

**STATE OF NORTH CAROLINA  
JUDICIAL DISTRICT 22  
SUPERIOR COURT CONTINUANCE POLICY**

**RULE 1: MOTIONS FOR CONTINUANCE - CIVIL CASES**

**1.1 Appropriate Court Official**

Prior to the opening of court for the session in which the case is calendared, all applications for continuance shall be made to the **Senior Resident Superior Court Judge**, or his/her designee. Following the opening of court for the session in which the case is calendared, any application for continuance shall be made to the presiding judge of the court in which the case is calendared.

**1.2 Form Of Motion**

All applications for continuance shall be by written motion made on state form AOC-CV-221, or by written request to the **Senior Resident Superior Court Judge**.

**1.3 Notification Of Opposing Counsel/Unrepresented Parties**

A copy of the completed form AOC-CV-221, or written request, must be distributed to all counsel of record and/or unrepresented parties prior to presentation of the motion to the appropriate judicial official. Distribution of the motion may be by U.S. mail, facsimile transmission, hand delivery, or distribution by means of attorney distribution boxes maintained in the courthouse facility..

**1.4 Objections To Motion For Continuance**

Opposing counsel and/or unrepresented parties shall have a period of three (3) working days following completion of distribution to communicate, by any means, objections to the motion for continuance to the moving party and the office of the Senior Resident Superior Court Judge or the office of his/her designee. Objections not raised within this time period are deemed waived..

**1.5 Evaluation Of Motions For Continuance**

Continuance requests are presumptively disfavored. However, when compelling reasons for continuance are presented which would affect the fundamental fairness of the trial process or when a continuance clearly is in the interest of justice, a continuance may be granted in the exercise of judicial discretion to further the best interest of the fair administration of justice.

In addition to other factors, the appropriate judicial official shall consider the following when deciding whether to grant or deny a motion for continuance.

- the age of the case;
- the status of the trial calendar for the week;
- 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 could resolve prior to the scheduled trial date;
- the length of the continuance requested, if applicable;
- the position of opposing counsel;
- whether the parties themselves consent to the continuance;
- present or future inconvenience or unavailability of witnesses/parties; and
- any other matter that promotes the ends of justice.

**Reasons that shall not be considered valid bases for allowing a continuance motion include first time scheduling of the case for trial, potential conflicting scheduling of other trials in other courts, failure to complete discovery, and whether counsel of record has received payment. In addition, voluntarily switching counsel on the eve of a court ordered or court mandated trial date shall not be a valid basis for allowing a continuance motion and thereby nullifying said trial date.**

When a case is set peremptorily for trial by the Court, or is otherwise mandated by the Court, either at the request of the parties or upon the Court's own motion, a continuance motion should not be allowed which would abort the Court fixed trial date or undermine the case management plan in place for that use, unless upon grounds of some compelling urgent necessity or extreme hardship arising subsequent to the Administrative Hearing at which the trial date was fixed or subsequent to any other action by the Court in fixing a trial date.

Under local rules, as part of the case management plan applicable to the case, when a case is set peremptorily by Order of the Court, either at the request of the parties or upon the Court's own motion, the parties and counsel acknowledge and agree to be bound by certain binding covenants, agreements, undertakings, and commitments which are hereafter set out:

- (1) All parties and attorneys certify readiness for trial.
- (2) All pleadings are complete and in final order.
- (3) No question remains with regard to non-joinder or mis-joinder of parties.
- (4) No party or attorney shall seek further continuance from the trial calendar, save and exempt for some intervening extraordinary cause or some sudden medical emergency.
- (5) All parties and attorneys will not thereafter seek to nullify the Court ordered trial date and delay the trial by seeking to add additional parties and amend pleadings.
- (6) No party or attorney will thereafter schedule any vacation trip or business teip which would be advanced as a basis to seek a continuance.

- (7) All parties and attorneys represent that all witnesses and parties are available and **FULL WELL UNDERSTAND** that should a witness or party thereafter voluntarily schedule a vacation trip, a business trip, some non-emergency medical procedure, or other event, such would **not** be recognized as a basis for continuance or adequate grounds for allowing a motion for continuance. [Examples: A medical witness decides to attend a seminar in Puerto Rico.... A party decides to attend a trade convention.... A witness schedules a pleasure trip.... A party schedules some elective medical procedure.]
- (8) All parties and attorneys acknowledge a continuing duty to take affirmative steps to obtain the testimony by deposition or otherwise of any party or witness who becomes unavailable subsequent to the Order of the Court fixing a trial date.
- (9) All attorneys acknowledge an affirmative duty to respect the Order of the Court fixing the date for trial and **not** to undertake to schedule any matter or event which would conflict with or abort the Court Ordered trial date.
- (10) Should any attorney choose to undertake employment in any matter or engage in any activity which would conflict with his or her availability for trial as Ordered by the Court, another member of the firm must be ready, willing and able to carry on in the case without delay and appear for trial at the scheduled time.

## **1.6 Case Rescheduling**

Prior to granting a motion for continuance, the appropriate judicial official shall refer the case to the Senior Resident Superior Court Judge or his/her designee, who will reschedule the trial of the case after receiving scheduling input from all counsel.

## **RULE 2: MOTIONS FOR CONTINUANCE – CRIMINAL CASES**

### **2.1 Appropriate Court Official**

Prior to the opening of court for the session in which the case is scheduled, a application for continuance shall be made to any Resident Superior Court Judge of the Twenty-Second Judicial District or to any Presiding Judge of the Court in which the case is calendared. Following the opening of Court for the session in which the case is calendared, any application for continuance shall be made to the Presiding Judge of the Court in which the case is calendared.

### **2.2 Form Of Motion**

All applications for continuance shall be by written motion made on state form, AOC-CR-410.

### **2.3 Notification Of Opposing Counsel/Unrepresented Parties**

A copy of the completed form AOC-CR-410 must be distributed to all counsel of record and/or unrepresented parties prior to presentation of the motion to the appropriate judicial official. Distribution of the motion may be by U.S. mail, facsimile transmission, hand delivery, or distribution by means of attorney distribution boxes maintained in the courthouse facility.

**If the motion is filed by defense counsel, the motion must be presented to the District Attorney prior to presentation to the appropriate judicial official.**

## **2.4 Objections To Motion For Continuance**

The Senior Resident Superior Court Judge or his/her designee shall establish an appropriate method of obtaining information from all counsel concerning positions on the motion to continue.

**If the District Attorney consents to the continuance and such consent is indicated by signature of the District Attorney on the continuance form, the continuance is allowed and the continuance form shall be filed in the court file. If no District Attorney's signature appears on the continuance form, the District Attorney's opposition to the motion is presumed.**

## **2.5 Evaluation Of Motions For Continuance**

When compelling reasons for continuance are presented which would affect the fundamental fairness of the trial process or when a continuance clearly is in the interest of justice, a continuance may be granted in the exercise of judicial discretion to further the best interest of the fair administration of justice.

In addition to other factors, the appropriate judicial official shall consider the following when deciding to grant or deny a motion for continuance:

- the age of the case;
- the pre-trial detention status of the defendant;
- the status of the trial calendar for the week;
- the order in which the case is designated for trial, including whether the case has a priority designation;
- the number of previous continuances;
- the number of times the cases have been designated for trial and not reached;
- 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 could resolve prior to the scheduled trial date;
- the length of the continuance requested, if applicable;
- the position of opposing counsel;
- whether the motion has been considered by another judge (Senior Resident or designee) on the same grounds;

- whether the parties themselves consent to the continuance;
- present or future inconvenience or unavailability of witnesses/parties; and
- any other matter that promotes the ends of justice.

Reasons that shall not be considered valid bases for allowing a continuance motion include first time scheduling of the case for trial, potential conflicting scheduling of other trials in other courts and whether counsel of record has received payment.

## **GENERAL RULES OF PRACTICE FOR THE SUPERIOR AND DISTRICT COURTS**

(Supplemental to the Rules of Civil Procedure)

### **RULE 3: CONTINUANCES**

**An application for a continuance shall be made to the presiding judge of the court in which the case is calendared following the opening of court for the session in which the case is calendared.**

When an attorney has conflicting engagements in different courts, priority shall be as follows: Appellate Courts, Superior Courts, District Court, Magistrate's Court.

At mixed sessions, criminal cases in which the defendant is in jail shall have absolute priority.