

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 250 (Senators Norman and Zirkin)
Judicial Proceedings

Civil Proceedings - Continuances Agreed to by All Parties

This bill requires a court, on motion of any party, to continue any part of a civil action or any part of a civil appellate proceeding if all parties agree to the continuance. The bill authorizes a court that grants a continuance to assess costs and expenses occasioned by the continuance in accordance with the Maryland Rules.

Fiscal Summary

State Effect: Minimal increase in general fund expenditures to accommodate continuances granted under the bill, which may be offset to the extent the Judiciary assesses costs to parties requesting these continuances.

Local Effect: Minimal increase in local expenditures to accommodate continuances granted under the bill, which may be offset to the extent the circuit courts assess costs to parties requesting these continuances.

Small Business Effect: None.

Analysis

Current Law: Pursuant to § 6-409 of the Courts and Judicial Proceedings Article, in any court proceeding, an attorney entering his appearance on behalf of a client may be granted a continuance if (1) the entry of appearance is made in good faith and not for purpose of delay; (2) the case has not been continued previously an unreasonable number of times; and (3) at the time appearance is entered, the attorney is the attorney of record in another court proceeding which previously had been scheduled for a time that will cause a conflict with the case in which the appearance is being entered.

Under § 6-402 of the Courts and Judicial Proceedings Article, if a member or desk officer of the General Assembly is an attorney of record in a proceeding, the proceeding must be continued from 5 days before the legislative session convenes until at least 10 days after it is adjourned. Section 6-402 also contains provisions requiring continuances for committee and subcommittee members during interim meetings and continuances to prepare a brief or other document in a matter continued because of legislative duties.

Rule 2-508 governs continuances in civil actions in the circuit courts. The rule authorizes a court to continue a trial or other proceeding as justice may require on motion of any party or on its own initiative. When an action has been assigned a trial date, the trial may not be continued on the ground that discovery has not yet been completed, except for good cause shown. A motion for continuance on the ground that a necessary witness is absent must be supported by an affidavit containing specified information, including the specific facts to which the witness is expected to testify. The court is also authorized to examine the affiant under oath. If the court is satisfied that a sufficient showing has been made, the court must continue the proceeding unless the opposing party elects to stipulate that the absent witness would, if present, testify to the facts stated in the affidavit. In that instance, the court is authorized to deny the motion. Rule 2-508 also contains provisions for the granting of continuances upon request of a member or desk officer of the General Assembly. When granting a continuance for a reason other than legislative duties, the court is authorized to assess costs and expenses occasioned by the continuance. With the exception of a continuance due to an absent witness, Rule 3-508 contains similar provisions for civil actions in the District Court.

In December 2016, the Maryland Court of Appeals approved Rule 16-804. Rule 16-804 contains extensive provisions pertaining to continuances or postponements for conflicting case duties.

Rule 16-804 requires an attorney to consult his or her calendar to ascertain a potential conflict before agreeing to a particular date and time for a trial or other proceeding. If an attorney who has accepted employment in a case in which a date and time for a proceeding has already been set, the attorney must (1) advise the client of a conflicting assignment which the attorney will promptly resolve; (2) attempt to make suitable arrangements in the event he/she is unsuccessful in obtaining a continuance or postponement in the client's case; (3) unless impracticable, contact the other parties in either or both cases to attempt to obtain consent to a postponement or continuance and at least three alternative dates for which no conflict exists for any party; and (4) unless impracticable, no later than 30 days prior to scheduled argument in an appellate court or 15 days prior to the scheduled proceeding in a circuit court or in the District Court, request a postponement or continuance in one or more of the conflicting cases, advise the court whether the other parties consent to the request, and provide to the court the alternative dates obtained during the consultation with the other parties.

Courts must liberally exercise their discretion to grant a postponement or continuance if the conditions in § 6-409 of the Courts and Judicial Proceedings Article are satisfied, no party or witness will be substantially prejudiced, and the court will not be unduly inconvenienced. Rule 16-804 also contains provisions regarding prioritization of proceedings when conflicts occur between proceedings in various courts or entities.

An attorney who holds public office or employment as an attorney, is permitted to engage in the private practice of law, and faces an assignment conflict between an action in which the attorney appears in a public capacity and an action in which the attorney appears in a private capacity, may not be granted a continuance or postponement in the action in which the attorney appears in a public capacity if the attorney knew of the conflict when accepting employment in the private action.

Rule 16-804 also requires a court to continue or postpone a proceeding in conformance with § 6-402 of the Courts and Judicial Proceedings Article upon request by an attorney of record in the action who is a member or desk officer of the General Assembly. The rule states that in accepting employment in the action, the attorney should consider the inconvenience to the public, the bar, and the judicial system produced by excessive continuances or postponements.

Nothing in Rule 16-804 precludes the affected courts, when apprised of a conflict, from attempting to resolve the conflict informally in a manner other than the priorities in conflicting assignments established under the bill.

Background: Exhibit 1 contains information on the percentage of civil cases that met the Judiciary's time standard goals and the percentage of civil cases with one or more postponements during fiscal 2015. The data is from the Judiciary's caseload assessments for fiscal 2015. The assessments analyzed 97,140 District Court and circuit court cases of various types (criminal, civil, traffic, etc.). Of the 25,637 civil cases sampled, 5,804 had one or more postponements.

Exhibit 1
Civil Cases Closed Within Time Standards and Civil Cases with Postponements
Fiscal 2015

<u>Case Type</u>	<u>Time Standard Goal*</u>	<u>Actual % of Cases Within Time Standard</u>	<u>Goal % of Cases Within Time Standard</u>	<u>% of Cases With 1 or More Postponements</u>
Civil – Circuit Court	548 days	91%	98%	16%
Large Civil – District Court	250 days	96%	98%	39%
Small – District Court	120 days	95%	98%	21%

*days from filing until case closure

Source: *Maryland Judiciary FY 2015 Statewide Caseflow Assessment – Circuit Courts*; *Maryland Judiciary FY 2015 Statewide Caseflow Assessment – District Court*

State/Local Revenues: Revenues may increase minimally from costs assessed for continuances in District Court and circuit court cases, to the extent the Judiciary decides to use its existing authority to assess such costs. Based on information provided by the Judiciary, it appears that courts rarely assess these costs in practice. Thus, general fund revenues may increase only to the extent that the bill increases the frequency with which courts assess costs for granting the continuances addressed in the bill.

State/Local Expenditures: Expenditures increase minimally to accommodate delayed proceedings. Operational delays also occur as a result of the bill.

As previously stated, the Judiciary has case time standards. Increases in postponements reduce the Judiciary’s ability to meet time standard goals, resulting in operational inefficiencies from unused court time and delayed dockets. According to the Judiciary, many trial courts schedule cases three to four months in advance and some courts are scheduling cases eight months in advance.

The Judiciary advises that the bill has a significant fiscal and operational impact due to docket delays, impacts on case management standards, and the potential for inefficient use of scarce judicial resources. However, the Department of Legislative Services (DLS) advises that the fiscal impact is likely to be minimal, for the reasons discussed below.

The bill’s impact depends on the number of continuances granted as a result of the bill, which is reliant upon a number of factors, including (1) the frequency with which all parties

in an action can agree to a continuance in a case; (2) the extent to which the bill results in requests for additional continuances that would not otherwise occur; and (3) the extent to which a judge is required to grant additional continuances under the bill that would not otherwise be granted.

For instance, the bill requires a court to grant a continuance if all parties agree to the continuance. Given the adversarial nature of the litigation process, there are likely instances in which attorneys for both parties cannot agree to a continuance. According to the *Maryland Judiciary Annual Statistical Abstract FY 2015*, there were 74,227 general civil case filings in the circuit courts and 291,219 civil case filings in the District Court during fiscal 2015. *For illustrative purposes only*, should continuances be granted in 5% of these filings as a result of the bill, the courts have to grant 18,272 additional continuances. Under statute, judges have discretion to grant continuances, which, based on available data, already occurs in 22.6% of civil cases. If the Judiciary chooses to use its authority to assess costs for the continuances requested under the bill, then these assessments may deter unnecessary requests for the continuances addressed by the bill.

Depending on the cumulative impact of continuances granted under the bill, the Judiciary may have to use retired judges to meet docket needs. DLS notes that the Judiciary is increasingly relying on the use of retired judges to supplement judicial resources throughout the State. The proposed fiscal 2018 State budget includes approximately \$5.6 million in funding for retired judges, which the Judiciary uses to supplement current judicial resources. Using the fiscal 2018 estimate, and *for illustrative purposes only*, for every 1% increase in the use of retired judges to handle additional hearings throughout the State, general fund expenditures increase by approximately \$56,000 annually.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Legislative Services

Fiscal Note History: First Reader - January 31, 2017
fn/kdm

Analysis by: Amy A. Devadas

Direct Inquiries to:
(410) 946-5510
(301) 970-5510