

## **MOTIONS FOR CONTINUANCE OF CRIMINAL CASES AND INFRACTIONS**

The policy of the District Court in the Seventh Judicial District is that criminal cases and infractions should be disposed of, removed from district court or otherwise tried by the court within a reasonable time. It is our commitment to have an efficient judicial system that appropriately respects the rights of the alleged victims as well as those charged with offenses and truly justifies the community's trust. This rule applies to all infractions and criminal cases except those felonies in classification A-E and their related felonies and misdemeanors.

### **1. Appropriate Court Official**

Prior to the opening of court on the day in which a case is first calendared, the district attorney shall have continuing authority to remove or recalendar the case. Upon the opening of court and within 180 days of the first court setting, the district attorney and defense counsel or defendant have authority to enter into a continuance agreement consistent with the time limitations of 2, notification requirements of 4 and the evaluation factors of 6. Otherwise, within the first 180 days and whenever reasonable, the judge should allow the district attorney and defense attorney or defendant discretion to enter into a continuance agreement consistent with these rules and policies. Only the presiding judge may continue a case past the 179<sup>th</sup> day except for an additional two-week period to facilitate a plea or submission.

### **2. Time**

All relevant criminal cases and infractions should be disposed or resolved in less than 180 days from the first court setting.

A request for a continuance from the first setting should be for good cause only considering the interests and convenience of those concerned. No continuance should be automatically allowed or agreement entered into unless required by statute.

Once a case has been continued 179 days from the first setting, any further continuance may only be allowed by the presiding judge except for an additional two-week period to facilitate a plea or submission.

Once a case has been continued by the court order to a specific date, any change from that date may only be allowed by a district court judge. If the district attorney and defense attorney or defendant agree, however, the case may be calendared and heard earlier than the new trial date without additional court order where that would be both appropriate and reasonable.

If a case has been dismissed with leave by the district attorney and is later reinstated, a continuance 90 days or more after the first new setting may only be allowed by the presiding

judge. A failure to appear and order of arrest does not enlarge the time period except where a party is prejudiced by administrative error in setting a new court date or surprise.

### **3. Right to Hearing**

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

### **4. Notification**

The party requesting a continuance shall give notice of the motion to the other party as soon as possible and if agreement is reached or continuance granted than appropriate notification shall be made to all concerned, including witnesses.

### **5. Procedures**

Any disagreement between the district attorney and defense attorney or defendant as to a continuance prior to the 180-day bar shall be heard by the presiding judge. While the judge has the ultimate authority to rule on a continuance of any case set on the calendar, the judge is to allow the district attorney and defense attorney or defendant reasonable discretion to enter into a continuance agreement during the initial 180 days with the court granting the continuance by acquiescence when not inconsistent with the interests of justice.

Once the 180-day bar is reached, or 90 days after re-instatement where the case was dismissed with leave, there are only three conditions for a case to then be continued further. One is if a continuance is required by statute (i.e. federal court, higher state court including priority district court or legislative conflict). Another is for extraordinary cause (e.g. death or verifiable serious illness of a critical participant or close relative which makes trial unreasonable). The third is where the only charge is an infraction with no accompanying misdemeanor and there is a civil claim resulting from an accident. Any such continuance motion shall be oral and heard in open court as well as written unless clearly unreasonable based on the circumstances while any motion based on a statutory excuse shall be written. No written motion or order is required if the offense is an infraction.

Prior to granting the continuance, the judge should confer with counsel to fully explore how to properly resolve the case.

An order granting a continuance beyond the 180-day bar on the 90-day bar where the case was dismissed with leave shall be written with the Seventh Judicial District continuance order form completed and appropriately filled out. The moving party shall also provide one extra copy of the order to the clerk who will forward it to the Chief District Court Judge's office. The case will thereafter be tracked under a case management plan.

## **6. Evaluation of Motion**

The following are factors to be considered by the appropriate court officials during the initial 180 days in deciding whether a case should be continued:

- opportunity to have effective assistance of counsel;
- age of the case and seriousness of the charge;
- incarceration status of the defendant;
- effect on children if the issue is continued and not resolved;
- impact of a continuance on the safety of the parties or other persons;
- 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 as soon as practicable and notifying opposing counsel and witnesses;
- period of delay caused by the continuance requested;
- presence of witnesses of their availability for the present session or for a future session;
- a legitimate conflict with another court;
- availability of counsel;
- consideration of the financial consequences to the public, the parties, the attorneys or witnesses if the case is continued;
- previously scheduled CLE;
- availability of an interpreter;
- any other factor that promotes the fair administration of justice.

## **7. 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.

## **8. Case Rescheduling**

All cases which are continued should be rescheduled with the new date chosen to be one which will most likely lead to a resolution. All necessary participants should review their schedules, checking for such matters as Superior Court, CLE, vacation and other readily discernible conflicts, to make sure they will be available and that the date is not one likely to lead to a further continuance.

## **9. Other Cases**

The District Court shall have continuing authority over all cases not subject to these rules consistent with the North Carolina General Statutes and case law.