

MIDDLESEX COUNTY (VICINAGE 8) ADJOURNMENT POLICY

The policy set forth herein shall apply to the municipal courts in this vicinage and provide a uniform standard for judges and administrators when dealing with requests to adjourn any matter pending in court. This policy should be administered with equal courtesy and consideration to all parties when a conflict arises on a matter scheduled before the Court.

1. General Application

In general, cases having the oldest offense date shall be given priority over newer cases if there is a conflict between Courts. Courts meeting less frequently shall be afforded preference over Courts having a wider range of sessions. Consideration must also be given to witness availability and scheduling that comports with police officers' work schedules. Once such consideration has been given, however, all parties and their witnesses, including the State's and those of the defense, are expected to abide by the Court's schedule.

2. DWI Cases/Specific Application

All matters coming before the municipal court are significant, but some, such as DWI cases, have broader impact and require special attention and supervision. In those cases, special care must be taken to prevent unnecessary delays in listing the complaints for status conference or trial and to ensure that such matters are given priority. It is the policy of this vicinage to adhere as closely as reasonably possible to the Supreme Court's Directive that DWI cases be disposed within 60 days from the date of the complaint, and adjournments that result in delays beyond that time frame may be granted for only the most valid and compelling reasons.

3. First Appearances / Waivers / Adjournments to Obtain Counsel

- A. **First Appearances** – Counsel that has been retained by a defendant may be permitted to waive the defendant's first appearance if counsel informs the Court (i) by letter of representation that is received by the Courts prior to the first appearance date; or (ii) by telephone communication confirmed by facsimile transmission of the letter of representation before the first appearance date. Once the defendant's first appearance has been waived, the matter should be adjourned for a reasonable period of time for counsel to obtain discovery and properly prepare a defense, second adjournment requests without having appeared for the arraignment should ordinarily not be granted except upon a showing of good cause.
- B. **Counsel of Record** – Once counsel has entered an appearance for purposes of waiving a defendant's first appearance, counsel will be relieved as counsel of record only upon the filing of a substitution of attorney, by motion, or otherwise with the approval of the Municipal Court Judge.

- C. **Adjournment to Obtain Counsel** – Unrepresented defendants at first appearance shall be allowed a reasonable adjournment to obtain counsel. The Court should set a reasonable date, given the defendant’s particular circumstances, for the defendant to procure counsel. The Court should utilize the procedure of requiring a defendant to appear before the court on a “short” second date for the purposes of reviewing defendant’s progress in obtaining counsel.
- D. **Entry of Appearance Within Time Specified** – If an attorney enters an appearance and requests an adjournment within the time specified by the Court for the defendant to obtain counsel, the request should be granted in a routine manner and neither the defendant nor counsel shall be required to appear in court to request said adjournment.

4. Adjournment Procedure

- A. No one is entitled to an adjournment as a matter of course. All parties must presume that the time and date set forth in the court notice are final and firm.
- B. All requests for adjournment should be made at least **five** business days prior to the **trial date**, except in cases of a bona fide emergency.
- C. All requests for trial postponements should be in writing, stating the reasons for the request, with back-up documentation enclosed as appropriate. The Judge may require a medical certificate, which may be verified by the court, or other written verification.
- D. In the event of a disparity between the date/time on a summons and the date/time provided in the court notice, then the listing set forth on the court notice shall prevail.

5. Reasons for Adjournment

- A. Unavailability due to preplanned vacation, conference, or convention. Documentation may be requested by the court.
- B. Sudden illness of a party, witnesses or attorney. In appropriate cases and at the discretion of the Municipal Judge, medical certification may be required.
- C. Conflicts in an attorney’s court schedule that cannot be resolved after good faith efforts by the attorney involved.
- D. Conflicts in scheduling of witnesses, such as police officers and defense experts, that cannot be resolved after good faith efforts.

- E. To obtain and review discovery, only if it can be demonstrated that the defendant timely retained counsel, and that counsel has made a timely request and paid any required fees. (In the event counsel enters the case too near of the date set for trial to reasonably obtain discovery, the matter may be postponed at counsel's request for a brief period to permit completion of the discovery process.)
- F. Such other reason as the Municipal Judge deems appropriate and just.

6. Conflicts in Scheduling

- A. **Conflicts with Counsel** – If counsel experiences a scheduling conflict with another court, which counsel has been unable to resolve after reasonable and diligent effort, counsel should include the date, time, offense, and offense date of the conflicting matter when the request for adjournment is made. Since scheduling conflicts are customarily foreseeable well in advance, communication concerning the conflict should be made as soon as the conflict is known in order to allow time for appropriate resolution. Every effort should be employed to accommodate both appearances by marking a case “ready hold” for a specific time. If this technique is employed, counsel shall bear the responsibility of advising other counsel and/or any lay witnesses of the “ready hold” time in order to avoid unnecessary inconvenience.

If the conflict cannot be resolved by scheduling techniques, then the oldest case in time should take precedence, unless the case is a DWI matter. If a scheduling conflict involves a DWI case and a non-DWI case, then the DWI case takes precedence.

- B. **Adjournment of DWI Special Session for Trial** – No adjournments should be granted when a DWI has been set for trial, with a date certain, and all witnesses and parties have been noticed. It is defense counsel's responsibility to clear the date with their expert witnesses as soon as they receive notice of the trial date. Court Administrators should work with defense counsel to schedule the trial when the expert is available. Once a date has been agreed upon, and subpoenas for witnesses have been sent, no adjournment shall be granted except for unforeseen circumstances which may require medical proof or other supporting documentation. In any instance where the court does not agree to the adjournment, the Municipal Presiding Judge may be contacted to resolve the adjournment request.
- C. **Conflicts with Expert Witnesses** – If an adjournment is requested because an expert witness isn't available due to a conflict with another court, the date, time, offense, and offense date of the conflicting case should be supplied by counsel. The Court Administrator or designee will work in conjunction with the conflicting Court to resolve the conflict by scheduling the conflicting cases at times when each can be

accommodated. If this is impossible, then the oldest case should take precedence.

- D. Conflicts with Superior Court/DWI Cases** – If the scheduling conflict is with the Superior Court, counsel should communicate with the Superior Court Judge or the Judge's designee in an attempt to work out the scheduling conflict, before seeking an adjournment. In DWI cases, Superior Court Judges in Middlesex County have been requested by the Assignment Judge to accommodate counsel's need to appear in Municipal Court, particularly when the DWI has been set for trial.

7. Discovery

The rules of discovery and the caselaw applicable to them shall be strictly observed, except for circumstances set forth in Paragraph 5E of this Policy. Requests for adjournment because the State has failed to supply discovery should be addressed by motion rather than by adjournment request, unless the prosecutor and defense counsel agree upon the adjournment because discovery is forthcoming, the adjournment should be granted for a brief time period to allow the State to supply the missing discovery. In the even counsel does not agree the motion will be resolved on the record by the Municipal Court Judge.

8. Granting by Court Required

The Court Administrator, Municipal Court Judge, or designee must specifically consent to the adjournment in order for the request to be honored. Counsel should not assume that a case is adjourned simply because a request for adjournment has been faxed or emailed to the Court office.

9. Notice of Adjournment

When an adjournment request has been granted, each party should notify its own witnesses forthwith. The Court should make every effort to notice victims and witnesses that the matter will be adjourned prior to granting the request. The Court will send a notice with a new date to all parties involved.

10. Sanctions

Mere absence from Court or absence after unreasonably short notice is unacceptable and may result in the imposition of appropriate sanctions, including monetary penalties, Order to Show Cause and in some instances dismissal of the case.

11. Definite Date

All adjournments that are granted should be of brief duration and made to a specific date. Whenever possible, the techniques of "adjourning forward" should be employed.

12. Relaxation of Policy

The Municipal Court Judge has the discretion to relax or waive any of the provisions of this policy in the interest of justice and for good cause shown.