

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

Civil Action No. 16-cv-01173-PAB-CBS

ROBERT E. MOSES,

Plaintiff,

v.

JAMES E. HOVIS and
CATHERINE HOVIS,

Defendants.

ORDER

This matter comes before the Court on the Motion to Vacate Trial Date [Docket No. 54] filed by defendants. This matter is currently set for a four-day jury trial beginning on December 4, 2017. Counsel for defendants, Heidi Sue Whitaker, has filed a motion to withdraw [Docket No. 49], which is pending before Magistrate Judge Craig Shaffer. Defendants claim that the Court should continue the trial in order to give “sufficient time for Defendants to secure substitute counsel.” Docket No. 54 at 3. Defendants indicate that Judge Shaffer agreed to hold the motion to withdraw in abeyance “while Defendants seek to vacate the trial date and reset the trial a bit further out to allow for the substitution of counsel.” *Id.* at 2.

Defendants’ reply states that, at the hearing before Judge Shaffer, the defendants expressed “a desire to retain [Ms. Whitaker’s] representation.” Docket No. 58 at 2 n.6. Similarly, the motion does not indicate that defendants are agreeing to counsel’s motion to withdraw. To the contrary, the reply represents that circumstances

have arisen that “require counsel for Defendants to withdraw from representation of both clients.” *Id.* at 4. Thus, the motion to vacate the trial is predicated on Judge Shaffer granting a motion to which the defendants have not consented.

The motion to vacate does not describe any efforts that defendants have made to find new counsel. This is not surprising since they do not agree to Ms. Whitaker’s withdrawal. However, without such a description, any continuance would be open-ended, dependent on the willingness of new counsel to try the case when it is set. For this reason, the Court denies the motion to continue. In the event that Ms. Whitaker is allowed to withdraw, defendants will be motivated to find new counsel and can file a pro se motion to continue the trial. Defendants should understand that, without a detailed description of defendants’ efforts to retain new counsel and indications of when prospective attorneys could try this case, the Court will not look favorably on any renewed motion to vacate.

Wherefore, defendants’ Motion to Vacate Trial Date [Docket No. 54] is denied.

DATED September 12, 2017.

BY THE COURT:

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