

STATE OF NORTH CAROLINA **FILED** IN THE GENERAL COURT OF JUSTICE **FILED**

COUNTY OF BURKE NOV 22 2022 A 9:40
SUPERIOR COURT DIVISION
22-R-325 CALDWELL COUNTY O.S.C.

IN THE MATTER OF THE ADMINISTRATION OF
CIVIL CASES IN BURKE COUNTY SUPERIOR COURT

BY _____

STATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE

COUNTY OF CALDWELL SUPERIOR COURT DIVISION
22-R-555

IN THE MATTER OF THE ADMINISTRATION OF
CIVIL CASES IN CALDWELL COUNTY SUPERIOR COURT

ORDER ON CONTINUANCES IN CIVIL CASES

This matter came on before Robert C. Ervin, Senior Resident Superior Court Judge, in the exercise of the Court's administrative responsibilities as Senior Resident Superior Court Judge in response to a request from Andrew T. Heath, Director of the Administrative Office of the Courts, dated July 22, 2022.

GENERAL PRINCIPLES

Article I, Section 18 of the Constitution of North Carolina provides in pertinent part that "right and justice shall be administered without favor, denial or delay."

"One of the immortal provisions of Magna Carta is that justice shall neither be delayed nor denied." *Piedmont Wagon Co. v. Bostic*, 118 N. C. 758, 24 S. E. 525 (1896).

"A delay of justice is often a denial of justice." *Piedmont Wagon Co. v. Bostic*, 118 N. C. 758, 24 S. E. 525.

The law's delay is the lament of society. *State v. Rogers*, 352 N. C. 119, 126, 529 S. E. 2d 671 (2005); *State v. Gibson*, 229 N. C. 497, 50 S. E. 2d 520 (1948).

Court rules “shall at all times be construed and enforced in such manner as to avoid technical delay and to permit just and prompt consideration and determination of all business before them.” Rule 1 of the General Rules of Practice for the Superior and District Courts.

According to Director Heath, the National Center for State Courts has opined that “the most effective method for making justice swifter is to adopt and implement a written continuance policy in each district.”

CIVIL CASES

Rule 40 of the North Carolina Rules of Civil Procedure “provides ultimately for judicial control of the calendar.” Comment to Rule 40.

Rule 2(a) of the General Rules of Practice for the Superior and District Courts provides that “(t)he Senior Resident Judge...in each Judicial District shall be responsible for the calendaring of all civil cases and motions for trial or hearing in their respective jurisdictions.”

Rule 40(b) of the North Carolina Rules of Procedure provides that “(n)o continuance shall be granted except upon application to the court.”

“A motion to continue is addressed to the sound discretion of the trial judge.” *Shankle v. Shankle*, 289 N. C. 473, 483, 223 S. E. 2d 380 (1976).

A trial judge “should determine it (the motion) as the rights of the parties require under the circumstances.” *Id.*

Continuances are not favored. *Shankle*, 289 N. C. at 482.

A party seeking a continuance has the burden of showing sufficient grounds for it. *Id.*

Rule 40(b) further provides that “(a) continuance may be granted only for good cause shown and upon such terms and conditions as justice may require.”

“Considering the myriad of circumstances which might be urged as grounds for a continuance, the rule wisely makes no attempt to enumerate them.” *Shankle*, at 482-483.

“The chief consideration to be weighed in passing on the application is whether the grant or denial of a continuance will be in furtherance of substantial justice.” *Id.* at 483.

PRACTICES FOR CONTINUANCES IN CIVIL CASES.

Three Civil Administrative Court calendars are prepared each year in each county. These calendars are normally scheduled during the months of April, August and December.

Cases placed on these calendars are ordinarily set for trial during the next three or four regular sessions of Civil Superior Court in each county.

Every pending case that is more than 150 days old is placed on the Administrative Court calendar to have a trial date set with certain exceptions.

Cases that have been assigned to the Business Court, have been designated as Rule 2.1 cases or medical malpractice cases which are assigned to a designated judge, are on appeal to North Carolina's appellate courts or have been stayed for arbitration are not placed on the Administrative Court calendar.

At times there are pending cases which are more than 150 days old which do not involve trials. Typically, these cases are appeals from administrative determinations. These cases are scheduled for motion hearings and not trials by the Court Manager.

The Court Manager advises the parties or their attorneys of the cases set on the Administrative Court calendar by email or regular mail in the event the court does not have an email address for the party or attorney. The Administrative Calendars are also posted on-line. Attorneys or unrepresented parties then communicate their preferred trial dates to the Court Manager prior to the date set for the Administrative calendar.

The Court Manager has the discretion to continue or "carry over" cases to the next Administrative Court calendar. The Court Manager frequently confers with the Senior Resident Judge when considering motions or requests to continue or "carry over" a case to the next Administrative Court calendar.

Once a case has been assigned a trial date after the completion of the Administrative calendar, motions or requests for continuance are determined by the Senior Resident Superior Court Judge in accordance with the standards set out above.


Motions or requests for a continuance may also be made during the term of court to the Superior Court Judge who is presiding over the particular session of court during which the case is scheduled for trial. The presiding judge determines such a motion or request in accordance with the standards set out above.

If a case is continued by either the Senior Resident Superior Court Judge prior to the beginning of the term of court or by the presiding Superior Court Judge during the term of court, then the case is again placed on the Administrative calendar for the setting of a new trial date unless the Court Manager and the parties or their attorneys have already agreed to a new trial date.

If a case is not reached during a particular trial session, the case is then placed back on the Administrative calendar for another trial date unless the Court Manager and the attorneys or parties have already agreed to a trial date.

This order is hereby entered and effective as of the date of the execution of this order.

This the 3rd day of November 2022.



Robert C. Ervin

Senior Resident Superior Court Judge