



**ANALYSIS OF CONTINUANCE REQUESTS AND RECOMMENDATIONS
RELEVANT TO ESTABLISHING A BASELINE FOR ASSESSING THE
IMPACT OF THE CIVIL DCM SYSTEM IN THE
BALTIMORE CITY CIRCUIT COURT**

Submitted to Judge Ellen M. Heller

By

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III. Post-DCM Implementation Survey

MEMORANDUM

TO: Judge Ellen M. Heller, Circuit Court for Baltimore City

FROM: Caroline Cooper, Associate Director, Justice Programs Office,
The American University

SUBJ: **Analysis of Continuance Requests: May 1994 - April 1995**

DATE: March 6, 1996

I. OVERVIEW

As you know, as evaluator for the civil DCM program in Baltimore City, I have felt it essential that some baseline be established against which the impact of the new civil DCM program can be measured. While some measures currently exist focussing on "speed" -- e.g., time to disposition -- that may be useful in assessing the impact of the DCM, I think it important that additional measures also be used that relate to the **efficiency** of the process, since that is a major goal of a DCM system.

Although my official involvement with the project under the SJI grant has terminated, both in terms of the resources that were available and the timeframe for the grant, I wanted to provide you with some guidance in measuring the impact of the civil DCM program once it is fully implemented and operational.

There are two ways I suggest that such measures can be obtained: First, through a Post-DCM Implementation Survey of the DCM Task Force members and others they suggested who were surveyed earlier this year to ascertain (a) whether the problems they identified at that time have been addressed by the DCM; (b) whether their expectations for the system have been met, and (c) whether new, unanticipated problems have arisen; and, second, through an analysis of continuance requests after the DCM system is implemented since uncertainty of trial dates and inappropriate case preparation time was a common complaint surfacing in the pre-DCM Implementation Survey.

In regard to the Post-DCM Implementation Survey, I've enclosed a draft survey instrument and a list of the persons who received the earlier survey. I'd suggest that the follow-up survey be sent out 8 - 10 months following implementation. That timeframe should provide the opportunity to have some cases disposed of as well as to identify unanticipated problems that can be addressed before the system procedures are too far in place.

In regard to the analysis of continuance requests, to provide some baseline, I've conducted an analysis of continuance requests in two categories:

- (a) requests submitted to you during the period April 22, 1995 - June 22, 1995 involving trial dates more than thirty days in advance; and
- (b) requests submitted to the duty judge during the period of May 1994 - April 1995 for cases involving trial dates less than thirty days in advance

The results of this analysis, summarized below, provide (a) a synopsis and description of continuance activity during the period and (b) suggestions on data collection procedures that would make this information more readily available in the future.

II. ANALYSIS OF CONTINUANCE REQUESTS

A. Requests Submitted During the Period April 22, 1995 - June 22 1995 Involving Trial Dates More than Thirty Days in Advance

1. Study Methodology

Frank Sherry maintained a special record of every civil law case in which a continuance request was made during the two-month period designated.¹ A copy of that listing is attached (Attachment 1). A total of 174 requests were submitted during the period, with 45 (32%) sampled for analysis.

2. Principal Findings

Note: Because of data limitations, more specifically described below, it was extremely difficult to provide an accurate analysis of continuance activity in terms of the information that would be most useful: e.g., timeframe for requesting continuances in relation to the timeframe provided in the Court Scheduling Order, the reasons for continuance requests, the moving party, and the action taken. Below, therefore, is a general picture of continuance activity during the period studied that emerged which, hopefully, will generate discussion regarding specific issues raised.

a. Timeframe for Requesting Continuances

Since November 1, 1991, the Pretrial Conference Order requires that requests to modify the trial date as well as the pretrial conference date and discovery deadlines be made by the filing of a written motion for modification within 15 days of the date of the Order. Thereafter, a modification request can be made only upon a showing of "good cause that the schedule cannot reasonably be met despite the diligence of the party seeking modification."

Only 56% of the continuances filed during the study period were filed within 15 days of the issuance of the Scheduling Order. An additional 11% were filed within 30 days of the Order. Ten (22%) were filed in excess of 60 days.

The timeframes for filing the 45 continuance requests studied were as follows:

| Within 15 days | Within 16-30 days | Within 31 - 60 days | Within 61-120 days | Over 120 Days | Not Avail./Not Applic.² |
|-----------------------|--------------------------|----------------------------|---------------------------|----------------------|---|
| 25 (56%) | 5 (11%) | 2 (4%) | 3 (6%) | 7 (16%) | 3 |

b. Reasons for Continuance Requests

The following categories reflect the reasons for continuance requests filed during the period studied:

¹ This time period was agreed to because it was felt to reflect a typical period of court activity, with no special vacations or other factors that might skew the results.

² one case was filed in 1990, before the Scheduling Order took effect, and one case file was missing from the file room so no information was available.

| | |
|--|------------------|
| Attorney conflict (including vacation, pregnancy, meetings, and other court cases) | 18 (40%) |
| Request for Fast Track/expedited processing | 4 (9%) |
| Request for More Discovery Time | 10 (22%) |
| Lead Paint Case Extension | 5 (12%) |
| Clerical Error/No Notice | 2 (4%) |
| Party conflict | 1 (2%) |
| No information available | <u>5 (11%)</u> |
| Total: | 45 (100%) |

Analysis of the requests filed indicates that attorney conflicts and the need for more discovery time continue to be the most frequent causes for continuance requests filed in excess of 15 days of the scheduling order. The following categories reflect the reasons for continuance requests made for the 20 cases beyond the 15-day timeframe provided in the Order:

| | |
|--|------------------|
| Attorney conflict (including vacation, pregnancy, meetings, and other court cases) | 7 (35%) |
| Request for Fast Track/expedited processing | 0 - |
| Request for More Discovery Time | 6 (30%) |
| Lead Paint Case Extension | 0 - |
| Clerical Error/No Notice | 2 (10%) |
| Party conflict | 1 (4%) |
| No information available | <u>4 (20%)</u> |
| Total: | 20 (100%) |

3. Action Taken On Continuance Requests

Seventy-eight percent of the continuance requests submitted were approved, with 86% of the requests submitted within 15 days of the Order granted, and 62% of those submitted in excess of that timeframe. The following is a summary of the action taken on continuance requests in the cases sampled:

| <u>Reason</u> | <u>W/in 15 days</u> | | <u>15+ days</u> | |
|--|---------------------|-------------|-----------------|-------------|
| | <u>Grtd</u> | <u>Den.</u> | <u>Grtd</u> | <u>Den.</u> |
| Attorney conflict (including vacation, pregnancy, meetings, and other court cases) | 12 | 2 | 5 | 1 |
| Request for Fast Track/expedited processing | 2 | - | - | - |

| | | | | |
|---------------------------------|--------------|--------------|--------------|--------------|
| Request for More Discovery Time | 2 | | 4 | 2 |
| Lead Paint Case Extension | 5 | - | - | - |
| Clerical Error/No Notice | 2 | - | - | - |
| Party conflict | - | - | - | 1 |
| not available | <u>2</u> | <u>2</u> | <u>1</u> | <u>2</u> |
| Total: | 25 | 4 | 10 | 6 |
| | (86%) | (14%) | (62%) | (38%) |

4. Issues Raised

a. Data/Record Limitations

Information on continuance requests for cases in which the trial date is more than thirty days in advance and which therefore go before the Judge in Charge of Civil Cases is by no means readily available. As noted above, the court does not regularly maintain a record of continuance requests and it was only by compiling a special recording of each continuance requested during the study period that an analysis was possible. Even with that listing, however (See Attachment 1), the process of researching continuance requests was laborious. Although summary docket entries were available on computer, the reasons for the continuance request and, frequently, the action taken had to be researched by reviewing the case file itself. Each case file, therefore, had to be retrieved from the file room and the papers reviewed to obtain information on the continuance requested. In five cases (11%) the file was missing and in a sixth case it was signed out. For those files that were available, the history of the continuance was not always readily available, as the entries on Chart 1 reflect.

b. Issues to Review

While approximately 32% of the continuance requests submitted were analyzed, it would be important to know what percentage of the total civil law cases filed had continuances requested and, within this gross figure, what case types generated continuance requests most frequently and for what reasons. The total civil law case filing figures are not readily available because the Court maintains the civil listings in a gross statistic which includes both civil law and civil equity cases. Based on estimates provided by Frank Sherry, the Circuit Court is currently averaging approximately 1,275 civil cases per month³, with the ratio of civil law and equity cases 60/40. Using this ratio, it is assumed that 765 civil law cases were filed each month, or a total of 1,530 for the period analyzed, with an estimated eleven (11.4%) generating continuance requests. This rate of continuance requests per total filings assumes, however, that continuance requests are submitted within 15 days of the Pretrial Conference Order pursuant to the terms of the Order. Eleven (25%) of the forty-five continuances analyzed were filed at least one month after the Order was issued, with six of these requests filed more than six months later.

5. Observations

³ As of December 15, 1995, 15,318 civil cases (law and equity) were filed since January 3rd; projecting an additional 600 cases to be filed by the end of the year, a total of 16,000 civil cases will have been filed in Calendar Year 1995.

With implementation of the DCM program, cases should be scheduled in accordance with the preparation needs required, therefore greatly reducing continuance requests after the issuance of the Scheduling Order in the following areas: (a) lead paint extensions; (b) need for additional preparation time; and (c) requests to expedite scheduling. In addition, the DCM schedule should provide for timely review of situations in which parties have not been timely served so that requests to extend time because of late service or nonservice should also be greatly reduced. On the other hand, during the initial implementation period there may well be an increase in continuance requests or requests to change track assignment as attorneys and parties become accustomed to the new system. These requests should be carefully monitored and reviewed to assure a consistent continuance policy and to identify any modifications that might be needed in the DCM track plans or scheduling provisions.

6. Recommendation

- (1) *Information on all continuance requests should be entered in the computer, including the party making the request, the reason for the request, the action taken, and whether any previous requests had been submitted⁴.*
- (2) *The Court should maintain and analyze periodically continuance request activity in toto and by case types. The results of this analysis should be used to identify special procedural, administrative or other problems that might be addressed collegially by bench and bar.*

B. Requests Submitted Within Thirty Days of Trial

1. Study Methodology

A 10% sample of requests for continuances submitted to the duty judge, who oversees requests to modify trial dates submitted within 30 days of trial was reviewed for a twelve month period covering May 1994 - April 1995. The results of this analysis are reported in Charts 2 and 3. Approximately two thousand eight hundred requests were submitted during the period, with 241 requests analyzed in the sample. In accordance with the Scheduling Order provisions, continuance requests submitted within 30 days of trial are to be for "exigent circumstances" or a showing of "good cause that the schedule cannot reasonably be met despite the diligence of the party seeking the modification because of unforeseen circumstances occurring within 30 days of the pretrial conference or trial date."

The review of the continuance requests submitted to the duty judge for cases scheduled for trial within thirty days was considerably easier than the requests submitted to the Judge in Charge of Civil Cases because each request is recorded on a Civil Postponement Form which Fran Meeks has made a practice of collecting and storing. Each form also contained the relevant information, including the moving party, date of the scheduled trial, reason for the continuance, and whether a prior continuance had been requested. Therefore, no reference to the case files was needed.

2. Principal Findings

a. Timeframe for Requesting Continuances

⁴ Currently, this information could be obtained only by reviewing the case file itself although, in some instances, a computer entry might also have been made.

Although only those requests which entail trial dates within thirty days are to be permitted to be filed before the Duty Judge under the terms of the Scheduling Order, an average of fifteen percent of the continuances sampled (36) involved trial dates in excess of 30 days. In no instance, did it appear that the request was ever rejected because it should have been submitted to the Judge in Charge of Civil Cases. In June, July, and October, requests to continue trial dates more than thirty days away exceeded twenty percent of the requests submitted.

b. Action Taken on Continuance Requests and Impact on Case Processing Time

Fifteen percent of the continuance requests were denied overall, with the frequency of denials varying significantly among the months studied. In June, August, September, January and February, for example, the rate of denial exceeded twenty percent and in January and February it was 33% and 50% respectively.

Overall, sixty-two percent of the requests granted established new trial dates which were in excess of 120 days beyond the previous date set. Scheduling patterns differed among months, however, with fifteen percent of the requests advancing the trial date less than sixty days. In January, March, and April, for example, 42% and 38% of the cases were advanced less than 60 days, while in July, August, September and February, less than 9% of the cases were advanced less than 60 days.

c. Reasons for Continuance Requests

The reasons for and frequency of continuance requests within thirty days of trial generally mirror those for continuance requests made within fifteen days of the issuance of the Scheduling Order. Attorney conflicts (24%) and the need for more discovery time (22%) continue to be the most frequently cited reasons. In addition, special problems that occur nearer to the trial date, such as a defendant not being served or recently served and the unavailability of an expert witness were also cited 14% and 9% of the time, respectively.

3. Issues Raised

a. Data/Record Issues

As noted above, it was far easier to research continuance requests submitted to the duty judge within thirty days of the trial date than those submitted to the Civil Judge within 15 days of the scheduling Order. Nevertheless, in neither instance are regular reports of continuance requests maintained and it is unlikely that anyone would go through the laborious process of extracting data from the Civil Postponement Forms maintained by Ms. Meeks on a regular basis, even though these are easier to access than the requests submitted to the Judge in Charge of Civil Cases.

b. Impact of Continuance Requests on Trial Calendar

Particularly with the advent of the DCM system, it will be important to monitor the predictability of the trial calendar and to take whatever actions are necessary to preserve its certainty and integrity. It will therefore be important to monitor the frequency of last minute requests for continuances once the DCM system is operational and to keep them to a minimum. Presently, it does not appear possible to calculate the rate of last minute continuance requests on the trial calendar because the strict 30-day timeframe is not fully complied with. Therefore, cases scheduled for trial on any one day could have generated continuance requests both within thirty days previously and beyond that timeframe.

4. Observations

DCM should greatly reduce these last minute modification requests and those which are filed should truly conform with the reasons permitted under the Scheduling Order. With more certain, predictable trial dates the availability of expert witnesses should also be increased. In addition, the early court supervision of the case process should greatly reduce the frequency of "last minute" requests for continuances and should provide a mechanism to identify "exigent circumstances" as soon as they develop.

The volume of continuances submitted during the 30-day period prior to trial, averaging approximately 240 per month, suggests that the earlier court supervision of the caseload process that will be instituted under the DCM program may obviate the need for many of these continuances. In addition, the significantly higher volume of requests within thirty days of trial than immediately after the case scheduling order is issued (241 monthly compared with 87 monthly) suggests that (a) attorneys are not currently meaningfully reviewing their cases and case preparation needs when the scheduling order is issued and/or (2) that it is their perception that a continuance will more likely be granted by the duty judge than by the Judge in charge of Civil Cases. A consistent continuance policy will be important to maintaining the integrity of the DCM system and judges overseeing continuance requests should exercise a consistent policy in this regard.

5. Recommendations

- (1) *Maintain summary information on the continuance requests submitted within thirty days of trial to ascertain: (a) the reasons for these requests, including those which comply and don't comply with the definition of "exigent circumstances"; the impact of granting these requests on the trial calendar⁵ as well as upon case disposition time; and (c) those cases whose trial dates are in excess of thirty days and for which continuance requests should be brought before the Judge in charge of Civil Cases.*
- (2) *Continuance requests should also be analyzed to ascertain the frequency with which continuances are requested for each trial date to provide a snapshot of the accuracy of the scheduling process and the relation between the volume and complexity of the cases set with those actually heard.*

⁵ Assuming that the trial docket will be realistically set once the DCM program is operational, and the expectation is created that every case scheduled will, in fact, go to trial, cases continued within thirty days of trial should be kept to a minimum because rescheduling them at that late time will take away trial time that cannot be allocated to other cases.

(Chart I)

(Chart IIA)

(Chart IIB)

ATTACHMENT 1

III. POST-DCM IMPLEMENTATION SURVEY