

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Philip A. Brimmer

Civil Action No. 09-cv-00487-PAB-MJW

ELMER MARSH,

Plaintiff,

v.

JOHN DOE, in his Individual and Official Capacities, as a Colorado Department of Corrections Transportation Sergeant,
JOHN DOE, in his Individual and Official Capacities, as a Colorado Department of Corrections Officer, and
RENEE MARTINEZ, Health Services Administrator, in her Individual Capacity,

Defendants.

ORDER

This matter is before the Court on defendant Renee Martinez's Motion to Vacate Trial Preparation Conference Set for February 17, 2011 and Trial Date Set for March 7, 2011 [Docket No. 144]. Defendant seeks to vacate the trial and the trial preparation conference on the ground that Magistrate Judge Michael J. Watanabe has issued recommendations on two pending motions, one of which is a recommendation that the Court grant defendants' Martinez and Persons motion for summary judgment [Docket No. 95]. Objections to the recommendations are due on February 21, 2011, several days after the trial preparation conference. In addition to allowing the parties and Court to consider the recommendations free of trial preparations, two other factors weigh in favor of granting defendant Martinez's motion. One is that the parties have agreed to waive a jury in this case, which allows more flexibility in rescheduling the trial. The

other is that the trial in this case is set for March 7, 2011, which means that, if the five-week criminal trial set on February 28, 2011 begins on schedule, this trial would have to be reset anyway.

The motion to vacate indicates that counsel for plaintiff agrees that the trial should be vacated, but not the trial preparation conference. However, the trial preparation conference is best held in proximity to the trial. Thus, it is preferable under the circumstances to vacate both the trial preparation conference and the trial until the Court rules on the pending recommendations.

Wherefore, it is

ORDERED that defendant Renee Martinez's Motion to Vacate Trial Preparation Conference Set for February 17, 2011 and Trial Date Set for March 7, 2011 [Docket No. 144] is granted. The trial preparation conference on February 17, 2011 and the trial set for March 7, 2011 are vacated.

DATED February 8, 2011.

BY THE COURT:

s/Philip A. Brimmer
PHILIP A. BRIMMER
United States District Judge