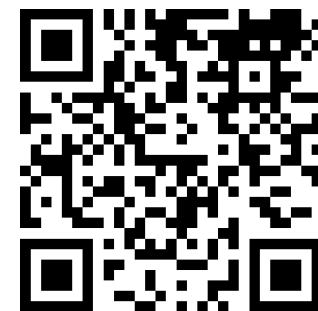




The Case That Wouldn't End: Continuances, Delay, & Mandamus

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Chief Parent Defender
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OPD OFFICE OF THE
PARENT DEFENDER



A dark, atmospheric photograph of a wooden bench in a park. The bench is made of dark wood and metal supports, positioned on a gravel path. In the background, there are bare trees and a misty or foggy sky. The word "Continuances" is overlaid in a large, white, serif font across the middle of the image.

Continuances

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Continuances

The court may, for **good cause**, continue the hearing ... to receive additional evidence, reports, or assessments, or other information, or for discovery.

Only **extraordinary circumstances** when necessary for the proper administration of justice or in the best interests of the juvenile.

Resolution of a pending criminal charge shall not be the sole extraordinary circumstance for granting a continuance.

NCGS §§ 7B-803, 1109(d) (reworded)



Extraordinary circumstances

Are “[a] highly unusual set of facts that are not commonly associated with a particular thing or event.”

Circumstance, Black’s Law Dictionary (12th ed. 2024) (defining “extraordinary circumstance”).





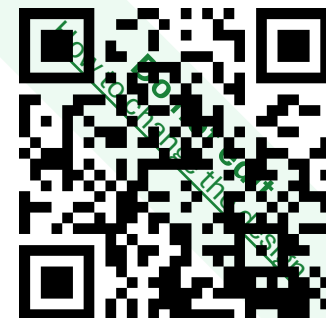
STATE OF NORTH CAROLINA		File No.
County		In The General Court Of Justice District Court Division
IN THE MATTER OF		MOTION FOR REVIEW (ABUSE/NEGLECT/DEPENDENCY)
Name And Address Of Juvenile 		
Juvenile's Date Of Birth 	Age 	
Name Of Movant 		
		G.S. 7B-1000

Considerations



What is good cause?

- Too many cases
- Not enough time
- Respondent not present
- Pending criminal trial
- Waiting on medical reports
- No notice of hearing to parent
- Parent in prison and writ not executed
- Parent in hospital



Is this good cause?

Counsel asked for a continuance because client is home and does not have a ride and so has asked them to ask for a continuance.

In re L.M., p. 27:

[R.M.] “did not assert in the trial court that a continuance was necessary to protect a constitutional right” the “motion to continue is addressed to the discretion of the trial court, ...”

The chief consideration is whether granting or denying a continuance will further substantial justice. (Quoting *In re S.M.*, 375 N.C. 673, 680 (2020).)

Since no constitutional issue raised:

“Thus, Respondent-Mother must show that she had an extraordinary circumstance for the continuance and the trial court’s denial of her motion to continue was ‘manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision’ ... [Mother] must also show she ‘suffered prejudice as a result of the error.’” (internal citations removed)



What could trial counsel have done?

- Constitutionalize the motion
- If transportation an issue, ask for an order for transportation
- Have client appear by WebEx
- Offer of proof of what Mother would have testified
- Motion to re-open the evidence (prior to court order)
- Motion to set aside



Timelines



**My cases meet the statutory
timelines**



① The Slido app must be installed on every computer you're presenting from

slido

Juvenile Code

First Non-Secure Custody:

- 7 days

Continuing Non-Secure Custody:

- 30 days

Adjudications:

- 60 days from pet | 7B-801(c)

Dispositions:

- 30 days from adj | 7B-901(a)

Review & Permanency:

- 90 days from disp | 7B-906.1

Further review & PPH:

- Every 6 months

TPR:

- 90 days from pet | 7B-1109(a)

Orders:

- 30 days

A top-down view of various natural ingredients and tools arranged on a light-colored surface. In the center is a small glass bowl filled with a thick, green, creamy substance. Surrounding it are several orange slices, a large yellow sponge, a wooden spoon, a brush with dark bristles, and a small, dark brown glass bottle. The text "What's the remedy?" is overlaid in white, centered on the image.

What's the remedy?

In re J.Q., p. 18:

- [...] we are “not unmindful of the difficulties facing a conscientious district court judge trying to balance a busy trial docketHowever, regularly allowing bureaucratic failure to be the sole cause of delay ... is anathema to the principles underlying the Juvenile Code,” and we caution litigants to properly use the remedy of **mandamus**. See *T.H.T.*, 362 N.C. 446, 456-57 (2008).

STATE OF NORTH CAROLINA

File No. _____

_____ County

In The General Court Of Justice
District Court Division

IN THE MATTER OF:

Name Of Juvenile

**NOTICE OF HEARING
IN JUVENILE PROCEEDING
(ABUSE/NEGLECT/DEPENDENCY)**

G.S. Chapter 7B

To The Persons Named Below:

☐ Juvenile, if age 12 or older

Name And Address

Name And Address

☐ Parent ☐ Guardian ☐ Custodian ☐ Caretaker

☐ Parent ☐ Guardian ☐ Custodian ☐ Caretaker

Name And Address

Name And Address

☐ GAL ☐ DSS ☐ Foster Parent(s) ☐ Other: _____

☐ GAL ☐ DSS ☐ Foster Parent(s) ☐ Other: _____

A hearing will be held at the date, time and location shown below in the above juvenile proceeding:

Writ of Mandamus



How to Mandamus?

1. Object to continuances/delays
2. Schedule the matter
3. Call OPD
4. Warning letter
5. Mandamus
 - Petition
 - Attachments: notices, orders, warning letter



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