

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

AT BECKLEY

MARY WEBB, individually, and in
her capacity as Administratrix of the
Estate of Robert A. Webb,

Plaintiffs,

v.

Civil Action No. 5:09-cv-1253
Honorable Irene C. Berger

RALEIGH COUNTY SHERIFF'S DEPARTMENT;
RALEIGH COUNTY COMMISSION;
SHERIFF DANNY MOORE, individually and in his
official capacity; CHIEF DEPUTY STEVE TANNER,
individually and in his official capacity;
DEPUTY GREG S. KADE, individually and in his
official capacity; and DEPUTY JOHN E. HAJASH,
individually and in his official capacity,

Defendants.

**PLAINTIFF'S MOTION TO CONTINUE TRIAL DATE DUE
TO UNAVAILABILITY OF STATE MEDICAL EXAMINER WITNESS**

COMES NOW Plaintiff Mary Webb, individually and in her capacity as Administratrix of the
Estate of Robert A. Webb, and hereby respectfully moves this Court for an Order to Continue
the current trial date and modify the Court's Scheduling Order for the reasons set forth below.

1. The Office of the Chief Medical Examiner of the State of West Virginia was
served on April 21, 2011 with a subpoena for trial testimony requiring Zia Sabet, M.D. to appear
and testify in this civil action on or about Monday, May 2, 2011. The initial trial subpoena
served upon Dr. Sabet's office was served by Chip E. Williams, as counsel for Defendants Kade
and Raleigh County Commission. A similar trial subpoena was issued by the undersigned

counsel for the plaintiff.

2. Counsel received a prompt response to the service of trial subpoenas from Rhonda McClanahan who is employed as Dr. Sabet's secretary and assistant at the Office of the Chief Medical Examiner. Ms. McClanahan advised Mr. Williams and the undersigned counsel via facsimile that Dr. Sabet would be unable to comply with the trial subpoenas as he already departed for a vacation to Istanbul, Turkey where he will remain for approximately ten days.

3. The undersigned counsel immediately contacted all counsel of record to advise of this unforeseen issue and to consult and confer regarding its impact upon the current trial date of May 2, 2011.

4. Counsel for each party was present via telephone conference and an attempt to reach the Court was then made unsuccessfully.

5. The undersigned counsel then obtained an Affidavit from Ms. McClanahan setting forth Dr. Sabet's conflicts with the trial date as currently scheduled. (See Exhibit attached hereto).

6. As the Court is well aware, this civil action arises from the shooting death of Robert A. Webb. Dr. Sabet performed the autopsy examination and issued the reports of his findings subsequent to Mr. Webb's death. Dr. Sabet also obtained numerous original photographs that are maintained as part of his file related to Mr. Webb's autopsy.

7. Counsel for both the plaintiff and Defendants Kade and Raleigh County Commission represented to this Court their intentions of calling Dr. Sabet as a witness at trial during the pretrial conference before this Court on April 20, 2011.

8. With regard to the plaintiff's case in chief, Dr. Sabet is a necessary witness as he, and only he, can provide testimony to certain specific findings during his autopsy examination

and how those findings may serve to contradict the testimony of the defendants with regard to the manner in which Mr. Webb was shot by the defendants.

9. The undersigned counsel previously met with Dr. Sabet in order to prepare for his direct examination testimony when this matter was set for trial earlier this year. The parties did not depose Dr. Sabet as part of this civil action. Accordingly, there is no prior sworn testimony available to be utilized at trial under Rule 804 or other provisions of the Federal Rules of Evidence.

10. Immediately upon his return, Dr. Sabet is currently under subpoena and scheduled to testify on Monday, May 9, 2011 in the Circuit Court of Kanawha County, West Virginia.

11. In light of the unique and exclusive role that Dr. Sabet plays in this wrongful death action, there is no other source from which the plaintiff can elicit and provide the testimony necessary from the Chief Medical Examiner's office. Plaintiff cannot present necessary elements of her case without Dr. Sabet's testimony at trial.

12. While there is no agreement on how to proceed among counsel, counsel for the parties have conferred and agreed to bring this issue to the Court's attention as soon as possible once the conflict was discovered.

WHEREFORE, Plaintiff Mary Webb respectfully requests that this Court enter an Order granting her Motion to Continue the Trial of this matter due to the unavailability of Zia Sabet, M.D. and reschedule this trial at a time when Dr. Sabet is available to appear and testify as a necessary witness, and for any and all other relief the Court may deem just and proper.

MARY WEBB, individually and as
Administratrix of the Estate of Robert Webb

By Counsel

/s/ *Michael A. Olivio*

Michael A. Olivio (WVSB No. 7923)

Travis A. Griffith (WVSB No. 9343)

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Counsel for Plaintiff

AFFIDAVIT OF RHONDA McCLANAHAN

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, TO WIT:

Before me, the undersigned authority, this day personally appeared Rhonda McClanahan, who after being by me first duly sworn, deposed and said, that:

1. I, Rhonda McClanahan, am a resident of Kanawha County, West Virginia.
2. I am employed by the State of West Virginia, Department of Health and Human Resources, Office of the Chief Medical Examiner at 619 Virginia Street, West, Charleston, West Virginia.
3. I am employed as Secretary I, assigned to and assistant to Zia Sabet, M.D.
4. Dr. Sabet performed the autopsy inspection and report Robert A. Webb for the Office of the Chief Medical Examiner.
5. I understand the autopsy and report related to Mr. Webb's death is a subject of a civil case pending before the United States District Court for the Southern District of West Virginia, Cause No. 5:09-01253.
6. I have been advised that the aforementioned civil action is currently scheduled for trial on Monday, May 2, 2011 in Beckley, West Virginia.
7. I received a subpoena on Thursday, April 21, 2011, issued by Chip E. Williams, Esq. requiring Dr. Sabet to appear at the aforementioned civil trial on Monday, May 2, 2011.
8. I have been advised that a similar subpoena for trial testimony is forthcoming from Michael A. Olivio, Esq. for the same trial.
9. Dr. Sabet left the country today, April 21, 2011, for a vacation to Istanbul, Turkey. Dr. Sabet is not scheduled back to this office until Monday, May 9, 2011.
10. Upon Dr. Sabet's return, he is scheduled to testify in a trial in the Circuit Court of Kanawha County, West Virginia on Monday, May 9, 2011 at 10:30 a.m.

11. Dr. Sabet will not be available for testimony by way of deposition during his vacation to Istanbul, Turkey.

12. Dr. Sabet will not be available to meet with any counsel or to discuss his testimony in Case No. 5:09:01253 until after his currently scheduled trial testimony on Monday, May 9, 2011.

13. Immediately upon being advised of the receipt of trial subpoenas, I provided written responses of the scheduling conflict by facsimile to Chip E. Williams and Michael A. Olivio on April 21, 2011.

And further Affiant saith not.

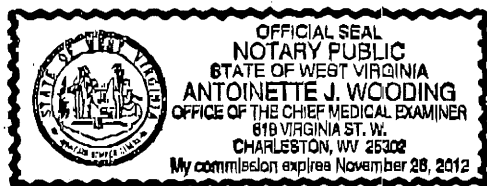
Rhonda McClanahan
Rhonda McClanahan

STATE OF West Virginia
COUNTY OF Kanawha

I, Antoinette Wooding a notary public in and for the said state, do hereby certify that Rhonda McClanahan whose named is signed to the writing above, has this day acknowledged the same before me.

Given under my hand this 21st day of April, 2011.

My Commission expires November 24, 2012.



Antoinette J. Wooding
Notary Public

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AT BECKLEY

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Civil Action No. 5:09-cv-01253
Honorable Irene C. Berger

RALEIGH COUNTY SHERIFF'S DEPARTMENT;
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Defendants.

CERTIFICATE OF SERVICE

I, Michael A. Olivio, counsel for Plaintiff, Mary Webb, individually, and in her capacity
as Administratrix of the Estate of Robert A. Webb, do hereby certify that a true and exact copy
of the foregoing "*Plaintiff's Motion to Continue Trial Date Due to Unavailability of State
Medical Examiner Witness,*" was made upon the parties listed below by electronic filing this
21st day of April, 2011 to:

Chip E. Williams, Esquire
Pullin Fowler Flanagan Brown & Poe, PLLC
600 Neville Street, Suite 201
Beckley, West Virginia 25801
Counsel for Raleigh County Commission and Deputy Greg S. Kade

Kermit J. Moore, Esquire
Brewster, Morhous, Cameron, Caruth, Moore, Kersey & Stafford, P.L.L.C.
P.O. Box 529
Bluefield, West Virginia 24701
Counsel for Deputy John E. Hajash

/s/ *Michael A. Olivio*

Michael A. Olivio (WVSB No. 7923)

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