

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)

## OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 EASTERN DISTRICT OF  
CALIFORNIA 10 11 EDWARD THOMAS, Case No.: 1:24-cv-00281-KES-SKO 12 Plaintiff,  
ORDER DENYING RHINES STAY 13 v. (Doc. 25) 14 J. AGUIRRE, et al., ORDER GRANTING  
60-DAY EXTENSION 15 Defendants. OF TIME WITHIN WHICH TO FILE THIRD  
AMENDED COMPLAINT 16 17 Plaintiff Edward Thomas is proceeding pro se in this civil rights  
action pursuant to 42 18 U.S.C. § 1983.

19 20 I. INTRODUCTION 21 On April 21, 2025, the Court issued its Second Screening Order.  
(Doc. 24.) The Court 22 found that Plaintiff's second amended complaint failed to state a claim  
upon which relief could be 23 granted. (Id. at 5-18.) Plaintiff was granted one final opportunity to  
amend his complaint to cure 24 the deficiencies identified in the screening order.

(Id. at 18.) Plaintiff was directed to either file a 25 third amended complaint or to file a notice of  
voluntary dismissal within 21 days. (Id. at 18-19.) 26 On May 15, 2025, Plaintiff filed a document  
titled "Petitioners Motion for Kelly 27 Stay/Rhines v. Weber Stay Untill Further Notice." (Doc.  
25.) 1 II. DISCUSSION 2 Plaintiff seeks a stay of these proceedings pursuant to Kelly v. Small,  
315 F.3d 1063 (9th 3 Cir.

2003) and Rhines v. Weber, 544 U.S. 269 (2005). (Doc. 25 at 1.) Plaintiff contends he has 4  
"several other pending court matters with upcoming dates" requiring a response. (Id.) The other 5  
actions include, but are not limited to, a habeas action pending before the California Supreme 6  
Court, another habeas action pending before the United States District Court for the Central 7  
District of California, and an action pending in the Kern County Superior Court.

(Id.) Plaintiff 8 states he is awaiting lower back surgery that will likely require his admission to the  
hospital 9 "from anywhere to a few weeks to a few days." (Id. at 1-2.) He does not yet know the  
date of the 10 surgery due to "security reasoning." (Id. at 2.) 11 Plaintiff states he is  
contemplating "seeking counsel to represent him in this matter" 12 because the "time limits of  
only 21-days to comply with federal rules" would not apply "if his 13 case was being litigated  
within the actual court it was originally filed with"—referring to Kern 14 County Superior Court  
from which this action was removed.

Plaintiff also states he does not wish 15 to file a voluntary dismissal “as suggested by this court [who] appears to assist the States 16 Attorney General at every opportunity and [refuses] to request appointment of federal counsel for 17 Plaintiff/Petitioner from the federal [lawyers] that the federal district courts usually make such 18 request to.” (Id.)

19 As an initial matter, this is a civil rights action filed pursuant to 42 U.S.C. section 1983 20 and is not a habeas action. Therefore, a Rhines stay is not appropriate. See, e.g., *Mills v. Jones*, 21 1:21-cv-01193-NONE-HBK, 2021 WL 4992325, at \*2 (E.D. Cal. Oct. 11, 2021) (“Plaintiff’s 22 request for a ‘Rhines Stay’ is not appropriate in a civil rights action”); *Kilgore v. Mandeville*, No. 23 2:07-cv-2485 GEB KJN P, 2011 WL 4048406, at \*2, n.3 (E.D.

Cal. Sept. 9, 2011) (“the court 24 notes that there is no mechanism for ‘staying’ a Section 1983 action, as plaintiff requests, as 25 compared to the ‘stay and abeyance option’ available in habeas corpus actions, see *Rhines v. 26 Weber*, 544 U.S. 269 [] (2005)”). 27 Second, a stay is not necessary because Plaintiff could have simply sought an extension of 1 may exist because Plaintiff has several other pending actions in other courts, but Plaintiff has 2 provided no information concerning the deadlines applicable in those actions.<sup>1</sup> In any event, 3 Plaintiff also indicates he will be scheduled for an upcoming surgery that will require his 4 admission to the hospital, and presumably a recovery period.

Because it appears Plaintiff needs 5 additional time within which to comply with this Court’s most recent screening order, the Court 6 will grant Plaintiff a 60-day extension of time. That should allow Plaintiff sufficient time to meet 7 his obligations in this action. 8 To the extent Plaintiff states this Court improperly “suggested” he file a notice of 9 voluntary dismissal in its April 21, 2025, order, that would result in dismissal of this action with 10 prejudice, Plaintiff is mistaken.

The Court made no such suggestion. Plaintiff’s two options 11 following screening were provided as follows: Plaintiff could either cure the deficiencies 12 identified in his second amended complaint or he could file a notice of voluntary dismissal 13 pursuant to Rule 41(a)(1)(A) of the Federal Rules of Civil Procedure. Such a dismissal is 14 “without prejudice.” Fed.

R. Civ. P. 41(a)(1)(B). 15 Lastly, the Court addresses Plaintiff’s reference to the appointment of counsel. As 16 Plaintiff was advised on April 4, 2024, in this Court’s Order Denying Plaintiff’s Motion to 17 Appoint Counsel, 18 Plaintiffs do not have a constitutional right to appointed counsel in section 1983 actions. *Rand v. Rowland*, 113 F.3d 1520, 1525 (9th 19 Cir.

1997), rev’d in part on other grounds, 154 F.3d 952, 954 n.1 (9th Cir. 1998). Nor can the Court require an attorney to represent a party 20 under 28 U.S.C. § 1915(e)(1). See *Mallard v. U.S. Dist. Court*, 490 U.S. 296, 304-05 (1989).

However, in “exceptional circumstances,” 21 the Court may request the voluntary assistance of counsel pursuant to section 1915(e)(1). *Rand*, 113 F.3d at 1525. 22 23 (See Doc. 8 at 2.) Again,

because this action is a civil rights case, Plaintiff has no constitutional 24 right to appointed counsel.

The circumstances presented in Plaintiff's current motion do not 25 change that outcome because Plaintiff presents no exceptional circumstances. Plaintiff may retain 26 27 1 Plaintiff is encouraged to review the First Informational Order in Prisoner/Civil Detainee Civil Rights Case issued on March 7, 2024. (See Doc. 2 [I. INTRODUCTION & VII. DEADLINES].) 1 counsel if he chooses to do so, and he would be subject to the same Federal Rules of Civil 2 Procedure and this Court's Local Rules regarding applicable deadlines.

3 III. CONCLUSION AND ORDER 4 For the foregoing reasons, this Court HEREBY ORDERS that: 5 1. Plaintiff's motion for a Rhines stay (Doc. 25) is DENIED; and 6 2. Plaintiff is GRANTED a 60-day extension of time, from the date of service of this 7 order, within which to file a third amended complaint, curing the deficiencies 8 identified in the Court's Second Screening Order (Doc.

24). 9 Plaintiff is advised that a failure to comply with this order may result in a 10 recommendation that this action be dismissed for a failure to obey court orders and failure 11 to prosecute. 12 IT IS SO ORDERED. 13 14 Dated: May 23, 2025 /s/ Sheila K. Oberto. UNITED STATES MAGISTRATE JUDGE 15 16 17 18 19 20 21 22 23 24 25 26 27