

CONTINUANCE POLICY FOR THE DISTRICT COURTS

JUDICIAL DISTRICT 6A

HALIFAX COUNTY

EFFECTIVE JANUARY 1, 1998

AUTHORITY AND EFFECTIVE DATE

Pursuant to the authority vested in the undersigned by virtue of N.C.G.S. 7A-146(2), IT IS HEREBY ORDERED that the continuance policies adopted herein for criminal, general civil, magistrate appeal, domestic and juvenile cases for the District Courts of Judicial District 6A shall be effective on and after January 1, 1998.

Signed this the 15th day of September, 1997.

H. Paul McCoy, Jr.
Chief District Court Judge
Judicial District 6A

September 15, 1997

MEMORANDUM

**TO: ATTORNEYS PRACTICING IN THE DISTRICT COURTS OF
HALIFAX COUNTY;**

FROM: H. Paul McCoy, Jr., Chief District Court Judge

**SUBJECT: ADOPTION OF WRITTEN CONTINUANCE POLICIES IN
DISTRICT COURT**

In accordance with the caseload management plan which requires that each district adopt a written continuance policy as part of our local rules, I have attached to this memo a copy of the continuance policies for the district court in Judicial District 6A. You will note that these continuance policies apply to criminal, general civil, magistrate appeal, domestic, and juvenile cases. This continuance policy is one that is being strongly urged by the Chief Justice, and all of the districts in the State are adopting policies similar to ours. Ours fairly well mirrors the model continuance policy that was recently established by a committee appointed by the Chief Justice and the Director of the Administrative Office of the Courts. The committee was composed of district court judges, district attorneys, public defenders, and privately practicing attorneys. The attorney most closely located to our district who served on this committee was Lloyd Smith from Windsor, North Carolina.

These rules will be filed with the Administrative Office of the Courts and published in their Local Court Rules publication to be effective on January 1, 1998, and a copy is also being filed in the Office of the Clerk of Superior Court. Be aware of the fact that these rules become effective on January 1, 1998, and you are to begin putting them into active practice at that time. It might be advisable for all of you to begin some attempt to incorporate them into your practice at this time.

With best wishes and with thanks for your continued cooperation.

HPMcCjr/jg

Attachment

cc: The Honorable Hayes C. Neathery
The Honorable Richard B. Allsbrook
The Honorable Dwight L. Cranford
The Honorable W. Robert Caudle, II

CONTINUANCE POLICY FOR THE DISTRICT COURTS JUDICIAL DISTRICT 6A

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. The Chief District Court Judge shall establish a written policy identifying the appropriate court official to address the motions for continuance made prior to the session of court during which the case is calendared.

- 1.1A** Prior to the session of court during which the case is calendared, the defendant or his attorney may apply to the assistant district attorney assigned to prosecute the docket in that court for the first continuance. This first continuance can be for a period of no longer than 30 days. Thereafter, to obtain continuances court appearances of the defendant are required except for extraordinary cause which would include personal illness or death in the family.

[Commentary: This section recognizes the authority and responsibility of the trial judge to address all matters which are set before him or her, and also recognizes the demands and realities of North Carolina's 39 district court judicial districts: urban or rural, multi-county or single-county, daily sessions of court or non-daily sessions of court. The policy should clearly state to whom applications should be made prior to the court session and the parameters under which continuances should and should not be granted.]

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 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. A request for continuance which would exceed 90 days from the original court setting must be in writing with a copy being mailed to the district attorney.

1.4 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.

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 status of the trial calendar for the 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 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 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/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 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 persons;
- 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 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 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% of all cases disposed within 12 months of filing.

[Commentary: These are the standards adopted by the Supreme Court of North Carolina in the caseload management plan provided 1 May 1996 to the General Assembly, pursuant to Chapter 333 of the 1995 Session Laws.]

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. Requests for continuances that will delay the resolution of the contested issues beyond the established time standards 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/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 other 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 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.]

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.

[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.]

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) 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 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 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.]

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:

- 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 the session;
- the number of 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 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 or 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; and
- any other factor that promotes the fair administration of justice.

3.7 Case Rescheduling

Upon 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 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.

[Commentary: These are the standard adopted by the Supreme Court of North Carolina in the caseflow management plan provided 1 May 1996 to the General Assembly, pursuant to Chapter 333 of the 1995 Session Laws.]

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 courts 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 cases 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 his/her designee.

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 other matters.

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:

- the best interest of the child;
- 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 juvenile;
- 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 the 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 juvenile;
- 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.

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.

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 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 terminations of parental rights (TPRs) should be disposed within 120 days after service of the petition.

[Commentary: These are the standards recommended by juvenile experts who served on Juvenile Task Force on Case Flow Management, part of the Court Improvement Project.]