

District Court Continuance Policies for Judicial District 29B

By authority of Rule 2 of the General Rules of Practice, the principles set out below are declared to be a part of the local rules of the district court division of Judicial District 29B. These Policies are effective for civil and criminal cases.

1. Justice delayed is justice denied. Because continuances sometimes cannot be avoided, and because continuances sometimes serve the interests of all litigants in a case, no hard and fast rule about continuances is appropriate. But as a general principle, the policy of the District is that if, as a practical matter, a calendared case can be heard, and any party wants it heard, it should be heard. Whether it is possible, as a practical matter, for a calendared case to be heard at a given session of court depends on several factors, including whether there remains enough time in the session to complete the case if it is begun. The evaluation of the various factors is left to the sound discretion of the trial judge.

2. The courts exist to hear cases that someone wants heard. If a party requests that a case be continued, and no party objects in open court to its being continued, then the case should be continued. An objection to a continuance should be clear and positive, though no particular form of words is required. Words such as “I object,” or “We want it tried,” are clear enough. Expressions such as “Well, we leave it up to the court,” or “I cannot consent,” are equivocal, and will not be taken as objections. In this regard, attorneys are presumed to speak for their clients, and will be presumed to have cleared a continuance request (or response to such a request) with the client.

3. No one except a party to a case (or the attorney for a party) has standing to request, or object to, a continuance. In criminal cases, the parties are the defendant(s) and the State, and only the District Attorney speaks for the State. Victims, complainants, advocates, mediators, officers and other State witnesses can advise the District Attorney of their wishes and needs, but in the final analysis the only persons who can request, consent to, or object to a continuance in a criminal action are the defendant’s attorney (or the defendant, if *pro se*), and the District Attorney.

4. In criminal court, on the day that a misdemeanor defendant either waives appointed counsel or applies for counsel, if the defendant requests that the case be continued, the request should be granted. Likewise, if on that first day in court the State's witnesses are not present and the file does not show that they were notified to be there, and the State requests a continuance, the request should be granted. It is not the policy of the District that a case should be freely continued because it is the defendant's attorney's first time in court since being hired or appointed. Nor is it the policy of the district that each side gets one free continuance, or that each side is entitled to the same number of continuances. Except for the first time in court (i.e., the day the waiver or application is signed), the policy of the District for criminal cases is the same as for civil cases: if a case can as a practical matter be tried, and either party wants it tried, it should be tried.

5. An attorney of record who is involved in the hearing of a case in the Superior, Appellate or Federal courts, or who is involved in a Federal or State administrative hearing, is entitled to a continuance. Such an attorney who, though not actively in a hearing, is on actual notice (from the Judge, District Attorney, or hearing officer) to be available to the higher court, likewise has a valid ground for a continuance. As to an attorney who has matters merely pending in a higher court, but who is not involved in either of the situations just mentioned, it is within the district court trial judge's sound discretion whether a given situation justifies a continuance. Attorneys who persistently over-commit themselves are abusing the court system, and a presiding judge who detects such a pattern should consider such action, including denying a continuance where there is discretion to do so, as may be needed to discourage this practice. See also Rule 2(e) of the General Rules of Practice. The absence from district court, for whatever reason, of an attorney who has not entered an appearance in the case, shall not necessitate a continuance. For the definition of what constitutes entry of an appearance in criminal cases, see G.S. 15A-141.

6. An application for a continuance shall be made to the presiding judge of the court in which the case is calendared. Requests for the continuance of a non-domestic civil trial or civil motion, shall be brought to the attention of the district's Trial Court Administrator, who will notify the appropriate judge. Requests for the continuance of domestic matters shall be brought to the attention of the domestic clerk of the county of venue, who will notify the appropriate judge. Requests for the continuance of criminal cases require the input of the District Attorney, and will not be considered *ex parte*.