

LOCAL RULES OF PRACTICE: **Continuance Policy In Both Civil and Criminal Cases
and Case Management Plan For Calendaring Civil
Cases**

Rule 2(a) of the General Rules of Practice for the Superior and District Courts found in the Annotated Rules of North Carolina states that a case management plan for the calendaring of civil cases must be developed by the Senior Resident Superior Court Judge and the Chief District Court Judge.

Chief Justice Mitchell has directed Chief District Court Judges to adopt for their respective Districts such continuance policy, to be effective on 1 January 1998.

In order to comply with the requirement of Rule 2(a) of the General Rules of Practice and the directives of the Chief Justice, IT IS HEREBY ORDERED, effective for all civil and criminal cases pending as well as all civil and criminal cases filed on or after 1 January 1998, that the local rules contained hereinafter shall be complied with in the District Courts of the Twenty-Fourth Judicial District.

The majority of these rules came verbatim from the District Court Model Continuance Policy prepared by the Committee appointed by Judge Cozort, Acting Director of the Administrative Office of the Courts.

The legal assistant for the Chief District Court Judge shall deliver a copy of these Rules to the District Court Judges and to the District Attorney. The District Attorney is requested to distribute a copy to the Assistant District Attorneys.

The Clerk of Superior Court in each of the counties of the Twenty-Fourth Judicial District shall distribute a copy of these rules to every attorney (except those in the office of the District Attorney) in his or her county who is licensed to practice law. A copy of these local rules shall be kept in a notebook in the office of the Clerk of Superior Court available for review by the citizens of that county.

ENTERED IN CHAMBERS in Newland, North Carolina on the tenth day of September 1997.

Alexander Lyerly
Chief District Court Judge
Twenty-Fourth Judicial District

Rule 1: Motions for Continuance in Criminal Cases

Criminal cases should be disposed of at the earliest opportunity, including the first trial setting; however, when compelling reasons for continuance are represented which would affect the fundamental fairness of the trial process, a continuance may be granted for good cause. Requests for continuances that are made 90 days from the first calendaring before a judge shall only be granted for extraordinary cause and said requests shall be in a paper writing in the form of a motion or in letter form. Notations on file will not suffice after 90 days from the first calendaring. It is intent of these rules that most cases will be disposed of within 90 days.

All Motions to Continue Criminal Cases shall be in writing in accord with Local Rules already in effect.

Rule 1.1: Appropriate Court Official to Rule on Motions for Continuance in Criminal Cases

Rulings on any request for continuance of a case shall be made to the presiding judge scheduled to preside on the day the case is set for trial. If the judge scheduled to preside is unavailable, the request shall be made to the Chief District Court Judge.

Rule 1.2: Documentation of Continuance Motions and Orders

All Motions and Orders for continuance entered within 90 days from the first calendaring shall be documented on the shuck just as the practice has been. The notation on the shuck shall include a notation as to whether the motion was made for the State of North Carolina, for the Defendant, or both.

REQUESTS FOR CONTINUANCES BEYOND 90 DAYS FROM THE FIRST CALENDARING BEFORE A JUDGE SHALL BE IN WRITING

All requests for a continuance beyond 90 days from the first calendar date before a judge shall be made in paper writing in the form of a letter or motion. The party or counsel requesting the continuance shall indicate on the paper writing that a copy of the request was delivered, mailed or faxed to the Assistant District Attorney assigned to prosecute during that session of Court.

The paper writing shall state the number of prior continuances and shall describe the “extraordinary cause” necessitating the request. The Court’s Order allowing the request shall be in writing and shall state the number of prior continuances. The written order shall state clearly the “extraordinary cause” upon which the continuance is based. The failure of the prosecutor to object is not “extraordinary cause.” The “Order of Continuance” form which has been used in civil cases in this district can be used to comply with this rule. It is the intent of this rule that continuances beyond 90 days will be rare.

Rule 1.3: Notification of Opposing Counsel/Unrepresented Parties/Witnesses

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

Rule 1.4: Objections to Motions for Continuance

All parties should have an opportunity to be heard on a Motion to Continue.

Rule 1.5: Time Standards

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

Rule 2: Motions for Continuance in 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 the continuance are presented which would affect the fundamental fairness of the trial process, a continuance may be granted for good cause. Requests for continuance that will delay the resolution of the case beyond the established time standards stated below shall only be granted for extraordinary cause.

Rule 2.1: Appropriate Court Official to Rule on Motions to Continue in Civil Cases and Magistrate Appeal Cases

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 scheduled judge is unknown or unavailable, the request should be made to the Chief District Court Judge.

Rule 2.2: Documentation of Continuance

All requests for continuance shall be in a paper writing in the form of a letter or motion. Oral motions may be allowed only in emergency situations when the reason for the continuance did not become known until immediately preceding the start of court. Orders of continuance shall be on the "Order of Continuance" form which is currently in use in the district.

Rule 2.3: 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 parties by the quickest means feasible, including facsimile transmission, electronic mail, or hand delivery.

Rule 2.4: Objections to Motions 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 working days prior to trial, opposing counsel and/or unrepresented parties shall have a period of four working days, following completion of distribution, to communicate objections to the motion for continuance to the moving party and the presiding judge. Objections not raised in writing within this period are deemed waived.

When a motion to continue is made within seven working days of the trial date (other than an oral motion as provided in Rule 2.2 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. The writing requirements of this rule may be in the form of a letter.

Rule 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.

Rule 2.6: Time Standards

All general civil cases and magistrate appeal cases should be disposed of within 24 months of filing, with 90% of all cases disposed of within 12 months of filing. These time standards were adopted by the Supreme Court of North Carolina in the caseflow management plan provided May 1, 1996 to the General Assembly.

Rule 3: Calendaring of Domestic Cases (Non-Equitable Distribution Cases)

Domestic cases shall be calendared by the filing of a Notice of Hearing with the Clerk of Court. The Chief District Court Judge prepares a trial schedule for each county, a copy of which may be obtained from the Clerk of Court or from the legal assistant for the Chief Judge. The notice of hearing should set the domestic case for hearing on a day the Chief District Court Judge has designated as either a Civil or a Domestic session.

Rule 3.1: Motions for Continuance in Domestic Cases

Domestic cases, because they frequently involve disputes that directly impact children, 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 continuance that will delay the resolution of the contested issues beyond the established time standards shall only be granted for extraordinary cause.

Rule 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. If the trial judge is unknown or unavailable the application is to be addressed to the Chief Judge.

Rule 3.2: Documentation of Continuance

All requests for continuance shall be by written motion which may be in the form of a letter. However, oral motions may be allowed when the reason for the continuance did not become known until immediately preceding the start of court. Orders of continuance should be on the form in use in the district.

Rule 3.3: Notification of Opposing Counsel/Unrepresented Parties/Witnesses

All parties shall 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 motion to continue should contain a certificate of service attesting to the manner of service on the opposing counsel or unrepresented party.

Rule 3.4: Objections to Motions 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 working days prior to trial, opposing counsel and/or unrepresented parties shall have a period of four working days, following completion of distribution, to communicate objections to the motion for continuance to the moving party and the presiding judge. Objections not raised in writing within this period are deemed waived.

When a motion to continue is made within seven working days of the trial (other than an oral motion as provided in Rule 3.2) the moving party shall include in the written motion a statement that the opposing counsel or unrepresented party, the motion shall state what efforts were made and why contact was not possible.

Rule 3.5: Case Rescheduling

If a motion for continuance is granted, the case should be rescheduled to a date certain after receiving input from all parties.

Rule 3.6: Time Standards

All domestic cases should be disposed of within 18 months of filing, with 90% disposed of within 6 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. These are the standards adopted by the Supreme Court of North Carolina in the caseflow management plan provided to the General Assembly.

Rule 3.7: Local Rule Regarding Affidavits in Child Support, Post-Separation Support and Alimony Cases

In all cases involving child support, post-separation support and/or alimony, each party may submit to his or her employer an affidavit in the form substantially equivalent to Form A attached to these rules. Upon completion by the employer, a copy of the affidavit shall be served on the opposing party's counsel or on the opposing unrepresented party, and the original shall be filed in the case file at least 10 days prior to a scheduled hearing. Unless a party prior to trial files and served a written objection to an employers' affidavit, and also issues a subpoena for the maker of the affidavit, an employer's affidavit shall be admissible in evidence without further foundation or authentication, and shall be considered by the court in setting support. A suggested form for such a subpoena is found in Form C attached to these rules.

A party or the party's counsel may serve an employer's affidavit, together with a subpoena to produce documents for the date of the scheduled hearing, on the employer for the opposing party, and may advise the opposing party's employer by letter that the employer may avoid the necessity of appearing in court by returning the completed affidavit to the requesting party. A suggested form for such a letter is found in Form B attached to these rules.

It shall be a violation of the Local Rules of Practice for a party or a party's attorney to impede in any way the efforts of the other party or the other party's attorney to obtain employer's affidavits as described in this rule. A party who willfully interferes with efforts made to obtain an employer's affidavit, may be assessed, in the discretion of the court, the costs (including reasonable attorney fees) of the other party in obtaining the employer's affidavit.

Rule 4: Motions for Continuance – Juvenile Cases

For an abused, neglected or dependent child, the Courts are hid 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 a stable, permanent family. Therefore, continuances should be allowed only when it served 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 matters, including motions for review in neglect, abuse and dependency matters, should be disposed of at the earliest possible 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.

Rule 4.1: Appropriate Court Official to Rule on Requests

All applications for continuance shall be made to the District Court Judge assigned to preside over the juvenile session of court for which the case is calendared. If the judge scheduled is unknown or unavailable such application shall be made to the Chief Judge.

Rule 4.2: Documentation of Continuance

All orders of continuance shall be in writing and shall include the number of prior continuances and the basis for the continuance sought in this instance.

All requests for continuances beyond 90 days from the first calendaring before a judge shall be in a paper writing in the form of a letter or motion. The written request shall state the number of prior continuances and the “extraordinary cause” necessitating the request.

Rule 4.3: Notification of Opposing Counsel/Unrepresented Parties/Witnesses

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

Rule 4.4: Objections to Motions for Continuance

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

Rule 4.5: Case Rescheduling

Upon granting a motion for continuance, the judge shall reschedule the case for a specific date, taking into consideration the availability of counsel, parties, and witnesses, and the needs of the child or youth who is the subject of the juvenile case.

Rule 4.6: Time Standards

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

All neglect, abuse and dependency cases should be disposed of within 60 days of service of the petition. All termination of parental rights cases should be disposed of within 120 days after service of the petition. These are the standards recommended by the experts who served on

the Juvenile Task Force on Case Flow Management which was a part of the Court Improvement Project.

Rule 5: Calendaring of Equitable Distribution Cases

General Statute 50-21(a) states that at any time after a husband and a wife begin to live separate and apart, a claim for equitable distribution may be filed. All requests for a hearing in an equitable distribution case shall be by letter to the Chief District Court Judge. The procedure to be followed after receipt of that request is as follows:

1. Property inventory affidavits shall be mailed by the Chief District Court Judge or by the legal assistant to the attorneys and to unrepresented parties in which they can list property to be considered. Thirty days will be given to answer the exhibits. Requests for extensions to answer the exhibits are to be made to the Chief Judge in writing (with a copy to opposing counsel or unrepresented party) and are to be signed by both the attorney and the party/client. All orders by the Chief Judge allowing an extension shall be in writing. It will be rare that more than one (1) extension is granted.

2. After the Chief District Court Judge received a copy of the exhibits from both parties, the Chief Judge shall assign the case to one of the District Court Judges. The judge assigned shall be the only judge to handle any matters, including allowing counsel to withdraw, in that case, after he or she is assigned. The Rule requires, however, that there shall be a Pre-Trial Order filed in all ED cases prior to the matter being set for hearing.

Rule 5.1 Calendaring of Requests for Interim Allocation of Marital Assets in Equitable Distribution Cases

Requests for interim allocation of assets in equitable distribution cases to be scheduled at any civil or domestic session of court and may be heard by any judge assigned to preside that session. If a judge enters an order of interim distribution of marital assets, that judge shall notify the Chief Judge so that an assignment can be made to that judge to hear all subsequent matters in that equitable distribution case because of the policy set out in Rule 5(2) above.

Rule 5.2 Time Standards

All equitable distribution cases should be disposed of within 18 months of the filing of a claim for equitable distribution, with 90% disposed of within 12 months of the filing of a claim for equitable distribution. Those cases not so disposed of should be brought to the immediate attention of the Chief District Court Judge, in writing.

Rule 6: Calendaring of Civil Jury and Non-Jury Cases (Non Domestic Cases)

The calendar of civil jury and non-jury (not domestic cases) will be distributed to attorneys of record and unrepresented parties four weeks before the first day of the civil session. This is required by Rule 2(a) of the General Rules of Practice for the Superior and District Courts.

The calendar of civil jury and non-jury cases will contain such cases as are directed by the Chief District Court Judge. As a general rule, all civil jury and non-jury cases will be put on the calendar after six months has expired from the filing of the last pleading or the time when the last pleading was due. Any attorney or unrepresented party who has a case that is ready for trial may request that the said case be placed on the next civil calendar even before the six months period, by writing a letter to the Chief District Court Judge.

Rule 6.1: Calendar Call Rules

Attorneys and unrepresented parties who do not attend calendar call are expected to fax, mail or deliver a letter to the person whose name appears on the first page of the calendar (usually an Assistant or Deputy Clerk or to the Chief Judge's legal assistant) and advise whether any conflicts exist during that session of court. If there is a conflict in another county during the term of court, the attorney should state in his or her letter the file number of his or her conflict. Priority should be given to the oldest case assuming the conflict is also in District Court.

All motions for sanctions, summary judgment, et cetera, must be set for hearing before the calendar call or they will be deemed waived. Motions filed but not set for a hearing will not be the basis for requesting a continuance. Discovery, such as interrogatories, which are not answered but which have not been the subject of a motion for sanctions and set for hearing before calendar call are deemed to be waived and shall not be the basis for requesting a continuance.

No attorney will be allowed to withdraw as attorney of record between calendar call and the date set for trial unless the client has retained new counsel who is ready to proceed with the trial. All motions to withdraw must be filed and set for hearing before calendar call. All orders to withdraw must have the consent of the client on the order as evidence by the client's signature or be based on notice and a hearing.

If an attorney's name appears as attorney of record on the calendar, the Clerk will not send a calendar to the client. If there has been a mistake and an attorney listed on the calendar is not attorney of record, the attorney is requested to write a letter to the Clerk before calendar call.

Note: In the past, continuances have been requested because opposing counsel has not filed an answer pursuant to an agreement between the attorneys. No agreement between counsel shall extend the time for filing an answer for more than 90 days beyond the original time the answer was due without the written permission of the Chief District Court Judge.

Requests will be granted if an attorney has a serious health problem or for some other, extraordinary cause.

Boundary Line cases: Often continuances are requested because the property in dispute has not been surveyed. All surveys must be completed within 180 days after answer is filed. If a court appointed surveyor is going to be requested, the same should be done within 90 days after the answer is filed.