

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

FILED

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
TWENTY-EIGHTH JUDICIAL DISTRICT

2022 SEP 13 A 8:42

LOCAL CRIMINAL RULES FOR BUNCOMBE COUNTY DISTRICT
COURT/CONTINUANCE POLICY

Rules of Practice and Case Management Plan for the District Courts of the 28th Judicial District

These Rules are written in response to a Directive by the NC Supreme Court, the Chief Justice of that Court, and the Director of the Administrative Office of the Courts.

The aim of these rules/policy is to address any backlog that is currently present and to prevent any unnecessary accumulation of cases in the future. Additionally, the rules are designed to give litigants appropriate, but not wasteful, amounts of time to prepare cases for disposition allowing continuances only when supported by sufficient and just cause.

The Court will grant a continuance only for good cause shown. On a case-by-case basis, the Court will evaluate whether sufficient cause justifies a continuance. As a guide to practitioners, the following will generally not be considered sufficient cause to grant a continuance:

- Counsel or the parties agree to a continuance;
- The case has not previously been continued;
- The case probably will settle if a continuance is granted;
- Discovery has not been completed;
- New counsel has entered an appearance in the case or a party wants to retain new counsel;
- Unavailability of a witness who has not been subpoenaed;
- A party has not yet fully recovered from injuries when there is no competent evidence available as to when the party will be fully recovered;
- A party or counsel is unprepared to try the case for reasons including, but not limited to, the party's failure to maintain necessary contact with counsel;
- The failure to schedule the hearing on a suppression motion on a timely basis unless the prosecution failed to comply with a discovery order;

*Continuance requests for cases filed prior to the effective date of this policy shall be handled similarly in that further continuances shall be for good cause only regardless of the amount of continuances previously granted.

*The Judge has ultimate discretion in each case. This policy is for general guidance in keeping with the goal of making and keeping our Courts efficient.

- A police officer or other witness is either in training or is scheduled to be on vacation, unless the Court is advised of the conflict soon after the case is scheduled and sufficiently in advance of the trial date; and
- Any continuance of trial beyond a second trial date setting.

The following will generally be considered sufficient cause to grant a continuance:

- Sudden medical emergency (not elective medical care) or death of a party, counsel, or material witness who has been subpoenaed;
- A party did not receive notice of the setting of the trial date through no fault of that party or that party's counsel;
- Facts or circumstances arising or becoming apparent too late in the proceedings to be fully corrected and which, in the view of the Court, would likely cause undue hardship or possibly miscarriage of justice if the trial is required to proceed as scheduled;
- Unanticipated absence of a material witness for either party; and
- Illness or family emergency of counsel.

Attorneys Making Appearance For And Representing Defendants.

General Appearance - An attorney may make a general appearance either in writing or orally.

Orally in court.

- If an oral general representation is made it must be done in open court or directly to the assistant district attorney or the Court.
- The assistant district attorney or the clerk must note the attorney's name on the jacket.
- The clerk must note the attorney's name on the calendar with the appropriate notations. If the name of the attorney is not noted on the jacket the clerk is to note the attorney's name.

In writing.

- An attorney may file a written notice of general appearance by presenting the written notice to the judge, assistant district attorney or the clerk.
- The District Attorney's website is still acceptable, but must be timely filed and signatures should be legible.

Limited Appearance.

To make a limited appearance or to limit the representation, notice of such must be filed with the court in writing.

- If the attorney limits the representation to district court only, the attorney may simply file the representation. The attorney must file a written waiver of appearance and waiver of court appointed attorney.

Paralegals acting on behalf of attorneys.

- Paralegals may contact clerks or assistant district attorneys outside of court as the legal agent of the attorney.
- Paralegal may not make motions before the court or act as an attorney.
- Paralegal may inform the court or other officers of the court of emergencies that delays an attorney or prevents the attorney's appearance.

Continuance Policy.

A continuance may be granted upon a motion made to the Presiding Judge based on (case by case):

- The defendant's desire to hire an attorney (at first appearance).
- The defendant's or the state's need to subpoena necessary witnesses for trial or sentencing.
- Giving the defendant or state an opportunity to take action that may impact the trial or disposition of a case.
- Allowing the defendant an opportunity to complete deferred prosecution, first offenders program or special probation pursuant to statutes allowing such process.
- Serious illness, hospitalization, or death of a family member if there is verification provided to the court.
- Conflict of an attorney or other necessary party required to appear in Federal Court, Superior Court or a court that takes precedence over district court. See General Rule of Practice 3.1.
- An attorney's vacation if the vacation period was set in compliance with the vacation policy as adopted by this judicial district. The attorney is expected to alert the court if a case is being scheduled during a vacation period. See General Rule of Practice for the Superior and District Courts Rule 26.
- Judge should review the file prior to ruling to verify number of prior continuances already occurring if applicable.

Length of Continuances.

Continuances lengths should be based on the following factors.

- Any continuance granted after 180 days of filing shall be granted only upon a showing of good cause.
- In cases in which the prosecuting witnesses or defense witnesses have been served with a subpoena the case should not be continued without a showing for good cause. If a witness fails to appear for a court date after being subpoenaed or a law enforcement officer fails to appear for a regularly scheduled court date the case should not be continued unless there is a showing for good cause.
- The District Attorney's representative or clerk in district court shall write notes on the court file creating a history of the case. The history of the case will be available to assist the court in making decisions about continuances.

Trials or Hearings of Cases.

Place and time to appear - The courthouse is the proper place to appear for trials or other types of hearings unless indicated otherwise. The time and what courtroom to report to will be stated in legal documents.

- The District Courts shall be deemed always open - G.S. 7A-190. All trials on the merits and all hearings on infractions shall be conducted in open court G.S.7A-191.
- Courtrooms 1A, 2A, 2B, 3B and criminal court in Buncombe County will begin at 9:00am. Judge may allow 9:00am – 9:30am for assistant district attorney to speak with lawyers and witnesses.
 - *The assistant district attorney will call the calendar once the Judge takes the bench and immediately complete the administrative work.
- Administrative acts arising from a court to which a judge is assigned may be conducted in chambers in the absence of the clerk or other court officials and at any place within the district. Administrative acts proper for in chamber's type action may be issuing duplicate limited driving privileges or an extension to pay fine and cost but not restitution.
 - *Any modification of a judgment previously entered must be done in open court or with the written consent of the district attorney or an assistant district attorney.
 - *A limited driving privilege not requested in open court must be done in open court or with the written consent of the district attorney or an assistant district attorney.

Witnesses or parties being present for court.

- Defendants - Defendants must be present at the start of court unless the attorney is appearing on defendant's behalf. If an emergency or illness is the cause for the defendant not appearing, the cause must be documented. Defendants who are late must sit in the courtroom and wait until they are called. Late defendants will not be called before other business is transacted for those who appeared at the calendar call. Exceptions may be

made to this rule when no other business is ready for the court or in the discretion of the presiding judge.

- Witnesses - The assistant district attorney, the defendant or the defendant's attorney is responsible for insuring that necessary witnesses are subpoenaed. Once placed under subpoena or under the court order to be in court or to return to court, the witness is required to appear. If the witness does not appear such witness is subject to court action to enforce its orders. Witnesses who have not contacted the D. A. or assistant district attorney by 4:00pm on the day before their court appearance are required to appear at the designated time in their notice requiring them to appear unless a specific reason prevents advanced notice.
- Law Enforcement Agencies - Any law enforcement officer who initiated court action by charging or causing a person or persons to be charged with violations of the law is expected and required to be present on assigned court dates. Any emergency or illness that causes the officer not to appear must be communicated to the assistant district attorney assigned to that court.

Dress for Court.

- Attorneys - Proper business attire must be worn by all judges, attorneys, court support staff and liaisons working with the court.
- Witnesses - Defendants - Should be dressed for a business transaction and if not should be dressed in a clean neat manner appropriate for a serious public encounter.

Unusually time-consuming cases, defendants, or witnesses who travel from distant locations.

- The attorney, assistant district attorney or the defendant must notify the opposing side and after consulting with each other if necessary consult with the appropriate judge to make the necessary arrangements to process the case.
- A special setting shall be granted only for good and compelling reasons.

Courtroom Decorum. See Rule 12 of General Rules of Practice.

The Judge has the obligation to use the court's power and authority to govern the conduct of all participants in the courtroom so as to insure the fair, impartial and timely administration of justice. The judge should maintain an atmosphere of unhurried dignity regardless of any inadequacies in the physical setting of the courtroom or the size of the calendar.

Judges.

- The Judge should wear the judicial robe when presiding over any trial.
- The Judge should maintain an attitude of professional respect for attorneys appearing before the judge.

- The Judge's demeanor should do nothing to reflect or transmit messages which may unintentionally influence other participants in the trial.
- The Judge must avoid conduct that threatens the judge's ability to remain impartial with respect to the proceedings before the judge.
- The Judge has a duty to treat all who appear before or work with the judge in a courteous, unbiased, and respectful manner.
- The Judge should prepare and sign all court related documents in a timely manner. Also, the judge should insure that attorneys prepare and file appropriate court related documents timely.
- The Judge should not have Ex Parté Discussion of a pending case except as allowed by law. The judge should always require an attorney to contact the other attorney (D.A. or assistant) before discussing the merits of the case with one side when a case is pending before or is likely to be heard by the judge.
- The Judge should preside in such a manner that the public can hear the conducting of court business.
- The Judge should be available throughout the business day whether in court or in chambers. When possible, a judge should assist other courts in completing its business.

Attorneys.

- Attorneys are at all times to conduct themselves with dignity and propriety. The attorney appearing before the court must comply with the local rules of court.
- All statements and communications to the court other than objections and exceptions shall be clearly and audibly made from a standing position behind the counsel table. Counsel shall not approach the bench or a witness except upon the permission of or by request of the court.
- The examination of witnesses shall be conducted from a sitting position behind the counsel table except as otherwise permitted by the court.
- Counsel shall not approach the witness except for the purpose of presenting, inquiring about, or examining the witness with respect to an exhibit, document, or diagram. All witnesses should be treated with fairness and due consideration. Abusive language or offensive personal references are prohibited.
- All personalities between counsel should be avoided. The personal history or peculiarities of counsel on the opposing side should not be alluded to. Colloquies between counsel

should be avoided. The conduct of the lawyers before the court and with other lawyers should be characterized by candor and fairness.

- Counsel should yield gracefully to rulings of the court and avoid detrimental remarks both in court and out. The attorney should at all times promote respect for the court.

Clerks and Bailiffs.

- All court support personnel are responsible for assisting the judge in maintaining the best possible image and prestige of the court.
- All court support personnel must show respect to citizens and persons in the courtroom.
- Clerks must prepare paperwork in a prompt and timely manner so that defendants or persons with business before the court are not unnecessarily delayed. If there are problems the clerk is expected to alert the judge if the judge is needed to help resolve it.
- Bailiffs must conduct themselves in such a way as to show respect for the court and by such display of respect secure respect from all present for the court and for its administration.

*Bailiffs have the following duties:

- * to announce the judge and formally open court in a dignified and respectful manner. To speak in a clear understandable manner while doing so.
- *to furnish assistance to the judge.
- *to supervise the condition of the courtroom.
- *to maintain order in the courtroom.
- *to assist in the routine matters of the court.
- *to assist members of the public in their relations with the court.
- *to take charge of prisoners while in court and to assist in getting prisoners into or out of court when they are in custody.
- *to take charge of defendants who are given an active jail or prison sentence.
- *to close the court whenever requested by the judge.
- *to perform such other and further duties as are required by the court.
- *it is the Bailiff's job to maintain courtroom issues - not the clerk.

Jail Cases.

Jail cases are to be given priority. Special attention and in some instances preference should be given to defendants in custody or who present unusual risks or danger to the public. Every effort should be made to complete all jail cases by the time court recesses for lunch. If an attorney or public defender has a jail case on the court calendar that attorney must communicate with the assistant district attorney about the action to be taken in court that day. This must be done no later than 11am.

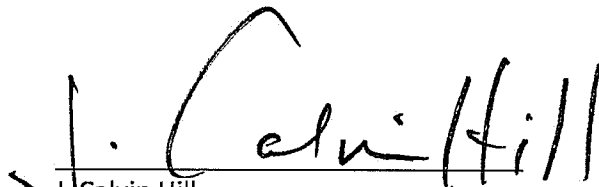
Defendants representing themselves (in Custody).

- On the scheduled court day, the defendant is to be brought into the courtroom.
- The Judge should review the bond following any matter involving a pro se litigant, if the case is not resolved, and make inquiry about ability to make the current bond, modify the bond if appropriate given other statutory considerations. Represented defendants' bond are reviewed upon counsel's request.

Please see the attachments of The General Rule of Practice Rules 3.1, 12 and 26.

These rules are effective October 3rd, 2022.

This 12th day of September, 2022.



J. Calvin Hill
Chief District Court Judge
28th Judicial District
Buncombe County

Rule 3. Continuances

An application for a continuance shall be made to the presiding judge of the court in which the case is calendared.

History Note.

276 N.C. 735; 282 N.C. 737; 356 N.C. 703.

Rule 3.1. Guidelines for Resolving Scheduling Conflicts

(a) In resolving scheduling conflicts when an attorney has conflicting engagements in different courts, the following priorities should ordinarily prevail:

1. Appellate courts should prevail over trial courts.
2. Any of the trial court matters listed in this subdivision, regardless of trial division, should prevail over any trial court matter not listed in this subdivision, regardless of trial division; there is no priority among the matters listed in this subdivision:
 - any trial or hearing in a capital case;
 - the trial in any case designated pursuant to Rule 2.1 of these Rules;
 - the trial in a civil action that has been peremptorily set as the first case for trial at a session of superior court;
 - the trial of a criminal case in superior court, when the defendant is in jail or when the defendant is charged with a Class A through E felony and the trial is reasonably expected to last for more than one week;
 - the trial in an action or proceeding in district court in which any of the following is contested:
 - termination of parental rights,
 - child custody,
 - adjudication of abuse, neglect or dependency or disposition following adjudication,
 - interim or final equitable distribution,
 - alimony or post-separation support.
3. When none of the above priorities applies, priority shall be as follows: superior court, district court, magistrate's court.

(b) When an attorney learns of a scheduling conflict between matters in the same priority category, the attorney shall promptly give written notice to opposing

counsel, the clerk of all courts and the appropriate judges in all cases, stating therein the circumstances relevant to resolution of the conflict under these guidelines. When the attorney learns of the conflict before the date on which the matters are scheduled to be heard, the appropriate judges are Senior Resident Superior Court Judges for matters pending in the Superior Court Division and Chief District Court Judges for matters pending in the District Court Division; otherwise the appropriate judges are the judges presiding over those matters. The appropriate judges should promptly confer, resolve the conflict, and notify counsel of the resolution.

(c) In resolving scheduling conflicts between court proceedings in the same priority category, the presiding judges should give consideration to the following:

- the comparative age of the cases;
- the order in which the trial dates were set by published calendar, order or notice;
- the complexity of the cases;
- the estimated trial time;
- the number of attorneys and parties involved;
- whether the trial involves a jury;
- the difficulty or ease of rescheduling;
- the availability of witnesses, especially a child witness, an expert witness or a witness who must travel a long distance;
- whether the trial in one of the cases had already started when the other was scheduled to begin.

(d) When settlement proceedings have been ordered in superior or district court cases, only trials, hearings upon dispositive motions, and hearings upon motions scheduled for counties with less than one court session per month shall have precedence over settlement proceedings.

(e) When a mediator, other neutral, or attorney learns of a scheduling conflict between a court proceeding and a settlement proceeding, the mediator, other neutral, unrepresented parties or attorneys shall **promptly** give written notice to the appropriate judges and request them to resolve the conflict; stating therein the circumstances relevant to a determination under (d) above.

(f) Nothing in these guidelines is intended to prevent courts from voluntarily yielding a favorable scheduling position, and judges of all courts are urged to communicate with each other in an effort to lessen the impact of conflicts and continuances on all courts.

History Note.

356 N.C. 703; 358 N.C. 746.

Rule 11. Examination of Witnesses

When several counsel are employed by the same party, the examination or cross-examination of each witness for such party shall be conducted by one counsel, but the counsel may change with each successive witness or, with leave of the court, in a prolonged examination of a single witness.

History Note.

276 N.C. 735.

Rule 12. Courtroom Decorum

Except for some unusual reason connected with the business of the court, attorneys will not be sent for when their cases are called in their regular order.

Counsel are at all times to conduct themselves with dignity and propriety. All statements and communications to the court other than objections and exceptions shall be clearly and audibly made from a standing position behind the counsel table. Counsel shall not approach the bench except upon the permission or request of the court.

The examination of witnesses and jurors shall be conducted from a sitting position behind the counsel table except as otherwise permitted by the court (see *S. vs. Bass*, 5 N.C. App. 429, 431 (1969)). Counsel shall not approach the witness except for the purpose of presenting, inquiring about, or examining the witness with respect to an exhibit, document, or diagram.

Any directions or instructions to the court reporter are to be made in open court by the presiding judge only, and not by an attorney.

Business attire shall be appropriate dress for counsel while in the courtroom.

All personalities between counsel should be avoided. The personal history or peculiarities of counsel on the opposing side should not be alluded to. Colloquies between counsel should be avoided.

Adverse witnesses and suitors should be treated with fairness and due consideration. Abusive language or offensive personal references are prohibited.

The conduct of the lawyers before the court and with other lawyers should be characterized by candor and fairness. Counsel shall not knowingly misinterpret the contents of a paper, the testimony of a witness, the language or argument of opposite counsel or the language of a decision or other authority; nor shall he offer evidence which he knows to be inadmissible. In an argument addressed to the court, remarks or statements should not be interjected to influence the jury or spectators. (See Rule 22, Canons of Ethics and Rules of Professional Conduct, N.C. State Bar, G.S. 4A p. 273.)

Suggestions of counsel looking to the comfort or convenience of jurors should be made to the court out of the jury's hearing. Before, and during trial, a lawyer should attempt to avoid communicating with jurors, even as to matters foreign to the cause.

Counsel should yield gracefully to rulings of the court and avoid detrimental remarks both in court and out. He should at all times promote respect for the court. (See Rule 1, Canons of Ethics and Rules of Professional Conduct, N.C. State Bar, G.S. 4A p. 269.)

History Note.

276 N.C. 735.

Editor's Note.

In the order adopting Rule 12, 276 N.C. 735, the reference to *State v. Bass* is set off by brackets. In this codification, those brackets have been replaced by parentheses so that the reference is not mistakenly interpreted as an alteration by the editor.

References in the General Rules of Practice to statutes, other rule sets, and caselaw have not been updated in this codification.

Rule 13. Presence of Counsel During Jury Deliberation

The right to be present during the trial of civil cases shall be deemed to be waived by a party or his counsel by voluntary absence from the courtroom at a time when it is known that proceedings are being conducted, or are about to be conducted. In such event the proceedings, including the giving of additional instructions to the jury after they have once retired, or receiving the verdict, may go forward without waiting for the arrival or return of counsel or a party.

After the jury has retired to deliberate upon a verdict in a criminal case, at least one attorney representing the defendant shall remain in the immediate area of the courtroom so as to be available at all times during the deliberation of the jury and when the verdict is received.

History Note.

276 N.C. 735.

Rule 14. Custody and Disposition of Evidence at Trial

Once any item of evidence has been introduced, the clerk (not the court reporter) is the official custodian thereof and is responsible for its safekeeping and availability for use as needed at all adjourned sessions of the court and for appeal.

After being marked for identification, all exhibits offered or admitted in evidence in any cause shall be placed in the custody of the clerk, unless otherwise ordered by the court.

Rule 26. Secure-Leave Periods for Attorneys

(a) **Definition; Entitlement.** A “secure-leave period” is one complete calendar week that is designated by an attorney during which the superior courts and the district courts may not hold a proceeding in any case in which that attorney is an attorney of record. An attorney is entitled to enjoy a secure-leave period that has been designated according to this rule.

(b) **Allowance.**

- (1) Within a calendar year, an attorney may enjoy three different secure-leave periods for any purpose. A secure-leave period that spans across calendar years counts against the attorney’s allowance for the first calendar year.
- (2) Within the twenty-four weeks after the birth or adoption of an attorney’s child, that attorney may enjoy twelve additional secure-leave periods for the purpose of caring for the child.

(c) **Form of Designation.** An attorney must designate his or her secure-leave periods in writing.

(d) **Content of Designation.** An attorney’s designation of a secure-leave period must contain the following information:

- (1) the attorney’s name, address, e-mail, telephone number, and state bar number;
- (2) the date of the Sunday on which the secure-leave period is to begin and the date of the Saturday on which it is to end;
- (3) the allowance that the secure-leave period will count against, with reference to either subsection (b)(1) or (b)(2) of this rule;
- (4) the dates of any previously designated secure-leave periods that count against that allowance;
- (5) a statement that the secure-leave period is not being designated for the purpose of interfering with the timely disposition of any proceeding;
- (6) a statement that the attorney has taken adequate measures to protect the interests of the attorney’s clients during the secure-leave period; and
- (7) the attorney’s signature and the date on which the attorney submits the designation.

(e) **Where to Submit Designation.**

- (1) **In Criminal Actions.** The attorney must submit his or her designation of a secure-leave period to the office of the district

attorney for each prosecutorial district in which the attorney's criminal actions are pending.

- (2) **In Civil Actions.** The attorney must submit his or her designation of a secure-leave period to the office of the senior resident superior court judge for each superior court district and to the office of the chief district court judge for each district court district in which the attorney's civil actions are pending.
- (3) **In Special Proceedings and Estate Proceedings.** The attorney must submit his or her designation of a secure-leave period to the office of the clerk of the superior court of the county in which the attorney's special proceedings or estate proceedings are pending.
- (4) **In Juvenile Proceedings.** The attorney must submit his or her designation of a secure-leave period to the juvenile case calendaring clerk in the office of the clerk of the superior court of the county in which the attorney's juvenile proceedings are pending.

(f) **When to Submit Designation.** An attorney must submit his or her designation of a secure-leave period:

- (1) at least ninety days before the secure-leave period begins; and
- (2) before a proceeding in any of the attorney's cases is scheduled for a time that conflicts with the secure-leave period.

But because of the uncertainty of a child's birth or adoption date, the superior court or district court scheduling authority must make reasonable exception to these requirements so that an attorney may enjoy leave with the child.

(g) **Depositions.** A party may not notice a deposition for a time that conflicts with a secure-leave period that another party's attorney has designated according to this rule.

(h) **Other Leave.** Nothing in this rule limits the inherent power of the superior courts or the district courts to allow an attorney to enjoy leave that has not been designated according to this rule.

History Note.

350 N.C. 861; 372 N.C. 896; 374 N.C. 943.