

## Can I Get a Continuance of my Court Date?

Maybe. Continuances are disfavored by the trial court and are in the absolute discretion of the trial judge. If the judge denies your request for a continuance, that will not be a basis for appeal unless you can show the judge abused his or her discretion. See *Wilburn v. Wilburn*, 260 N.C. 208, 210, 132 S.E.2d 332, 334 (1963). The general rules applicable to a court decision of whether to grant or deny a continuance are found in *Pickard Roofing Co., Inc. v. Barbour*, 94 N.C.App. 688, 691-692, 381 S.E.2d 341, 343 (1989), in which the court provided in relevant part:

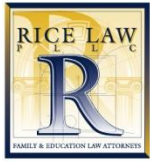


G.S. sec. 1A-1, Rule 40(b) provides that “[n]o continuance shall be granted except upon application to the court. A continuance may be granted only for good cause shown and upon such terms and conditions as justice may require.” A motion for a continuance is addressed to the sound discretion of the trial court, and is generally not favored. A court’s ruling on a motion for a continuance is not reviewable absent a clear abuse of discretion. The burden of showing sufficient grounds for a continuance rests with the party seeking it. *Id.* (Citations omitted).

The burden of proof rests on the moving party to demonstrate sufficient grounds justifying the continuance. See *May v. City of Durham*, 136 N.C.App. 578, 581, 525 S.E.2d 223, 227. When ruling on a motion to continue the trial judge must consider not only the grounds given for the motion, but “whether the moving party has acted with diligence and in good faith, and may consider facts of record as well as facts within his judicial knowledge.” See *Draughon v. Harnett County Bd. of Educ.*, 166 N.C. App. 464, 466, 602 S.E.2d 721, 723-24 (2004).

In *Pickard Roofing Co.*, 94 N.C.App. at 691, 381 S.E.2d at 343, on the day before trial the court denied defendant’s motion for continuance. Defendant proceeded to trial *Pro Se*, and the court found in favor of the plaintiff. *Id.* at 691. The appeals court affirmed the trial court’s denial of defendant’s motion for continuance. *Id.* The court compared its facts to those of *Fungaroli v. Fungaroli*, 40 N.C.App. 397, 252 S.E.2d 849 (1979) in which the appeals court affirmed the trial court’s denial of the plaintiff’s motion for a continuance. In *Fungaroli* the trial court allowed plaintiff’s attorney to withdraw one day before trial, and it concluded that “plaintiff had sufficient time to employ new counsel” despite having only a few days to hire new counsel for trial. *Id.* at 397.

In summary, you may or may not get a continuance. When you ask for one, do it in writing in advance and attach an Affidavit under oath stating the reasons that you need a postponement of the hearing or trial.



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