under Kelly v. Small and Rhines v. Weber after the court granted him a final opportunity to amend his complaint. The court denied the stay and granted a 60-day extension to file a third amended complaint.
PRECEDENTIAL VALUE	unpublished_nonprecedential
PARTIES	Edward Thomas v. J. Aguirre, et al.

TOPICS

- civil procedure
- section 1983
- prisoners rights

PRACTICE AREAS

- civil procedure
- civil rights
- prisoner civil rights

QUESTIONS PRESENTED

1. Whether a Rhines stay or comparable Kelly stay is available in this § 1983 civil rights action.
2. Whether Plaintiff was entitled to additional time to comply with the court's screening order.
3. Whether Plaintiff had a constitutional or statutory right to appointed counsel under the circumstances presented.

HOLDINGS

1. A Rhines stay is not appropriate in a civil rights action because the stay-and-abeyance procedure applies to habeas corpus proceedings, not § 1983 actions.
2. Plaintiff was entitled to a 60-day extension to file a third amended complaint because his anticipated surgery and recovery appeared to require additional time.
3. Plaintiff had no constitutional right to appointed counsel in this § 1983 action, and the circumstances presented did not constitute exceptional circumstances warranting a request for voluntary counsel under 28 U.S.C. § 1915(e)(1).

KEY QUOTATIONS

*“Therefore, a Rhines stay is not appropriate. See, e.g., Mills v. Jones, 1:21-cv-01193-NONE-HBK, 2021 WL 4992325, at *2 (E.D. Cal. Oct. 11, 2021) (“Plaintiff’s request for a ‘Rhines Stay’ is not appropriate in a civil rights action”);”* (at 2)

“Plaintiffs do not have a constitutional right to appointed counsel in section 1983 actions.” (at 3)

FACTUAL BACKGROUND

Edward Thomas is pursuing a pro se civil rights action under 42 U.S.C. § 1983. After the court determined that his second amended complaint failed to state a claim, he was given a final opportunity to file a third amended complaint or voluntarily dismiss the action. Thomas sought a stay because of other pending court matters and anticipated lower-back surgery, but supplied no information about deadlines in the other actions.

PROCEDURAL HISTORY

The court's Second Screening Order found that Plaintiff's second amended complaint failed to state a claim and allowed one final opportunity to amend or voluntarily dismiss. Plaintiff then moved for a Kelly/Rhines stay, citing other pending matters and anticipated surgery. The court denied the stay, clarified that any voluntary dismissal under Rule 41(a)(1)(A) would be without prejudice, declined to appoint counsel, and granted a 60-day extension to amend.

DISPOSITION

other

CASES CITED

- Kelly v. Small, 315 F.3d 1063 (9th Cir. 2003)

- Rhines v. Weber, 544 U.S. 269 (2005)
- Mills v. Jones, 1:21-cv-01193-NONE-HBK, 2021 WL 4992325, at *2 (E.D. Cal. Oct. 11, 2021)
- Kilgore v. Mandeville, No. 2:07-cv-2485 GEB KJN P, 2011 WL 4048406, at *2 n.3 (E.D. Cal. Sept. 9, 2011)
- Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), rev'd in part on other grounds, 154 F.3d 952, 954 n.1 (9th Cir. 1998)
- Mallard v. U.S. District Court, 490 U.S. 296, 304-05 (1989)

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