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CIVIL PRACTICE, CRIMINAL PROCEDURE

Civil Practice and Procedure Generally: Clarify Circumstances in Which Continuances Shall be Granted Due to Attendance at the General Assembly; Trial: Clarify Circumstances in Which Continuances Shall be Granted Due to Attendance at the General Assembly

CODE SECTIONS:	O.C.G.A. §§ 9-10-150, 17-8-26 (amended)
BILL NUMBER:	HB 1626
ACT NUMBER:	521
GEORGIA LAWS:	1996 Ga. Laws 112
SUMMARY:	The Act clarifies the effect that an attorney's or party's attendance at the General Assembly has on civil, criminal, and administrative agency proceedings. The Act provides that judges of trial courts or administrative agencies shall continue any trial or hearing when a party or attorney is in attendance at the General Assembly. The Act further provides that the time for filing papers or performing other acts in cases shall be extended when a party or attorney is in attendance at the General Assembly.
EFFECTIVE DATE:	March 20, 1996 ¹

History

Prior to the Act, Code sections 9-10-150 and 17-8-26 only provided grounds for continuing civil and criminal *trials* when a party or an attorney was in attendance at the General Assembly.² However, parties and their attorneys had no clear instruction as to whether other court proceedings or activities in a civil, criminal, or administrative agency case could also be continued.³ This lack of clear guidance in the Code caused two major conflicts. First, parties and attorneys experienced disparate treatment among the various courts and administrative agencies because judges and hearing officers struggled to interpret the

1. The Act became effective upon approval by the Governor.

2. 1991 Ga. Laws 376, § 1, at 377 (formerly found at O.C.G.A. § 9-10-150 (Supp. 1995)); 1983 Ga. Laws 675 (formerly found at O.C.G.A. § 17-8-26 (1990)).

3. Telephone Interview with Rep. Thurbert E. Baker, House District No. 70 (May 9, 1996) [hereinafter Baker Interview].

grounds for continuances under these circumstances.⁴ Second, attorneys who also served as members of the General Assembly often met resistance and a general unwillingness to cooperate in the handling of a matter from other lawyers who were not serving in the General Assembly.⁵ HB 1626 was introduced to address both of these concerns.⁶

HB 1626

Continuances in Civil Cases

The Act requires judges of any trial court or administrative agency⁷ to continue any case, any hearings on motions, and the response to any motion or suit when any party or attorney involved shall be absent by reason of his or her membership in the General Assembly.⁸ The continuance lasts the entire length of any ordinary or extraordinary session plus the three weeks immediately following any session adjourned *sine die*.⁹ A party, in the absence of his or her attorney, or the attorney, in the absence of the party, still has the option to proceed with the trial or motion.¹⁰ In those instances where a party has engaged more than one attorney, a continuance must be granted upon a showing that the absent attorney is necessary or desirable for the proper handling of the case.¹¹ With respect to other actions required to be taken in a case, the Act provides that the period of time provided for the doing of "any act" in a case in which a continuance is granted shall be automatically extended by the length of the continuance upon certification by the absent counsel that (1) he or she is lead counsel in the case, and (2) it is necessary for the absent counsel "to attend to the matters for which an extension is granted for the proper handling of the case."¹²

4. *Id.*

5. Telephone Interview with Rep. Jim Martin, House District No. 47 (June 4, 1996) [hereinafter Martin Interview]. The lack of civility among lawyers is especially true in the Atlanta legal community where the competition for clients is fierce. *Id.* An attorney who thought he might gain an advantage over his opponent would not hesitate to refuse an opposing counsel's request for an extension to respond to a suit or discovery response because of attendance at the General Assembly. *Id.*

6. Baker Interview, *supra* note 3; Martin Interview, *supra* note 5.

7. While the former Code section never addressed the duty of administrative judges to continue agency proceedings, in practice, most administrative agencies (like the Board of Workers' Compensation) acknowledged the appropriateness of continuing administrative agency hearings when a party or attorney was in attendance at the General Assembly. Baker Interview, *supra* note 3.

8. O.C.G.A. § 9-10-150 (Supp. 1996).

9. *Id.* *Sine die* refers to a session that has been adjourned or postponed indefinitely. BLACK'S LAW DICTIONARY 19 (5th ed. 1983).

10. O.C.G.A. § 9-10-150 (Supp. 1996).

11. *Id.*

12. *Id.* The "any act" referred to would include all discovery-related activities.

Continuances in Criminal Cases

The provisions of the Act amending the former criminal statute¹³ are almost a mirror image of the provisions of the civil statute.¹⁴ The Act applies to judges of administrative agencies as well as trial courts.¹⁵ Continuances are to be granted for trials, hearings, responses, and other acts when a party or attorney is in attendance at the General Assembly.¹⁶ The only substantial difference between the criminal statute and the civil statute is a provision that states a party in a criminal matter is not required to be present at the call of the case, motion, or hearing if the case, motion, or hearing is subject to continuance because that party's attorney is a member of the General Assembly.¹⁷

Karen Kay Harris

Baker Interview, *supra* note 3.

13. 1983 Ga. Laws 675 (formerly found at O.C.G.A. § 17-8-26 (1990)).

14. Compare O.C.G.A. § 17-8-26 (Supp. 1996) with *id.* § 9-10-150.

15. *Id.* § 17-8-26.

16. *Id.*

17. *Id.*