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RECEIVED, 08/31/2017 02:53:33 PM, Clerk, Supreme Court

Saw the proposed rules and am wondering what is generating the interest in having a rule to govern this specific ground for a continuance. Are judges routinely denying continuances for this reason when they would grant them for other reasons? My own experience has been that on the relatively rare occasion when a continuance is sought because an attorney is going on maternity/parental leave, everyone is quite agreeable and respects the need for a continuance if the attorney's presence is essential to the trial. Unless there has been some history of a significant number of judges arbitrarily refusing to even consider this particular ground as compared to other grounds for continuance, I wouldn't think that such a rule would be even considered. Additionally, it would put the Supreme Court in the position of "prioritizing" grounds for continuance and imposing its ideology on trial judges regarding one particular reason to consider a continuance. In my view, parental leave should remain one of many reasons why a continuance may be granted and not given any priority over other equally valid reasons. Whether phrased as a mandatory or discretionary rule, a rule like this would unnecessarily invade the independence of trial judges. For these reasons, I would not be in favor of such a rule.

Thanks for inviting input.

Toby Monaco
Circuit Judge, Eighth Judicial Circuit

I agree with Judge Monaco. In addition to being our Civil Administrative Judge, he will be the Eighth Circuit's Chief Judge beginning Jan. 1, 2017. Thanks for seeking input.

Robert E. Roundtree, Jr.
Chief Judge
Eighth Judicial Circuit

I do not have anything new to add to the discussions, other than I believe it would be appropriate for there to be a Rule rather than a "policy." It seems to me to be a distinction of substance, because a judge's failure to follow "policy" would be non-reviewable and thus of little force or effect

Ross Goodman
Circuit Judge
First Judicial Circuit

Thank you for seeking input on the rule.

I agree with the rule that would require it to be mandatory, with the Court having to explain the denial.

However, I believe the rule should include a requirement for the attorney (male or female) expecting* a baby to file their motion upon receipt of the trial order, or as soon thereafter as is known, if the projected parental leave would somehow interfere with pre-trial deadlines or conflict with the trial period, so that the matter may be timely addressed. Of course, this requirement would not apply if the case can proceed, pre-trial deadlines met, etc., without the attorney that is expecting a baby. For example, if co-counsel is able to handle matters. (The attorney expecting the baby would be the one to decide – not the Court – by either filing or not filing the motion.) Failure to timely file the motion would provide the court with sufficient grounds for denial of continuance based on parental leave.

Giving birth does not usually come as a surprise. Unless there are unexpected complications, attorneys know the approximate due date way in advance.

Although I grant the continuance or, at a minimum, excuse them for a portion of the trial period, (usually it's the father seeking a continuance) I've never understood why they wait until calendar call to advise that their wife will be having a baby during the trial period.

So, while I agree with the mandatory rule, I propose it include parameters for the timeliness of the motion, as well as the possible consequences for failure to comply.

*"Expecting" refers to the future mother or father of the child to be born, not the person that is actually pregnant. Would also apply to those that are adopting a child to be born from a surrogate.

Barbara Areces
Circuit Court Judge
Eleventh Judicial Circuit

Manny I vote to recommend the mandatory rule in keeping with that premise that lawyers are people too with families and lives outside of the practice of law. I think the mandatory rule would work best because it creates the presumption of granting leave, rather than leaving it up to the judge's discretion. In criminal court the only hesitation is the defendant's speedy trial rights.

Judge Dennis Murphy
Circuit Judge
Eleventh Judicial Circuit

Our court plans to write a letter agreeing with the Judicial Administration Committee that a special rule should not be created. Offhand, can you advise where and to whom the letter should be sent? If an email is sufficient, let us know to whom and email address.

Judge Thomas Logue
Third District Court of Appeal,

While I do not know nearly enough about the laws relating to issues of family leave, if they bind us and say what we must do in this circumstance, we do not need a redundant court rule. If they do not, our obligation to be reasonable at all times will guide us.

My thought is rules of this type are borne of unnecessary hand-wringing over what must have been the persistent, misguided actions or policies of a few of our colleagues. I am unwilling to believe that this is a systemic problem. If it is, let the rule be served. If not, it is clutter in the cupboard.

While these sorts of rules, it might be argued, are designed to present to the public a view of the courts that is fair, just, and reasonable, I am of the opinion they work just the opposite result – reflecting a wild judiciary with no sense of decency or humanity. We are supposed to be resting upon the summit of these virtues and the public should perceive that we are implicitly trusted to so rest. "Good people do not need laws to tell them to act responsibly." - didn't some sage Greek once proclaim this? The more rules we have to tell us how to be "good", the less likely the public is to view us as inherently so.

There are mechanisms in place to address errant judicial conduct – ethics complaints, extraordinary writs, and the dread branding of "the learned trial judge", for instance. I know when confronted with a lawyer requesting a postponement on grounds of recent parental responsibility, I have without hope of escape found myself under the microscope of decency. If our elected lawmakers have spoken, by damn I will abide. If not, I rely upon those traits I must believe had something to do with my being entrusted with this position. I can only hope I will do the right thing. I must have confidence the vast majority of my colleagues are of similar ilk. Allowing the public to observe we are fair and decent despite commandment goes much further than making room for the perception we are doing this, that, or the other thing only because required by edict.

If on the committee, I would vote no on the rule and yes on judicial education.

J. Kevin Abdoney
Judge of the Circuit Court
Tenth Judicial Circuit of Florida

I'm with Kevin. The measure of morality is "what you do when no one is looking."

William Sites
Circuit Judge
Tenth Judicial Circuit

I agree w/ Kevin, too! There is a rule in place; however, humanity & decency should guide us through these situations.

Sharon Franklin
Circuit Judge
Tenth Judicial Circuit

I understand the importance of wanting to address this issue, but agree with Roger that it is already addressed with the “good cause” language in the Rule. However, if it needs to be spelled out, then perhaps Rule 2.545(e) should be revised to elaborate on “good cause” to include, but not limited to, not just parental leave but other types of leave covered under FMLA, to avoid future revisions.

Andrea Teves Smith
Circuit Judge
Tenth Judicial Circuit

The consensus from the 5th is that if a rule is necessary, it should be the discretionary version- there are too many variables for the mandatory version, i.e., sole practitioner vs a large firm, involvement of other attorneys in the firm in the case, conflict with other required mandates such as elderly litigants on the other side, etc.

Don Briggs
Chief Judge
Fifth Judicial Circuit

RICHARD J. SUAREZ
CHIEF JUDGE
DISTRICT COURT OF APPEAL
THIRD DISTRICT

2001 S.W. 117TH AVENUE
MIAMI, FLORIDA 33175-1716
(305) 229-3200

November 14, 2016

Robert M. Eschenfelder, Esq.
PO BOX 958,
Bradenton, FL 34206-0958.

Re: Proposed Rule Focusing on Family Leave

Dear Chairman Eschenfelder:

While the Third District Court of Appeal is committed to lawyers being able to balance work and personal life, including specifically family matters and parental leave, the Court is in unanimous agreement with the position of the Rules of Judicial Administration Committee, which on two separate occasions declined to approve a Rule in this regard.

The nature of this issue makes it one best left to the exercise of the sound discretion of the court, subject to review as provided by existing rules. We approve including a segment on work/life issues in judicial training, as appropriate.

Sincerely,

Richard J. Suarez
Chief Judge

RJS:fam

Florida Conference of Circuit Judges

March 17, 2017

William J. Schifino Jr. President, The Florida Bar
P.O. Box 380
Tampa, Fl. 33601-0380

Dear Mr. Schifino:

The Florida Conference of Circuit Judges is comprised of all 599 Circuit Court Judges in the State of Florida. The Florida Conference of Circuit Judges met in Executive Committee on February 27, 2017 in Tampa, Florida. Among other Court business, we considered the Final Report and Recommendation of the Special Committee on Parental Leave in Court Actions. The Executive Committee voted overwhelmingly in favor of a mandatory parental leave rule.

The Conference has a longstanding commitment to fairness in the court system. We regularly present judicial education programs on a vast array of diversity topics, including implicit bias and gender bias. The Executive Committee recognizes that parental leave has legal, social, and psychological benefits for the legal profession and for the mothers, fathers and children impacted positively by promoting work/life balance. The Executive Committee also recognizes that parental leave is generally an appropriate basis for which to grant a continuance.

The Conference is aware that the Board of Governors is now considering proposed rule language and that the Board of Governors may alter or amend the language proposed by the Special Committee. The Conference does not wish to influence the Board of Governors in its consideration of specific rule language. Therefore, the Florida Conference of Circuit Judges will wait until the Board of Governors finalizes the language before passing a formal resolution supporting a proposed mandatory parental leave rule.

Please let me know if I or the Florida Conference of Circuit Judges can assist you further.

Very truly yours,

Judge Scott M. Bernstein
Chair,Florida Conference of Circuit Judges
and Administrative Judge, Family Division LET Courthouse Center
175 N.W. 1st Avenue, Suite 2815
Miami, FL 33128
305-349-5744

Florida Conference of Circuit Judges

April 7, 2017

William J. Schifino Jr. President, The Florida Bar
P.O. Box 380
Tampa, Fl. 33601-0380

Dear President Schifino:

Since my letter to you on March 17, 2017, I have heard from other Judges (some of whom are not on the FCCJ Executive Committee) who expressed opinions on the proposed Parental Leave Rule now pending before the Board of Governors. As I understand the concerns, the issue appears to be whether the Judges feel a rule on parental leave should use the word "shall" or "may." I have heard from no one who disputes that parental leave is generally an appropriate basis to grant a continuance. In fact, the vote of the Executive Committee was overwhelming in support of the concept of parental leave. But whether the Board of Governors ultimately decides its proposal contains the word "shall" or "may" is, I believe, better left up to the rule drafters and the Board of Governors. We do not feel the Florida Conference of Circuit Judges should weigh in on debates over specific language at this stage. If the Board of Governors ultimately passes a proposed rule, the FCCJ will then debate actual language and be able to take a position whenever the Supreme Court requests comments. On Behalf of the Executive Committee, we wish to thank you and the Board of Governors for your willingness to consider this issue.

Very truly yours,

Judge Scott M. Bernstein

Chair, Florida Conference of Circuit Judges
LET Courthouse Center
175 N.W. 1st Avenue, Suite 2815
Miami, FL 33128
305-349-5744

OFFICE OF

JONATHAN SJOSTROM
CHIEF JUDGE
SECOND JUDICIAL CIRCUIT

LORRAINE GAUSS
JUDICIAL ASSISTANT
PHONE: (850) 606-4321
FAX: (850) 606-4474

LEON COUNTY COURTHOUSE
301 SOUTH MONROE STREET
TALLAHASSEE, FLORIDA 32301

April 26, 2017

Krys Godwin, Director
The Florida Bar, Board of Governors
Legal Publication, at kgodwin@floridabar.org

Re: Proposed Rule 2.570 -- Parental Leave

I previously submitted comments to the Special Committee as Chief Judge of the Second Circuit. This document is my individual view regarding the proposed rule.

Introduction

If a rule is to be adopted, its language should be more cautious.

Parental leave for lawyers represents a worthy value. Florida judges must carefully consider remedies, including trial continuances, necessary to ensure that trial lawyers can rely on parental leave. Judges must be humane in considering the family circumstances of lawyers and sensitive to the demands of trial practice. Probably every judge knows trial lawyers who worked themselves into the hospital. My personal experience is that I have sometimes been rebuffed by trial lawyers when I attempted to get them to acknowledge their health issues, including parental leave. Trial lawyers can be territorial.

Control of the calendar is the core of sound judicial discretion. Time and deadlines are the essence of due process rights of parties in many contexts. Good trial judges carefully manage both the life of a case and the judge's caseload by skillful attention to their responsibility to establish the calendar and schedule.

Judges do not and should not have discretion to act arbitrarily. But careful consideration must be given to the purpose and essential values protected by judicial discretion.

What is "a Continuance?"

The proposed rule does not define the ubiquitous term "continuance." The concept of "a continuance" is as broad and imprecise in practice as the circumstances and procedural posture of every case. This breadth should suggest the humility of caution.

A lawyer may mean "a continuance" of a long established trial date with witness availability scheduled far in advance by many lawyers, travel costs, and collateral consequences for many and diverse parties, clerks, law enforcement, jurors and court personnel.

"A continuance" may refer to a single hearing or the filing date for a single document that is unlikely to have much effect on the overall time to resolution.

"A continuance" may mean discovery and motion deadlines that may be easily adjustable with forethought.

"A continuance" may mean deadlines established by rule or statute that may have implications for other matters over which the trial judge has no control.

"A continuance" may mean delaying a hearing on a protective injunction for a respondent whose liberty interest in home, work and children have been curtailed without notice or opportunity to be heard or for a petitioner who remains unprotected because of deficiencies in pro se pleadings.

"A continuance" may mean an assistant state attorney, public defender, dependency counsel, or regional conflict counsel imposing delay on hundreds of litigants.

A broad, mandatory rule must anticipate and be reconciled with the many, many contexts and circumstances in which lawyers use the word "continuance." That this is a daunting task counsels that a less absolute rule is more appropriate and that we must trust judges to consider individual circumstances individually.

Examples of Rules Addressing Time and Continuances
The proposed rule applies to every form of action, at every stage, in every circumstance and across the Rules of Civil, Criminal, Juvenile, Family, and Appellate Procedure, no matter the priority of the case.

Time and deadlines are the essence of due process rights of parties in many contexts. The idea of "a continuance" is the subject of many existing rules and implied by many rules and statutes. The Rule should not be broad and mandatory without an explicit reconciliation with existing rules addressing time and continuances.

This list is intended to be exemplary, not comprehensive.

Judicial Administration Rule 2.545(e) provides:

> **Continuances.** All judges shall apply a firm continuance policy. Continuances should be few, good cause should be required, and all requests should be heard and resolved by a judge. All motions for continuance shall be in writing unless made at a trial and, except for good cause shown, shall be signed by the party requesting the continuance. All motions for continuance in priority cases shall clearly identify such priority status and explain what effect the motion will have on the progress of the case.

I suggest that, because Rule 2.545(e) already establishes a general rule on "Continuances," the proposed rule must be considered as a part of Rule 2.545(e), rather than separately. The proposed rule should be reconciled with existing Rule 2.545(e). The Supreme Court should not be asked to mandate both and ignore their contradictions.

Rule 2.545(e) requires motions for continuance "to be signed by the party." The proposed rule does not. This distinction emphasizes the potential conflict between a lawyer's personal interest in a continuance and the client's potential interest in a speedier resolution. A mandatory rule should reconcile this conflict or give guidance to the trial judge.

Judicial Administration Rule 2.256, Juror Time Management, requires that "The services of jurors should be employed so as to achieve optimum use with a minimum of inconvenience to jurors." Rule 2.256(d) states that "Jury management and calendar management should be coordinated to make effective use of jurors." Calendar and scheduling has broad implications for many persons throughout the process.

Judicial Administration Rule 2.250, Time Standards for Trial and Appellate Courts and Reporting Requirements, establishes specific and very aggressive standards "as presumptively reasonable."

Judicial Administration Rule 2.545, Case Management, affirms that "Judges and lawyers have a professional obligation to conclude litigation as soon as it is reasonably and justly possible to do so. However, parties and counsel shall be afforded a reasonable time to prepare and present their case."

Rule 2.545(b) demands that the "trial judge shall take charge of all cases at an early stage in litigation and shall control the progress of the case thereafter until the case is determined." The Rule establishes specific processes to ensure timely resolution.

Rule 2.545(c) acknowledges "cases assigned a priority status by statute, rule of procedure, case law, or otherwise" and provides methods by which parties and counsel may advance such cases on the court's docket including seeking appellate review and enforcement. Judicial Administration Rule 2.550(a) contains guidelines for broad categories of priority cases.

Civil Procedure Rule 1.200, Pretrial Procedure, sets out a careful process to ensure that cases are resolved both reasonably and reasonably quickly. It encourages the parties and the court to plan the path, and especially the time, to resolution through a schedule tailored to the circumstances of each case. Rule 1.201, Complex Litigation, provides detailed processes and timelines to promote the fair and timely resolution of these matters.

Rule 1.460, Continuances, requires a motion to be in writing and "signed by the party requesting the continuance."

Criminal Rule 3.050, "Enlargement of Time," makes certain time periods jurisdictional.

Criminal Rule 3.190(f) defines "continuance" to mean "the postponement of a cause for any period of time" and provides specific processes and deadlines.

Criminal Rule 3.191, "Speedy Trial," has crucial implications for due process rights in criminal cases and I suggest that the proposed Rule cannot be responsibly implemented without making plain that a lawyer cannot both invoke speedy trial rights and rely on a parental leave continuance. The priority of a client's right to invoke speedy trial rights must also be reconciled with the lawyer's parental leave rights under the proposed rule. Finally the proposed rule does not reconcile the defendant's right to speedy trial with a prosecutor's right to parental leave.

Rule 2.550(a)(2) establishes that "Juvenile dependency and termination of parental rights cases are generally to be given preference over other cases, except for speedy trial and capital cases." Consistent with this priority, the Rules of Juvenile Procedure are replete with provisions requiring the trial judge to advance these cases.

In juvenile delinquency cases in which the child is detained, section 985.26(2) of the Florida Statutes forbids a continuance past 21 days after arrest in most cases. Because of the emergency created by an incarcerated child, Rule 8.010 requires a detention decision within hours. Rule 8.015 requires an arraignment within 48 hours of filing of an initial petition for all detained children. All children have the right to be tried within 90 days of arrest under Rule 8.090 with specified bases for extensions, including illness and exceptional circumstances. A child is permitted to demand a speedy trial within 60 days.

Juvenile Dependency cases likewise include compressed timeframes in acknowledgment of the court's paramount responsibility of timely achieving permanency for dependent children. "Time is of the essence for permanency of children in the dependency system. A permanency hearing must be held no later than 12 months after the date the child was removed from the home or within 30 days after a court determines that reasonable efforts to return a child to either parent are not required, whichever occurs first." Judges lack the power to avoid the damage of delay for dependent children.

Many remedies in family law are both urgent and harsh. As a consequence, rules and statutes impose many strict time standards. See, e.g., 61.13001(1), Florida Statutes (temporary relocation hearing to be conducted within 30 days of motion and trial within 90 days of notice for trial); Family Rule 12.610(c)(4)(A) (injunctions to be tried within 15 days).

The proposed rule would be very difficult to implement if it is the only remedy permitted in cases in which lawyers are responsible for mass caseloads such as prosecutors, public defenders, regional counsel, and dependency counsel.

Lawyers and Judges Should be Encouraged to Communicate and Cooperate
The responsibility to resolve cases timely is not the judge's alone. "Judges and lawyers have a professional obligation to conclude litigation as soon as it is reasonably and justly possible to do so." Judicial Administration Rule 2.545. The proposed rule should make clear that the lawyers continue to retain a professional responsibility to communicate and attempt to reconcile the values of parental leave and timely resolution of cases.

I urge caution in mandating a specific remedy that cannot anticipate the circumstances of a specific case and lawyer. Courtesy, professionalism and timely, good-faith communication should be emphasized.

Conclusion

I suggest a rule explicitly establishing that parental leave is an appropriate basis for a continuance but eliminating the mandate and the requirement for record findings of exceptional circumstances. I am doubtful that the proposal gives appropriate deference to the trial court's judgment about the circumstances of individual cases. It is more appropriate to provide lawyers a rule establishing parental leave as a specific basis for a continuance to present to the judge in support of a motion.

I suggest the following alternative language:

> "A court may grant, and shall closely consider, a motion for a reasonable continuance to accommodate parental leave. Lawyers shall confer and attempt to reconcile parental leave and the expeditious resolution of cases."

I hope these comments are helpful.

Respectfully,

Johathan Sjostrom, Circuit Judge

Copies via electronic mail to:
Circuit 2 Representative Larry Sellers
Circuit 2 Representative Melissa Van Sickle
All Chief Judges

From: "Ficarrotta, Ron" <FICARRRN@fljud13.org>
Date: April 27, 2017 at 2:40:02 PM EDT
To: "margaret.mathews@akerman.com" <margaret.mathews@akerman.com>, "lscriven@trenam.com" <lscriven@trenam.com>, "tbopp@bankerlopez.com" <tbopp@bankerlopez.com>, "michael.hooker@phelps.com" <michael.hooker@phelps.com>
Cc: "wschifino@burr.com" <wschifino@burr.com>
Subject: FW: Proposed Rule 2.570-- Parental Leave correspondence

I have had the opportunity to discuss with each of you, except Margaret, my thoughts regarding the pending Parental Leave Rule.

I hope to speak directly with Margaret later this week.

Attached you will find a copy of the comments filed by my counterpart in Tallahassee, Second Circuit Chief Judge Jon Sjostrum. I could not say it better, and I adopt his comments.

I realize that there was some confusion regarding the letter sent by Judge Scott Bernstein on behalf of the Florida Conference of Circuit Judges. A second letter was sent clarifying that the conference supports the concept of parental leave, but was not taking a position on the rule at this time. I can assure you that the overwhelming majority of chief judges, while supporting the concept of parental leave, are opposed to any strict rule which would limit the discretion of the trial judge.

We have never had a problem with this issue in the 13th Circuit. I give credit to our judges and more so to our local attorneys for their professionalism in handling any such issue amongst themselves and resolving the need for any continuances without the need for a rule.

I suggest that we give our judiciary and members of the Florida Bar the credit they deserve for treating each other with courtesy and professionalism and continue to rely on their own good sense as to when and if a continuance is merited. While parental leave may certainly be a valid reason for a continuance, it is clear that the presiding judges and the parties involved in each particular case are in the best position to make that determination.

I thank you for your service on the Board of Governors and respectfully request that you consider this proposed rule as one that is not necessary at this time.

RF

Ronald N. Ficarrotta
Chief Judge, Thirteenth Judicial Circuit
800 East Twiggs Street
Suite 602
Tampa, Florida 33602

813-272-5022