

26 NCAC 03 .0118 is amended with changes as published in 29:06 NCR 662 - 664 as follows:

26 NCAC 03 .0118 CONTINUANCES

(a) Requests for a continuance of a hearing shall be granted upon a showing of good cause or extraordinary cause. Unless time does not permit, a request for a continuance of a hearing shall be made in writing to the administrative law judge and shall be served upon all parties of record. In determining whether good cause or extraordinary cause exists, due regard shall be given to the ability of the party requesting a continuance to proceed effectively without a continuance. A request for a continuance filed within five days of a hearing shall be denied unless the reason for the request could not have been ascertained earlier.

(1) "Good cause" includes death or incapacitating illness of a party, representative, or attorney of a party; a court order requiring a continuance; lack of proper notice of the hearing; a substitution of the representative or attorney of a party if the substitution is shown to be required; a change in the parties or pleadings requiring postponement; and agreement for a continuance by all parties if either more time is clearly necessary to complete mandatory preparation for the case, such as authorized discovery, and the parties and the administrative law judge have agreed to a new hearing date or the parties have agreed to a settlement of the case that has been or is likely to be approved by the final decision maker.

(2) "Good cause" shall not include: intentional delay; unavailability of counsel or other representative because of engagement in another judicial or administrative proceeding unless all other members of the attorney's or representative's firm familiar with the case are similarly engaged, or if the notice of the other proceeding was received subsequent to the notice of the hearing for which the continuance is sought; unavailability of a witness if the witness testimony can be taken by deposition, and failure of the attorney or representative to properly utilize the statutory notice period to prepare for the hearing.

(b) For the purpose of determining whether "extraordinary cause" exists to allow a final decision to be issued beyond 180 days after the commencement of a personnel case under G.S. 126-34.02(a) the phrase "extraordinary cause" is defined as follows: out of the ordinary; exceeding the usual, average, or normal measure or degree; not usual, [regular] regular, or of a customary kind. "Extraordinary cause" includes:

(1) a stay issued by a federal or state trial or appellate judge;

(2) a stay issued by an administrative law judge under G.S. 150B-33(a); or

(3) a pending OAH civil rights investigation which addresses the same issues of discrimination as the subject matter of the contested case when the OAH investigation has not been pending in the Civil Rights Division longer than 90 days.

"Extraordinary cause" shall not be granted for any cause listed in Subparagraph (a)(2) of this Rule.

(c) A continuance for good cause shall not be granted when to do so would prevent the case from being concluded within any statutory or regulatory deadline.

~~(b)(d)~~ During a hearing, if it appears in the interest of justice that further testimony should be received and sufficient time does not remain to conclude the testimony, the administrative law judge shall either order the

1 additional testimony taken by deposition or continue the hearing to a future date for which oral notice on the record
2 is sufficient.

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4 *History Note:* *Authority G.S. 126-34.02; 150B-33(b)(4);*
5 *Eff. August 1, 1986;*
6 *Amended Eff. November 1, 1987;*
7 *Temporary Amendment Eff. March 1, 2014;*
8 *Amended Eff. February 1, 2015.*
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