

IN THE CIRCUIT COURT OF COUNTY, MISSISSIPPI

PLAINTIFF

VS.

CAUSE NO.

DEFENDANT

MOTION FOR CONTINUANCE

NOW COMES , Plaintiff, and files this his/her Motion for Continuance in the trial of this cause set for , and in support thereof would show as follows, to-wit:

I.

This cause is set for trial in this Court on .

II.

One of the witnesses for Plaintiff at the trial of this cause will be , who was a passenger in the vehicle with the Plaintiff at the time of the automobile accident between Plaintiff and Defendant.

III.

Plaintiff's witness cannot be located at this time, and it is probable that he/she will not be available to testify at trial on .

IV.

 is a material and necessary witness for the Plaintiff. There are no other witnesses known to the Plaintiff who can testify to the particular facts Plaintiff expects to prove by this absent witness.

V.

Plaintiff had no reason to believe this witness would not be available for trial, and in fact, fully expected him/her to be available at all times to prepare for trial and to testify at trial.

VI.

Through this absent witness, Plaintiff expects to prove facts showing the cause of the accident and facts concerning Plaintiff's physical condition both before and after the accident.

VII.

Plaintiff's Affidavit in support of this Motion is attached hereto as Exhibit "A" and is incorporated herein by reference.

VIII.

This Motion is not being made for purposes of delay but so that justice may be done.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays this Court will grant a
continuance in the trial of this cause set for .

RESPECTFULLY SUBMITTED this the day of 20 .

By: _____

Plaintiff's Attorney

IN THE CIRCUIT COURT OF COUNTY, MISSISSIPPI

PLAINTIFF

VS.

CAUSE NO.

DEFENDANT

NOTICE OF MOTION

TO:

PLEASE TAKE NOTICE that Plaintiff's Motion for Continuance will be heard before the Honorable , ., Circuit Court Judge, on at o'clock a.m/p.m at the County Circuit Courthouse, , Mississippi, or as soon thereafter as counsel may be heard.

RESPECTFULLY SUBMITTED this the day of 20 .

By: _____

Plaintiff's Attorney

CERTIFICATE OF SERVICE

I, _____, counsel of record for the Plaintiff, do hereby certify that I have this day delivered a true and correct copy of the above and foregoing Motion for Continuance and Notice of Motion to the following counsel of record for the Defendant:

THIS, the _____ day of _____, 20____.

IN THE CIRCUIT COURT OF COUNTY, MISSISSIPPI

PLAINTIFF

VS.

CAUSE NO.

DEFENDANT

AFFIDAVIT OF

STATE OF MISSISSIPPI)

COUNTY OF)

THIS DAY PERSONALLY APPEARED BEFORE ME, the undersigned legal authority in and for the jurisdiction aforesaid, the within named who being by me first duly sworn, did state on his oath as follows, to-wit:

1. Affiant is the Plaintiff in the above entitled cause of action.
2. This cause has been set for trial on in the Circuit Court of County, Mississippi.
3. One of the witnesses for Affiant at the trial of this cause will be . This witness was a passenger in the vehicle with Affiant at the time of the automobile accident between Affiant and Defendant.
4. Affiant is unable to locate at this time and does not believe will be present to testify at trial.
5. Affiant expects to prove through the testimony of certain facts concerning the cause of the accident. Affiant expects to prove through - testimony that the accident was caused by the negligent acts of the Defendant. testimony will also be used to show how Affiant's physical condition was affected by the collision.

6. Affiant had advised _____ that the trial of this case would be held on _____, and was assured by _____ that he/she would be available for trial. Affiant had no reason to expect this witness not to be available. However, since Plaintiff has not heard from this witness recently, he/she believes he/she may not appear in time for trial or in time to prepare adequately for trial.

7. _____ is a necessary and material witness, and Affiant cannot proceed to trial without his/her testimony. Affiant knows of no other witnesses who can testify to the same facts as this witness.

8. This witness is not absent by Affiant's consent, connivance, or procurement.

9. Affiant has used due diligence to procure the presence of _____ at trial. _____ has lived and worked in the State of Mississippi for some time and during said time has lived at several different addresses. Affiant does not know _____ present address or present whereabouts at this time, but Affiant was advised by the witness that his/her family's permanent address is _____.

_____ . Affiant has attempted to telephone the witness in _____ but has discovered that there is no telephone listing for _____ - and has learned that there are no _____ listed on _____ in _____. A letter has been forwarded to the witness' address in _____, requesting the witness to contact Affiant, but no reply has yet been received.

10. Affiant requests a continuance not for the purpose of delay but so that justice may be done.

And further Affiant saith not.

SWORN TO AND SUBSCRIBED BEFORE ME, this the day of 20 .

NOTARY PUBLIC

My Commission Expires:

IN THE CIRCUIT COURT OF COUNTY, MISSISSIPPI

PLAINTIFF

VS.

CAUSE NO.

DEFENDANT

ORDER

THIS CAUSE this date having come on for hearing in the above styled cause, and the Court, having considered this matter and having heard arguments of counsel, finds that the motion is well taken and should be sustained.

IT IS THEREFORE, ORDERED AND ADJUDGED, that the trial of this cause set for is hereby continued and will be re-set on a date agreeable to the parties and this Court.

ORDERED AND ADJUDGED this the day of 20 .

CIRCUIT JUDGE

PRESENTED BY: