

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 12-cv-02429-CMA-KLM

MARION HARPER, and
MONTGOMERY COYOTE,

Plaintiffs,

v.

MONTEZUMA COUNTY BOARD OF COMMISSIONERS,
SHERIFF DEPARTMENT,
CITY OF CORTEZ,
CORTEZ POLICE DEPT.,
22ND JUDICIAL DISTRICT and
OFFICER ANGELO MARTINEZ,

Defendants.

MINUTE ORDER

ENTERED BY MAGISTRATE JUDGE KRISTEN L. MIX

This matter is before the Court on the **Motion to Vacate Scheduling Conference or in the Alternative Convert Scheduling Conference to Status Conference** [Docket No. 19; Filed January 3, 2013] (the “Motion to Vacate”) submitted by Defendants City of Cortez, Cortez Police and Officer Angelo Martinez (the “Cortez Defendants”). Also before the Court is Plaintiff Marion Harper’s **Letter Re: Leave to Appear Telephonically** [#14; Filed November 29, 2012] (the “Letter”).

In the Motion to Vacate, the Cortez Defendants ask the Court to vacate the Scheduling Conference set for January 15, 2013 pending the resolution of their Motion to Dismiss [#44], the granting of which would result in their dismissal from this action.¹ Counsel for the Cortez Defendants has contacted counsel for the Montezuma County Defendants and the Montezuma County Defendants do not oppose the Motion to Vacate.

¹ On January 4, 2013, attorneys for Defendants Board of County Commissioners of Montezuma County and Montezuma County Sheriff Dennis Spruell (the “Montezuma County Defendants”) filed an Entry of Appearance [#21]. The Montezuma County Defendants have not yet filed an answer or other responsive pleading. Regarding Defendant 22nd Judicial District, no appearance has been entered, nor has any proof of service as to this defendant been filed.

Additionally, counsel for the Cortez Defendants “had limited contact” with Plaintiff Marion Harper via e-mail and explained the reasons for filing the Motion to Vacate. Plaintiff Harper, however, did not provide his position on the Motion to Vacate.²

Under these circumstances, the Court finds that vacating the Scheduling Conference is appropriate. It would be a waste of the Cortez Defendants’ time and money to proceed with a Scheduling Conference when a decision on their pending Motion to Dismiss may result in their dismissal from this action. Moreover, because the Montezuma County Defendants have just recently appeared in this action, it is unclear whether they too intend to seek dismissal of this action. For these reasons,

IT IS HEREBY **ORDERED** that the Motion to Vacate [#19] is **GRANTED**. The Scheduling Conference set for January 15, 2013 is **VACATED**. The Court will reset a Scheduling Conference, if necessary, after resolution of the Motion to Dismiss [#44].

IT IS FURTHER **ORDERED** that in light of the Court’s ruling on the Motion to Vacate, Plaintiff Harper’s Letter [#14], in which he seeks leave to appear telephonically at the Scheduling Conference, is **DENIED AS MOOT**. This denial is **WITHOUT PREJUDICE** such that Plaintiff may resubmit a motion to appear telephonically if the Scheduling Conference is reset.

Dated: January 6, 2013

² Although neither Plaintiff has made his position known as of the date of this Order, the Court may rule on a motion at any time after it is filed. See D.C.COLO.LCivR 7.1C.