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June 30, 2016

The Honorable Jorge Labarga, Chief Justice
Florida Supreme Court
500 South Duval Street
Tallahassee, Florida 32399-1925

The Honorable Vance Salter, Chair
District Court Performance and Accountability
Third District Court of Appeal
2001 SW 117th Avenue
Miami, Florida 33175-1716

The Honorable Jeffrey J. Colbath, Chair
Florida Conference of Circuit Judges
205 North Dixie Highway
West Palm Beach, Florida 33401

The Honorable Augustus D. Aikens, Jr., Chair
Florida Conference of County Court Judges
301 South Monroe Street, 265-A
Tallahassee, Florida 32301

Florida Judiciary Education
Office of the State Court Administrator
Supreme Court Building, 500 South Duval Street
Tallahassee, Florida 32399-1900

Dear Chief Justice Labarga, Judges Salter, Colbath, and Aikens, and Florida Judiciary Education:

As Chair of the Rules of Judicial Administration ("RJAC") for the 2015-2016 term, I have been asked to send this letter to you regarding possible educational opportunities for judges in your conference on the topic of parental leave.

At both the January and June Florida Bar committee meetings, the RJAC considered variations of a rule of procedure that would, absent certain circumstances, require a judge to grant a Motion

for Continuance when an attorney is on parental leave for the birth or adoption of a child. The RJAC discussed this matter after it was advised of circumstances where expectant mothers' Motions for Continuance, based upon upcoming maternity leave, were denied.

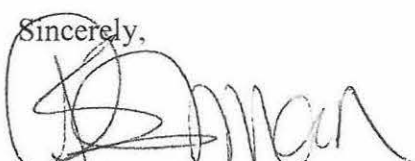
The matter was referred to a subcommittee to discuss and develop a proposed rule that would ensure that both men and women could avail themselves of their employers' parental leave policy without fear or consequences of their case not being continued. The subcommittee discussed the harmful effects on both attorneys and their families when a court denies a motion for continuance based on parental leave. These effects may include forcing an attorney to either spend less time with a newborn, or transferring cases to a different attorney which thus could interfere the with client relationship and negatively impact the attorney's career path.

The subcommittee believed, as a matter of policy, that parental leave always constitutes good cause for a continuance and that a motion for continuance based on parental leave should only be denied if there is a substantial countervailing harm to the other party. Enclosed is a copy of the subcommittee report explaining the reasons for the proposed rule.

The Diversity and Inclusion Committee of the Florida Bar also reviewed the topic of parental leave and unanimously adopted a resolution in support of a proposed parental leave rule. It recommended a rule of procedure to the Florida Bar Board of Governors for consideration. As part of the resolution, the Diversity and Inclusion Committee stated that "the effects of having another lawyer cover a case are often detrimental to the lawyer's career advancement, the attorney-client relationship, and the client," and that "the legal profession as a whole, and the judiciary in particular, should acknowledge the importance of child-rearing and support members of the Bar who choose to practice law and build families." A copy of the resolution is also enclosed for your review.

The full RJAC voted not to pursue a rule amendment as a number of members believed that the issue of parental leave should be addressed as a policy rather than through rule. The full RJAC did, however, unanimously (26-0) support the proposal that motions for continuance based upon parental leave should be granted. The RJAC directed the undersigned to forward a letter to the judicial college and judicial conferences notifying the organizations of the importance of parental leave and granting motions for continuance when requested for parental leave. The RJAC therefore respectfully requests that judicial education programs include a discussion of parental leave, the importance of judges being sensitive to the concerns expressed above, and to encourage judges to grant continuances based on parental leave to attorneys where possible.

Sincerely,



Amy Singer Borman
Chair, Rules of Judicial Administration

Enclosures

cc: Krys Godwin, Bar Liaison
Craig Leen, Esquire

THE FLORIDA BAR RULES OF JUDICIAL ADMINISTRATION COMMITTEE

SUBCOMMITTEE A ACTION REPORT

TO: Amy Borman, Chair RJA

FROM: Mark A. Romance

Date: May 17, 2016

Please be advised that Subcommittee A conducted a meeting on Tuesday, May 17, 2016, by conference call to discuss the action item listed below.

Subcommittee attendance was as follows:
Mark Romance – Present
Judson Cohen – Present
Judge Gagliardi – Present
David Jones – Not Present
Craig Leen – Present
James McKee – Not Present
Bill Vose – Present
Stephen Williams – Present
Tom Hall – Present
Paul Regensdorf -- Present

Additional participants included:
None.

The Subcommittee took the following action:

Item A: Proposal from Committee Member Craig Leen Regarding Parental Leave 15-RJA-33

1. Determined that the submission is within the scope of Subcommittee authority. **Yes.**
2. The Subcommittee made the following work assignments: **See attached.**
3. The Subcommittee made the following decisions: **The Subcommittee recommended by a vote of 7-0 that the full committee approve a new Rule 2.565.**
4. The Subcommittee prepared the attached written report which includes a summary of the issues, factors considered, majority position, minority position if applicable and proposed change in legislative format, if any. **See attached.**

Item B: Proposal from Ashley M. Myers, Esq. re Notice of Appearance and Access to Dockets in Family Law Cases 15-RJA-24

1. Determined that the submission is within the scope of Subcommittee authority. **No.**
2. The Subcommittee made the following work assignments: **See attached.**

3. The Subcommittee made the following decisions: **The Subcommittee voted 7-0 to refer the issue to the FCTC as the RJA has no power to determine access to court files.**
4. The Subcommittee prepared the attached written report which includes a summary of the issues, factors considered, majority position, minority position if applicable and proposed change in legislative format, if any. **See attached.**

Item C: Proposal from Heather Telfer Regarding Rule 2.110 and conflicting statutes 15-RJA-14

1. Determined that the submission is within the scope of Subcommittee authority. **Yes.**
2. The Subcommittee made the following work assignments: **See attached.**
3. The Subcommittee made the following decisions: **The Subcommittee voted 6-1 not to propose a change to the rule to clarify that the Rules of Judicial Administration do not supersede statutes as currently stated.**
4. The Subcommittee prepared the attached written report which includes a summary of the issues, factors considered, majority position, minority position if applicable and proposed change in legislative format, if any. **See attached.**

Item D: Proposal from RJA/FCTC Regarding Scope and Purpose of Rule 2.110

1. Determined that the submission is within the scope of Subcommittee authority. **Yes.**
2. The Subcommittee made the following work assignments: **See attached.**
3. The Subcommittee made the following decisions: **The Subcommittee determined that it was premature to evaluate the proposed rule changes.**
4. The Subcommittee prepared the attached written report which includes a summary of the issues, factors considered, majority position, minority position if applicable and proposed change in legislative format, if any. **See attached.**

The Subcommittee Chair will be prepared to report to the full Committee at the meeting in June 2016.

/s/
Mark A. Romance
Subcommittee A Chair

Cc: Judson Cohen, Vice-Chair, Subcommittee A
Krys Godwin

REPORT OF SUBCOMMITTEE A

ITEM A. Proposed New Rule 2.565 – Parental Leave, proposed by Committee Member Craig Leen

Summary of Issues Discussed

Prior to the January meeting, Committee Member Craig Leen proposed the concept of a new rule regarding Parental Leave and submitted two proposed versions of the rule, one where a continuance was mandatory and a second version where the court would have discretion to grant a continuance. The two proposed rules and comments are as follows:

Mandatory version

RULE 2.565 PARENTAL LEAVE

A motion for continuance based on parental leave of the attorney, when consistent with the parental leave policy of the firm or governmental entity for which the attorney works, or for a reasonable time when the attorney is a solo practitioner, shall be granted unless exceptional circumstances are shown. If the court denies the continuance, the specific grounds for denial shall be stated in the order, and the court shall exercise its discretion to grant as much leave as would be reasonable under the circumstances.

Comment

The profession is committed to parental leave and to the importance for attorneys to be able to balance work and family. This rule provides a presumption that a continuance for parental leave will be granted unless an exceptional reason is shown. An exceptional reason could be the need for emergency or time sensitive relief, or the fact that many continuances have already been granted and the substantial rights of the parties may be affected.

Discretionary version

RULE 2.565 PARENTAL LEAVE

In considering a motion for continuance based on parental leave of an attorney for a party, when the requested amount of time is consistent with the parental leave policy of the firm or governmental entity for which the attorney works, or for an otherwise reasonable amount of time when the attorney is a solo practitioner, the court should

exercise its discretion to grant the requested continuance unless the opposing party would be substantially prejudiced. In such circumstances, the court should exercise its discretion to grant as much leave as would be reasonable without causing substantial prejudice to the opposing party.

Comment

The profession is committed to parental leave and to the importance for attorneys to be able to balance work and family. This rule establishes that a court should exercise its discretion to grant a continuance for parental leave unless there is substantial prejudice to the opposing party. Substantial prejudice could be the need for emergency or time sensitive relief, or the fact that many continuances have already been granted and the substantial rights of the parties may be affected.

In determining the time period that is reasonable for a continuance under this rule, the court is expressly encouraged to consider the parental leave policies of the firm or governmental entity for which the attorney works. Where no such parental leave policy exists, the court may also wish to consider the time periods provided in the Family and Medical Leave Act as a reasonable amount of time. Nevertheless, the ruling on a motion for continuance under this rule, as well as any time period provided, ultimately remains in the sound discretion of the court.

Discussion

In the Committee's January meeting, the Committee voted to have the Chair send a letter to various court organizations, such as the Conference of Circuit Court Judges, encouraging a policy of granting continuances based on parental leave. The full Committee also voted to table the issue, referring it back to the Subcommittee, and did not reach a decision on whether to approve any rule.

Mr. Leen explained that following the meeting he has drafted a letter for the Chair to circulate to the various court organizations, including the Conference of Circuit Court Judges, the Conference of County Court Judges and the Florida Judiciary Education, Office of the State Court Administrator. It was suggested that the letter also be sent to the Florida Conference of Appellate Courts Judges Committee as well.

Mr. Leen further explained that the Florida Bar Diversity and Inclusion Committee unanimously adopted a resolution in support of the mandatory version of the rule, recommending the rule to the Florida Supreme Court and the Board of Governors.

The Subcommittee discussed possible additions to the rule, such as a time limit for motions to be filed under the rule, or limit the rule to lead counsel or lawyers who have had substantial

participation in the case. After discussion, the subcommittee felt that those issues could be considered by the court in the exercise of its discretion.

Action taken by Subcommittee

After discussion a motion was made to approve the discretionary version of the rule, and that the full Committee approve the rule and submit it to the Supreme Court, which motion passed unanimously 7-0.

ITEM B. 15-RJA-24 –Letter from Attorney Ashley Myers regarding Notice of Appearance and access to docket

Summary of Issues Discussed

Ashley Myers, a Jacksonville attorney, asked the Committee to consider changes to applicable rules to permit access to court files in cases in which the attorney was not counsel of record. Ms. Myers' email indicates that only an attorney of record has the right to access documents filed in a family law case, and that the clerk's office requires a notice of appearance to be filed in order to gain access to the file.

The Subcommittee discussed the fact that access to court records is not an issue within the scope of the Rules of Judicial Administration, and that the issue can only be addressed by the Florida Technology Committee.

Action taken by Subcommittee

The Subcommittee voted 7-0 to have the Committee Chair refer the issue to FCTC.

ITEM C. 15-RJA-14 – Email from Heather Telfer re: Rule 2.110 Scope and Purpose and conflict with statutes

Summary of Issues Discussed

Florida Bar Attorney Liason – Rules attorney Heather Telfer noted that Rule 2.110 currently provides, in its last sentence, that the Rules of Judicial Administration "supersede all conflicting rules and statutes." Attorney Telfer notes that it is unlikely that the Rules of Judicial Administration supersede Florida statutes.

The Subcommittee discussed the fact that statutes that are deemed procedural are within the purview of the courts, and can be superseded by the Rules of Judicial Administration. However, given that the Court has rendered several opinions in which it evaluated a statute to determine

whether it was substantive or procedural, the Court is in the best position to determine whether a Rule of Judicial Administration supersedes a statute and thus, no change is necessary.

Action taken by Subcommittee

The Subcommittee voted 6-1 that no change to Rule 2.110 is needed in response to Ms. Telfer's request.

ITEM D Email from Amy Borman Regarding Proposed Revisions to 2.110 to clarify the scope and purpose of the Rules of Judicial Administration

Summary of Issues Discussed

The RJA/FCTC workgroup proposed the following revisions to 2.110:

RULE 2.110. SCOPE AND PURPOSE

These rules, cited as "Florida Rules of Judicial Administration" and abbreviated as "Fla. R. Jud. Admin.," shall take effect at 12:01 a.m. on July 1, 1979. They shall apply to all matters of general or common application and administrative matters in all courts to which the rules are applicable by their terms. The rules shall be construed to secure the speedy and inexpensive determination of every proceeding to which they are applicable. These rules shall supersede all conflicting rules and statutes.

The Subcommittee did not have the benefit of the proposed rule changes in advance of the meeting, so it was determined by Subcommittee Chair Mark Romance that no vote be taken on the issue at the meeting. Further, it was reported that other FCTC work groups have been evaluating the scope and purpose of the Rules of Judicial Administration, and that a change of this nature should wait until those workgroups further develop their analysis.

Action taken by Subcommittee

The issue was tabled pending further developments by FCTC work groups.

THE FLORIDA BAR RULES OF JUDICIAL ADMINISTRATION COMMITTEE

SUBCOMMITTEE A ACTION REPORT

TO: Amy Borman, Chair RJA

FROM: Mark A. Romance

Date: January 14, 2016

Please be advised that Subcommittee A conducted a meeting on Wednesday, January 13, 2016, by conference call to discuss the action item listed below.

Subcommittee attendance was as follows:
Mark Romance – Present
Judson Cohen – Present
Judge Gagliardi –Present
David Jones – Not Present
Craig Leen – Present
James McKee – Present
Bill Vose – Not Present
Stephen Williams –Present
Tom Hall – Not Present

Additional participants included:
Krys Godwin
Amy Borman
The Subcommittee took the following action:

Item A: Proposal from Committee Member Craig Leen Regarding Parental Leave

1. Determined that the submission is within the scope of Subcommittee authority. **Yes.**
2. The Subcommittee made the following work assignments: **See attached.**
3. The Subcommittee made the following decisions: **The Subcommittee approved in concept a new rule 2.565 regarding Parental Leave. The proposed rule suggested by Mr. Leen included a presumption that a motion for continuance based on parental leave of the attorney should be granted unless exceptional circumstances exist. By a 4-2 vote, the majority of the Subcommittee members in attendance approved the concept of a new rule but with the caveat that the court have more discretion to grant the continuance based on all the circumstances. Mr. Leen was amenable to revising the proposed rule to afford the court more discretion and provided a revised rule for the Committee's consideration.**
4. The Subcommittee prepared the attached written report which includes a summary of the issues, factors considered, majority position, minority position if applicable and proposed change in legislative format, if any. **See attached.**

The Subcommittee Chair will be prepared to report to the full Committee at the meeting in January 2016.

Mark A. Romance
Subcommittee A Chair

Cc: Judson Cohen, Vice-Chair, Subcommittee A
Krys Godwin

REPORT OF SUBCOMMITTEE A

ITEM A. Proposed New Rule 2.565 – Parental Leave, proposed by Committee Member Craig Leen

Summary of Issues Discussed

Committee Member Craig Leen proposed the following new Rule and Comment:

RULE 2.565 PARENTAL LEAVE

A motion for continuance based on parental leave of the attorney, when consistent with the parental leave policy of the firm or governmental entity for which the attorney works, or for a reasonable time when the attorney is a solo practitioner, shall be granted unless exceptional circumstances are shown. If the court denies the continuance, the specific grounds for denial shall be stated in the order, and the court shall exercise its discretion to grant as much leave as would be reasonable under the circumstances.

Comment

The profession is committed to parental leave and to the importance for attorneys to be able to balance work and family. This rule provides a presumption that a continuance for parental leave will be granted unless an exceptional reason is shown. An exceptional reason could be the need for emergency or time sensitive relief, or the fact that many continuances have already been granted and the substantial rights of the parties may be affected.

Mr. Leen explained that he has become aware of three specific, separate cases where female attorneys moved for a continuance of a trial because she wanted to take maternity leave at the time the trial was scheduled, and the motions were denied. He has reason to suspect that there are more similar instances. Mr. Leen explained that many judges believe that if a lawyer is employed by a large governmental agency or a law firm, that a continuance for maternity leave should not be granted because another attorney from the agency or firm can simply "cover" the trial. Mr. Leen further explained that even if another attorney could "cover" the trial, the inability of the lawyer requesting the continuance to handle the trial has adverse consequences on the lawyer, who may suffer lost advancement opportunities by not being able to conduct the trial. Accordingly, the risk that a court could deny the motion puts the lawyer in the difficult position of sacrificing significant family time in order to not hurt her career. Mr. Leen explained that female lawyers refrain from making such motions because they do not want to have a stigma attached to them within their firms and thus often do not even seek the continuance. Mr. Leen

further explained that male attorneys may also want to take family leave for the birth of a child, but the stigma attached to such a motion precludes the filing of the motion in the first instance. Mr. Leen suggested that having a rule in place will be an indication from the court that this critical family time is important and is a proper basis to request a continuance, hopefully removing the negative stigma presently attached to filing such a motion.

Several members of the Subcommittee expressed concern that lawyers could use such a rule for tactical advantages and "game the system." Several examples were discussed. Another concern raised was whether such a rule was necessary in light of the current rules on continuances that exist in the Civil Procedure Rules and elsewhere. Another concern was raised as to whether a rule that constrains judicial discretion was appropriate.

Committee Chair Amy Borman suggested that the Subcommittee consider whether the proposal could be incorporated into Rule 2.550 Calendar Conflicts. She also suggested that the Subcommittee consider whether the proposal should be part of the RJA or possibly put into the Code of Judicial Conduct.

Action taken by Subcommittee

The Subcommittee voted 4-2 that the proposed rule should be approved in concept because the policy issues justify enactment of a new rule. The majority, however questioned whether the mandatory nature of the proposed rule should be revised to allow a judge more discretion in evaluating a motion made under the rule. The votes in favor of the proposed rule uniformly limited their affirmative vote to the "concept" of a Parental Leave rule with the understanding that the rule should be revised to remove the mandatory inference of the rule and to instead permit the court more discretion.

The two dissenting votes supported the concept of having judges grant continuances based on family leave, that the policy being proposed is very important and one that should be promoted, but indicated concern about criticisms that there are simply too many rules, that more rules that restrain judicial discretion is not good for our system, and that the likelihood of abuse of such a rule was very high. An additional concern was whether it would be appropriate to limit the topic of the rule to maternity leave when there are other important public policy reasons for a continuance that should be considered such as the health of a lawyer and health of a lawyers' family member – spouse, parent or child.

Subsequent Activity

Following the Subcommittee meeting, Committee Member Craig Leen proposed an alternative rule that permits the judge more discretion in evaluating a motion for continuance based on family leave, which additional proposal has not been considered by the Subcommittee. The additional proposed rule is as follows:

RULE 2.565 PARENTAL LEAVE

In considering a motion for continuance based on parental leave of an attorney for a party, when the requested amount of time is consistent with the parental leave policy of the firm or governmental entity for which the attorney works, or for an otherwise reasonable amount of time when the attorney is a solo practitioner, the court should exercise its discretion to grant the requested continuance unless the opposing party would be substantially prejudiced. In such circumstances, the court should exercise its discretion to grant as much leave as would be reasonable without causing substantial prejudice to the opposing party.

Comment

The profession is committed to parental leave and to the importance for attorneys to be able to balance work and family. This rule establishes that a court should exercise its discretion to grant a continuance for parental leave unless there is substantial prejudice to the opposing party. Substantial prejudice could be the need for emergency or time sensitive relief, or the fact that many continuances have already been granted and the substantial rights of the parties may be affected.

In determining the time period that is reasonable for a continuance under this rule, the court is expressly encouraged to consider the parental leave policies of the firm or governmental entity for which the attorney works. Where no such parental leave policy exists, the court may also wish to consider the time periods provided in the Family and Medical Leave Act as a reasonable amount of time. Nevertheless, the ruling on a motion for continuance under this rule, as well as any time period provided, ultimately remains in the sound discretion of the court.

A RESOLUTION OF THE FLORIDA BAR DIVERSITY AND INCLUSION COMMITTEE IN SUPPORT OF THE MANDATORY VERSION OF PROPOSED RULE 2.565, PARENTAL LEAVE

WHEREAS, anecdotal evidence exists that female lawyers, in the State of Florida, are often denied continuances in anticipation of taking maternity leave; and

WHEREAS, it is assumed that these lawyers, especially those who work in large firms or agencies, can simply have a colleague stand in the place of the lawyers; and

WHEREAS, the effects of having another lawyer cover a case are often detrimental to the lawyer's career advancement, the attorney-client relationship, and the client; and

WHEREAS, there is a stigma attached to both female and male lawyers asking for a continuance in anticipation of maternity or paternity leave; and

WHEREAS, the legal profession as a whole, and the judiciary in particular, should acknowledge the importance of child-rearing and support members of the Bar who choose to practice law and build families; and

WHEREAS, Craig Leen, a member of the Rules of Judicial Administration (RJA) Committee, proposed an amendment to Rule 2.565 to address these concerns; and

WHEREAS, the Rule was approved "in concept" at the subcommittee level with a request that the proposed rule be amended to allow for more judicial discretion; and

WHEREAS, on January 22, 2016, the RJA Committee tabled discussion on the proposal to amend the rule, effectively halting its progress; and

WHEREAS, also on January 22, 2016, the Standing Committee on Diversity and Inclusion addressed this issue and reviewed both versions of the proposed rule finding the initial version to be preferable; and

WHEREAS, the Standing Committee on Diversity and Inclusion subsequently considered and approved this resolution.

NOW THEREFORE BE IT RESOLVED BY THE FLORIDA BAR STANDING COMMITTEE ON DIVERSITY AND INCLUSION TO RECOMMEND TO THE FLORIDA SUPREME COURT AND THE FLORIDA BAR BOARD OF GOVERNORS THE AMENDMENT OF THE FOLLOWING RULE OF CIVIL PROCEDURE:

RULE 2.565 PARENTAL LEAVE

A motion for continuance based on parental leave of the attorney, when consistent with the parental leave policy of the firm or governmental entity for which the attorney works, or for a reasonable time when the attorney is a solo practitioner, shall be granted unless exceptional

circumstances are shown. If the court denies the continuance, the specific grounds for denial shall be stated in the written order, and the court shall exercise its discretion to grant as much leave as would be reasonable under the circumstances.

Comment

The profession is committed to parental leave and to the importance for attorneys to be able to balance work and family. This rule provides a presumption that a continuance for parental leave will be granted unless an exceptional reason is shown. An exceptional reason could be the need for emergency or time-sensitive relief, or the fact that many continuances have already been granted and the substantial rights of the parties may be affected.

Passed and adopted this 22nd day of March, 2016.

On behalf of the Committee:

Chasity H. O'Steen
Chair