

**JUDICIAL DISTRICT 3A  
DISTRICT COURT  
CONTINUANCE RULES AND POLICY**

**Table of Contents**

**Rule 1. Motions for Continuance – Criminal Cases .....**

    Rule. 1.1   Appropriate Court Official .....

    Rule 1.2   Court Conflicts.....

    Rule 1.3   Documentation of Continuance .....

    Rule 1.4   Notification of Opposing Counsel/Unrepresented .....

                  Parties/Witnesses

    Rule 1.5   Objections to Motion for Continuance.....

    Rule 1.6   Evaluation of Motions for Continuance .....

    Rule 1.7   Case Rescheduling .....

    Rule 1.8   Time Standards .....

**Rule 2. Motions for Continuance – General Civil and Magistrate Appeal Cases .....**

    Rule 2.2   Court Conflicts.....

    Rule 2.3   Documentation of Continuance .....

    Rule 2.4   Notification of Opposing Counsel/Unrepresented .....

                  Parties/Witnesses

    Rule 2.5   Objections to Motion for Continuance.....

    Rule 2.5   Evaluation of Motions for Continuance .....

    Rule 2.5   Case Rescheduling .....

    Rule 2.6   Time Standards .....

**Rule 3. Motions for Continuance – Domestic Cases .....**

    Rule 3.1   Appropriate Court Official .....

    Rule 3.2   Court Conflicts.....

    Rule 3.3   Documentation of Continuance .....

    Rule 3.4   Notification of Opposing Counsel/ Unrepresented .....

                  Parties/Witnesses

    Rule 3.5   Objections to Motion for Continuance.....

    Rule 3.6   Evaluation of Motions for Continuance .....

    Rule 3.7   Case Rescheduling .....

    Rule 3.8   Time Standards .....

**Rule 4. Motions for Continuance – Juvenile Cases**

    Rule 4.1   Appropriate Court Official .....

    Rule 4.2   Court Conflicts.....

    Rule 4.3   Documentation of Continuance .....

    Rule 4.4   Notification of Opposing Counsel/Unrepresented .....

                  Parties/Witnesses

    Rule 4.5   Objections to Motion for Continuance.....

Rule 4.6 Evaluation of Motions for Continuance .....  
Rule 4.6 Evaluation of Motions for Continuance .....  
Rule 4.8 Time Standards .....

**Rule 5. Application, Interpretation and Resolution of Conflicts With .....  
Laws and Other Rules**

**Rule 5. Custody Mediation .....**

**Rule 6. Equitable Distribution.....**

**Rule 7. Conflicts**



## *State of North Carolina General Court of Justice*

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### JUDICIAL DISTRICT 3A DISTRICT COURT CONTINUANCE RULES AND POLICY EFFECTIVE JANUARY 1, 1998

Pursuant to the Case Flow Management Plan adopted by the North Carolina Supreme Court on May 1, 1996 and Chapter 333 of the 1995 Session Laws and in order to reduce delay and insure fairness, the following policies and rules are hereby adopted as local rules for District Court District 3A (Pitt County):

#### **Rule 1. Motions for Continuance – Criminal Cases**

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 90 days from the first calendaring before a judge shall be granted only for extraordinary cause.

##### **Rule. 1.1 Appropriate Court Official**

Except as hereinafter provided, motions for continuance may be addressed to and rules on by any District Court Judge having jurisdiction to hear the motion.

Requests for continuances in misdemeanor cases more than 180 days from service of the charging document on the defendant, and made prior to the day of court on which the case is calendared, shall be made to the judge assigned to preside at that term of court, if available. If said trial judge is not available or is not known at the time the request is made, the motion for continuance shall be made to the Chief District Court Judge or his designee.

The Clerk of Superior Court, or any assistant or deputy clerk, may continue certain infractions one time to the officer's next court date. This applies only to cases in which only infractions are charged and for which there have been no previous failures to appear or continuances. It shall apply only to infractions in which the only witness is the officer issuing the citation and will not, therefore, apply to infractions in which there has been a collision or other incident which would involve a witness other than the issuing law enforcement officer. Such continuances shall be until the officer's next court date, which the clerk shall determine. In making such continuances the clerk shall note on the outside of the file the new court date and whether the continuance was for the state or defendant. If the clerk is unable to determine that the issuing officer is the only witness or is unable to determine the officer's appropriate court date, the clerk shall refuse to order the continuance.

### **Rule 1.2     Court Conflicts**

The various levels of court should work together to dispose of cases as expeditiously as possible consistent with the other goals of this POLICY. Age of case, subject matter, priority of setting, fundamental fairness and common sense should be considered when resolving conflicts.

Attorneys shall notify the court and opposing counsel of any other court conflict(s) as those become known and shall keep the court advised of the resolution of all conflicts. All judges should communicate with other judges to resolve such conflicts and shall make a reasonable effort to do so when requested by the attorney for either the State or defendant. In resolving conflicts, juvenile cases shall take precedence over all other matters in district court with the exception of jury trials.

### **Rule 1.3     Documentation of Continuance**

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 90 days from the first calendaring before a judge shall be granted only for extraordinary cause.

All orders for continuance shall be documented in or on the file and shall include the moving party, any objections to the continuance and the basis for the continuance; provided, however, continuances of infractions may be documented as set in Rule 1.1.

When one of the reasons for or conditions of a continuance is that the defendant is to plead guilty, the assistant district attorney shall so note on the outside of the file and in a prominent manner. In such cases, the attorney representing the defendant or the unrepresented defendant shall, on the new trial date, and prior to calendar call and prior to any trial or motion in the case, bring this to the attention of the assistant district attorney.

In cases which are continued with one of the documented notations being "last continuance," or words to that effect, both the unrepresented defendant or the attorney for the

defendant, as well as the assistant district attorney, shall bring that to the attention of the judge for consideration in any further continuance motion or motions.

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

All requests for continuance shall be brought to the attention of opposing counsel, or to unrepresented defendants, as soon as any conflict or other reason for continuance is known. Both the state and the defendant (and his attorney, if any) are charged with the responsibility of making whatever arrangements are necessary to assure the least inconvenience to all who may be impacted by a continuance, if it is granted; further, such arrangements should include provision for the trial of the case in the event the continuance motion is denied. These arrangements should include, among others, having witnesses, including defendants, on telephone standby and available to the court if their presence is required.

The motion should be heard and ruled on in a timely manner to the end that there be the least inconvenience to all who would be impacted by the granting or denial of the motion.

**Rule 1.5     Objections to Motion for Continuance**

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

**Rule 1.6     Evaluation of Motions for Continuance**

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

- the opportunity to exercise the right to effective assistant 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 the continuance on the safety of the parties or any other persons;
- the status of the trial calendar for the session;
- the number 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 and availability of witnesses for future sessions;
- whether the basis of the motion is the existence of a legitimate conflict with another court setting;
- for whom previous continuance(s) were granted;
- the availability of counsel;
- consideration of the financial consequences to the public, the parties and witnesses if the case is continued; and
- any other factor that promotes the fair administration of justice.

### **Rule 1.7     Case Rescheduling**

Upon granting a motion for continuance, the judge shall reschedule the case, taking into consideration the availability of counsel, defendant(s), witnesses, courtroom space, and other necessary resources.

### **Rule 1.8     Time Standards**

All criminal and motor vehicle and other infraction cases should be disposed of 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 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 god cause. Requests for continuances that will delay the resolution of the case beyond the established time standards shall be granted only for extraordinary cause.

### **Rule 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 his designee. If the trial judge is not known at the time the request is made, or is unavailable, the application shall be made to the Chief District Court Judge or his designee.

### **Rule 2.2     Court Conflicts**

The various levels of court should work together to dispose of cases as expeditiously as possible consistent with the other goals of this POLICY. Age of case, subject matter, priority of setting, fundamental fairness and common sense should be considered when resolving conflicts.

Attorneys shall notify the court and opposing counsel of any other court conflict(s) as those become known and shall keep the court advised of the resolution of all conflicts. All judges should communicate with other judges to resolve such conflicts and shall make a reasonable effort to do so when requested by the attorney for either the plaintiff or defendant. In resolving conflicts, juvenile cases shall take precedence over all other matters in district court with the exception of jury trials.

### **Rule 2.3     Documentation of Continuance**

All requests for continuance shall 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. In cases in which a continuance motion is allowed the attorney for the moving

party or the unrepresented party making the motion shall draft the order of continuance and present it to the court forthwith, unless otherwise directed by the court. Such order shall contain the case caption, file number, date of the order and the reasons for the continuance. It shall also indicate any objections to the motion which were made.

#### **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, 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, in writing, and within four (4) working days, following completion of distribution, communicate to the moving party any objections to the motion for continuance. Such objections, in writing, shall also be filed with the Clerk of Superior Court within the four (4) days. Objections not raised in writing within this time period are deemed waived. Notwithstanding failure of opposing counsel or party to object to a continuance, or to the waiver of any such objections pursuant to this rule, the continuance motion pursuant to Rule 2.6 of these rules prior to ruling on said motion.

When a motion to continue is made within seven (7) working days of the trial (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 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.

#### **2.5 Evaluation of Motions for Continuance**

Factors to be considered by the appropriate court official when deciding 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 preemptorily 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 the 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, and the 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.

## **2.5 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.

## **2.6 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 be granted only 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 his designee. If the trial judge is not known at the time the request is made or is unavailable, the application shall be made to the Chief District Court Judge or his designee.

The various levels of court should work together to dispose of cases as expeditiously as possible consistent with the other goals of this POLICY. Age of case, subject matter, priority of setting, fundamental fairness and common sense should be considered when resolving conflicts.

Attorneys shall notify the court and opposing counsel of any other court conflict(s) as those become known and shall keep the court advised of the resolution of all conflicts. All judges should communicate with other judges to resolve such conflicts and shall make a reasonable effort to do so when requested by the attorney for wither the plaintiff or defendant. In resolving conflicts, juvenile cases shall take precedence over all other matters in district court with the exception of jury trials.

### **3.3 Documentation of Continuance**

All requests for continuance shall 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. In cases in which a continuance motion is allowed the attorney for the moving party or the unrepresented party making motion shall draft the order of continuance and present it to the court forthwith, unless otherwise directed by the court. Such order shall contain the case caption, file number, date of the order and the reasons for the continuance. It shall also indicate any objections to the motion which were made.

### **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.

### **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) 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 his designee. Objections not raised in writing within this time period are deemed waived.

When a motion to continue is made within seven (7) days of the trial term (other than an oral motion as provided in Rule 3.3 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 counsel or party

consents or objects, and whether or not he 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, etc.;
- the age of the case or motion;
- the status of the trial calendar for the session;
- the number of and grounds for previous continuances;
- for whom previous continuances were granted;
- 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, and the witnesses if the case is continued; and
- any other factor that promotes the fair administration of justice.

### **3.7 Case Rescheduling**

Upon granting a motion for continuance, the judge or his designee should reschedule the trial or pre-trial of the contested issues to a specific date after receiving scheduling input from all parties.

### **3.8 Time Standards**

All domestic cases should be disposed of within 18 months of filing, with 90% disposed of 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 the source of protection and the source of services. For a delinquent child, the courts provide the opportunity for rehabilitation and for the protection of the community. 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, to give them the best possible chance of living in a stable, permanent families and to protect the community. Continuances should be allowed only when it serves the child's best interest or is necessary to protect the community. Participants must come to court prepared to meet each statutory obligation and other requirements necessary for resolution of these matters.

Juvenile cases, including motions for review in neglect and abuse matters, should be disposed at the earliest opportunity, including the first setting 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 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. If the trial judge is not known at the time the request is made, or is unavailable, the application should be addressed to the Chief District Court Judge, or his designee.

### **4.2 Court Conflicts**

The various levels of court should work together to dispose of cases as expeditiously as possible consistent with the other goals of this POLICY. Age of case, subject matter, priority of setting, fundamental fairness and common sense should be considered when resolving conflicts.

Attorneys shall notify the court and opposing counsel of any other court conflict(s) as those become known and shall keep the court advised of the resolution of all conflicts. All judges should communicate with other judges to resolve such conflicts and shall make a reasonable effort to do so when requested by the attorney for wither the plaintiff or defendant. In resolving conflicts, juvenile cases shall take precedence over all other matters in district court with the exception of jury trials.

### **4.3 Documentation of Continuance**

All orders for continuance shall 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/or other caretakers 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 or unrepresented parties in promptly making a motion for continuance as soon as practicable and notifying opposing counsel and witnesses;
- the due diligence of parties in promptly bringing to their attention the basis for the continuance motion;
- 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, and the witnesses if the case is continued; and
- any other factors that promote 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 and volunteer guardian ad litem.

#### **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 should be disposed 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 petition.

#### **Rule 5. Application, Interpretation and Resolution of Conflicts With Laws and Other Rules**

Common sense and logic, as well as fairness, should be employed in the application and interpretation of these rules and policies.

Any of these rules in conflict with the Constitution of the United States or the Constitution of the State of North Carolina, the North Carolina General Statutes, or Rules of the North Carolina Supreme Court shall be resolved in favor of such Constitution, General Statute or Supreme Court Rule.

These rules and policies supersede any previously issued local rules and policies addressing the same subject matter.

These rules and policies are effective January 1, 1998 and shall apply to all motions for continuance made or heard on and after that date.

This the 29<sup>th</sup> day of October, 1997.

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E. Burt Aycock, Jr.  
Chief District Court Judge  
District Court District 3A



State of North Carolina  
General Court of Justice

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**JUDICIAL DISTRICT 3A  
LOCAL RULES FOR JUVENILE COURT  
EFFECTIVE MARCH 1, 1998**

**Rule 1. Purpose**

The purpose of these rules is to provide for the just, orderly and prompt disposition of all juvenile matters to be heard in district court.

The rules shall govern all proceedings in juvenile court in District Court District 3A (Pitt County). These rules shall not be construed in any manner which is in conflict with the Constitution of the United States nor the Constitution of the State of North Carolina nor any of its statutes and laws nor any rules promulgated by the North Carolina Supreme Court. Matters not covered by these rules be governed by existing laws and rules.

**Rule 2. Enforcement**

In order to accomplish the purpose of these rules and because time is of the essence in addressing the needs of children alleged to be delinquent and to the successful establishment of permanent and stable homes for children involved in juvenile cases, these rules will enforced strictly, provided no rule will be enforced or construed in any manner likely to endanger or harm a child. Sanctions may imposed against a party or attorney who fails to comply with these rules.

The court should always give appropriate consideration to compliance with these rules and should make appropriate findings of fact and conclusions of law relative thereto.

**Rule 3. Appointment of Counsel**

(a) The clerk shall maintain a current list of attorneys eligible to be appointed to represent juveniles alleged to be delinquent and a separate list of attorneys eligible to be appointed to represent parents of children alleged to be abused, neglected or dependent. To be included on any list an attorney must maintain an office in Pitt County North Carolina, have a local working telephone number at which he or she can be contacted, and maintain a mail box in the Clerk's office.

(b) The clerk shall assign an attorney to represent a juvenile alleged to be delinquent as soon as possible after a petition is filed. An attorney shall not accept appointment in a case if he or she knows any reason why he or she should not be available to try the case through the disposition hearing within 60 days.

(c) Upon taking a child into non-secure custody or upon filing a petition, the social worker shall make a reasonable effort to direct the respondent(s) to the clerk for the purpose of applying for court appointed counsel if the respondent(s) so desire(s). Further when a petition is filed, the clerk shall issue the summons and attach to the respondent's copy of the summons an Appointment of Counsel Information Form. The clerk shall complete that form with the name, business address, and business phone number of the attorney likely to be appointed to represent the respondent(s) if appointed counsel is requested and approved. The clerk shall be available at any time during regular business hours to provide the respondent(s) with an application for court appointed counsel and to receive such applications. Upon receipt of any such application the clerk shall take immediate steps to have the application considered by the court. If the application is approved the clerk shall immediately assign counsel and the clerk shall notify the attorney approved by placing a not in his or her mailbox or by telephoning him or her by the end of the next business day. An attorney shall not accept appointment in a case if he or she knows any reason why he or she may be able to be present for the first non-secure custody hearing, and to the best of the attorney's knowledge, the other stages of the proceeding.

(d) In any case in which a petition for termination of parental rights is filed, the clerk shall assign an attorney to represent the parent in the termination proceeding. If the parent fails to apply or qualify for court appointed counsel or waives court appointed counsel, the assignment of court appointed counsel shall not be approved by the court and shall be withdrawn, and the attorney originally assigned will have no responsibility regarding that case unless later appointed.

(e) Before being eligible for appointment to represent parents, attorneys must satisfy to the court: (1) that they have a good working knowledge of juvenile law and juvenile court procedures; (2) that they have read and understand the local rules governing juvenile; (3) that they have spent two days in juvenile court in the company of an attorney experienced in abuse, neglect and dependency matters if they are requesting to be placed on the list of attorneys eligible to be appointed to represent parents of children alleged to be abused, neglected or dependent, unless this requirement is waived by court because of other training or experience deemed comparable by the court; (4) that they have spent days in juvenile court in the company of an attorney experienced in delinquency matters if they are requesting to be appointed to the list of attorneys eligible to represent children alleged to be delinquent, unless this requirement is

waived by court because of other training or experience deemed comparable by the court; (5) that they have read and understand the local rules governing juvenile court.

#### **Rule 4. Attendance at Court**

(a) An attorney who represents a party in a case scheduled for hearing shall appear at calendar call at the time set for opening of that session of court unless excused by the court or by agreement of all parties. An attorney who has a conflict in another court shall comply with the relevant rules relating to priority and it shall be the responsibility of the attorney to keep the courtroom clerk informed of his or her location at all times. Any attorney or represented party should call upon the judge presiding or to be presiding in the juvenile court to communicate with the presiding judge of other courts which counsel represents to be in conflict with the juvenile setting, in order to resolve the conflicts.

(b) With the exception of jury terms, juvenile court shall have priority among the other district courts for purposes of calendar calls.

#### **Rule 5. Calendaring**

(a) The juvenile clerk (assistant or deputy clerk of superior court) shall furnish to each attorney of record in any case appearing on any juvenile court calendar a copy of that calendar at least nine (9) days prior to the day of court for which that calendar is published. Any attorney receiving or possessing such calendar or calendars shall keep, maintain and dispose of them as follows, to wit:

1. No such calendar shall be exhibited or displayed to any other person.
2. Any information gained by the attorney from such calendar shall be kept in confidence.
3. The attorney will not copy, reproduce or permit anyone else to copy or reproduce such calendars.
4. At the end of each court date, the attorney shall destroy his calendar.

(b) Because some case may be added to the calendar after it has been prepared, as set forth in (a) above, the clerk will prepare a calendar of added cases and this “add on” calendar shall be available to attorneys in the clerk’s office on the Monday before court.

(c) Any attorney or unrepresented party making or filing any motion or calendar request in juvenile court, shall, forthwith upon such filing, serve a copy of the calendar request or motion upon all unrepresented parties or respondents and upon all attorneys of record; provided, however, when the motion or other matter is being set or noticed for the SAME date as previously set or noticed then the attorney or unrepresented party need serve only all unrepresented parties. Forthwith upon withdrawing or being discharged from any juvenile case the attorney withdrawing shall notify the new attorney of all pending reviews, motions, pre-trial conferences and other hearing dates.

(d) All attorneys in juvenile cases shall be responsible for recording and maintaining all review, motion, pre-trial and other hearing dates set by court order, announced in open court or set by these Rules and need not be noticed or served as to those review, motions, pre-trial or hearing dates.

(e) Attorneys entering or making appearances in juvenile cases shall immediately determine all existing review, motion, pre-trial and hearing dates.

(f) All motions and notices to be served on guardians ad litem shall be mailed or delivered to the office of the Guardian Ad Litem Program.

## **Rule 6. Settlement Negotiations**

Attorneys shall make whatever arrangement necessary to have full, open and frank settlement negotiations prior to all hearings and trials. Consent judgments in abuse, neglect and dependency proceedings are encouraged, where appropriate, and where such consent orders or judgments are appropriate and can be prepared prior to trial, the court encourages that practice.

## **Rule 7. Discovery**

Attorneys are encouraged to provide all other attorneys with discoverable materials at any time upon request, and without court involvement.

## **Rule 8. Pre-Hearing Conference for Abuse, Neglect and Dependency Proceedings**

(a) On the business day nine days prior to a scheduled session of court for hearing abuse, neglect and dependency cases, there shall be a pre-hearing conference among the attorneys for the parties to cases calendared for the scheduled session. The purposes of the conference shall be to explore the possibility of settlement, to narrow the issues as much as possible, and to stipulate facts that are not in dispute. At or before the conference the parties shall prepare and sign a list of prospective witnesses and a list of exhibits intended for use at the trial. Conferences will be held at 12:30 p.m. in the courtroom then designated for juvenile matters unless another place or time is designated by the court.

(b) The Department of Social Services, the guardian ad litem, or any attorney intending to offer in to evidence a written report or recommendation must deliver a copy of that report to all other attorneys of record or unrepresented parties at least five (5) days before the scheduled pre-hearing conference. Delivery to counsel is considered completed when the report is placed in the boxes maintained in the clerk's office for the attorneys or, in the case of the attorney advocate, in the guardian ad litem's box. Delivery must be made no later than 5:00 p.m. five (5) days prior to the pre-hearing conference.

(c) If any party opposes any substantive recommendations of any written report delivered to him or her pursuant to Rule 8(b) above, that party must appear at the pre-trial conference unless the party has, for good cause, been excused by the presiding judge and has made arrangements to meet with the attorneys for the other parties at a reasonable time before the hearing.

(d) The district court judge assigned to preside over the scheduled session(s) of court at which these cases are set may modify the time, date and place of these pre-hearing conferences and so notify the attorneys and parties required to attend.

## **Rule 9. Continuances**

(a) Juvenile cases, including motions for review in neglect, dependency and abuse matters, should be disposed of at the earliest opportunity, including the first trial setting. However when compelling reasons for continuances are presented which would affect the fundamental fairness of the trial process, a continuance may be granted for good cause.

(b) Rulings on any request for continuance made on the day of court at the session at which the case is calendared shall be the responsibility of the presiding judge. Requests for continuance which must be considered prior to the day of court for the session at which the case is calendared shall be addressed by the judge scheduled to preside in juvenile court at that session or by the Chief District Court Judge or his designee. If the date, time or place of the hearing is changed the judicial assistant to the district court judges shall immediately notify, by phone (i) the office of Department of Social Services' attorney or the district attorney's office, whichever is applicable; (ii) the office of the guardian ad litem, if applicable; and (iii) the juvenile clerk. The Department of Social Services' attorney or district attorney, whichever is applicable, shall be responsible for notifying other attorneys of record and shall make reasonable efforts to contact, by phone or mail, any unrepresented parties.

## **Rule 10. Secure and Non-Secure Custody Hearings**

(a) In cases in which a secure or non-secure custody order is entered, reviews of the orders shall be conducted at the times and in the courts listed on the district court calendar unless otherwise directed. The petitioner or the petitioner's attorney shall notify all unrepresented parties of the date, time and place of the scheduled hearing. The time, date or place of these hearings may be changed only at the direction of or with the consent of the presiding judge. If the date, time or place of the hearing is changed the judicial assistant to the district court judges shall immediately, notify by phone the office of the Department of Social Services' attorney, the office of the guardian ad litem and the juvenile clerk of this change. The Department of Social Services attorney shall be responsible for notifying other attorneys of record and shall make reasonable efforts to contact, by phone or mail, any unrepresented parties.

(b) When the need arises to review an initial secure custody order at a time earlier than the next regularly scheduled setting for such reviews, the office of the juvenile court counselors

shall notify the assistant district attorney who has been designated by the district attorney to be responsible for juvenile matters. The assistant district attorney shall have overall responsibility for coordinating such reviews including the determination of an appropriate time and place for the review. The assistant district attorney shall be responsible for making the arrangements necessary to have the juvenile present for the hearing unless the juvenile's attorney waives the juvenile's appearance at the hearing. Upon receiving notice from the juvenile court counselor's office of the need for such hearing, the assistant district attorney will immediately notify the juvenile clerk. The clerk will immediately notify the judicial assistant to the district court judges who shall be responsible for notifying the juvenile's attorney and who shall make appropriate arrangements for setting the hearing.

(c) If an attorney is appointed to represent respondents in abuse, neglect and dependency cases and that appointment occurs prior to the first scheduled non-secure custody hearing, that attorney may request an earlier date for the initial non-secure custody hearing and shall have overall responsibility for coordinating that hearing, including, (i) determining a time and date which is convenient to all parties, attorneys, the court clerk and the court, (ii) finding an available court space, (iii) arranging to have a bailiff present, and (iv) notifying all individuals involved.

(d) When reasonable and practical, any party or attorney intending to ask that the secure custody or non-secure custody order then in place not be extended for the additional period allowed by statute, or under the same terms and conditions as provided by the then existing order, shall notify the Department of Social Services attorney or the assistant district attorney as appropriate, at least 48 hours prior to the hearing of the case. In those cases at which such notice is not reasonable and practical, the attorney shall keep the Department of Social Services attorney advised, on a daily basis, of the status of the custody review. Upon learning that a non-secure or secure custody hearing will be contested, the attorney for the Department of Social Services or the assistant district attorney will notify the legal assistant to the district court judges and, where appropriate the office of guardian ad litem program. The judicial assistant to the district court judges will notify the judge scheduled to preside at the hearing and the clerk of superior court for juvenile matters.

## **Rule 11. Preparation of Orders**

(a) Delinquency Cases. Unless otherwise specified at the time of the entry of the order, the clerk must prepare the proposed order and deliver it to the office of the district court judges at which time the judicial assistant to the district court judges will immediately notify the attorneys involved in the hearing that the order is in the district court judges' offices and available for review. The order will be held for a period of not less than three (3) days before it is presented to the district court judge for signing and any counsel desiring changes to any proposed order shall notify the judge and opposing counsel in writing prior to the expiration of that three (3) day period, of any proposed changes. Any such communication to the judge shall show, on its face, that a copy was sent to opposing counsel and the date on which it was done.

Attorneys are encouraged to request, in open court, and after the court pronounces its order or judgment or adjudication, any specific finding of fact, conclusion of law or other provision which the attorney believes might be particular to or controversial about case or order.

- (b) Abuse, neglect and dependency cases.
1. Unless otherwise specified at the time of the entry of the order, counsel for the petitioner shall prepare the proposed order. Copies of the proposed order must be delivered to or placed in the boxes of all opposing counsel and delivered or mailed to all unrepresented parties within 14 days of the hearing. A cover letter must accompany the proposed order which must state that the proposed order will be submitted to the judge for signing on a date stated in the letter and which date shall be seven (7) days after the date of delivery of the proposed order, unless objections are received by petitioner's counsel by that date. The sample letter "A" attached to these rules meets this requirement.
  2. If no objections are received by the date stated above, petitioner's counsel must cause the proposed order to be delivered to the judge with a cover letter so stating. The letter on its face shall state the date of delivery of the proposed order to opposing counsel or parties and shall show that a copy is being sent to opposing counsel or parties. The sample letter "B" attached to these rules meets this requirement.
  3. If objections to the proposed order are received and are acceptable, petitioner's counsel must make the requested correction within seven (7) days and follow the procedure for review by opposing counsel and parties set forth in 1 and 2 above. If objections are received and are not acceptable, petitioner's counsel must, within seven (7) days, notify opposing counsel and parties in writing of the refusal to make the requested corrections and indicate that the proposed order is being submitted to the judge, along with a copy of the letter to opposing counsel refusing to make the requested corrections, and requesting the judge sign the order within five (5) days of receipt of order and the accompanying letter. The sample letter "C" attached to these rules meets these requirements.
  4. When a proposed order to which objections have been received is submitted to the judge, it shall be accompanied by a cover letter so stating and with attached copies of any writings received showing the objections. This letter shall show on its face the date on which it is submitted and that copies have been sent to opposing counsel or parties. The sample "D" attached to these rules meets this requirement.
  5. All attorneys shall copy all other attorneys on all correspondence relative to orders and proposed orders.
  6. Attorneys are encouraged to request, in open court, and after the court pronounces its order or judgment or adjudication, any specific finding of fact, conclusion of law or other provision which the attorney believes might be particular to or controversial about case or order.
  7. When an order is to contain recommendations or directions relative to some conduct or affirmative by a party, parent or other respondent, and such

conduct or affirmative action is to occur within 30 days, the court may direct that one or more of the attorneys in the case prepare a memorandum of order which shall be signed by the court, filed with the clerk and serve as the court's order pending the preparation, signing and filing of the final order.

**Rule 12. Orders Requiring or Recommending Mental Health or Substance Abuse Assessments or Counseling**

Unless otherwise directed, whenever the court announces in open court an order requiring or recommending mental health or substance abuse assessments, treatment or counseling, a letter shall be mailed by the end of the following business day to the director of the local mental health/substance abuse agency so stating and attaching copies of any relevant court reports. In delinquency cases, the clerk of court will prepare and mailed by the attorney for the party requesting or recommending these services. Should more than one party's attorney make this request or recommendation, the court will designate the attorney responsible for the letter to adjournment of that court. The sample letter "E" attached to these rules meets this requirement.

These rules shall be effective on and after March 1, 1998.

This the 6<sup>th</sup> day of February, 1998.

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E. Burt Aycock, Jr.  
Chief District Court Judge  
District 3A



*State of North Carolina  
General Court of Justice*

E. BURT AYCOCK  
CHIEF DISTRICT COURT JUDGE

MONA N. HARPER  
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DISTRICT COURT DISTRICT 3A  
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DISTRICT COURT JUDGE  
JAMES E. MARTIN  
DAVID A. LEECH  
P. GWYNETT HILBURN

**JUDICIAL DISTRICT 3A  
LOCAL RULES FOR DOMESTIC COURT  
EFFECTIVE JULY 1, 1999**

The purpose of these rules is to provide for the just, orderly and prompt disposition of all domestic matters to be heard in district court.

The rules shall govern all proceedings in domestic court in District Court District 3A (Pitt County). These rules shall not be construed in any manner which is in conflict with the Constitution of the United States not the Constitution of the State of North Carolina not any of its statutes and laws nor any rules promulgated by the North Carolina Supreme Court. Existing laws and ruled shall govern matters not covered by these rules.

**Rule 1. Trial Calendars**

1.1 On the Thursday 11 days next preceding a scheduled session of domestic court, the clerk shall publish a trial calendar of the cases scheduled for that session. (If a session of court is scheduled to begin on a Tuesday the calendar will still be published on Thursday, but 12 days prior to the session.) The clerk shall accept written calendar requests from attorneys and parties until noon on the Monday prior to the Thursday publication of each such calendar; thereafter, any request to place a case on the calendar must be addressed to and ruled upon by the scheduled trial judge, if available, or the Chief District Court Judge (or his designee), if the trial judge is not available. Cases continued to a session of court from a prior session shall appear on the new calendar without the necessity of an additional calendar request. Cases will not be continued to a session of court for which a calendar has already been published unless (1) the court reviews the published calendar for that term of court and determines that the motions hearings and trials already scheduled will not take the full week of the scheduled session and that the case to be

continued can probably be heard at that session of court, or (2) there is extraordinarily good cause to continue said case to a term for which a calendar has already been published and said case should have priority over a sufficient number of cases on the published calendar so that it will likely be reached at that term of court.

1.2 Cases set peremptorily shall be designated as such, by the clerk, on the calendar.

1.3 Counsel should always engage in full, frank and open settlement negotiations prior to the trial date.

1.4 No calendar request need be filed in a case involving matters covered in Chapter 50B of the North Carolina General Statutes. Such cases will always have a trial date.

1.5 Uncontested divorces and other uncontested domestic matters may be scheduled by the Chief District Court Judge or his designee for sessions and times other than those involving contested hearings.

## **Rule 2. Calendar Call**

2.1 A call of the calendar of domestic cases, except divorces and other clearly uncontested matters, shall be held at 8:30 a.m. on the Thursday prior to the trial week unless otherwise ordered by the scheduled trial judge or the Chief District Court Judge. The presence of parties or their counsel is encouraged. If counsel cannot be present, a partner, associate or staff member may attend and be prepared to furnish the information set forth below; otherwise, counsel shall have delivered to the clerk, in written form, a short description of each case in which that lawyer appears, the issues to be heard, an estimate of the length of the hearing, any problems of availability of witnesses, parties, or attorneys for the entire length of the session, the status of any settlement negotiations and anything else which would reasonably affect the order in which the cases are to be heard.

Motions to continue cases will be considered at calendar call pursuant to the Judicial District 3A District Court Continuance Rules and Policy. The judge shall determine and announce the order in which the cases shall be heard during the trial session. There is a presumption that the cases will be heard and tried in the order in which they appear on the calendar and all cases not specifically determined by the judge to be tried in some different order should be heard in the order in which they appear on the calendar. The clerk of court shall clearly indicate and mark on her (his) calendar the order in which the judge has determined the cases shall be called. The clerk shall maintain that calendar in her office and keep it available to attorneys and unrepresented parties in order to assist them in being available to the court when their case is called for trial.

2.2 On the same Thursday as calendar call the clerk shall notify by telephone the attorneys, or parties if they are unrepresented, in the first three cases set for trial or hearing and shall notify them of their specific calendar position. This does not relieve the attorneys or unrepresented parties of their responsibility under the General Rules of Practice in the Superior and District

Courts to keep themselves advised and available for the trial of their cases when the case are called for trial.

2.3 Whenever a case on a trial calendar is settled, counsel, or the parties if unrepresented, shall immediately call the clerk and notify the clerk of the fact of settlement and shall furnish to the clerk the named and file number of the case and the name of the attorney responsible for preparing and submitting the proposed order to the judge. The clerk shall mark and clearly indicate on her calendar all such reported settlements and shall do so in the same calendar on which the court has indicated the order in which cases should be called for the trial week. Whenever there is a reported settlement or continuance for a case among the then top three trial positions the clerk shall notify the attorneys and unrepresented parties which would then be among the top three cases for trial. The official clerk's calendar shall be maintained by the assistant or deputy clerk assigned to domestic court or such other assistant or deputy clerk designated by the Clerk of Superior Court.

### **Rule 3. Preemptory Settings**

3.1 The District Court Judge scheduled to preside at a session of domestic court will rule on all requests for preemptory settings for that session. All requests for preemptory settings shall be addressed to that District Court Judge in writing and shall include the following information: case caption and file number, all attorneys involved, estimated number of days for trial, status of pending motions, status of discovery (including expected date of completion/compliance), several alternative dates for trial, status of pre-trial order, reason for need for preempt setting, whether there are expert witnesses involved and their availability, the number of times the case has been previously calendared, statement of anticipated unusual evidentiary issues, a brief description of settlement efforts and any other special needs or issues.

### **Rule 4. Financial Information**

4.1 In all child support, post-separation and alimony cases, both parties shall bring to the hearing copies of their income tax returns for the last two calendar years and pay stubs or records for the four pay periods prior to the hearing. Where such tax returns have not been filed, the parties shall bring their W-2 forms, 1099 forms and K-1 forms for such year(s).

4.2 Affidavits of financial standing should be prepared for each such case except child support cases. For alimony and post-separation support cases the affidavits shall set forth the financial condition and needs of the party seeking support and the party from whom support is sought.

### **Rule 5. Custody Mediation**

5.1 The purpose of the Custody and Visitation Mediation Program is to provide the services of a skilled mediator to parties that are involved in a custody and visitation dispute. All cases

that qualify for custody mediation shall be mediated pursuant to the Amended Custody Mediation Rules for Judicial District 3A.

## **Rule 6. Equitable Distribution**

6.1 Equitable Distribution affidavits as required by NCGS 50-21 shall be in the manner and form as may from time to time be established and made available in the Clerk of Superior Court's office in typewritten or computer generated form. Any party failing to file and serve the affidavits required by this Rule may be denied the right to offer evidence on the financial issues raised in addition to any other appropriate sanctions.

6.2 Within 120 days after the filing of the initial pleading or motion requesting equitable distribution the party first requesting equitable distribution must schedule a date with the clerk for a scheduling and discovery conference. If that party fails to do so then the other party shall do so. The clerk shall notify the Chief District Court Judge of any such cases where no conference is scheduled and will then place them on the next regularly scheduled domestic calendar and notify the parties. At the conference the court should address all matters as provided in NCGS 50-21. Failure to attend the conference may result in dismissal of the equitable distribution claim or the imposition of other sanctions.

6.3 At the scheduling and discovery conference each attorney (or unrepresented party) is expected to have a statement of the issues as they then appear, a proposed plan and schedule of discovery, and proposed limits, if any, to be placed on discovery. The court shall schedule discovery and a time for a pre-trial conference. The scheduling order may be amended, as justice requires.

6.4 At the final pre-trial conference counsel and the parties are expected to have their schedules available so that an appropriate trial date may be set. Equitable distribution cases will generally not be set for trial until the court has determined that all discovery reasonably necessary to prepare for trial and all valuations have either been completed or will be completed prior to the trial. Equitable distribution cases set on for trial shall not be continued except by the trial judge or the Chief District Court Judge. If the case is continued it shall be rescheduled at that time by the court.

The Final Pre-Trial Order shall be in the manner and form as may from time to time be established and made available in the Clerk of Superior Court's office in typewritten or computer generated form.

6.5 If the presiding judge in an equitable distribution trial does not announce the judgment during the term of court at which the trial concludes he should announce the judgment to the attorneys and any unrepresented party within 30 days of the conclusion of that term of court. Should the protracted nature and complexity of the case or some extraordinary reason cause the presiding judge to be unable to announce a decision within the 30 days such delay will be made known to the attorneys and unrepresented parties by the trial judge and he will bring that delay to

the attention of the Chief District Court Judge who shall assign the presiding judge such time as may necessary to reach a decision in the case and enter a judgment without undue delay.

## **Rule 7. Conflicts**

7.1 Any of these rules conflict with the North Carolina General Statutes, the Constitution of the United States or North Carolinas, or Rules of the North Carolina Supreme Court shall be resolved in favor of such general statute, Constitutions or Supreme Court Rule.

This the 27<sup>th</sup> day of April, 1999.

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E. Burt Aycock, Jr.  
Chief District Court Judge  
District Court District 3A