

NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

BERTIE COUNTY
HALIFAX COUNTY
HERTFORD COUNTY
NORTHAMPTON COUNTY

DISTRICT COURT DIVISION

23AO09

ADMINISTRATIVE ORDER – Continuance Policy for Sixth Judicial District

Rule 1: Motions for Continuance -- Criminal Cases

Criminal 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.

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. The District Attorney will have the authority to continue cases prior to the third (3rd) setting. Only the Presiding District Court Judge shall have the authority to grant requests for continuances on the 3rd setting or beyond on victim-related cases, DWI, and felony cases for extraordinary cause. The officers and victims shall be in court on the 3rd setting or beyond.

1.2 Court Conflicts

The various levels of court should work together to try 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 Presiding Judge and opposing counsel in writing (by fax or email) 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 juvenile cases shall take precedence over all other matters. Defense Attorneys shall send this written communication with a copy to the Judge, at least 72 hours before the court date. The Presiding Judge will direct the parties as to how to resolve the conflict.

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, any objections to the continuance, and the basis for the continuance.

1.4 Notification of Opposing Counsel/Unrepresented Parties/Witnesses

All motions 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. Defense Attorneys shall send (by fax or email) these written motions to continue with a copy to the Judge, at least 72 hours before the court date or as soon as reasonably practical.

1.5 Objections to Motion for Continuance

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

1.6 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:

- the opportunity to exercise the right to effective assistance of counsel;
- the age of the case and seriousness of the charge;
- the incarceration status of the defendant;
- the effect on children and spouses if the issue is continued and not resolved;
- the impact of a continuance on the safety of the parties or any other persons;
- the number, moving party, and grounds for previous continuances;
- the due diligence of counsel in promptly making a motion for continuance as soon as practicable and notifying opposing counsel and witnesses;
- the period of delay caused by the continuance requested;
- the presence of witnesses, including the defendant;
- the availability of witnesses for the present session, or for a future session;
- whether the basis of the motion is the existence of a legitimate conflict with another court setting;
- the availability of counsel;
- consideration of the financial consequences to the public, the parties, the attorneys, or witnesses if the case is continued: and
- any other factor that promotes the fair administration of justice.

1.7 Case Rescheduling

Upon granting a motion for continuance, the judge should reschedule the case, taking into consideration the availability of counsel, defendant, and witnesses.

1.8 Time Standards

All criminal and motor vehicle cases should be disposed within 120 days from the first appearance in District Court.

[Commentary: Meeting this deadline may not be possible in instances in which a defendant fails to appear and is "called and failed." In these matters, it is the responsibility

of the district attorney to determine when it is appropriate to enter a dismissal with leave in these matters.]

Rule 2: Motions for Continuance -- General Civil and Magistrate Appeals

Civil 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. Requests for continuances that will delay the resolution of the case beyond the established time standards shall only be granted for extraordinary cause.

2.1 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, or his or her designee. If the trial judge is not known at the time the request is made, the application should be addressed to the Chief District Court Judge, or his or her designee.

2.2 Court Conflicts

The various levels of court should work together to try 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 juvenile cases shall take precedence over all matters.

[Commentary: All attorneys are reminded of the requirements of Rule 2(e) of the General Rules of Practice regarding their appearance, or the appearance of a partner, associate, or another attorney familiar with the case, if there is another court that requires his or her presence in court simultaneously.]

Attorneys shall notify the presiding Judge know where you will be as soon as you realize you cannot be in court by fax, email, text, or any form of written communication as soon as reasonably practical but by 9:00 a.m. the morning of the court date.

2.3 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.

[Commentary: This proviso for an oral motion is only for emergency situations, such as severe family illness or death of a party, one of the attorneys, or critical witnesses; and the absence of that person will make it impossible for the trial or hearing to proceed.]

2.4 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.

[Commentary: The burden is on the moving party to advise the court and opposing counsel of any motion for a continuance. The goal of this provision is to avoid any continuance surprises and to provide notice as expeditiously as possible to the court and to the opposing party and/or their counsel.]

2.5 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) working 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 his/her designee. Objections not raised in writing within this time period are deemed waived.

When a motion to continue is made within seven (7) working days of the trial term (other than an oral motion as provided in Rule 2.3, 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 party or counsel consents or objects, and whether or not he or she desires 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.

[Commentary: The writing requirement of this rule may be in the form of a letter.]

2.6 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:

- the effect on children and spouses if the issue is continued and not resolved;
- the impact of a continuance on the safety of the parties or any other person;
- the age of the case;
- the status of the trial calendar for the session;
- the order in which the case appears on the trial calendar, including whether the case is preemptorily scheduled;

the number of previous continuances;
the extent to which counsel had input into the scheduling of the trial date;
the due diligence of counsel in promptly filing a motion for continuance as soon as practicable;
whether the reason for continuance is a short-lived event which would resolve prior to the scheduled trial date;
whether the basis of the motion is the existence of a legitimate conflict with another court setting;
the period of delay caused by the continuance requested;
the position of opposing counsel of unrepresented parties; for a future session;
whether the parties themselves consent to the continuance;
present or future inconvenience or unavailability of witnesses/parties;
consideration of the financial consequences to the public, the parties, the attorneys, or witnesses if the case is continued;
compliance with any law relating to the scheduling and trial of civil cases (such as, summary ejectment appeals); and
any other factor that promotes the fair administration of justice.

2.7 Case Rescheduling

Upon granting a motion for continuance, the judge should reschedule the case to a specific trial date after receiving input from all parties.

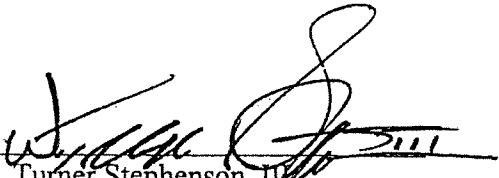
2.8 Time Standards

All general civil and magistrate appeal cases should be disposed within 24 months of filing, with 90 percent of all cases disposed within 12 months of filing.

Rule 3 Exceptions

Family Court, Juvenile Abuse/Neglect/Dependency Court, and Juvenile Delinquent Court are governed by the Family Court Rules of Court.

This District Court Continuance Policy of the Sixth Judicial District as outlined above shall be in effect January 1, 2023.


W. Turner Stephenson, III
Chief District Court Judge
Sixth Judicial District