

**LOCAL RULES AND CONTINUANCE POLICIES FOR DISTRICT COURT
CRIMINAL/INFRACTION CASES**

The continuance rules, policies and time standards set out below were adopted to conform to the Supreme Court of North Carolina's Caseflow Management Plan, submitted to the General Assembly May 1, 1996 pursuant to Chapter 333 of the 1995 Session Laws, and to the recommendations of the Administrative Office of the Courts' District Court Model Continuance Policy Committee.

**RULE 1: GENERAL RULES AND POLICIES FOR DISTRICT COURT
CRIMINAL/INFRACTION CASES**

1.1 Continuances

All district court criminal/infraction 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 will delay the resolution of the case beyond the established time standards shall only be granted for extraordinary cause.

1.2 Court Conflicts

The various district criminal/infraction courtrooms should work together to try to move cases as expeditiously as possible. Age of case, subject matter, and priority of setting should be given as much precedence as the level of court when resolving conflicts.

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

[Commentary: All attorneys are reminded of the provisions of Rule 2(e) of the General Rules of Practice requiring their appearance, or the appearance of a partner, associate, or another attorney familiar with the case.]

1.3 Evaluation of Motions for Continuance

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

- the opportunity to exercise the right to effective assistance of counsel;
- the age of the case and seriousness of the charge;
- the incarceration status of the defendant;

- the effect on children and spouses if the issue is continued and not resolved;
- the impact of a continuance on the safety of the parties or any other persons;
- the status of the trial calendar for the session;
- the number, moving party, and grounds for previous continuances;
- the due diligence of counsel, including the District Attorney, 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;
- the availability of witnesses for the present session or for a future session;
- whether the basis of the motion is the existence of a legitimate conflict with another court setting;
- the availability of counsel;
- consideration of the financial consequences to the public, the parties, the attorneys, or witnesses if the case is continued; and
- any other factor that promotes the fair administration of justice.

1.4 Application

These rules and policies shall apply to all criminal/infraction cases in the District Court.

1.5 Effective Date

These rules and policies shall be effective on and after May 1, 2007.

RULE 2: APPEARANCE OF ATTORNEYS IN CRIMINAL/INFRACTION CASES

2.1 Appearance of Attorneys

Appearance of attorneys in criminal/infraction cases and the entry of such appearance on the records of the Court are controlled by N.C.G.S. 15A-141 *et seq.* and Rule 17 of the General Rules of Practice for the Superior and District Courts. These provisions are incorporated by reference and are supplemented by the following local rules:

- a. Under no circumstances will an attorney be entered as attorney of record solely upon the representation of a defendant that he/she is represented by the attorney;
- b. A privately retained attorney will be entered as attorney of record when it is represented to the court by a person with apparent authority that the attorney has undertaken to represent the defendant. This may be done orally in open court or by presenting the court with a written document, signed by the attorney, stating that the attorney is making an appearance for the defendant. This document shall be placed in and become a part of the case file;
- c. Any appearance in a criminal proceeding including, but not limited to, filing a motion to continue or a motion to recall an order for arrest, by a privately

retained attorney that is not limited by the attorney filing a written notice thereof with the clerk is a general appearance pursuant to N.C.G.S. 15A-143;

- d. No one except the Presiding Judge, Clerk of Superior Court, deputy clerk or privately retained attorney is authorized to enter the appearance of a retained attorney on a shuck. Once a privately retained attorney's name is written on a shuck, that attorney is presumed to have made a general appearance in the case. No attorney who has made a general appearance in a case shall be allowed to withdraw as counsel of record unless that attorney files a **written** motion to withdraw, serves that motion on the District Attorney and the defendant, and is allowed by court order to withdraw;
- e. No one except the Presiding Judge, Clerk of Superior Court, or deputy clerk is authorized to enter the appearance of a court-appointed attorney on a shuck;

RULE 3: TRANSFER OF CASES BETWEEN CRIMINAL/INFRACTION COURTROOMS

No criminal/infraction cases on a printed calendar will be transferred to another courtroom without the express consent of the judge presiding in the courtroom to which the transfer is requested **as well as** the express consent of the judge presiding in the courtroom where the case is scheduled.

RULE 4: CONTINUANCE POLICY IN CRIMINAL/INFRACTION CASES

4.1 General Rules for Continuance

- a. No case will be continued except for good cause shown; what constitutes good cause is in the sound discretion of the judge to whom a motion to continue is presented.
- b. The State and the defendant should have an opportunity to be heard on all motions to continue.
- c. No case will be continued beyond the established time standards except for extraordinary cause which may include:
 - 1) the defendant's attorney has an unavoidable conflict involving an appearance in another court, in which case the judge must be informed of the court, the name of the case and the nature of the proceeding which necessitates the attorney's presence in that court; or
 - 2) there are exigent circumstances such as medical or personal emergencies that necessitate the absence of either the defendant, the defendant's attorney, or witnesses for the defendant or the State, including the charging officer; or
 - 3) the presiding judge determines in his/her sound discretion that the interests of justice require a further continuance.

- 4) No case which has been marked “LAST” will be continued except under the circumstances set forth in subsections c (1), (2), (3) of this rule.
- 5) No case will be continued because of the failure of either the defendant or the attorney to ascertain the court date; notice to the defendant is notice to the attorney, and notice to the attorney is notice to the defendant.
- 6) Cases involving law enforcement officers should be continued to the officer’s next court date. No continuance should exceed more than four (4) weeks except upon a finding that a longer continuance is warranted based upon the interests of justice or court efficiency.
- 7) **NO CASE SHALL BE SCHEDULED IN DISPOSITION COURT FOR MORE THAN TWO SETTINGS UNLESS THERE ARE EXTRAORDINARY CIRCUMSTANCES FOUND BY THE PRESIDING JUDGE.**

4.2 In-Court Continuance Procedure

- a. On the date of trial, no one except the presiding judge is authorized to continue a case with the following exception: Cases set in Disposition Court that do not require the Court to advise the defendant of his or her right to counsel, may be continued one time, **on the first setting only**, by the assistant district attorney assigned to that courtroom. All other motions for continuance must be directed to and ruled upon by the presiding judge.
- b. No cases, except 90-96 and First Offenders deferrals, shall be rescheduled in Disposition Court once they have been continued out of that courtroom.
- c. If a case is continued, it shall be the sole responsibility of the trial judge to mark on the case shuck:
 - 1) The next court date; and
 - 2) “D” if the continuance is for the defendant, “S” if the continuance is for the state or “NR” if the continuance resulted from the case not being reached for trial. If a case is set in Disposition Court no marking shall be made when continuing the case out of Disposition Court.
- d. If the presiding judge in granting a continuance determines in his/her discretion that no further continuances should be granted, the judge may further mark the shuck “**LAST**” for the defendant, the state or both.

4.3 Out-of-Court Continuance Procedure

- a. If a case is scheduled on a printed calendar, any motion to continue in advance of a trial date must be presented in writing and in duplicate to the presiding judge before whom the case is scheduled.
- b. If a case is not yet scheduled for a printed calendar, motions to continue in advance of the trial date shall be presented in writing as follows:

- 1) Felony cases in district court shall be presented to the Presiding Judge in Courtroom 4D during the morning session only.
 - 2) Misdemeanor domestic violence cases shall be presented to the Presiding Judge in the Domestic Violence Criminal Courtroom.
 - 3) Misdemeanor non-domestic violence criminal/infracton cases shall be presented to the Presiding Judge in Disposition Court.
 - 4) If the Presiding Judge specified above is unavailable, the request for continuance shall be presented to the Chief District Court Judge.
- c. The motion to continue must be on the form attached hereto as Appendix A and must include the following information:
- (1) Reason for the continuance;
 - (2) Charge/charges against the defendant, including all case numbers;
 - (3) All previous court dates and the party or reason for which the continuance was granted, i.e. “D” for defendant, “S” for state or “NR” for not reached;
 - (4) Any dates upon which the case was called and failed;
 - (5) Whether any court date has been marked “**LAST**”; and
 - (6) Whether there are any outside witnesses, i.e., witnesses other than law enforcement officers scheduled for their regular court date.
- d. The presiding judge will either allow or deny the motion and will enter his/her ruling in writing on both copies of the motion; one copy of the motion and ruling will be returned to the attorney and the other copy will be given to the clerk to be placed in the court file.
- e. If the motion to continue is allowed, the presiding judge will enter the next court date along with the ruling.
- f. If the motion to continue is allowed and the case involves outside witnesses, it is the absolute responsibility of the attorney to notify all such witnesses of the continuance of the case and the next court date.
- g. If any fact appears to be different from what is represented in the motion to continue, or if any outside witness is not notified of the continuance, the continuance may be revoked and the case called and failed.
- h. Out-of-court motions to continue misdemeanor criminal or infracton cases must contain the written consent of the District Attorney or an Assistant District Attorney. Out-of-court motions to continue felony probable cause hearings must contain the written consent of the Assistant District Attorney who is, or will be, assigned to the case along with a continuance date agreed upon by the attorneys. If written consent from an Assistant District Attorney or the District Attorney cannot be obtained, the State shall be given an opportunity to be heard before any out-of-court continuance is granted.

4.4 Time Standards

a. Infractions

All infractions should be disposed of within 90 days of the first setting.

b. Misdemeanors – Criminal and Motor Vehicle

All misdemeanors should be disposed of within 120 days of the first setting.

c. Motions to Suppress

Motions to suppress evidence in DWI cases pursuant to N.C.G.S. 20-38.6 and pursuant to *State v. Knoll* and *State v. Ferguson* shall be made in writing within a reasonable time prior to trial. A reasonable time shall be defined in these local rules as not later than ninety (90) days after the first regular setting in District Court.

This rule shall apply unless there is an exception under N.C.G.S. 20-38.6 or unless a judge determines that extraordinary circumstances exist to permit the defendant additional time to file said motions.

d. Felonies

All felonies should be disposed of in District Court within 120 days of the first setting for probable cause hearing.

[Commentary: Meeting this deadline may not be possible in instances in which a defendant fails to appear and is “called and failed”. In these matters, it is the responsibility of the district attorney to determine when it is appropriate to dismiss the charges. Also, cases in which defendants are placed in authorized Diversion programs may not meet this deadline. THESE TIME STANDARDS IN NO WAY IMPLY ANY “**RIGHT**” BY THE STATE OR THE DEFENDANT *TO* A CONTINUANCE OR SERIES OF CONTINUANCES UP TO THE MAXIMUM TIME FOR DISPOSITION. ON THE CONTRARY, THE POLICY, AS SET OUT IN RULE 1.1, IS THAT ALL DISTRICT COURT CASES SHOULD BE DISPOSED OF AT THE EARLIEST OPPORTUNITY, INCLUDING THE FIRST TRIAL SETTING.]

This the 1st day of May, 2007.

JOYCE A. HAMILTON
CHIEF DISTRICT COURT JUDGE
TENTH JUDICIAL DISTRICT