

Rule 18: Continuances

- 18.1** Requests for continuances of a trial date made within ten (10 days) of trial may be granted only in exceptional circumstances and for good cause shown with no objection by the opposing party and upon a Judge's approval. Parties requesting a continuance must provide prior notice to opposing counsel, or if the defendant is pro se, then to the defendant personally at the last known address of record with the Court before making such request to the Judge.
- 18.2** Any party requesting a continuance shall complete a Motion for Continuance which format shall be approved by the Administrative Judge. The motion shall be fully completed, specifically including the position of (1) the written waiver of speedy trial by the defendant, if the request is to continue a trial setting; (2) the position of other counsel requesting the continuance, including counsel representing any co-defendants, and (3) any other requested information. Upon completion of the motion, the motion shall be provided to opposing counsel, allowing opportunity for opposing counsel to object and then filing with the Court.
- 18.3** All other continuances or extensions of time shall only be granted by order of a Judge.
- 18.4** The defendant who wishes to retain counsel may be given, at his/her request, one continuance for such purpose.
- 18.5** The defendant who wishes to apply for diversion, or desires additional time to produce documentation pursuant to potential plea negotiations, may be given one continuance or such purpose.
- 18.6** If after sixty (60) days from arraignment the defendant has not disposed of the charges in the case, has not obtained appointed counsel or retained counsel or waived counsel, the Judge shall make appropriate inquiries and enter appropriate orders to resolve such issues. In such circumstance, and if none of the violations charged carry any possibility of incarceration, then the Judge may set the matter for trial and direct the defendant to appear for trial and be ready to try the case at the time and date specified either with or without counsel. If any of the charges alleged against the accused carry any possibility of the imposition of a jail sentence, the Judge should resolve the issue of counsel by obtaining a written waiver of counsel from the defendant, assigning court-appointed counsel, or by entry of appearance by retained counsel, and such case should be set for trial absent the entry of a plea of guilty or no contest.
- 18.7** Continuances requested on the day of trial are not favored by the Court. Subject to judicial discretion, no continuances shall be granted the day of a trial except in an extreme emergency or where a subpoena has been personally served but the witness fails to appear. Both prosecution and defense should be fully prepared to dispose of any and all charges on the trial docket at the time of the scheduled trial. Charges on the trial docket should be disposed of by trial, plea, or dismissal, on the day of trial unless a bond forfeiture is at the time ordered for the accused's failure to appear. Any other method of continuing or delaying of the disposition of the charges from the trial date is not favored.
- 18.8** Motions for continuances on the day of trial based on the failure of a witness to appear will be considered in light of the following factors:

- A. The good faith efforts of the party requesting the continuance to obtain the attendance of the witness for the scheduled trial date;
- B. Whether a legally sufficient subpoena was timely issued in compliance with TMC §2.40.450, and amendments thereto, at the request of the party requesting the continuance;
- C. Whether the party requesting the continuance made any good faith effort to serve such subpoena in a timely and legal manner upon the absent witness in compliance with TMC §2.40.450;
- D. Whether the absent witness was properly served with a subpoena or otherwise indicated to the party requesting the continuance that he or she would voluntarily comply with the subpoena without formal service of the subpoena;
- E. Whether the party requesting the continuance was misled by the absent witness regarding the willingness to appear in Court without a subpoena;
- F. The good faith proffer of the party requesting the continuance as to the testimony which would be given by such absent witness;
- G. Whether the absent witness would be allowed as a matter of law to assert any privileges against giving such proffered testimony in the present case;
- H. Whether the reason for the absence of the witness can be ascertained, and such reason was based upon an unexpected emergency or illness;
- I. Whether the absence of the witness could, or should, have been known to the requesting party by due diligence prior to the date of trial;
- J. The pre-trial efforts, if any, of the party requesting the continuance at the time of trial to advise opposing counsel and the Court of the problem relating to the attendance of the witness subpoenaed at the scheduled trial;
- K. The prejudice and inconvenience which would be suffered by the parties, by the victim(s) and by the witnesses, if the motion for continuance is granted or denied by the Court;
- L. The delay of the party requesting the continuance in notifying the Court and opposing counsel until trial or during the trial docket while other witnesses are present or available for trial;
- M. Any other relevant circumstances made known to the Court at the time of the request for continuance.

18.9 Once all charges set for trial in a case have been disposed of by plea or trial, the Judge may, within discretion, continue the matter for the preparation of a pre-sentence report, the sending of victim notification of a sentencing date, or for determination of restitution prior to sentencing or otherwise continue the matter for sentencing.

18.10 No continuances should be considered by a judge for a jail release or show cause docket (i.e., 3PM) unless the defendant has retained counsel, verified through a written entry of appearance filed with the Court, for the case upon which the continuance is sought.