

## \* RULE 106. CONTINUANCES

- (a) All contested motions for a continuance shall be in writing and filed with the Clerk of Courts no later than 4:00 p.m. on the Tuesday prior to the week of criminal jury trials during which the case is scheduled for trial. A copy of the motion shall be served on opposing counsel by the same deadline.

The motion shall contain a procedural history of the case, beginning with date of filing of the criminal complaint, and a recitation of any prior continuances sought. The motion shall aver whether opposing counsel has been contacted concerning the motion and shall state counsel's position thereon.

In cases which have been permanently attached or temporarily assigned for disposition, the motion shall be addressed to the assigned judge. All other cases shall be referred to the motions judge.

- (b) The Court Administrator will assign all such motions to the motions judge who will either dispose of the motion on its face or assign the motion to the judge assigned to the case for trial or plea.
- (c) A later motion shall be entertained only when the opportunity therefore did not previously exist, or the defendant was not aware of the grounds for the motion, or the interests of justice require it.
- (d) A later motion shall be presented only in open court before the business court judge or the judge assigned to the case for trial. Reasonable notice shall be afforded opposing counsel prior to the presentation of the motion in open court.
- (e) Notwithstanding subsections (a) – (d), cases that are neither permanently attached to a judge nor on the priority list may be continued upon mutual agreement of the District Attorney and defense counsel without the filing of a formal motion. Such continuances shall be effectuated by execution by the District Attorney, defense counsel, and defendant of an administrative continuance form in the District Attorney's Office.

COMMENT: Subsection (a)'s language that the "motion shall contain a procedural history of the case, beginning with the date of the filing of the criminal complaint, and a recitation of any prior continuances sought" establishes the Court's expectation that the motion contain dates of previously-sought continuances. Furthermore, if a case is not called during a particular term of court without a formal motion being made and granted,

its rescheduling to the next term of court is a de facto continuance which should be disclosed as part of the procedural history of the case.

The subsection's language also requires that a continuance motion will include any limiting or scheduling provisions previously dictated. For example, provisions in a prior court order that no further continuances will be granted or that trial will commence on a certain date/time must be disclosed.