

CONTINUANCE POLICY FOR HALIFAX COUNTY CIRCUIT COURT EFFECTIVE: October 1, 2012

The Halifax County Circuit Court believes that control of a strict calendar leads to a more expeditious and efficient administration of justice.

A continuance of any pending matter **shall** only be for good cause shown and with the approval of the Court.

All requests for continuances **shall** be in writing and state the basis upon which the continuance is requested. If a continuance is granted, the counsel requesting the continuance **shall** submit to the Court within seven days of the continuance being granted an endorsed order stating (1) whose motion the continuance is upon, (2) the specific reason for the continuance, and (3) the new trial date (approved by the Judge's secretary and/or Clerk's office). All continuances in criminal cases **shall** be to a date certain. A hearing on the continuance request **shall** be conducted prior to trial whenever possible. Continuance requests made the day of Court will be discouraged by the Court and will only be granted in extreme or unusual circumstances.

To prevent avoidable continuance requests, the Circuit Court adopts the following policies:

1. Criminal Cases: All criminal cases will be set for trial at least 45 days out from the date of appointment of an attorney or the date of advisement of an attorney if one is not appointed. If an attorney is retained and the court date is already set, consideration may be given by the Court for a continuance but such request must be made in advance of the trial date. Further, new cases coming from the grand jury will not be set within 14 days of the grand jury meeting. Court-appointed criminal defendants shall be informed that if they do not contact their attorney within 10 days of the appointment of an attorney, they risk revocation of their bond. All sentencing reports shall be returned to the court sixty days from the date of trial barring extreme circumstances. The sentencing date shall be scheduled no less than thirty days after the presentence report is returned to avoid continuance requests. All criminal matters shall be set in advance of Docket Call. If the matter is not set in advance, then the Court shall set the date of trial at Docket Call and the Commonwealth

and attorney for the Defendant shall be bound to that date absent extreme circumstances.

2. Civil Cases: Dates for all civil matters will be set by the Judge's secretary and/or Clerk's Office. If a continuance is sought in a civil matter, the request must be made prior to the hearing date and be in writing. Precedence shall be given on the civil docket for statute-driven matters such as cases involving the termination of parental rights or protective order appeals.

Towards helping those practicing before this Court and the public understand the goals of this policy, the following are examples of what may be bad reasons and good reasons for a continuance request.

(1) BAD REASONS FOR A CONTINUANCE MAY INCLUDE BUT ARE NOT LIMITED TO:

- assumption that a continuance will be granted because it is the first calling of a case
- the criminal defense attorney has had no time to meet with his/her client when he/she was appointed or noted representation more than 45 days prior to trial date
- the attorney has just met their client in court when the correct address and phone number is in the court file
- no time to subpoena defense witnesses when they were known by or were provided to the attorney at least 14 days prior to court date
- no time to subpoena Commonwealth witnesses when they were known by or provided to the attorney at least 14 days prior to court date
- the attorney was only notified about a necessary witness the day of court
- an involved police officer, deputy, trooper, or lab technician has training or vacation on the scheduled court date
- the request is for a "short term continuance" in order for the client to retain new counsel when new counsel has not yet been retained and noted his/her appearance to the court
- both parties have agreed to the continuance

- the last continuance request was not made by the attorney now asking for the continuance
- a continuance for any reason which will present speedy trial issues
- continuing the matter for any reason which will impact statutory time frames for trial, i.e. matters involving DSS appeals which are time sensitive
- no valid reason is given other than the attorney “just needs more time”
- request because discovery is incomplete. This may not be considered a valid reason for a continuance when a discovery order is in place which indicates a date by which discovery is to be completed by the parties and the request for continuance is not accompanied by a motion to compel discovery. Please also note, in specific circumstances failure to complete discovery may nonetheless be considered a valid reason for a continuance.
- a criminal defendant is associating with the Drug Task Force.

(2) GOOD REASONS FOR THE COURT TO GRANT A CONTINUANCE REQUEST MAY INCLUDE BUT NOT BE LIMITED TO:

- short term continuance to finalize details of a possible plea agreement
- short term continuance in order to allow new counsel to appear so long as new counsel has already noted an appearance to the court and provided available dates to reset the matter
- client cannot be located despite diligent attempts
- witness who was subpoenaed to court fails to appear
- witness was subpoenaed but not found to be served and time is needed to locate new address to resubpoena the witness
- death, serious illness, or personal or family emergency of any party, material witness, or counsel
- counsel is not prepared for trial because of the inability of defendant and counsel to meet. Please also note this is listed as a bad reason for a continuance. Continuances that are none-the-less granted for failure to meet in a criminal matter may be granted conditioned solely on the defendant’s bond status being changed to allow him/her to meet with

his/her attorney. Additionally, a request for a continuance made because an attorney is not prepared for trial in a court appointed case may result in removal of that attorney from the list of attorneys able to receive court appointments if the Court determines that the attorney has been lapse in his/her duties.

- a motion to compel discovery has been filed and is pending.
- a criminal defendant not transported to court when incarcerated
- a criminal defendant failed to appear for court

If the endorsed continuance order is not received by the court within ten days of the original trial date as noted above, then the attorneys must appear on a “Delinquent Order Day” for entry of the order. Additionally, within ten days of Docket Call all attorneys representing criminal defendants shall sign a docketing order. If such order is not signed within the ten days, then the attorneys must appear on a “Delinquent Order Day” for entry of the docketing order.

Finally, once a continuance order has been received by the Clerk’s Office setting a case, the Clerk’s Office shall issue a summons for the Defendant to appear in court unless the Defendant was recognized by the court. Any Defendant represented by counsel WILL NOT need to be subpoenaed to appear at Docket Call but rather the Clerk’s Office will issue a summons to the Defendant for his/her trial date. If a date certain for trial has not been set in advance of Docket Call, the counsel for the Defendant shall be required to appear at Docket Call to have the case set for trial.

If a party is representing himself or herself on a civil matter, he or she must appear at docket call for the setting of the case. If the *pro se* party does not appear he/she risks dismissal of their case.