

May 18, 2011

The Honorable Michael E. Busch
Speaker of the House
H-101 State House
Annapolis, MD 21401

Dear Mr. Speaker:

In accordance with Article II, Section 17 of the Maryland Constitution, today I have vetoed House Bill 22 – *Courts – Attorneys – Subpoena Procedures and Forms of the Circuit Courts*.

House Bill 22, as originally introduced, required the courts to adopt uniform subpoena procedures and forms to be used in circuit courts throughout Maryland. The Maryland Judiciary objected to this measure as the requisite programming costs would have been a significant additional expense, at a time when the Judiciary is in the process of establishing a statewide case management system. Given the Judiciary's opposition to the uniform procedures, the bill was amended to allow attorneys, and other officers of the court, to obtain signed and sealed subpoenas and to photocopy those subpoenas and use the photocopies for service. The Maryland Judiciary opposed this amended version as well.

Pursuant to Rules 2-510(b) and 3-510(b) of the Maryland Rules of Practice and Procedure, courts clerks are required to issue blank, signed and sealed subpoenas to attorneys or other officers of the court upon request. The Rules in no way limit the number required to be issued. Attorneys may then fill in the information, regarding the witnesses or documentation to be produced under the court order, and deliver the subpoenas. This practice is designed to offer flexibility and convenience for attorneys, all of whom are subject to sanctions if the entrusted authority is abused. House Bill 22 would codify the current practice, required by the Rules, and additionally allow those subpoenas to be photocopied and issued.

The Maryland Judiciary has voiced strong opposition to House Bill 22 and Chief Judge Robert Bell has urged a veto. According to Chief Judge Bell, the current Rules were adopted after extensive hearings and careful deliberation by the Rules Committee. That Committee balanced attorney convenience

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with the risk of misuse and altered the blank subpoena rule from discretionary issuance to mandatory. House Bill 22 relaxes these carefully-constructed Rules, according to the Judiciary, and invites misuse of the legal process by removing the safeguard of the clerk and allowing access to court orders by anyone with a copier and a subpoena. These orders could be fraudulently issued for the production of witnesses or for otherwise private information. In requesting a veto of House Bill 22, Chief Judge Bell indicated that “if it goes into effect, the damage would be profound.”

While I am vetoing House Bill 22, I agree with the intent behind its original introduction. There should be uniformity in the circuit court subpoena process to ensure that all parties, and their attorneys, have access to due process of law. Moreover, given the Rules’ statewide application and the cross-county practice of attorneys, all clerks should be operating under the same set of procedures for the issuance of blank subpoenas. As such, I would urge the Maryland Judiciary to continue to work towards a uniform process and to ensure that the current Rules, requiring the issuance of unlimited blank subpoenas, are being enforced.

For the above reasons, I have today vetoed House Bill 22.

Sincerely,

Governor