

Norfolk Circuit Court – Criminal Continuance Policy



CIRCUIT COURT OF NORFOLK - CRIMINAL CONTINUANCE POLICY

A continuance of a criminal case will only be for good cause shown and with the approval of the Court. If the case is pre-assigned the request must be made to the judge to whom the case is assigned. If the case has not been pre-assigned the request must be made to one of the designated criminal continuance judges.

If a continuance is granted, counsel must submit by the end of the next business day, to the judge who granted the continuance, an order stating the specific reason for the continuance and the new trial date (approved by the Clerk's office) which shall, if possible, be within 120 days of the defendant's arrest.

Good cause for a continuance does not ordinarily include the following:

1. Counsel for both parties agree to the continuance.
2. The case has never been continued before.
3. The case has been continued once, but on the motion of the other party.
4. Financial arrangements have not been satisfied.
5. The defendant has charges pending in another Court and desires to dispose of those charges first, or the defendant has other charges pending in this Court and wishes to consolidate them.
6. Counsel for the defendant and the Commonwealth need additional time to discuss a possible plea agreement.
7. The defendant wants to hire a new attorney after previously declaring indigency and having received court-appointed counsel who is ready and prepared for trial.
8. A witness who was not subpoenaed by movant is not present.
9. Further time is needed for investigation unless, before the scheduled trial date, counsel has established to the Court's satisfaction that due diligence has been exercised and that counsel would otherwise not be prepared and ready for trial.
10. A material witness has been subpoenaed but the subpoena return indicates "not found" and counsel has no new information or leads in locating the witness.
11. The defendant is assisting law enforcement officers in the investigation of routine matters or is a witness for the Commonwealth or the United States in another case that has not yet been tried.

Although a continuance should not be granted if the reason for the request is within the control of counsel or reasonably foreseeable, the defendant's constitutional right to a fair trial will many times require that a continuance be granted to bring a witness material to the defense before the Court. Furthermore, by statute, continuances ought to be granted if necessary. See Virginia Code §19.2-162. Consequently, the failure of counsel to proceed in an orderly and expeditious fashion in preparation for trial is a matter of great concern to the Court. Failure of counsel to proceed as expected will not go unnoticed and may result in sanctions and/or removal (in the case of court-appointed defense counsel) from the court-appointed attorney list.

The Court is likely to be most unreceptive to a continuance request made on the day of trial as witnesses may be inconvenienced. The unnecessary delay of cases will not be permitted.

Good cause may include the following:

1. The death, serious illness, or personal or family emergency of a party, material witness, or counsel.
2. The unavoidable absence of a material witness.
3. Counsel is not prepared for trial because of the inability of defendant and counsel to meet. However:
 - (A) The defendant's bond status may be affected if the Court determines the defendant has been dilatory.
 - (B) Removal from the list of court-appointed attorneys may be ordered if the Court determines counsel has been dilatory.
 - (C) Other sanctions may be used by the Court in addressing counsel's failure to be prepared.
4. The late submission of discoverable material by the Commonwealth which necessitates further investigation or summoning of additional witnesses by the defense. However, where tardy submission of discoverable material necessitates a continuance, sanctions may be in order, including, but not limited to, charging the continuance to the Commonwealth for purpose of speedy trial calculations.
5. The defendant was not transported to Court from a jail located outside the city's limits.
6. A previously ordered mental evaluation has not been completed.
7. The defendant fails to appear for trial.