

# **RULES FOR GOVERNING CASES PENDING IN THE SUPERIOR AND DISTRICT COURT**

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STATE OF NORTH CAROLINA  
SECOND JUDICIAL DISTRICT

IN THE GENERAL COURT OF JUSTICE

**IN RE:**

**CONTINUANCE POLICIES IN  
CIVIL AND CRIMINAL CASES PENDING  
IN THE SUPERIOR COURT DIVISION  
OF THE SECOND JUDICIAL DISTRICT**

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**ORDER**

Pursuant to Rule 40, North Carolina Rules of Civil Procedure, Rule 3, General Rules of Practice for the Superior and District Courts, the Mandate of the supreme Court of North Carolina and the Superior Court's Inherent Power, the attached Rules governing continuances of cases pending in the Superior Courts of Beaufort, Hyde, Martin, Washington and Tyrrell Counties are hereby adopted effective July 1, 1998.

Copies of this Order and a copy of the Rules promulgated by this Order shall remain on file in the offices of the Clerks of Superior Court of the Second Judicial District. When an attorney takes his oath and is admitted to practice, the Clerk where the oath is administered shall deliver to such attorney a copy of this Order and the Rules. When the Clerk learns that an attorney has opened an office or has changed his residence to his County, the Clerk shall deliver to such attorney a copy of this Order and the Rules.

This the 27<sup>th</sup> day of March 1998.

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William C. Griffin, Jr.  
Resident Superior Court Judge

# **RULES FOR GOVERNING CASES PENDING IN THE SUPERIOR AND DISTRICT COURT**

## **Rule 1: Motions for Continuance-Civil Cases**

### **1.1 Appropriate Judicial 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 of the Judicial District in which the case is filed, or his/her designee. Following the opening of court for the session in which the case is calendared, any application for continuance shall be made to the presiding judge of the court in which the case is calendared.

### **1.2 Form of Motion**

All applications for continuance shall be by written motion made on AOC Form-Motion for Continuance (Civil Cases).

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

A copy of completed AOC Form – Motion for Continuance (Civil Cases) 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 US 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 and means, objections to the motion for continuance to the moving party and the office of the Senior Resident Superior Court Judge of the office of his/her designee. Objections not raised within this period are deemed waived.

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

**Continuance requests are presumptively disfavored.** However, when compelling reasons 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;
- the status of the trial calendar for the week;
- the order in which the case appears on the trial calendar, including whether the case is peremptorily 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 could resolve prior to the scheduled trial date;
- the length of the continuance requested, if applicable;
- the position of opposing counsel
- whether the parties themselves consent to the continuance;
- present or future inconvenience or unavailability of witness/parties, and
- any other matter that promotes the ends of justice.

**Reasons that shall not be considered valid bases 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.**

## **1.6 Case Rescheduling**

Prior to granting a motion for continuance, the appropriate judicial official, in consultation with the office of the Senior Resident Superior Court Judge or his/her designee, should reschedule the trial of the case after receiving scheduling input from all counsel.

## **1.7 Deadlines**

Discovery should be completed within 120 days of the date of the last responsive pleading. Within 30 days of the last responsive pleading, cases should be ordered to the appropriate dispute resolution process, and follow the deadlines set out in the Rules for the process. With the exception of medical malpractice cases, condemnation cases, and other exceptional cases, trial should occur within 180 days of the completion of discovery, or as soon thereafter as a session of court is available at which to hear the case.

## **Rule 2: Motions for Continuance-Criminal Cases**

### **2.1 Appropriate Judicial 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 of the judicial district in which the case is filed, or his/her designee. Following the opening of court for

the session in which the case is calendared, 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 by written motion made on AOC Form – Motion for Continuance (Criminal Cases).

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

A copy of completed AOC Form – Motion for Continuance (Criminal Cases) 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 US mail, facsimile transmission, hand delivery, or distribution by means of attorney 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**

The Senior Resident Superior Court Judge or his designee shall establish an appropriate method of obtaining information from all counsel concerning positions on the motion to continue.

**If the District Attorney consents to the continuance and such consent is indicated by signature of the District Attorney on the continuance form, the continuance is allowed and the continuance form shall be filed in the court file. 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 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;
- the pre-trial detention status of the defendant;
- the status of the trial calendar for the week;
- the order in which the case is designed for trial, including whether the case has a priority designation;
- the number of previous continuances;

- the number of times the cases has been designated for trial and not reached;
- 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 could resolve prior to the scheduled trial date;
- the length of the continuance requested, if applicable;
- the position of opposing counsel;
- whether the motion has been considered by another judge (Senior Resident or designee) on the same grounds;
- whether the parties themselves consent to the continuance;
- 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 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 Deadlines**

Indictment should occur within 90 days of arrest or at the first session of Superior Court after arrest, as the case may be. With the exception of capital cases and other exceptional cases, trial should occur within 180 days, or as soon thereafter as a session of Superior Court is available at which to hear the case. Misdemeanor appeals should be tried within 180 days of the transfer of the case to Superior Court, or the first session of Superior Court after transfer.