

CIVIL COURT CALENDARING RULES

1. Requests to calendar a matter in civil court must be filed seven business days prior to the requested court date except for 50B or other statutorily required hearings. Matters will be added to the calendar only by the presiding judge or Chief District Court Judge.
2. Calendars should be published no less than five business days prior to the session of court.
3. Calendar requests must contain the certification of the filing attorney or party that:
 - (a) The issues to be calendared are ready for trial (or hearing) and both parties have agreed to the calendar date requested OR no answer or other appearance was made by the opposing party OR this is a matter under the "First or Fourth" sections below.
 - (b) The party filing the calendar request is ready for trial (or hearing) upon the issues to be calendared, but the parties have not agreed upon the court date.
4. Only one court date per case is to be requested unless essential for separate issues.
5. The Clerk of Court in each county shall maintain calendar requests in a book, in order filed, for use by the presiding judge at the calendar call.
6. The Clerk of Court in each county shall place matters on the court calendar in the following order:
 - First:** Uncontested matters calendared in the order in which the calendar requests were filed with the clerk.
 - Second:** Cases in which the parties have not agreed upon the court date in the order. This hearing is for the setting of a trial date only.
 - Third:** Motions certified on the calendar request not to require more than ten minutes for hearing.
 - Fourth:** Cases in which a hearing is required within a specified time pursuant to statute or court order including but not limited to Chapter 50B and restraining orders. A motion must be made on the calendar request that this section is applicable.
 - Fifth:** Motions and pre-trial conferences.
 - Sixth:** Small claims appeals and other matters.
 - Seventh:** Peremptory settings.

Eighth: Cases in which the parties have agreed upon the court date, or there was no answer or other appearance made by the opposing party, in the order the calendar requests were filed with the clerk, including cases continued from prior court dates. The earlier court date shall stand as the "filing date" for purpose of place on the calendar unless otherwise ordered.

7. The presumption shall be that matters will be heard in the order calendared. However, the presiding judge shall determine the order of trial at the calendar call.

8. Continuance of matters calendared by agreement, or set by the court, should be granted only by consent of both parties or for compelling reasons.

9. Except for uncontested or domestic violence matters, any continuance should be to a date exceeding one week.

10. A calendar request form as shown on pages III - 41 (a) - (c) is to be utilized.

MOTIONS FOR CONTINUANCE OF CIVIL CASES

The policy of the Seventh Judicial District is that all civil cases, including domestic, child support, general civil and magistrate appeals, shall be expeditiously addressed and concluded. The intent is to provide a proper forum and reach a resolution within a reasonable time so as to satisfy the requirements of giving the parties a just and timely hearing and of giving the community an expectation of appropriate fairness and efficiency.

1. Appropriate Court Official

The following procedures apply where there is no stipulation by all parties in writing as to a continuance. All continuances, however, including those by stipulation or agreement, shall comply with Rule 7 and ultimately be within the discretion of the presiding judge.

Any application for a continuance shall be made to the judge presiding over the session of court for which the case is calendared after notification as required in 3.

2. Right to Hearing

All parties shall have the right to be heard by the presiding judge on any objection to a motion to continue.

3. Notification

All parties must be notified by the movant with the motion including a clear statement of reasons for the request. A copy of the motion must be sent to all counsel or record and/or

unrepresented parties prior to the court's ruling on the motion. Distribution of the motion must be made by the quickest means feasible, including facsimile transmission, electronic mail or hand delivery. However, an oral motion may be allowed when the reason for the continuance did not become known until immediately preceding the start of court and constitutes extraordinary cause.

4. Procedure

The motion shall be written and may be formal or informal (including a letter) except for oral motions under Rule 3.

When a written motion to continue is made and service completed seven (7) or more working 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. Objections not raised in writing within this time period are deemed waived.

When a written motion to continue is made less than seven (7) working days of the trial term, the moving party shall include in the motion a statement that the opposing counsel or party has been notified of the motion. If the moving party is unable to contact opposing counsel or unrepresented parties, the motion shall state what efforts were made and why contact was not achieved.

5. Evaluation of Motion

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

- effect on children;
- whether there already is a temporary order as to the issue that is the subject of the continuance request;
- impact of a continuance on the safety of the parties or any other persons;
- whether the issue has been statutorily identified as an issue which should be addressed expeditiously, i.e. child support, post-separation support;
- age of the case or motion;
- status of the trial calendar for the session;
- number, moving party and grounds for previous continuances;
- due diligence of counsel in promptly making a motion for continuance;
- legitimate conflict with another court;
- amount of delay caused by the continuance requested;
- position of opposing counsel or unrepresented parties;
- present or future inconvenience or unavailability of witnesses and parties;
- 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.

6. Court Conflicts

Any court conflict shall be resolved according to applicable statutes unless otherwise agreed. The various courts should communicate and if possible resolve any such conflict as best serves the proper and efficient administration of justice.

Juvenile cases should take precedence if there is a conflict among the District Courts.

Rule2(e) of the General Rules of Practice states "when an attorney is notified to appear for the setting of a calendar, pretrial conference, hearing of a motion or for trial, he must, consistent with ethical requirements, appear or have a partner, associate or another attorney familiar with the case present. Unless an attorney has been excused in advance by the judge before whom the matter is scheduled and has given prior notice to his opponent, a case will not be continued."

7. Case Rescheduling

Any case being continued should be rescheduled to a specific date. Prior to granting a motion for continuance, the judge is to hear input concerning rescheduling and the new date chosen should be one which will most likely lead to a resolution. Except in cases of domestic violence or uncontested matters, any continuance should exceed one week in order to preserve the integrity of the next week's calendar.

8. Time Standards

In accordance with standards adopted by the Supreme Court of North Carolina in the caseload management plan provided 1 May 1996 to the General Assembly, pursuant to Chapter 33 of the 1995 Session's Laws "all domestic cases should be disposed within 18 months of filing, with 90% disposed within six months. Issues of child support shall 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. 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. Equitable Distribution and other family financial cases not including child support should be disposed within one year.

EX PARTE PROCEDURES

Any request or motion for an ex parte order shall be made only in cases of a true emergency with the movant to comply with the following procedure:

1. Motions shall be written.

2. If a particular judge is in the process of hearing the case, or has retained jurisdiction, then any emergency request is to be heard by that judge. If that judge is not reasonably available then any district court judge may hold the hearing.
3. If the opposing party is represented by counsel, reasonable notice should be given prior to the hearing of the motion.
4. Any movant shall inform the court prior to or at the start of the hearing:
 1. whether there is opposing counsel
 2. whether that counsel has been notified
 3. whether another judge has heard/refused to hear a similar motion/this motion
 4. whether another judge has heard other matters in this case
5. If any ex parte communication with a judge takes place without the opposing counsel or party present then notification of that communication occurring must be given by the movant to the counsel or party.
6. Ex parte orders must be written and state the date, time and location for review within the allowable 10-day period.

PREMPTORY /SPECIAL SETTINGS

Any request for a preemptory or special day setting shall be based on compelling reasons and be heard by the judge who will preside. If at all possible the request should be regularly calendared for an earlier civil session with the judge first exploring the possibility of settlement. If the judge determines a preemptory setting or a setting for a special day is warranted, a written request with the judge's acknowledgement shall be mailed or faxed to the Chief District Court Judge's office. Consultation shall be made with the appropriate clerk's and sheriff's offices to determine staff and courtroom availability prior to a final order from the Chief District Court Judge.

Except for extraordinary cause, no calendar should include more than one preemptory setting.

FILING OF ORDERS

All civil orders shall be prepared, signed and filed no later than 30 days from the date of the presiding judge's ruling, unless otherwise ordered.

If the order is not timely filed, the clerk shall immediately notify the Civil Case Management Administrator in the chief district court judge's office.

The administrator shall contact the presiding judge and, unless that judge determines otherwise, the case shall be re-calendared. If the case is re-calendared, notice shall be sent to the attorneys or parties with the presiding judge to determine fault, penalty or other action.

In addition to any other provision of the Local Rules, the presiding judge may, without further notice to the attorneys or parties and in the presiding judge's discretion, remove the case to an inactive status where the order is not timely and appropriately submitted. Once placed inactive, the case may be returned to an active status only upon order of the court. Notice shall then be sent to the attorneys or parties.

With due notice to the attorneys or parties where the order is not timely and appropriately submitted, the presiding judge may enter a show cause order for contempt for anyone subject to the court's jurisdiction in the case where there is probable cause to believe that person is in violation of the court's order to submit a timely and proper order. Upon a hearing and finding of contempt, the presiding judge may exercise appropriate discretion including but not limited to imposing a fine or vacating or modifying any findings or order related to the earlier hearing. The presiding judge may also order a new trial.

Nothing in this rule limits the authority of the presiding judge otherwise provided.

Notwithstanding the preceding, the Chief District Court Judge has continuing authority, with good cause, to remove any case to an inactive status. If the presiding judge is not available within a reasonable time, in the Chief District Court Judge's discretion, the Chief District Court Judge has the authority of the presiding judge described within this rule. Nothing in this rule limits the authority of the Chief District Court Judge as set out in Rule 7 or otherwise provided.