

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:17-cv-01177-LTB-NYW

DAKOTA TYLER MCGRATH,

Plaintiff,

v.

FORT COLLINS POLICE SERVICES OFFICER NICK RODGERS, in his individual capacity,

Defendant.

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**UNOPPOSED MOTION TO AMEND CIVIL SCHEDULING  
ORDER TO REFLECT 60-DAY EXTENSION OF DISCOVERY  
CUTOFF AND DISPOSITIVE MOTIONS DEADLINE**

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Plaintiff Dakota McGrath, by and through counsel, Anthony Viorst of the Viorst Law Offices, P.C., respectfully submits his Unopposed Motion to Amend Civil Scheduling Order to Reflect Extension of Discovery Cutoff and Dispositive Motions Deadline, such that the Scheduling Order in this case is modified to reflect a 60-day extension of the discovery cutoff, until May 4, 2018, as well as a 60-day extension of the dispositive motion deadline, until June 6, 2018, as follows:

1. **STATEMENT AS TO CONFERRAL:** Pursuant to D.C.Colo.LCivR 7.1(A), the undersigned conferred with counsel for Defendant Officer Nick Rogers (“Defendant”) on the relief Plaintiff requests. Defendant’s counsel advised Defendant does not oppose the requested relief.

2. In the current Scheduling Order, the current deadline for the close of discovery is March 5, 2018, and the current deadline for the filing of dispositive motions is April 6, 2018. [ECF No. 12.]

3. For the reasons stated in this Unopposed Motion, Plaintiff requests that both parties be afforded until and including May 4, 2018, within which to conduct all discovery in this matter, and until and including June 6, 2018, within which to prepare and file dispositive motions.

4. **RELEVANT FACTS:** Mr. McGrath is currently undergoing inpatient treatment at Centennial Peaks Hospital, a mental health facility located in Louisville, Colorado. Upon information and belief, Mr. McGrath's treatment at Centennial Peaks has included electric-shock therapy. Mr. McGrath's deposition is currently scheduled for February 8, 2018. However, he may not be released from Centennial Peaks by that date and, even if he has been released by that date, his mental health status may prevent him from undertaking a deposition so close in time to his release.

5. **RELEVANT LAW:** Under Fed.R.Civ.P. 16(b)(4), a scheduling order "may be modified only for good cause and with the judge's consent." Movants must show the scheduling deadline cannot be met despite diligent efforts and may be satisfied if, for example, the movants learn new information through discovery. *See Birch v. Polaris Indus.*, 812 F.3d 1238, 1247 (10th Cir. 2015). Rigid adherence to a pretrial scheduling order is not advisable, *see SIL-FIO v. SFHC, Inc.*, 917 F.2d 1507, 1519 (10th Cir. 1990), and total inflexibility is quite undesirable in the context of a motion to amend a scheduling order, *see Summers v. Mo. Pac. R.R. Sys.*, 132 F.3d 599, 604 (10th Cir. 1997). When faced with a motion to extend discovery, a court considers the following factors: (a) whether trial is imminent; (b) whether the request to extend discovery is opposed; (c) whether the non-moving party would be prejudiced; (d) whether the moving party was diligent in obtaining discovery within guidelines the Court established; (e) the foreseeability of the need for additional discovery in light of the time allowed for discovery by the Court; and (f) the likelihood

that the discovery will lead to relevant evidence. See *Smith v. United States*, 834 F.2d 166, 169 (10th Cir. 1987); *Lehman Bros. Holdings, Inc. v. Univ. Am. Mortg. Co., LLC*, 300 F.R.D. 678, 681 (D. Colo. 2014) (granting motion to amend scheduling order).

6. **(A) Trial Is Not Imminent:** Although both a final pretrial conference and the trial are set in this matter, they will not occur until late in the fourth quarter of 2018. Hence, this factor weighs heavily in favor of the requested relief.

7. **(B) No Opposition to Request:** Defendant does not oppose. Hence, this factor weighs heavily in favor of the requested relief.

8. **(C) No Prejudice:** No deadlines to conduct discovery or to prepare and file dispositive motions have passed. Counsel for both parties in this matter agree a need exists to extend the remaining discovery deadlines in this matter due to the necessity of Plaintiff's deposition and any additional need to obtain documents or witnesses that may arise thereafter. Hence, neither the parties nor the Court will experience prejudice if the relief Plaintiff seeks is granted, meaning this factor weighs heavily in favor of the requested relief.

9. **(D) Diligence:** As the Court is aware from a review of the docket, an examination of this case's progression of pretrial proceedings reveals the parties have not been dilatory. Both the deposition of Defendant and the deposition of one of Plaintiff's non-retained treating providers have occurred, the parties have exchanged written discovery and expert pleadings, and Plaintiff's health care circumstances arose fairly suddenly and were occasioned by factors not entirely within the control of Plaintiff. Hence, this factor weighs heavily in favor of the requested relief.

10. **(E) Foreseeability:** Because Plaintiff's health care circumstances arose fairly suddenly and were occasioned by factors not entirely within the control of Plaintiff, the need for

additional time for written or testimonial discovery and for dispositive motions was not foreseeable, and this factor weighs heavily in favor of the requested relief.

11. **(F) Relevant Evidence:** Without question, Plaintiff's deposition and any additional need to obtain documents or witnesses that may arise thereafter will lead to discovery of evidence relevant to the parties' claims and defenses. Hence, this factor weighs heavily in favor of the requested relief.

12. **FIRST REQUEST FOR EXTENSION:** This is the first request by any party for an extension of time of any discovery deadline in this case. And since the final pretrial conference is not set to occur until November 2, 2018, neither the parties nor the Court will be prejudiced.

13. **GOOD CAUSE:** Given all six factors weigh heavily in favor of the requested relief, good cause exists for this Court to grant the relief Plaintiff seeks for the benefit of all parties.

14. **CONCLUSION:** In conclusion, for the foregoing reasons, Plaintiff Dakota McGrath respectfully requests that the Court grant this Unopposed Motion and amend the deadlines in ECF No. 12 to reflect that both parties be afforded until and including May 4, 2018, within which to conduct all discovery in this matter, whether written or testimonial, and until and including June 6, 2018, within which to prepare and file dispositive motions.

Respectfully submitted this 2<sup>nd</sup> day of February, 2018.

THE VIORST LAW OFFICES, P.C.  
*[Original signature on file at Viorst Law Offices, P.C.]*

*s/ Anthony Viorst*

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**ATTORNEYS FOR PLAINTIFF**

**CERTIFICATE OF SERVICE (CM/ECF)**

I hereby certify that on this 2<sup>nd</sup> day of February, 2018, I electronically filed the foregoing **UNOPPOSED MOTION TO AMEND CIVIL SCHEDULING ORDER TO REFLECT EXTENSION OF DISCOVERY CUTOFF AND DISPOSITIVE MOTIONS DEADLINE FROM PLAINTIFF** with the Clerk of Court using the CM/ECF system which will notify the following email addresses of such filing:

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*[Original signature on file at Viorst Law Offices, P.C.]*

*s/ Michelle Spadavecchia*  
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