

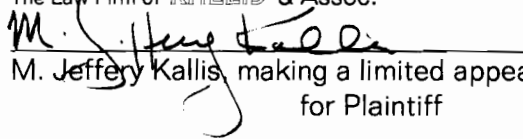
1 Mary ROHAN, ex rel. Oscar GATES, v. Jeanne WOODFORD, 334 F.3d 803. (9th Cir. Northern
2 District CA 2002). Competency has been defined as whether a defendant "has sufficient present ability
3 to consult with his lawyer with a reasonable degree of rational understanding and whether he has a
4 rational as well as factual understanding of the proceedings against him. Dusky v. United States, 362
5 U.S. 402, 402.

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7 In the case at bar, the plaintiff has been determined to require incarceration in a state mental
8 health hospital due to his mental condition. It was determined that he could not adequately interact with
9 his public defender and could not stand trial. When counsel interviewed the plaintiff, plaintiff was unable
10 to remember salient facts, was confused. (Kallis declaration Paragraph 2) It is clear that at this point
11 plaintiff's competency has been determined to prohibit trial on the criminal charges that placed him in
12 custody, and by extension cannot proceed at this time with his civil case.

13 To dismiss the civil case at this point for not having filed an amended complaint would be both
14 unfair, and would run counter to the California statute that tolls time when a person is in a mental
15 health facility. Code of Civil Procedure § 352¹.

16 This Court is asked to stay the July 14th 2008, date for amending the complaint and to order that
17 the plaintiff file an amended the complaint within 21 days of being released from the Napa Mental
18 Health Facility.

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20 Dated: July 2, 2008

The Law Firm of **KALLIS** & Assoc.

M. Jeffrey Kallis, making a limited appearance
for Plaintiff

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26 ¹ Tolling Statute of Limitation Because of Minority or Insanity

27 (a) If a person entitled to bring an action, mentioned in Chapter 3 (commencing with Section 335) is, at the
28 time the cause of action accrued either under the age of majority or insane, the time of the disability is not part of
the time limited for the commencement of the action.

(b) This section does not apply to an action against a public entity or public employee upon a cause of
action for which a claim is required to be presented in accordance with Chapter 1 (commencing with Section 900) or
Chapter 2 (commencing with Section 910) of Part 3, or Chapter 3 (commencing with Section 950) of Part 4, of
Division 3.6 of Title 1 of the Government Code.