

§ 15A-952. Pretrial motions; time for filing; sanction for failure to file; motion hearing date.

(a) Any defense, objection, or request which is capable of being determined without the trial of the general issue may be raised before trial by motion.

(b) Except as provided in subsection (d), when the following motions are made in superior court they must be made within the time limitations stated in subsection (c) unless the court permits filing at a later time:

- (1) Motions to continue.
- (2) Motions for a change of venue under G.S. 15A-957.
- (3) Motions for a special venire under G.S. 9-12 or G.S. 15A-958.
- (4) Motions to dismiss under G.S. 15A-955.
- (5) Motions to dismiss for improper venue.
- (6) Motions addressed to the pleadings, including:
 - a. Motions to dismiss for failure to plead under G.S. 15A-924(e).
 - b. Motions to strike under G.S. 15A-924(f).
 - c. Motions for bills of particulars under G.S. 15A-924(b) or G.S. 15A-925.
 - d. Motions for severance of offenses, to the extent required by G.S. 15A-927.
 - e. Motions for joinder of related offenses under G.S. 15A-926(c).

(c) Unless otherwise provided, the motions listed in subsection (b) must be made at or before the time of arraignment if a written request is filed for arraignment and if arraignment is held prior to the session of court for which the trial is calendared. If arraignment is to be held at the session for which trial is calendared, the motions must be filed on or before five o'clock P.M. on the Wednesday prior to the session when trial of the case begins.

If a written request for arraignment is not filed, then any motion listed in subsection (b) of this section must be filed not later than 21 days from the date of the return of the bill of indictment as a true bill.

(d) Motions concerning jurisdiction of the court or the failure of the pleading to charge an offense may be made at any time.

(e) Failure to file the motions in subsection (b) within the time required constitutes a waiver of the motion. The court may grant relief from any waiver except failure to move to dismiss for improper venue.

(f) When a motion is made before trial, the court in its discretion may hear the motion before trial, on the date set for arraignment, on the date set for trial before a jury is impaneled, or during trial.

(g) In superior or district court, the judge shall consider at least the following factors in determining whether to grant a continuance:

- (1) Whether the failure to grant a continuance would be likely to result in a miscarriage of justice;
- (2) Whether the case taken as a whole is so unusual and so complex, due to the number of defendants or the nature of the prosecution or otherwise, that more time is needed for adequate preparation; and
- (3) Whether the case involves physical or sexual child abuse when a victim or witness is under 16 years of age, and whether further delay would have an adverse impact on the well-being of the child.
- (4) Good cause for granting a continuance shall include those instances when the defendant, a witness, or counsel of record has an obligation of service to the State of North Carolina, including service as a member of the General

Assembly or the Rules Review Commission. (1973, c. 1286, s. 1; 1989, c. 688, s. 5; 1995 (Reg. Sess., 1996), c. 725, s. 9; 1997-34, s. 12.)