

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Robert E. Blackburn**

Civil Action No. 12-cv-02764-REB-KLM

JAMES FAIRCLOTH,

Plaintiff,

v.

CELIA SCHWARTZ, Legal Assistant for BVCF, in her official and individual capacities,
Defendant.

ORDER GRANTING MOTION TO CONTINUE TRIAL

Blackburn, J.

This matter is before me on the **Motion to Vacate January 5, 2016 Final Pretrial and Trial Preparation Conference, January 19, 2016 Jury Trial, and Related Deadlines in Favor of New Close-of-discovery and Dispositive Motion Deadlines** [#189]¹ filed November 24, 2015. I grant the motion.

This case is set to commence trial on January 19, 2016. A combined Final Pretrial Conference and Trial Preparation Conference is set for January 5, 2016. In her motion, the defendant notes that this case was stayed for several months, and, as a result, discovery is not yet complete. In addition, the defendant notes that only one defendant and two closely related First Amendment claims remain pending in this case. The defendant asks that the trial be continued to permit the completion of discovery and to provide an opportunity for the defendant to file a motion for summary judgment.

¹ “[#189]” is an example of the convention I use to identify the docket number assigned to a specific paper by the court’s case management and electronic case filing system (CM/ECF). I use this convention throughout this order.

Those considerations are important. I note also that this case, filed on October 17, 2012, is now more than three years old. After three years of litigation and with only one defendant and two closely related claims remaining, this case requires a reasonably prompt and final disposition.

As noted by the defendant in her motion, the United States Court of Appeals for the Tenth Circuit has outlined four primary factors that should be considered to determine if a continuance is necessary. *See, e.g., Morrison Knudsen Corp. v. Fireman's Fund Ins. Co.*, 175 F.3d 1221, 1230 (10th Cir. 1999) (citing *U.S. v. West*, 828 F.2d 1468, 1469 (10th Cir. 1987) (listing factors)). The key relevant factors are

(1) the diligence of the party requesting the continuance; (2) the likelihood that the continuance, if granted, would accomplish the purpose underlying the party's expressed need for the continuance; (3) the inconvenience to the opposing party, its witnesses, and the court resulting from the continuance; [and] (4) the need asserted for the continuance and the harm that [movant] might suffer as result of the district court's denial of the continuance.

United States v. Rivera, 900 F.2d 1462, 1475 (10th Cir. 1990) (quoting *United States v. West*, 828 F.2d 1468, 1470 (10th Cir. 1987)). Applied to the present case, these factors augur toward a brief continuance of the trial and combined Final Pretrial Conference and Trial Preparation Conference.

THEREFORE, IT IS ORDERED as follows:

1. That the **Motion to Vacate January 5, 2016 Final Pretrial and Trial Preparation Conference, January 19, 2016 Jury Trial, and Related Deadlines in Favor of New Close-of-discovery and Dispositive Motion Deadlines** [#189] filed November 24, 2015, is granted on the terms stated in this order;

2. That the combined Final Pretrial Conference and Trial Preparation Conference set for January 5, 2016, and the trial set to commence January 19, 2016, both are vacated and continued, pending further order;
3. That the combined Final Pretrial Conference and Trial Preparation Conference is re-set for February 26, 2016, at 11:30 a.m. (MST);
4. That a three-day trial is re-set to commence on Monday, March 14, 2016, at 8:30 a.m. (MST);
5. That the close of discovery shall be Tuesday, December 22, 2015;
6. That the dispositive motions deadline shall be January 18, 2016;
7. That the **Trial Preparation Conference Order** [#183] entered November 19, 2015, is amended and supplemented accordingly.

Dated December 10, 2015, at Denver, Colorado.

BY THE COURT:



Robert E. Blackburn
United States District Judge