



**State of Florida
Department of Children and Families**

Rick Scott
Governor

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Grainne O'Sullivan
*Director of Children's
Legal Services*

November 15, 2018

Florida Supreme Court
500 South Duval Street
Tallahassee, FL 32399
(via Florida Courts E-filing Portal)

Re: Proposed Rule 2.570 Parental Leave Continuance, Case No. SC18-1554

Dear Justices:

The Department of Children and Families ("the Department") respectfully submits the following comments in opposition to proposed Rule 2.570 to the extent the rule will be applied to dependency court proceedings. In short, the Department supports the sentiment that lead to the proposal of the rule; however, a mandated presumption that continuances should be granted in dependency cases will lead to continuances that are contrary to the law and delays that will have a negative impact on Florida's dependent children.

The Department echoes the Juvenile Court Rules Committee's comments submitted on August 15, 2018, that proposed Rule 2.570 is contrary to the provisions of Chapter 39 that mandate timely permanency for dependent children. Section 39.0136, Florida Statutes (2018), expressly provides that a continuance "may be granted only for extraordinary circumstances in which it is necessary to preserve the constitutional rights of a party or if substantial evidence exists to demonstrate that without granting a continuance or extension of time the child's best interests will be harmed." Even when such extraordinary circumstances are established, the statute limits the total time for continuances in a dependency case to 60 days within any 12-month period. Yet, proposed Rule 2.570 contemplates the movant may presumptively receive up to a three-month continuance but could receive a longer continuance if good cause is shown. The rule would also require the party challenging the continuance to demonstrate substantial prejudice instead of the movant demonstrating the extraordinary circumstances outlined in section 39.0136. In practice, just one continuance pursuant to Rule 2.570 would alone exceed the statutory limit on continuances permitted in a calendar year in the dependency case, thereby requiring the court to violate the statutory limit on continuances if another party seeks even a one-day continuance to preserve a constitutional right or to act in the child's best interest. The judiciary should not be placed in such a position.

If Rule 2.570 were to be adopted and applied to dependency cases, it will have a significant impact on the dependency court system and the children it serves. As of September 30, 2018, there

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were 24,235 children in out-of-home care. See <http://www.dcf.state.fl.us/programs/childwelfare/dashboard/c-in-oooh.shtml>. Chapter 39 contemplates that a permanent placement should be achieved for each of these children as soon as possible but no later than within 1 year of coming into care. § 39.001(h), Fla. Stat. (2018). The Department has been very successful in its efforts to improve permanency by achieving timely disposition at the beginning of a dependency case with a statewide average of 55 days, well below the 88 days provided for in Chapter 39. See pg 44 of http://www.centerforchildwelfare.org/qa/cwkeyindicator/KI_Monthly_Report_OCT_2018.pdf. Despite a timely start, only 39.6% of children entering Florida’s system achieve permanency within 12 months of removal, slightly below the national standard of 40.5%. See *id.* at pg 39. The Department and its community partners, including the judiciary, have convened multiple workgroups and are implementing strategies to improve permanency results for Florida’s children. However, those strategies would be undermined if the parties to dependency cases began to obtain presumptive three-month continuances under Rule 2.570 for adjudicatory, disposition, permanency, reunification, termination of parental rights, or permanent guardianship hearings. While it is unrealistic to assume that a continuance under Rule 2.570 would be sought in every dependency case, it is wholly reasonable to assume that a three-month delay would have a negative impact on the children in those cases in which such a continuance is granted. See *In Re: Amendments to the Rules of Judicial Admin.*, 24 So. 3d 47, 52 (Fla. 2009) (Pariante, J., concurring) (“Children are affected by delay more than adults because their sense of time is different and the need for attachment to promote healthy children is great.”).

For these reasons, the Department joins the Juvenile Court Rule’s Committee’s request that if the Court adopts Rule 2.570, it adopt a version of the rule that expressly provides that the rule will not apply to proceedings governed under the Florida Rules of Juvenile Procedure. Specifically, the Department supports the proposed amendments by the JCRC indicated in double-underline font below.

RULE 2.570. PARENTAL LEAVE CONTINUANCE

Unless substantial prejudice is demonstrated by another party, a motion for continuance based on the parental leave of a lead attorney in a case must be granted if made within a reasonable time after the later of:

- a. the movant learning of the basis for the continuance; or
- b. the setting of the proceeding for which the continuance is sought.

Three months is the presumptive maximum length of a parental leave continuance absent a showing of good cause that a longer time is appropriate. If the motion for continuance is challenged by another party that makes a prima facie demonstration of substantial prejudice, the burden shifts to the movant to demonstrate that the prejudice caused by denying the continuance exceeds the burden that would be caused to the objecting party if the continuance were to be granted. The court shall enter a written order setting forth its ruling on the motion and, if the court denies the requested continuance, the specific grounds for denial shall be set forth in the order. This rule will not apply to proceedings governed under the Florida Rules of Juvenile Procedure.

The Department appreciates this Court's consideration of these matters and stands ready to respond to any questions the Court has regarding its comments.

Sincerely,

/s/ Stephanie C. Zimmerman
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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this comment has been served by electronic mail via the Florida Courts E-filing Portal on November 15, 2018 on the Chair of the Rules of Judicial Administration Committee, Eduardo I. Sanchez, 99 NE 4th Street, Suite 800, Miami, Florida 33132-2131, eduardo.i.sanchez@usdoj.gov, and on the Bar Staff Liaison to the Committee, Krys Godwin, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300, kgodwin@floridabar.org.

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