

CONTINUANCE POLICY

Rule 1: Motions for Continuance--Criminal Cases

Criminal cases should be disposed at the earliest opportunity, including the first trial setting. However, when compelling reasons for continuance are presented which would affect the fundamental fairness of the trial process, a continuance may be granted for good cause. Requests for continuances that are made after 90 days from the first calendaring before a judge shall only be granted for extraordinary cause.

1.1 Appropriate Court Official

Rulings on any request for continuance made on the day of court the case is calendared shall be the responsibility of the presiding trial judge of that court.

Rulings on any request for continuance prior to the day of court the case is calendared shall be as follows:

Speeding and other waivable or minor traffic offenses:

The Clerk of Court or an assistant or deputy clerk may continue the case to the officer's next court day upon the oral request by the defendant or defendant's counsel if the matter has not been continued in the past. In the event the State desires to continue such a case, the State shall satisfy the clerk that good cause exists, that a written letter with the new court date has been mailed to the defendant's last known address, and that a subpoena for the new court date has been issued.

Continuances by consent:

Upon presentation of a written consent signed by the parties or their counsel and an assistant district attorney, the clerk shall continue the matter per the agreement. Care must be taken to notify civilian witnesses for the State and/or defense. New subpoenas shall be issued where appropriate.

All other motions to continue before the trial date may be made by counsel or assistant district attorney arranging to have the court file brought to the Criminal District Court in session for a ruling on the motion.

Notwithstanding the above rules, no criminal case shall be continued beyond 90 days from the first court date without court approval, and further; DWI cases shall not be continued in violation of N.C.G.S. 20-28.

1.2 **Court Conflicts**

The various levels of court should work together to try to move cases as expeditiously as possible. Age of case, subject matter, and priority of setting should be given as much primacy as the level of court when resolving conflicts.

Attorneys shall notify the court and opposing counsel of any other court conflicts(s) as they become known and shall keep the court advised of the resolution of that conflict. All judges shall communicate with other judges to resolve such conflicts. In resolving court conflicts juvenile cases shall take precedence over all other district court matters.

1.3 **Documentation of Continuance**

All orders for continuance shall be documented in or on the file and shall include the name of the moving party, any objections to the continuance if requested by one of the parties, and the basis for the continuance, if requested by one of the parties.

1.4 **Notification of Opposing Counsel/Unrepresented Parties/Witnesses**

All applications for continuance shall be made as soon as a conflict is identified, and all impacted -- opposing counsel unrepresented parties, subpoenaed witnesses, or court staff charged with subpoenaing witnesses -- shall be notified as soon as possible by the moving party.

1.5 **Objections to Motion for Continuance**

All parties should have an opportunity to be heard on a motion to continue.

1.6 **Evaluation of Motions for Continuance**

Factors to be considered by the appropriate court official when deciding whether to grant or deny a motion for continuance should include:

- the opportunity to exercise the right to effective assistance of counsel;
- the age of the case and seriousness of the charge;
- the incarceration status of the defendant;
- the effect on children and spouses if the issue is continued and not resolved;
- the impact of a continuance on the safety of the parties or any other persons;
- the status of the trial calendar for the session;
- the number, moving party, and grounds for previous continuances;
- the due diligence of counsel in promptly making a motion for continuance as soon as practicable and notifying opposing counsel and witnesses;
- the period of delay caused by the continuance requested;

- the presence of witnesses, including the defendant;
- the availability of witnesses for the present session, or for a future session;
- whether the basis of the motion is the existence of a legitimate conflict with another court setting;
- the availability of counsel;
- consideration of the financial consequences to the public, the parties, the attorneys, or witnesses if the case is continued; and
- any other factor that promotes the fair administration of justice.

1.7 **Time Standards**

All criminal and motor vehicle cases should be disposed within 120 days from the first appearance in District Court.

Rule 2: Motions for Continuance -- General Civil and Magistrate Appeal Cases

Civil cases should be disposed at the earliest opportunity, including the first trial setting. However, when compelling reasons for continuance are presented which would affect the fundamental fairness of the trial process, a continuance may be granted for good cause. Requests for continuances that will delay the resolution of the case beyond the established time standards shall only be granted for extraordinary cause.

2.1 **Appropriate Court Official**

All applications for continuance shall be made to the District Court Judge presiding over the session of court for which the case is calendared, or the Trial Court Coordinator to the district court. If the trial judge is not known at the time the request is made, the application should be addressed to either Judge Stone or Judge Wilkins.

2.2 **Court Conflicts**

The various levels of court should work together to try to move cases as expeditiously as possible. Age of case, subject matter, and priority of setting should be given as much primacy as the level of court when resolving conflicts.

Attorneys shall notify the court and opposing counsel of any other court conflicts(s) as they become known and shall keep the court advised of the resolution of that conflict. All judges shall communicate with other judges to resolve such conflicts. In resolving court conflicts juvenile cases shall take precedence over all district court matters.

2.3 **Documentation of Continuance**

All requests for continuance should be by written motion. However, oral motions may be allowed when the reason for the continuance did not become known until immediately preceding the start of court. An order should be prepared by the party seeking the continuance detailing the grounds for the continuance.

2.4 **Notification of Opposing Counsel/Unrepresented Parties/Witnesses**

All parties must be notified of a motion to continue. A copy of the motion to continue must be distributed to all counsel of record and/or unrepresented parties prior to ruling on the motion. In addition to the service requirements set out in the statute, distribution of the motion must be made by the quickest means feasible, including facsimile transmission, electronic mail, or hand delivery.

2.5 **Objections to Motion for Continuance**

All parties should have an opportunity to be heard on a motion to continue.

When a motion to continue is made more than seven (7) working days prior to trial, opposing counsel and/or unrepresented parties shall have a period of four (4) working days, following completion of distribution, to communicate objections to the motion for continuance to the moving party and the presiding District Court Judge or the Trial Court Coordinator to the district court. Objections not raised in writing within the time period may be deemed waived.

When a motion to continue is made within seven (7) working days of the trial term (other than an oral motion as provided in Rule 2.3, above), the moving party shall include in the written motion a statement that the opposing counsel or party has been contacted and a short statement on opposing party's position on the motion (including whether the opposing party or counsel consents or objects, and whether or not he or she desires to be heard on the motion). If the moving party is unable to contact the opposing counsel or unrepresented parties, the motion shall state what efforts were made and why contact was not possible.

2.6 **Evaluation of Motions for Continuance**

Factors to be considered by the appropriate court official when deciding whether to grant or deny a motion for continuance should include:

- the effect on children and spouses if the issue is continued and not resolved;
- the impact of a continuance on the safety of the parties or any other persons;
- the age of the case;
- the status of the trial calendar for the session;
- the order in which the case appears on the trial calendar, including whether the case is peremptorily scheduled;
- the number of previous continuances;
- the extent to which counsel had input into the scheduling of the trial date;

- the due diligence of counsel in promptly filing a motion for continuance as soon as practicable;
- whether the reason for continuance is a short-lived event which would resolve prior to the scheduled trial date;
- whether the basis of the motion is the existence of a legitimate conflict with another court setting;
- the period of delay caused by the continuance requested;
- the position of opposing counsel of unrepresented parties; for a future session;
- whether the parties themselves consent to the continuance;
- present or future inconvenience or unavailability of witnesses/parties;
- consideration of the financial consequences to the public, the parties, the attorneys, or witnesses if the case is continued;
- compliance with any law relating to the scheduling and trial of civil cases (such as, summary ejection appeals); and
- any other factor that promotes the fair administration of justice.

2.7 **Case Rescheduling**

Upon granting a motion for continuance, the judge should reschedule the case to a specific trial date after receiving input from all parties.

2.8 **Time Standards**

All general civil and magistrate appeal cases should be disposed within 24 months of filing, with 90% of all cases disposed within 12 months of filing.

Rule 3: Motions for Continuance -- Domestic Cases

Domestic cases should be disposed at the earliest opportunity, including the first trial setting. However, when compelling reasons for continuance are presented which would affect the fundamental fairness of the trial process, a continuance may be granted for good cause. Requests for continuances that will delay the resolution of the contested issues beyond the established time standards shall only be granted for extraordinary cause.

3.1 **Appropriate Court Official**

All applications for continuance shall be made to the District Court Judge presiding over the session of court for which the case is calendared, or the Trial Court Coordinator to the district court. If the trial judge is not known at the time the request is made, the application may be addressed to either Judge Stone or Judge Wilkins.

3.2 **Court Conflicts**

The various levels of court should work together to try to move cases as expeditiously as possible. Age of case, subject matter, and priority of setting should be given as much primacy as the level of court when resolving conflicts.

Attorneys shall notify the court and opposing counsel of any other court conflicts(s) as they become known and shall keep the court advised of the resolution of that conflict. All judges shall communicate with other judges to resolve such conflicts. In resolving court conflicts juvenile cases shall take precedence over all district court matters.

3.3 **Documentation of Continuance**

All requests for continuance should be by written motion. However, oral motions may be allowed when the reason for the continuance did not become known until immediately preceding the start of court. An order should be prepared by the party seeking the continuance detailing the grounds for the continuance.

3.4 **Notification of Opposing Counsel/Unrepresented Parties/Witnesses**

All parties must be notified of a motion to continue. A copy of the motion to continue must be distributed to all counsel of record and/or unrepresented parties prior to ruling on the motion. In addition to the service requirements set out in the statute, distribution of the motion must be made by the quickest means feasible, including facsimile transmission, electronic mail, or hand delivery. The burden is on the moving party to advise the court and opposing counsel of any motion for a continuance.

3.5 **Objections to Motion for Continuance**

All parties should have an opportunity to be heard on a motion to continue.

When a motion to continue is made more than seven (7) working days prior to trial, opposing counsel and/or unrepresented parties shall have a period of four (4) working days, following completion of distribution, to communicate objections to the motion for continuance to the moving party and the presiding District Court Judge or the Trial Court Coordinator to the district court. Objections not raised in writing within the time period may be deemed waived.

When a motion to continue is made within seven (7) working days of the trial term (other than an oral motion as provided in Rule 2.3, above), the moving party shall include in the written motion a statement that the opposing counsel or party has been contacted and a short statement on opposing party's position on the motion (including whether the opposing party or counsel consents or objects, and whether or not he or she desires to be heard on the motion). If the moving party is unable to contact the opposing counsel or unrepresented parties, the motion shall state what efforts were made and why contact was not possible.

3.6 **Evaluation of Motions for Continuance**

Factors to be considered by the appropriate court official when deciding whether to grant or deny a motion for continuance should include:

- the effect on children and spouses if the issue is continued and not resolved;
- whether there is in effect a temporary order dealing with the issue that is the subject of the continuance request;
- the impact of a continuance on the safety of the parties or any other persons;
- whether the issue has been identified statutorily as an issue which should be addressed expeditiously, i.e., child support, post-separation support;
- the age of the case or motion;
- the status of the trial calendar for the session;
- the number of previous continuances OR the number, moving party, and grounds for previous continuances;
- the extent to which counsel had input into the scheduling of the trial date;
- the due diligence of counsel in promptly making a motion for continuance as soon as practicable;
- whether the reason for continuance is a short-lived event which would resolve prior to the scheduled trial date;
- whether the basis of the motion is the existence of a legitimate conflict with another court setting;
- the period of delay caused by the continuance requested;
- the position of opposing counsel or unrepresented parties;
- whether the parties themselves consent to the continuance;
- present or future inconvenience or unavailability of witnesses/parties;
- consideration of the financial consequences to the public, the parties, the attorneys, or witnesses if the case is continued; and
- any other factor that promotes the fair administration of justice.

3.7 **Time Standards**

All domestic cases should be disposed of within 18 months of filing, with 90% disposed within six months. Issues of child support should be resolved and a temporary or permanent order entered within 60 days of service. Post-disposition issues, such as contempt and motions to modify existing orders, should be resolved within 60 days of the filing of such actions.

Rule 4: Motions for Continuance - Juvenile Cases

For an abused or neglected child, the courts are his or her source of protection and the source of services. For a delinquent child or youth, the courts provide the opportunity for rehabilitation. The goal of a case management plan for juvenile court is to put the courts in the best position to ensure the safety of children, and to give them the best possible chance of living in stable, permanent families. Therefore continuances should be allowed only when it serves the

child's best interest. Participants must come to court prepared to meet each statutory obligation that is required for resolution of these matters.

Accordingly, juvenile cases, including motions for review in neglect and abuse matters, should be disposed at the earliest opportunity, including the first setting for hearing. Requests for continuances that are made after the first setting for hearing on the merits of the case shall only be granted for extraordinary cause.

4.1 All applications for continuance shall be made to the District Court Judge presiding over the session of court for which the case is calendared. If the trial judge is not known at the time the request is made or is unavailable, the application should be addressed to Judge Stone or Judge Wilkins.

4.2 **Court Conflicts**

The various levels of court should work together to try to move cases as expeditiously as possible. Age of case, subject matter, and priority of setting should be given as much primacy as the level of court when resolving conflicts.

Attorneys shall notify the court and opposing counsel of any other court conflicts(s) as they become known and shall keep the court advised of the resolution of that conflict. All judges shall communicate with other judges to resolve such conflicts. In resolving court conflicts juvenile cases shall take precedence over all district court matters.

4.3 **Documentation of Continuance**

All orders for continuance should be documented in writing, and shall include the name of the moving party, any objections to the continuance, and the basis for the continuance.

4.4 **Notification of Opposing Counsel/Unrepresented Parties/Witnesses**

All applications for continuance shall be made as soon as a conflict is identified, and all impacted -- opposing counsel, unrepresented parties, subpoenaed witnesses, or court staff charged with subpoenaing witnesses -- shall be notified as soon as possible by the moving party.

4.5 **Objections to Motion for Continuance**

All parties should have an opportunity to be heard on a motion to continue.

4.6 **Evaluation of Motions for Continuance**

Factors to be considered by the appropriate court official when deciding whether to grant or deny a motion for continuance should include:

- the best interest of the child;
- the opportunity to exercise the right to effective assistance of counsel;

- the age of the case and seriousness of the charge;
- the incarceration status of the juvenile;
- the effect on children and spouses if the issue is continued and not resolved;
- the impact of a continuance on the safety of the parties or any other persons;
- the status of the trial calendar for the session;
- the number, moving party, and grounds for previous continuances;
- the due diligence of counsel in promptly making a motion for continuance as soon as practicable and notifying opposing counsel and witnesses;
- the period of delay caused by the continuance requested;
- the presence of witnesses, including the juvenile;
- the availability of witnesses for the present session, or for a future session;
- whether the basis of the motion is the existence of a legitimate conflict with another court setting;
- the availability of counsel;
- consideration of the financial consequences to the public, the parties, the attorneys, or witnesses if the case is continued; and
- any other factor that promotes the fair administration of justice.

4.7 **Case Rescheduling**

Upon granting a motion for continuance, the judge shall reschedule the case for a specified date, taking into consideration the availability of counsel, parties, and witnesses.

4.8 **Time Standards**

All undisciplined cases should be disposed within 30 days of service of the petition. All delinquency cases involving misdemeanor offenses should be disposed within 90 days of service of the petition and those involving felony offenses within 120 days of service of the petition.

All adjudication of neglect and abuse cases should be within 60 days of service of the petition. All termination of parental rights (TPRs) should be disposed within 120 days after service of the petition.

This the 26th day of January, 1999.

Richard W. Stone
Chief District Court Judge