

NORTH CAROLINA
ROBESON COUNTY

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION

ADMINISTRATIVE ORDER

CONTINUANCE POLICY
DISTRICT COURT
DISTRICT 16B

No. 08-15-22

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RULE 1. MOTIONS FOR CONTINUANCE-CRIMINAL CASES

Criminal 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, or other grounds provided by law. Requests for continuances not addressed below that are made after 120 days from the first calendaring before a judge shall be granted only for extraordinary cause.

1.1 Appropriate Court Official: Rulings on any request for continuance made on the day of court for the session in which the case is calendared shall be the responsibility of the presiding trial judge of that court, subject to the delegations of authority specifically authorized in these rules.

- A) Before any motion to continue is granted, the appropriate court official shall determine whether the matter is one in which a written record concerning counsel needs to be made. If required, the appropriate court officials shall take such action as is necessary to resolve the issue of counsel and ensure that the record affirmatively reflects that either counsel has entered an unlimited appearance for the District Courts, court-appointed counsel has been waived, or application for court-appointed counsel has been made
- B) The District Attorney may develop a listing of minor traffic offenses and infractions which he agrees may be initially continued by the Clerk of Superior Court, or his designees. This specifically does NOT include Impaired Driving offenses or other matters in which a written record concerning counsel is required.
- C) For motions made **within** 120 days of the first setting and which are made on or before the day the case is calendared for trial, the Assistant District Attorney regularly assigned to the courtroom where the case is to be tried is the appropriate court official to whom the motion should be addressed, and the Assistant District Attorney is authorized to allow the motion for good cause satisfactory to the Assistant District Attorney without further intervention by the trial judge.

- D) For all motions made **after** 120 days from the first calendaring, the judge presiding in the courtroom to which the case has been assigned is the appropriate court official to whom the motion should be addressed.
- E) Requests for continuances in misdemeanor cases more than 120 days from service of the charging documentation the defendant and made **prior** to the day of court on which the case is calendared, shall be made to the judge assigned to preside at that term of court, if available. If said trial judge is not available or is not known at the time the request is made, the motion for continuance shall be made to the Chief District Court Judge or her designees.
- F) For any contested motion or for any motion to which the clerk or district attorney can not consent as authorized herein above, the motion must be directed to and heard by the presiding judge or the Chief District Court Judge if no judge is presiding at the time the motion needs to be heard. There shall be no ex-parte approaches to any judge for a continuance without written authorization by the opposing party.
- G) **Felony cases that are pending in District Court must be disposed of by plea to a lesser charge, indictment, probable cause hearing and transfer, dismissal, deferred prosecution, or by any other appropriate means within 180 days of the defendant's first appearance. Felony cases pending in District Court exceeding this time frame shall not be continued further without a finding of extraordinary cause by the presiding judge.**

1.2 Court Conflicts: The various levels of court should work together to move cases as expeditiously as possible. Age of case, subject matter, and priority of setting should be given as much primacy 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 among the district courts, juvenile cases **shall** take precedence over all other matters in all other district courts unless otherwise agreed among the presiding judges.

1.3 Documentation of Continuance: All orders for continuance shall be documented in or on the file, and shall include the name of the moving party, and when appropriate, the basis for the continuance. If the motion is heard by a judge, the judge may direct the entry of the appropriate notations and findings made by any officer of the court. For continuances permissible under these rules which do not require the intervention of the judge, it shall be the responsibility of the prosecutor to document by appropriate notations and understandable symbols that identify of the moving party and any objections to the continuance if not consented to.

- A) When the reason for or conditions of a continuance is that the defendant is to plead guilty, or the file is marked "last continuance," the Assistant District Attorney shall so note on the outside of the file and in a prominent manner. In such cases, the attorney representing the defendant, or the defendant shall, on the new trial date, and prior to any trial or motion in the case, bring this to the attention of the Assistant District Attorney.

1.4 Notification of Opposing Counsel/Unrepresented Parties/Witnesses

All requests for continuance shall be made as soon as a conflict is identified, and all impacted—opposing counsel, unrepresented parties, subpoenaed witnesses, or court staff charged with subpoenaing witness—shall be notified as soon as possible

1.5 Objections to Motion for Continuance

All parties should have an opportunity to be heard on a motion to continue.

1.6 Evaluations of Motions for Continuance

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

- A) the opportunity to exercise the right to effective assistance of counsel;
- B) the age of the case and seriousness of the charge;
- C) the incarceration status of the defendant;
- D) the effect on children and spouses if the issue is continued and not resolved;
- E) the impact of the continuance on the safety of the parties or any other persons;
- F) the status of the trial calendar for the session;
- G) the number and grounds for previous continuances;
- H) the due diligence of counsel in promptly making a motion for continuance as soon as practicable and notifying opposing counsel and witnesses;
- I) the period of delay caused by the continuance requested;
- J) the presence of witnesses and availability of witnesses for future sessions;
- K) whether the basis of the motion is the existence of a legitimate conflict with another court setting;
- L) for whom previous continuance(s) were granted;
- M) the availability of counsel;
- N) consideration of the financial consequences to the public, the parties and witnesses if the case is continued; and
- O) any other factor that promotes the fair administration of justice

1.7 Case Rescheduling

Upon granting a motion for continuance, the judge shall reschedule the case, taking into consideration the availability of counsel, defendant(s), witnesses, courtroom space, and other necessary resources.

1.8 Time Standards

All non-felony criminal, motor vehicle and other infraction cases should be disposed of within 120 days from the first appearance in District Court. Felony cases should be resolved or transferred from District Court within 180 days from the first appearance in District Court.

RULE 2 MOTIONS FOR CONTINUANCE- CIVIL

2.1 General Continuance Rules: To be considered timely made, a motion to continue a case which has been calendared must be filed in writing on the form AOC-CV-222, directed to the judge assigned to preside with a copy delivered to the District Court Case Manager; and must, absent good cause, be filed by 9:00 a.m. within two days of the beginning of the session at which the case is set. The Case Managers will maintain an updated calendar and record thereon the status of cases, including special circumstances which will enable other parties to determine which cases have been continued or settled. The procedure for obtaining a continuance depends upon the age of the case as follows:

2.1.1. Cases Pending under 120 days: Any matter which has been calendared with the consent of all parties may be continued by the consent of all parties if the case has been pending for 120 days or less, provided the consent to the continuance is in writing and delivered to the District Court Case Manager by 9:00 a.m. within two days of the beginning of the session at which the case is set.

2.1.2. Cases Pending between 120 and 180 days: Cases which have been pending more than 120 days, but less than 180 days may ordinarily be continued by consent; however, notice and an opportunity for District Court Case Manager to object to the continuance shall be given by 9:00 a.m. within two days of the beginning of the session at which the case is set. If the District Court Case Manager objects, then a conference shall be scheduled with the trial judge and the court will enter such order as is appropriate.

2.1.3. Cases Pending more than six months: Cases which have been pending for more than 180 days and which have been set by the District Court Case Manager may not be continued without the consent of the District Court Case Manager unless ordered by a judge. Requests for continuances shall be submitted in writing, and the District Court Case Managers shall inform counsel promptly whether the request has been granted or denied. If any party objects to the action of the Case Manager, a written request that the court review the action of the Case Manager must be promptly delivered to the judge who is scheduled to preside over the term. The request for a review of the Case Manager's action must state in detail the reason why the action should be modified.

RULE 3. MOTIONS FOR CONTINUANCE – DOMESTIC CASES

Domestic cases should be disposed 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 according to the guidelines set out in Rule 2 and below. Requests for continuances that will delay the resolution of the contested issues beyond the established time standards shall be granted only for extraordinary cause.

3.1 Appropriate Court Official: All applications for continuance shall be directed to the District Court Judge assigned to preside over the session of court for which the case is calendared with a copy delivered to the District Court Case Manager. If the trial judge is

not known at the time the request is made or is unavailable, the application shall be made to the Chief District Court Judge and the District Court Case Manager.

3.2 Court Conflicts: The various levels of court should work together to dispose of cases as expeditiously as possible consistent with the other goals of this order. Age of case, subject matter, priority of setting, fundamental fairness and common sense should be considered when resolving conflicts. Attorneys shall notify the court and opposing counsel of any other court conflict(s) as those become known and shall keep the court advised of the resolution of all conflicts. All judges should communicate with other judges to resolve such conflicts and shall make a reasonable effort to do so when requested by the attorney for either the plaintiff or defendant. In resolving conflicts, juvenile cases shall take precedence over all other matters in district court with the exception of jury trials.

3.3 Documentation of Continuance: All requests for continuance shall be by written motion; however, oral motions may be allowed when the reason for the continuance did not become known until immediately preceding the start of court. In cases in which a continuance motion is allowed the attorney for the moving party or the unrepresented party making motion shall draft the order of continuance and present it to the court forthwith, unless otherwise directed by the court. Such order shall contain the case caption, file number, date of the order and the reasons for the continuance. It shall also indicate any objections to the motion which were made.

3.4 Notification of Opposing Counsel/ Unrepresented Parties/Witnesses; All parties must be notified of a motion to continue. A copy of the motion to continue must be distributed to all counsel of record and/or unrepresented parties prior to ruling on the motion. In addition to the service requirements set out in the statute, distribution of the motion must be made by the quickest means feasible, including facsimile transmission, electronic mail, or hand delivery.

3.5 Objections to Motion for Continuance: All parties should have an opportunity to be heard on a motion to continue. When a motion to continue is made more than seven (7) 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 and the presiding District Court Judge or their designee. Objections not raised in writing within this time are deemed waived. When a motion to continue is made within seven (7) days of the trial term (other than an oral motion as provided in Rule 3.3 above), the moving party shall include in the written motion a statement that the opposing counsel or party has been contacted and a short statement on opposing party's position on the motion (including whether the opposing counsel or party consents or objects, and whether or not they desire to be heard on the motion). If the moving party is unable to contact the opposing counsel or unrepresented parties, the motion shall state what efforts were made and why contact was not possible.

3.6 Evaluation of Motions for Continuance: Factors to be considered by the appropriate court official when deciding whether to grant or deny a motion for continuance should include:

- A) the effect on children and spouses if the issue is continued and not resolved;
- B) whether there is in effect a temporary order dealing with the issue that is the subject of the continuance request;
- C) the impact of a continuance on the safety of the parties or any other persons;
- D) whether the issue has been identified statutorily as an issue which should be addressed expeditiously, i.e., child support, post-separation support, etc.;
- E) the age of the case or motion;
- F) the status of the trial calendar for the session;
- G) the number of and grounds for previous continuances;
- H) for whom previous continuances were granted;
- I) the extent to which counsel had input into the scheduling of the trial date;
- J) the due diligence of counsel in promptly making a motion for continuance as soon as practical;
- K) whether the reason for continuance is a short-lived event which would resolve prior to the scheduled trial date;
- L) whether the basis of the motion is the existence of a legitimate conflict with another court setting;
- M) the period of delay caused by the continuance requested;
- N) the position of opposing counsel or unrepresented parties;
- O) whether the parties themselves consent to the continuance;
- P) present or future inconvenience or unavailability of witnesses/parties;
- Q) consideration of the financial consequences to the public, the parties, the attorneys, and the witnesses if the case is continued; and
- R) any other factor that promotes the fair administration of justice.

3.7 Case Rescheduling: Upon granting a motion for continuance, the judge in conjunction with the District Court Manager should reschedule the trial or pre-trial of the contested issues to a specific date after receiving scheduling input from all parties.

3.8 Time Standards: All domestic cases should be disposed of within 18 months of filing, with 90% disposed of within six months. Issues of child support should 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. Equitable Distribution cases should be managed in such a way that, unless there are extenuating circumstances, 90% should be completed within 270 days of filing.

RULE 4. MOTIONS FOR CONTINUANCE – JUVENILE CASES

For an abused or neglected child, the courts are the source of protection and the source of services. For a delinquent child, the courts provide the opportunity for rehabilitation and for the protection of the community. The goal of a case management plan for juvenile court is to put the courts in the best position to ensure the safety of children, to give them

the best possible chance of living in stable, permanent families and to protect the community. Continuances should be allowed only when it serves the child's best interest or is necessary to protect the community. Participants must come to court prepared to meet each statutory obligation and other requirements necessary for resolution of these matters. Juvenile cases, including motions for review in neglect and abuse matters, should be disposed at the earliest opportunity, including the first setting hearing. Requests for continuances that are made after the first setting for hearing on the merits of the case shall only be granted for extraordinary cause.

4.1 Appropriate Court Official: All applications for continuance shall be made to the District Court Judge presiding over the session of court for which the case is calendared. If the trial judge is not known at the time the request is made, or is unavailable, the application should be addressed to the Chief District Court Judge, or her designee.

4.2 Court Conflicts The various levels of court should work together to dispose of cases as expeditiously as possible consistent with the other goals of this order. Age of case, subject matter, priority of setting, fundamental fairness and common sense should be considered when resolving conflicts. Attorneys shall notify the court and opposing counsel of any other court conflict(s) as those become known and shall keep the court advised of the resolution of all conflicts. All judges should communicate with other judges to resolve such conflicts and shall make a reasonable effort to do so when requested by the attorney for either the plaintiff or defendant. In resolving conflicts, juvenile cases shall take precedence over all other matters in district court with the exception of jury trials.

4.3 Documentation of Continuance: All orders for continuance shall be documented in writing, and shall include the name of the moving party, any objections to the continuance, and the basis for the continuance.

4.4 Notification of Opposing Counsel/Unrepresented Parties/Witnesses: All applications for continuance shall be made as soon as a conflict is identified, and all impacted – opposing counsel, unrepresented parties, subpoenaed witnesses, or court staff charged with subpoenaing witnesses – shall be notified as soon as possible by the moving party.

4.5 Objections to Motion for Continuance: All parties should have an opportunity to be heard on a motion to continue.

4.6 Evaluation of Motions for Continuance: Factors to be considered by the appropriate court official when deciding whether to grant or deny a motion for continuance should include:

- A) the best interest of the child;
- B) the opportunity to exercise the right to effective assistance of counsel;
- C) the age of the case and seriousness of the charge;
- D) the incarceration status of the juvenile;

- E) the effect on children and/or other caretakers if the issue is continued and not resolved;
- F) the impact of a continuance on the safety of the parties or any other persons;
- G) the status of the trial calendar for the session;
- H) the number, moving party, and grounds for previous continuances;
- I) the due diligence of counsel or unrepresented parties in promptly making a motion for continuance as soon as practicable and notifying opposing counsel and witnesses;
- J) the due diligence of parties in promptly bringing to their attention the basis for the continuance motion;
- H) the period of delay caused by the continuance requested;
- I) the presence of witnesses, including the juvenile;
- J) the availability of witnesses for the present session, or for a future session;
- K) whether the basis of the motion is the existence of a legitimate conflict with another court setting;
- L) the availability of counsel; consideration of the financial consequences to the public, the parties, the attorneys, and the witnesses if the case is continued; and
- M) any other factors that promotes the fair administration of justice.

4.7 Case Rescheduling: Upon granting a motion for continuance, the judge shall reschedule the case for a specified date, taking into consideration the availability of counsel, parties and witnesses and volunteer guardian ad litem.

4.8 Time Standards: All undisciplined cases should be disposed within 30 days of service of the petition. All delinquency cases involving misdemeanor offenses should be disposed within 90 days of service of the petition and those involving felony offenses should be disposed within 120 days of service of the petition. All adjudication of neglect and abuse cases should be within 60 days of service of the petition. All termination of parental rights (TPRs) should be disposed within 120 days after service of petition. These time standards are subject to all other statutory time requirements for the scheduling of hearings for review of secure and non-secure custody orders.

RULE 5 APPLICATION, INTERPRETATION AND RESOLUTION OF CONFLICTS WITH LAWS AND OTHER RULES

The Supreme Court has ordered that each district have a continuance policy, and there is a need to have a uniform continuance policy in the District Courts of Judicial District 16B. Common sense and logic, as well as fairness, should be employed in the application and interpretation of these rules and policies.

Any of these rules in conflict with the Constitution of the United States or the Constitution of the State of North Carolina, the North Carolina General Statutes, or Rules of the North Carolina Supreme Court shall be resolved in favor of such Constitution, General Statute or Supreme Court Rule.

These rules and policies supersede any previously issued local rules and policies addressing the same subject matter. These rules and policies are effective August 15,

2022, and shall apply to all motions for continuance made or heard on and after that date, insofar as practical, to ALL pending cases

Entered this August 15, 2022.

/s/ Angelica Chavis McIntyre

**Angelica Chavis McIntyre
Chief District Court Judge**