

Rule 104. Avoidance and Resolution of Conflicts in Engagements of Counsel Among the Courts in the District of Columbia

The following provisions, which implement the "Procedures for Avoiding and Resolving Conflicts in Engagements of Counsel to Appear Before the Courts in the District of Columbia" dated April 18, 1973, adopted by and applicable to the United States Court of Appeals for the District of Columbia Circuit, the United States District Court for the District of Columbia, the District of Columbia Court of Appeals, and the Superior Court of the District of Columbia, shall apply to matters scheduled in this Court:

(a) Priority to Be Accorded Appellate Courts. Trial proceedings in this court will yield, and if under way will be held in abeyance, during argument by trial counsel in an appellate court.

(b) Priorities in Trial Courts. Actual trials of civil or criminal cases in this Court or in the U.S. District Court for the District of Columbia will be accorded priority over any nontrial matters in either Court. For the purpose of this Rule, a hearing on a preliminary injunction shall be regarded as a trial. A judge shall set a date for trial only after ascertaining that trial counsel have no conflicting trial or appellate engagement in any court within the District of Columbia. If, despite the foregoing and the obligations imposed on counsel by section (c) of this Rule counsel should have more than one trial set on 1 day, the following priorities will be recognized:

(1) That case which is first set to commence trial on a specific day will receive priority over cases which are later set to commence trial on that day. A continued case shall be treated as set as of the last setting date.

(2) Any trial in progress, including a trial in progress from day to day, shall take precedence over trial or nontrial engagements of counsel which are set for times during which the trial is still in progress.

(3) Nontrial matters in a trial court will yield to trials in any court.

(4) If a scheduled trial conflicts with a previously set nontrial matter and, because of the urgency or complexity of the nontrial matter or the number of persons involved, it would be difficult to reschedule the nontrial matter, counsel shall immediately advise the court in which or the judge before whom the conflicting trial is scheduled. The court or the judge will be receptive to counsel's application for a change of the trial date or an adjustment of the hours of trial, but shall retain discretion to grant or deny such an application.

(5) The judges of this court, insofar as practical, will attempt to adjust their schedules to enable an attorney to attend to brief nontrial matters such as pleas, sentences, or status and pretrial conferences pending in another court. It is recognized that emergency situations will arise and that certain types of cases may require special consideration. The judges of this court will attempt to accommodate these situations by recognizing the need to depart, on occasion, from rigid scheduling rules when such situations are brought to their attention by counsel.

(c) Responsibilities of Counsel. It is the professional responsibility of attorneys to avoid the setting of conflicting engagements in the courts, to inform the courts of expected difficulties or conflicts which may arise, and to achieve the resolution of such conflicts or problems at the earliest possible time. The following particular obligations are imposed upon counsel:

(1) Attorneys are expected to carry with them at all times they are in court a calendar of their future court appearances.

(2) Attorneys shall appear personally before the judge when a case is being set, reset, or continued except as otherwise specified below. They shall in every case inform the court fully as to any matters which may conflict with a setting, resetting, or continued date being considered by the court. Counsel shall not schedule engagements which they cannot reasonably expect to attend at the time scheduled. They shall observe such limitations on the number of matters they schedule as are imposed herein, or are imposed by the individual courts of this jurisdiction, or which arise by reason of their professional obligations to their clients. The sole exception to the requirement that counsel appear personally before the judge when a case is being reset or continued arises when counsel is physically unable to be present. In such event counsel should leave 3 open dates with the judge in question, and the trial may be reset in counsel's absence. It shall, however, be the attorney's duty to appear personally as soon as possible before the judge who reset the case to confirm the reset date.

(3) Attorneys are obliged to take action immediately upon becoming aware of any conflict and specifically to call the conflicting engagements to the attention of the judge being asked to yield, and to pursue the matter until the conflict is resolved. Such matters may be presented to the judge in open court as a preliminary matter, with advance notice to other counsel.

(4) If counsel cannot avoid being unexpectedly late for or absent from any scheduled appearance before any judge, they shall in advance of the scheduled appearance personally inform the judge of that fact, the reason therefor, and the nature and duration of the conflicting engagements.

(5) If an attorney has a felony case set for trial in any court on a given day, the attorney shall not schedule any other case for trial on that day or for any day thereafter during which that felony trial may reasonably be expected to continue. If an attorney has a misdemeanor case set for jury trial on a given date, the attorney shall not schedule more than 1 other misdemeanor case for trial on that day. These restrictions do not apply to cases as to which an attorney is certain there will be a nontrial disposition.

(6) This Court will take appropriate disciplinary action when an attorney fails to conduct himself or herself in accordance with the requirements and obligations imposed by this Rule.