

STATE OF NORTH CAROLINA
FIRST JUDICIAL DISTRICT

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION

**DISTRICT COURT CONTINUANCE POLICY
(LOCAL RULES)**

In order to utilize the resources of the district court division in the First Judicial District more effectively and efficiently the following continuance policy is hereby adopted to become effective on July 1, 2008. These local rules are adopted with some modification from a model continuance policy recommended by a statewide committee of district court judges, district attorneys, public defenders and private attorneys.

The continuance policy will be published on the Administrative Office of the Court's Local Rules website.

Adopted this the 3rd day of April, 2008

C. Christopher Bean
Chief District Court Judge

District Court Judges:

J. Carlton Cole

Edgar L. Barnes

Amber Davis

Eula E. Reid

MOTIONS FOR CONTINUANCE -CRIMINAL CASES IN DISTRICT COURT

Criminal cases should be disposed of 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 sixty (60) days from the first calendaring before a judge should only be granted for extraordinary cause.

1.1 APPROPRIATE COURT OFFICIAL

- (a) Cases of waivable offenses may be continued for cause **ONE (1) TIME** by the Clerk upon the request of either the State or the defendant prior to 12:00 noon on the last business day prior to the session of court during which the case is calendared. The order of continuance shall be documented in the court file by the clerk on the form adopted by the chief district court judge. The case will be rescheduled for the officer's next court date. If no officer is involved in the case, the case shall be rescheduled for a court date no more than thirty (30) days without prior consent of the opposing party. Cases of non waivable offenses shall **NOT** be continued by the Clerk but may be continued by the Court, as hereinafter stated.
- (b) Request for continuance made within **SIXTY (60) DAYS** from the first calendar date and made prior to the session of court during which the case is calendared shall be in writing and may be allowed by the judge assigned to the session of court at which the case is calendared, upon presenting a written consent order signed by the District Attorney, the defendant or the defendant's attorney. The consent order of continuance shall state the basis for continuance and shall be filed with the Clerk upon execution by the presiding judge.

In the event that the opposing party does not consent to continuance, the request for continuance shall be scheduled for hearing at the next session of criminal court at which the judge, who is assigned to the court at which the case is calendared, is presiding.

In either event, if the case is continued, the case will be rescheduled to a court session not more than 60 (sixty) days from the session at which the case was originally calendared. If the investigating officer has no court date within such period, the case may be rescheduled for a date past the above stated period of time.

- (c) Rulings on any request for continuance made **sixty (60) days** from the first calendar date and made prior to the session of court during which the case is calendared shall be the responsibility of a judge and shall be heard in open court on five (5) days notice if practicable, by **written motion** at any criminal session in the district. The motion shall state the basis for the continuance, number of times the case has previously been continued and the grounds for the prior continuances.

- (d) Rulings on any request for continuance **made on the day of court** for the session in which the case is calendared shall be the responsibility of the presiding trial judge of that court.
- (e) N.C. Gen. Stat. 15A-606(f) provides “Upon a showing of good cause, a scheduled probable-cause hearing may be continued by the district court upon timely motion of the defendant or the State. Except for extraordinary cause, a motion is not timely unless **made at least 48 hours prior to the time set** for the probable-cause hearing.”
- (f) Time to prepare shall never be considered by the Court as “extraordinary cause”.

1.2 COURT CONFLICTS

- (a) An attorney, scheduled to appear in more than one district court on the same day, should first satisfy trial obligations in the county wherein that attorney’s office is located
- (b) Defendants in district court, represented by an attorney who has an obligation to appear in superior court, shall not be released from their obligations to appear in court unless the attorney representing them is engaged in the trial of a case in superior court and that trial is in progress.
- (c) The prosecutors and other court officials in the various levels of court should work together to try to move cases as expeditiously as possible. Age of case, number of times the case has previously been continued, subject matter, and priority of setting should be given as much primacy as the level of court when resolving conflicts.
- (d) Attorneys shall notify the court and opposing counsel of any other court conflict(s) as they become known and shall keep the court advised of the resolution of that conflict. All judges should communicate with other judges to resolve such conflicts. All prosecutors should communicate with other prosecutors to resolve such conflicts. In resolving court conflicts **juvenile cases** shall have a high priority and take precedence over all other matters in the district court except for jury trials.

1.3 DOCUMENTATION OF CONTINUANCE

All orders for continuance shall be documented in the case file and shall include the name of the moving party, the basis for the continuance, and the rescheduled court date.

1.4 NOTIFICATION OF OPPOSING COUNSEL/UNREPRESENTED PARTIES/WITNESSES

All requests for continuance made pursuant to Rule 1.1(b)(c)(d) shall be made as soon as a conflict is identified and all persons effected including 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 request to continue made pursuant to Rule 1.1(c)(d). The hearing is to be scheduled at the next session of criminal court for that county and by consent of the opposing party, may be heard in another county in the district.

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 shall 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 resolves;
- 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 factors that promotes the fair administration of justice.

1.7 CASE RESCHEDULING

- (a) If at a hearing on motion to continue defense counsel, a party, a witness or law enforcement officer has knowledge of a conflict with a proposed court date, this fact should be disclosed to the presiding judge.
- (b) When a case is continued, the court official should reschedule the case taking into consideration the officer's next scheduled court date, the availability of defense counsel, the defendant and witnesses.

1.8 TIME STANDARDS

All criminal and motor vehicle cases should be disposed within ninety (90) days from the first appearance in district court.

STATE OF NORTH CAROLINA
COUNTY OF _____

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NUMBER: _____

STATE OF NORTH CAROLINA

VS

ORDER OF CONTINUANCE

ON THIS THE _____ DAY OF _____, _____, AND IN OPEN COURT
_____, ASSISTANT DISTRICT ATTORNEY, ON BEHALF OF THE STATE
_____, ATTORNEY AT LAW FOR THE DEFENDANT MOVED FOR
CONTINUANCE OF THE ABOVE NUMBERED CASE(S).

THE REASON FOR THE CONTINUANCE IS: _____
_____.

REQUESTED BY SAID MOVING PARTY AND ALLOWED BY THE COURT IS:

_____.

IF CASE IS 90 DAYS OLD THE EXTRAORDINARY CAUSE FOR CONTINUANCE IS:

_____.

THIS CONTINUANCE (IS) (IS NOT) CONSENTED TO BY THE OPPOSING PARTY.

FOR SUCH REASON AND FOR GOOD CAUSE SHOWN IT IS HEREBY ORDERED THAT THE
ABOVE NUMBERED CASE (S) BE CONTINUED AND RESCHEDULED FOR TRIAL IN THE DISTRICT
COURT DIVISION ON THE _____ DAY OF _____, _____.

ENTERED IN OPEN COURT THIS _____ DAY OF _____, _____.

DISCOVERY GIVEN THIS DATE

YES NO

PRESIDING JUDGE

LAST CONTINUANCE FROM THIS DATE

YES NO