

9A
DISTRICT COURT DIVISION
CONTINUANCE POLICY

To assist the court officials in Judicial District 9A this continuance policy was adopted by the 9A Bar on September 23, 1997 with the approval of the Chief District Court Judge, Pattie. S. Harrison.

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. Requests for continuances that are made after 90 days from the first calendaring before a judge shall only be granted 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.

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 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 other matters

1.3. All orders for continuances shall be documented in or on the file, and shall include the name of the moving party.

1.4. All parties must be notified of a motion to continue.

1.5. All parties should have an opportunity to be heard on the 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 status of the trial calendar for a session;
- 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 of 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 dismiss these matters.]

Rule 2 Motions for Continuance – General Civil and Magistrate Appeal Cases

Civil 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. 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.

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.]

2.3 All orders for continuance shall be documented in or on the file, and shall include the name of the moving party.

2.4 All parties must be notified of a motion to continue.

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

2.6 Evaluation of Motions for Continuance

- 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 age of the case;
- The status of the trial calendar for a session;
- 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 making a motion for continuance as soon as practicable;

- Whether the reason for the 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;
- The availability of witnesses for the present session, or for a future session;
- 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 ejection appeals); and
- Any other factor that promotes the fair administration of justice.

2.7 Case Rescheduling

Upon granting a motion for continuance the judge shall 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 of within 24 months of filing, with 90% of all cases disposed of within 12 months of filing.

Rule 3. Motions for Continuance – Domestic Cases.

Domestic cases should be disposed of at the earliest opportunity, including the first trial setting. However, when compelling reasons for a continuance are presented which would affect the fundamental fairness of the trial process, a continuance may be granted for good cause. Requests for continuances shall only be granted for extraordinary cause.

[Commentary: Domestic cases can involve disputes that directly impact children (especially their living arrangements and support) and that prevent the parties and their family members from moving on with their lives. Therefore, they should be resolved expeditiously.]

3.1 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.

3.2 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.]

3.3 All orders for continuance shall be documented in or on the file, and shall include the name of the moving party.

3.4 All parties must be notified of a motion to continue.

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

3.6 Evaluation of Motions for Continuance

- The effect on children and spouses if the issue is continued and not resolved;
- Whether there is in effect a temporary order dealing with the issue that is the subject of the continuance request;
- The impact of a continuance on the safety of the parties or any other persons;
- Whether the issue has been identified statutorily as an issue which should be addressed expeditiously, i.e., child support, post-separation support;
- The age of the case or motion;
- The status of the trial calendar for a session;
- The number or previous continuances OR the number, moving party, and grounds for previous continuances;
- The extent to which counsel had input into the scheduling of the trial date;
- The due diligence of counsel in promptly making a motion for continuance as soon as practicable;
- Whether the reason for the 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;
- 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;
- Any other factor that promotes the fair administration of justice.
- **Failure of a party to have an equitable distribution affidavit filed in accordance with NCGS will not be grounds for a continuance.**

3.7 Case Rescheduling

Prior to granting a motion for continuance, the appropriate judicial official 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 within 6 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.

Rule 4. Motions for Continuance – Juvenile Cases

For an abused or neglected child, the courts are his or her source of protection and the source of services. For a delinquent child or youth, the court provide the opportunity for rehabilitation. 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, and to give them the best possible chance of living in stable, permanent families. Therefore continuances should be allowed only when it serves the child’s best interest. Participants must come to court prepared to meet each statutory obligation that is required for resolution of these matters.

Accordingly, juvenile cases, including motions for review in neglect and abuse matters, should be disposed at the earliest opportunity, including the first setting for 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, 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.

4.2 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.]

4.3 All orders for continuance shall be documented in or on the file, and shall include the name of the moving party.

4.4 All parties must be notified of a motion to continue.

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

4.6 Evaluation of Motions for Continuance

- The best interest of the child;
- The opportunity to exercise the right to effective assistance of counsel;
- The age of the case and the seriousness of the charge;
- The incarceration and status of the juvenile;
- The effect on children and spouses of the issue is continued and not resolved;
- The impact of a continuance on the safety of the parties or any other persons;
- The status of the trial calendar for a session;
- 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;
- The period of delay caused by the continuance requested;
- The presence of witnesses, including the juvenile;
- The availability of witnesses for the present session or for a future session;
- The extent to which counsel had input into the scheduling of the trial date;
- 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.

4.7 Case Rescheduling

Prior to granting a motion for continuance, the appropriate judicial official should reschedule the trial or pre-trial of the contested issues to a specific date after receiving scheduling input from all parties..

4.8 Time Standards

All undisciplined cases should be disposed of within 30 days of service of the petition. All delinquency cases involving misdemeanor offenses should be disposed of within 90 days of service of the petition and those involving felony offenses 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 of within 120 days after service of the petition..