

**Second Judicial District  
Superior Court Continuance Policy  
Effective December 1, 2022**

**RULE 1: MOTIONS FOR CONTINUANCE – CIVIL CASES**

**1.1 Appropriate Court Official**

Prior to the opening of court for the session in which the case is calendared, all applications for continuances shall be made to the Senior Resident Superior Court Judge, or his/her designee. Following the opening of court for the session in which the case is calendared, and application for continuance shall be made to the presiding judge of the court in which the case is calendared.

2022 OCT 28  
FILED  
CJ

**1.2 Form of Motion**

All applications for continuance shall be by written notice made on state form AOC-CV-221, or by written request to the Senior Resident Superior Court Judge.

**1.3 Notification of Opposing Counsel/Unrepresented Parties**

A copy of the completed form AOC-CV-221, or written request, must be distributed to all counsel of record and/or unrepresented parties prior to presentation of the motion to the appropriate judicial official. Distribution of the motion may be by email, U.S. mail, facsimile transmission, hand delivery, or distribution by means of attorney distribution boxes maintained in the courthouse facility.

**1.4 Objections to Motion for Continuance**

Opposing counsel and/or unrepresented parties shall have a period of three (3) working days following completion of distribution to communicate, by any means, objections to the motion for continuance to the moving party and the office of

the Senior Resident Superior Court Judge or the office of his/her designee. Objections not raised within this time period are deemed waived.

### **1.5 Evaluation of Motions for Continuance**

Continuance requests are presumptively disfavored. However, when compelling reason for continuance are presented which would affect the fundamental fairness of the trial process or when a continuance clearly is in the interest of justice, a continuance may be granted in the exercise of judicial discretion to further the best interest of the fair administration of justice.

In addition to other factors, the appropriate judicial official shall consider the following when deciding whether to grant or deny a motion for continuance:

- The age of the case; and
- The status of the trial calendar for the week; and
- The order in which the case appears on the trial calendar, including whether the case is peremptorily scheduled; and
- The number of previous continuances; and
- The extent to which counsel had input into the scheduling of the trial date; and
- The due diligence of counsel in promptly filing a motion for continuance as soon as practicable; and
- Whether the reason for continuance is a short-lived event which could resolve prior to the scheduled trial date; and
- The length of the continuance requested, if applicable; and
- The position of the opposing counsel; and
- Whether the parties themselves consent to the continuance; and

- Present or future inconvenience or unavailability of witnesses/parties; and
- Any other matter that promotes the ends of justice.

Reasons that shall not be considered valid bases for allowing a continuance include first time scheduling of the case for trial, potential conflicting scheduling of other trials in other courts and whether counsel of record has received payment.

When a case is set preempt orally for trial, either at the request of the parties or upon the courts own motion, a continuance motion should not be allowed, unless up on grounds of some compelling urgent necessity or extreme hardship arising subsequently to the time at which the trial date was fixed. Only the senior resident Superior Court judge may continue a preempt orally set case.

### **1.6 Case Rescheduling**

Prior to granting a motion for continuance, the appropriate judicial official shall refer the case to the Senior Resident Superior Court judge or his or her designee, who will reschedule the trial of the case after receiving scheduling input from all council.

## **RULE 2: MOTIONS FOR CONTINUANCE-CRIMINAL CASES**

### **2.1 Appropriate Court Official**

Prior to the opening of court for the session in which the case is calendared, all applications for continuance shall be made to the senior resident Superior Court judge or to any presiding judge of the court in which the case is calendared. Following the opening of court for the session in which the cases calendared comma any application for continuance shall be made to the presiding judge of the court in which the case is calendared.

## **2.2 Form of Motion**

All applications for continuance shall be written motion made on state form, AOC-CR-410.

## **2.3 Notification of Opposing Counsel/Unrepresented Parties**

A copy of the completed form AOC-CR-410 must be distributed to all counsel of record and/or unrepresented [parties prior to presentation of the motion to the appropriate judicial official. Distribution of the motion may be by email, U.S. mail, facsimile transmission, hand delivery or distribution boxes maintained in the courthouse facility

If the motion is filed by defense counsel, the motion must be presented to the District Attorney prior to presentation to the appropriate judicial official.

## **2.4 Objections to Motion for Continuance**

If the District Attorney consents to the continuance and ush consent is indicated by signature of the District Attorney on the continuance form, the continuance may be allowed. If no District Attorney's signature appears on the continuance form, the District Attorney's opposition to the motion is presumed.

## **2.5 Evaluation of Motions for Continuance**

When compelling reasons for continuance are presented which would affect the fundamental fairness of the trial process or win a continuance clearly is in the interest of justice, a continuance may be granted in the exercise of judicial discretion to further the best interest of the fair administration of justice.

In addition to other factors, the appropriate judicial official shall consider the following when deciding to grant or deny a motion for continuance:

- The age of the case; and
- The pretrial detention status of the defendant; and
- The status of the trial calendar for the week; and
- The order in which the case is designated for trial, including whether the case has a priority designation; and
- The number of previous continuances; and
- The number of times the cases have been designated for trial and not reached; and
- The extent to which counsel had input into the scheduling of the trial date; and
- The due diligence of counsel in promptly filing a motion for continuance as soon as practicable; and
- Whether the reason for continuance is a short-lived event which could resolve prior to the scheduled trial date; and
- The length of the continuance requested, if applicable; and
- The position of the opposing counsel; and
- Whether the motion has been considered by another judge or the Senior Resident on the same grounds; and
- Whether the parties themselves consent to the continuance; and
- Present or future inconvenience or unavailability of witnesses/parties; and
- Any other matter that promotes the ends of justice.

Reasons that shall not be considered valid basis for allowing a continuance motion include first time scheduling of the case

for trial, potential conflicting scheduling of other trials in other courts and whether counsel of record has received payment.

**2.6 General Rules of Practice for the Superior and District Courts**

(Supplemental to the Rules of Civil Procedure)

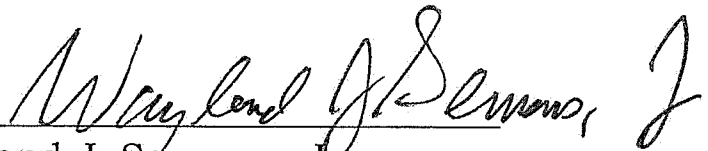
Parties shall comply with Rule 3 of the General Rules of Practice for the Superior and District Courts.

**RULE 3: CONTINUANCES**

When an attorney has conflicting engagements in different courts, priority shall be as follows: Appellate Courts, Superior Courts, District Courts, Magistrate's Court.

At criminal sessions, cases in which the defendant is in jail shall have absolute priority.

This policy is hereby adopted this the 28<sup>th</sup> day of October, 2022 to be effective December 1, 2022.



Wayland J. Sermons, Jr.  
Senior Resident Superior Court Judge  
Second Judicial District