IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

ALBERT J. TURK, M.D. and SHELLEY TURK, R.N., Plaintiffs, v. SOMERVELL COUNTY HOSPITAL DISTRICT and RAY REYNOLDS, INDIVIDUALLY, AND IN HIS CAPACITY AS CHIEF EXECUTIVE OFFICER OF GLEN ROSE MEDICAL CENTER-SOMERVELL COUNTY HOSPITAL DISTRICT, Defendants.	§	Civil Action No. 6:15-cv-00231-RP

DEFENDANTS' MOTION TO BIFURCATE TRIAL FOR INDIVIDUAL DEFENDANT, RAY REYNOLDS, AND GOVERNMENT DEFENDANTS

Defendants file this *Motion to Bifurcate Trial* and show as follows:

I. SUMMARY OF ARGUMENT

There are effectively two defendants in this lawsuit: (1) Defendant Ray Reynolds in his individual capacity ("Individual Defendant") and (2) Defendant Somervell County Hospital District and Reynolds in his Official Capacity ("Governmental Defendants").[1] The Court should bifurcate trial against the Individual Defendant Ray Reynolds and the Government Defendants in order to avoid prejudice, reduce potential jury confusion, expedite trial and conserve judicial resources.

Specifically, Plaintiffs have brought suit against Ray Reynolds individually; his personal liability and his own personal assets are at stake. The standard of liability, damages and evidence are different for trial for Mr. Reynolds personally and against the Government Defendants and he should not be prejudiced, nor should jury confusion be risked, as to his own personal liability. Indeed, in cases such as this, federal courts routinely bifurcate trial against an individual defendant from claims against government entities, as the Court should here. Accordingly, Defendants respectfully request trial bifurcation.

[1] The United States Supreme Court has held repeatedly that lawsuits against a government official in their official capacity are treated as duplicative of the lawsuit against the governmental entity. *See Kentucky v. Graham*, 473, U.S. 159, 166 (1985); *Monell v. New York City Dept. of Social Services*, 436 U.S. 658, 690, n.55 (1978) (stating that official capacity suits "generally represent only another way of pleading an action against an entity of which an officer is an agent").

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II. FACTUAL BACKGROUND

Plaintiffs Albert J. Turk ("Dr. Turk") and his wife Shelley Turk ("Mrs. Turk") have sued Government Defendants, Somervell County Hospital District and Ray Reynolds in his Capacity as Chief Executive Officer of Glen Rose Medical Center – Somervell County Hospital District and also Individual Defendant, Ray Reynolds, personally. Dr. Turk and Ms. Turk's claims are based on the U.S. Constitution and related Texas Constitution counterparts.

A. Defendants

Defendant Somervell County Hospital District ("Somervell District") is a governmental entity created pursuant to the Texas Constitution. *See* Art. IX, § 9, Texas Constitution. The Somervell District is governed by Chapter 286 of the Texas Health and Safety Code. Pursuant to Texas law, Somervell District has the authority to levy taxes in order to support the operations and functions of the hospital. TEXAS HEALTH AND SAFETY CODE, §§ 286.071-.073. The Somervell District is governed by the Board of Directors, which is composed of seven elected members. The Board of Directors has ultimate power over all practices, policies and procedures which govern the hospital, Glen Rose Medical Center, and is specifically empowered by statute to "manage, control, and administer the hospital system and the funds and resources" of the hospital. TEXAS HEALTH AND SAFETY CODE, §§ 286.041-.042, 286.074.

Defendant Ray Reynolds is the CEO of Glen Rose Medical Center ("Glen Rose Hospital"), the hospital which the Somervell District governs.[2] Mr. Reynolds has held his role as CEO of Glen Rose Hospital since April 2011. Mr. Reynolds reports to the Somervell District Board of Directors.

[2] Somervell County has a population of approximately 8,739 people. Glen Rose is a city in Somervell County with a population of approximately 2,594 people. Glen Rose Hospital is in the city of Glen Rose.

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Physicians are employed by a private corporation often called a 501(a)—pursuant to the Corporate Practice of Medicine Doctrine, that is to ensure there is no interference (governmental, private, financial, etc.) in the care and treatment provided by provisions. Until 2014, Texas (like most states) prohibited hospitals and governmental entities from directly employing physicians.[3] The 501(a) that employed Dr. Turk is Glen Rose Healthcare, Inc. Glen Rose Healthcare, Inc. is a non-party. Somervell District does not govern or manage Glen Rose Healthcare, Inc. Glen Rose Healthcare, Inc. has a board comprised of physicians who govern and administer the employment of physicians. Physicians within the 501(a) are tasked with the credentialing of doctors and review of care and treatment provided by providers with privileges at the hospital.

A summary of the key entities are below:

Entity/Person	**Party/Non-Party**	**Description**
Somervell County Hospital District	Party – Defendant	Governmental entity; Hospital District created by Texas Constitution
Ray Reynolds	Party – Defendant	CEO of Glen Rose Medical Center. Reynolds reports to the elected Board of Directors of Somervell District.
Glen Rose Healthcare, Inc. ("501(a)")	**Non-Party**	Private corporation that governs and employs physician. Not governed by the Somervell District.

B. Plaintiffs' Claims

Dr. Turk and his wife have brought constitutional claims under the U.S. Constitution and the corresponding Texas Constitution counterparts against the Individual and Government Defendants.

[3] *Flynn Brothers, Inc. v. First Medical Associates*, 715 S. W. 2d 72 (Tex. App. 1986); 22 TAC § 177.17.

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1. Plaintiff, Shelley Turk (Former Nurse of Glen Rose Hospital)

Mrs. Turk was formerly employed by Glen Rose Hospital, the Hospital administered by the Somervell District. Mrs. Turk alleges a first amendment (free speech and right to petition) retaliation claim under the United States Constitution and its Texas Constitution counterpart. In particular, Mrs. Turk claims her employment was terminated and she was denied the right to petition the government for redress of grievances in violation of her free speech rights.

2. Dr. Turk (Former Physician of Glen Rose Healthcare, Inc.—a Non-party)

Dr. Turk alleges a first amendment (free speech and right to petition) retaliation claim and due process claim under the United States Constitution and its Texas Constitution counterpart. Dr. Turk alleges that his contract with non-party Glen Rose Healthcare, Inc. (the 501(a)) to provide physician services was allowed to expire instead of being renewed in retaliation for raising alleged patient care issues. He also alleges he was not provided due process in his contract being allowed to expire.

For either Dr. Turk or Mrs. Turk to be successful on their claims they must present evidence relating to their specific free speech—i.e., each complaint and/or grievance filed—and will have to demonstrate that specific speech led to retaliation. Additionally, to prove his due process claims, Dr. Turk will have to establish that he has a property right in relation to the District with his contract and that there is not a non-retaliatory reason for his contract being allowed to expire.

III. LEGAL ARGUMENT

A. Legal Standard

The court may order a separate trial of one or more separate issues, claims, or parties when it determines that bifurcation is necessary for "convenience, to avoid prejudice, or to

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expedite and economize" the civil action. Fed. R. Civ. P. 42(b). The district court is vested with discretion in deciding whether to bifurcate claims. *Briggs v. State Farm Fire & Casualty Company*, 673 Fed. Appx. 389 (5th Cir. 2016).

While there is no bright line test for separate trials, under FRCP 42(b) the movant may show that separate trials will do justice, avoid prejudice, or further the convenience of the parties and the court. *See* Fed. R. Civ. P. 42(b); *see also Conkling v. Turner*, 18 F.3d 1285, 1293 (5th Cir.1994); *Aguirre v. Valerus Field Solutions LP*, 2017 WL 2982299 (S.D. Tex. July 13, 2017); *Doe v. Knights of Columbus*, 930 F.Supp. 2d 337, 339 (D.Conn. 2013); *Saxion v. Titan-C-Mfg.*, 86 F.3d 553, 556 (6th Cir. 1996) (only one of three factors under Fed. R. Civ. P. 42(b) needs to be met to justify bifurcation). In this case, bifurcating trial is warranted for all three reasons.

B. Bifurcation is Appropriate Because Varying Legal Standards and Defenses Apply to the Individual Defendant and Government Defendants.

While the claims against the Individual Defendant and the Governmental Defendants stem from the same laws, they are inherently distinct in the legal standards and applicable defenses. Indeed, the legal standard applicable to establish liability against each Defendant is distinct and separate, the defenses available to each Defendant — including applicable immunities — are entirely separate, and the remedies available to Plaintiffs in the event of liability are distinct. As a result, federal courts routinely and consistently grant requests for bifurcation of constitutional claims alleged against an individual and a governmental entity due to the widespread recognition of potential prejudice, confusion of issues and judicial economy. *See, e.g., Cox v. Columbia Cas. Co.*, No. CIV.A. 12-306-SDD-SC, 2014 WL 5465803, at *1 (M.D. La. Oct. 28, 2014) (granting motion to bifurcate 1983 claims against individual from 1983 claims against municipality for trial); *DiSorbo v. Hoy*, 343 F.3d 172, 179 (2d Cir. 2003) (bifurcating claims against government from Section 1983 claims against an individual); *Wilson*

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v. Morgan, 477 F.3d 326, 340 (6th Cir. 2007) (same); *Treece v. Hochstetler*, 213 F.3d 360, 365 (7th Cir. 2000) (same); *Quintanilla v. City of Downey*, 84 F.3d 353, 356 (9th Cir. 1996) (same); *McIntosh v. District of Columbia*, 1997 U.S. Dist. LEXIS 23891 *5 (D.D.C., Dec. 9, 1997) (bifurcating plaintiff's § 1983 claim against official from claim against government alleging a custom or policy of indifference to plaintiff's decedent's right*s); Anthony v. City of Bridgeport*, 97 F. R. Evid. Serv. 1145, 2015, WL 3745302 (D. Conn. June 15, 2015) (bifurcating claims against officer and municipality because of potential for unfair prejudice to individual defendant); *Phillips v. City of N.Y.*, 871 F. Supp. 2d 200 (E.D.N.Y. 2012) (holding bifurcation appropriate); *Wells v. City of Dayton*, 495 F. Supp. 2d 793 (S.D. Ohio 2006) (same); *Figueroa v. Gates*, 207 F. Supp. 2d 1085 (C.D. Cal. 2002) (same). The same result is appropriate here.

1. Claims Against the Individual Defendant.

As an individual being sued personally, Plaintiffs have to prove that Reynolds ***personally*** engaged in conduct under color of state law that deprived each of them of rights, privileges, or immunities secured by the federal Constitution or federal law. *Parratt, 451 U.S. at 535.* Actions not taken by Reynolds cannot be used to find Reynolds personally and individually liable and put his personal assets at stake.

Importantly, in his individual capacity, the legal standard is different than against the Governmental Defendants as Reynolds has pled a defense of qualified immunity and official immunity to the claims against him in his individual capacity. *Davis v. Scherer*, 468 U.S. 183, 194 (1984) ("Officials sued for constitutional violations do not lose their qualified immunity merely because their conduct violates some statutory or administrative provision.").

At trial, the burden is on Plaintiffs to overcome Reynolds' invocation of qualified immunity. *Club Retro, LLC v. Hilton*, 568 F.3d 181, 194 (5th Cir. 2009). To do so, Plaintiffs will have to establish that Reynolds *personally*: (1) violated a statutory or constitutional right,

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and (2) that "the right was 'clearly established' at the time of the challenged conduct." *Bustillos v. El Paso County Hospital District*, 226 F.Supp.3d 778, 789 (W.D. Tex. 2016) (citing *Ashcroft v. al–Kidd*, 563 U.S. 731, 735 (2011)). Reynolds is shielded from individual liability unless Plaintiffs can show that the right that he allegedly personally violated was so clear that "a reasonable official would understand that what he is doing violates that right." *Saucier v. Katz*, 533 U.S. 194, 202 (2001).

Moreover, as Reynolds has pled official immunity, he cannot be held liable if (1) he was performing discretionary duties; (2) that are within the scope of his authority, and (3) he acted in good faith. *Telthorster v. Tennell*, 92 S.W.3d 457 (Tex. 2002), (citing *City of Lancaster v. Chambers*, 883 S.W.2d 650, 653 (Tex. 1994)); *DeWitt v. Harris County*, 904 S.W.2d 650, 651-52 (Tex. 1995); *Kassen v. Hatley*, 887 S.W.2d 4, 8-9 (Tex. 1994); *K.D.F. v. Rex*, 878 S.W.2d 589, 597 (Tex. 1994). In order to defeat Defendant's entitlement to official immunity, the Plaintiffs would need to show that no reasonable officer under similar circumstances could have believed that the facts were such that they justified the disputed conduct. *Telthorster*, 92 S.W.3d at 460.

2. Claims against the Governmental Defendants.

Plaintiffs also sue Reynolds in his official capacity as Chief Executive Officer of Glen Rose Medical Center – Somervell County Hospital District, as well as suing the Somervell County Hospital District directly. As stated above, official capacity claims are considered duplicative of suits with regard to the governmental entity that the individual represents. *Monell v. New York City Dept. of Social Services*, 436 U.S. 658, 690, n.55 (1978) (stating that official capacity suits "generally represent only another way of pleading an action against an entity of which an officer is an agent").

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Importantly, there is no vicarious liability for Defendant Somervell County Hospital District (and the duplicative naming of Reynolds in his official capacity), even if Reynolds – or some other official – personally violated Plaintiffs' rights. *See Baker v. Putnal*, 75 F.3d 190, 200 (5th Cir. 1996); *Collins v. City of Harker Heights, Texas*, 503 U.S. 115, 112 (1992); *Monell*, 436 U.S. at 691-94; *Brown v. Lyford*, 243 F.3d 185, 191 (5th Cir. 2001); *Grabowski v. Jackson County Pub. Defender's Office*, 79 F.3d 478, 479 (5th Cir. 1996).

Rather, if Somervell District is a municipality,[4] it can only be liable for its specific actions which the Supreme Court has limited to: (1) formally promulgated policies; (2) well-settled custom or practice; (3) final decision by a municipal policymaker; or (4) deliberately indifferent training or supervision. *Monell v. Dep't of Social Svcs.*, 436 U.S. 658, 690-94 (1978); *Oklahoma City v. Tuttle*, 471 U.S. 808, 830-31 (1985). The final policy-maker of a municipal entity is dictated by state law and here it is the elected Board of Directors of Somervell District. TEXAS HEALTH AND SAFETY CODE, §§ 286.041-.042, 286.074 (providing the Board the responsibility to "manage, control, and administer the hospital system and the funds and resources" of Defendant Somervell District).

B. Separate Trials Will Avoid Prejudice to Defendants and Potential Jury Confusion.

Here, trial bifurcation would mitigate the risk of jury confusion and potential prejudice that may arise from presentation of disparate facts concerning the distinct claims against each Defendant, when forced together in the same trial. Trial should proceed separately where "the possible prejudice to defendants due to the likelihood of confusion in the minds of the jurors

[4] In addition, if Somervell District is considered an arm of the state, then *Will v. Michigan Department of State Police*, 491 U.S. 58, 70 (1985) and sovereign immunity may bar the official capacity claims against the Governmental Defendants, but this defense is not available to Reynolds individually. *See Edelman v. Jordan*, 415 U.S. 651 (1974) (neither the state nor its agencies may be sued for injunctive relief or retrospective relief, i.e., damages payable from the state treasury, in federal court).

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because of the similarity of issues alleged in the complaints and the possibility of different facts in each case outweigh the benefits of any possible convenience or economy to be obtained from consolidation." *Arroyo*, 90 F.R.D. at 605 (citing *Garber v. Randell*¸477 F.2d 711 (2nd Cir. 1973); *see also Houskins v. Sheahan*, 549 F.3d 480, 495 (7th Cir. 2008); *Quintanilla v. City of Downey*, 84 F.3d 353, 356 (9th Cir. 1996) (bifurcation permitted due to risk of prejudice and confusion by introducing evidence not applicable to any particular plaintiff).

1. Prejudice to Individual Defendant, Ray Reynolds

Ray Reynolds is being sued personally; suits for officials in their individual capacities seek to impose personal liability upon a government official for actions he takes under color of state law. *See, e.g., Scheuer v. Rhodes*, 416 U.S. 232, 237–238 (1974). The prejudice to the individual defendant must be weighed heavily in determining whether the individual capacity suit should proceed separately, as the ***personal assets*** of an individual governmental official are at stake in individual capacity claims. *Kentucky v. Graham*, 473 U.S. 159, 165–66 (1985) ("[A]n award of damages against an official in his personal capacity can be executed only against the official's personal assets.").

There is great prejudice to Individual Defendant, Reynolds, due to the separate legal standards for his liability individually versus liability of the Governmental Defendants. As discussed above, the issue in an individual capacity claim is the "reasonableness" of the official's individual decisions and "qualified immunity gives government officials breathing room to make reasonable but mistaken judgments, and protects all but the plainly incompetent or those who knowingly violate the law." *Messerschmidt v. Millender*, 565 U.S. 535, 132 S.Ct. 1235, 1244, 182 L.Ed.2d 47 (2012) (internal citations and quotation marks omitted). The legal standard for establishing liability against a government entity on an official capacity claim, by contrast, requires a showing that the official acted in accordance with a policy or custom of the

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governmental entity, and that the government policy was the "driving force" behind the alleged constitutional or statutory violation. *Monell*, 436 U.S. at 694; *Oklahoma City v. Tuttle*, 471 U.S. 808, 817–818 (1985).

The focus in the claims against the Governmental Defendants, then, is the entity's policy or custom, or the decision of a "final decision by a policy maker" as opposed to an individual decision of a particular official. But the policies and customs of a governmental entity are irrelevant when the personal liability of a governmental employee is at issue, and whether an individual governmental employee followed or violated policies is not relevant.

Because of the divergent standards, trying the two classes of claims together creates a risk that evidence of the acts of Defendant Hospital District could prejudice liability against Ray Reynolds personally. *See Cox*, 2014 WL 5465803, at *1 (granting motion to bifurcate 1983 claims against individual from 1983 claims against municipality because "it stands to reason that some evidence might be admitted during the case against the municipal Defendants that might not be admissible as to [the individual Defendant] and would thus be prejudicial to [the individual Defendant]"). The Court should not risk that jurors will hold Reynolds personally responsible, putting his personal assets at stake, for acts of the Governmental Defendants.

Bifurcation is also appropriate to avoid jury confusion – regarding the differing standard to be applied, as well as the different measures of damages. *See Cox*, 2014 WL 5465803, at *2 (granting motion to bifurcate 1983 claims against individual from 1983 claims against municipality and finding that "given the various state and federal claims asserted and the differing standards associated therewith, that bifurcation would serve to avoid a strong likelihood of jury confusion"). The potential remedies against Reynolds as an individual, under certain circumstances can include money damages, *Bustillos*, 226 F.Supp.3d at 789. Whereas, many of

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the potential remedies against the Governmental Defendants are non-monetary: prospective injunctive or declaratory relief, but not retrospective monetary damages nor punitive damages. *Nelson v. Univ. of Tex. at Dallas*, 535 F.3d 318, 321 (5th Cir. 2008); *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 271 (1981).

2. Prejudice to Governmental Defendants

Because there is no vicarious liability for Defendant Hospital District based on the individual actions of Reynolds, *Baker*, 75 F.3d at 200, there is also the risk of prejudice to Somervell District from the introduction of acts of Reynolds that could prejudice liability against Somervell District. Defendant Somervell County Hospital District is only liable for Reynolds' acts if those acts: (1) constitute formally promulgated policy; (2) are the result of well-settled custom or practice; (3) are a final decision by municipal policymaker; or (4) result from deliberately indifferent training or supervision by the Hospital District. *Monell*, 436 U.S. at 690-94. The risk of jury confusion and prejudice is particularly high where the jury is asked to differentiate between Reynolds' acts in his individual capacity – for which Somervell District is not liable absent one of the four factors above – and Reynolds' acts in his official capacity, which is simply "another way of pleading an action against [the government entity]." *Monell*, 436 U.S. at 690, n.55.[5]

C. **Separate Trials Will Do Justice and Conserve Judicial Resources.**

Under Rule 42, bifurcation is appropriate where the issues to be tried are "so distinct and separable from the others that a trial of it alone may be had without injustice." *McDaniel v. Anheuser-Busch, Inc.*, 987 F.2d 298, 305 (5th Cir. 1993) (quoting *Swofford v. B & W, Inc.*, 336

[5] Defendants expect that Plaintiffs will argue that Reynolds is a final "policymaker" whose decisions create liability for the Hospital District; however, the Board of Directors, vested by statute with the sole authority to "manage, control, and administer the hospital system and the funds and resources" of a hospital district are the actual "policymakers." TEXAS HEALTH AND SAFETY CODE, §§ 286.041-.042, 286.074.

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F.2d 406, 415 (5th Cir. 1964)). Plaintiffs' claims against each of the Defendants involve a distinct set of facts tailored to the distinct legal standards applicable against each Defendant. As a result, for all intents and purposes, they are two distinct and unrelated proceedings.

Bifurcation is also appropriate when the controversy involves more than one claim or defense and a separate trial of one issue might render trial of the other issues unnecessary. For this reason, bifurcation is particularly appropriate in Section 1983 cases where there is no liability for a municipal government entity without a finding of a municipal action, *i.e.* an unconstitutional action by "a final policymaker." *See City of Los Angeles v. Heller*, 475 U.S. 796, 797–98 (1986) (affirming dismissal of government defendant by trial court after jury found in favor of individual defendant on 1983 claims in bifurcated trial); *Cox*, 2014 WL 5465803, at *1 (granting motion to bifurcate 1983 claims against individual from 1983 claims against municipality because "if the jury finds no liability as to [the individual Defendant] for the Section 1983 claims, the municipal Defendants cannot be held liable under Section 1983 under the facts of this case."); *see also Jinro Am. Inc. v. Secure Invs.*, 266 F.3d 993, 998 (9th Cir. 2001) (bifurcation would permit deferral of costly and possibly unnecessary proceedings pending resolution of potentially dispositive preliminary issues), *amended*, 272 F.3d 1289 (9th Cir. 2001).

IV. CONCLUSION

Individual Defendant Ray Reynolds should not be subjected to a trial where his personal assets are at stake with Governmental Defendants due to the risk of jury confusion and undue prejudice. For the reasons set forth above, trial of Plaintiffs' claims should be bifurcated as to the claims against the Individual Defendant Reynolds in his individual capacity one trial, and the claims against the Governmental Defendants Reynolds in his official capacity and Somervell

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County Hospital District, in a second subsequent trial, in order to reduce potential prejudice, conserve judicial resources and so that justice may be done.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of August, 2018, I electronically submitted the foregoing document with the clerk of the court for the U.S. District Court, Western District of Texas, using the electronic case files system of the court. The electronic case files system sent a "Notice of Electronic Filing" to the following CM/ECF participants:

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