

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 11-cv-02639-MSK-CBS

SHERRY L. DERAY, as heir and next of kin of JOHN R. WINKLER (deceased)

Plaintiff,

v.

CITY OF COLORADO SPRINGS,  
COLORADO, RICHARD MYERS,  
RONALD SHEPPARD,  
CARLOS SANDOVAL, and  
JOHN HAVENAR,

Defendants.

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**CONSENT ORDER TO WITHDRAW OBJECTION AND AMEND COMPLAINT and  
TO WITHDRAW CONSENT MOTION TO STAY SCHEDULING CONFERENCE**

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Pursuant to the court's MINUTE ORDER (Document No. 19, filed on 12/22/2011)

counsel have agreed:

- 1) to withdraw objection to Second Motion to Amend/Correct/Modify #1 Complaint (Docket No. 10, filed 11-29-2011) to permit addition of Plaintiff's status as Personal Representative of the Estate of John R. Winkler, deceased, to which Plaintiff was appointed by the probate division of the El Paso County, Colorado, District Court on December 5, 2011, in probate proceeding 2011 PR 1327 and to allow such amendment by declaration in this order,
- 2) to withdraw as part of Defendants' Motion to Dismiss (Document 5), the argument stated as "Element 4:" at pp. 10-11 of said Motion concerning Plaintiff's lack of standing as personal representative, reserving to Defendants the right to raise this standing issue

in the future if deemed appropriate, and

3) to withdraw the joint Unopposed Motion to Continue Scheduling Conference (Docket No. 12, filed 11/30/2011) and proceed with case scheduling and procedure.

Accordingly, it is ORDERED

1) Plaintiff's Second Motion to Amend Complaint (Doc. #10) is GRANTED. The caption is modified to include Plaintiff as Personal Representative of the Estate of John R. Winkler and the Plaintiff's Complaint (Doc. #1) is modified at paragraph 2 to include "and Plaintiff hereby brings claims under 42 U.S.C. 1983 as Personal Representative of the Estate of John R. Winkler, deceased." The court will not require Plaintiff to file an amended complaint.

2) Defendants' Motion to Dismiss (Doc. # 5), is modified as to the argument stated as "Element 4:" at pp. 10-11 of said Motion concerning Plaintiff's lack of standing as personal representative, reserving to Defendants the right to raise this standing issue in the future if deemed appropriate. The court will not require Defendants to file an amended motion.

3) Plaintiff's Unopposed Motion to Continue Scheduling Conference (Doc. #12) is WITHDRAWN. A scheduling conference will be held on **February 15, 2012 at 10:45 a.m.** in Courtroom A-402, Fourth Floor, of the Alfred A. Arraj U.S. Courthouse, 901 19th Street, Denver, Colorado. Parties shall adhere to the instructions and deadlines previously set forth in the court's Order Setting a Scheduling Conference (Doc. #4).

DATED at Denver, Colorado, this 19<sup>th</sup> day of January, 2012.

BY THE COURT:

s/Craig B. Shaffer  
Craig B. Shaffer  
United States Magistrate Judge