

**IN THE SUPREME COURT OF FLORIDA**

**IN RE: AMENDMENTS TO THE  
FLORIDA RULES OF JUDICIAL  
ADMINISTRATION—PARENTAL  
LEAVE**

**CASE NO.: 18-1554**

**RESPONSE TO COMMENTS**

Eduardo I. Sanchez, Chair of the Rules of Judicial Administration Committee (“Committee”), and Joshua E. Doyle, Executive Director of The Florida Bar, file this response to comments with a proposed amendment. After the Committee reviewed the comments that were filed with the Court, it worked with several commenters to amend the rule currently before the Court. While the Committee has not reconsidered or changed its recommendation that the proposed parental-leave continuance rule should not be adopted, new amendments to the rule that is under consideration in this case were nonetheless approved by the Committee by a vote of 25–2 and approved by the Board of Governors by a vote of 36–1. The proposed amendments may be seen in Response Appendices A (full-page) and B (two-column).

This Court docketed the Committee’s No Action Report (“Report”) as an out-of-cycle report and published proposed Rule 2.570 (Parental-Leave Continuance) for comment. Nineteen comments have been submitted for consideration: fifteen comments were filed in response to the Court’s publication notice, and four additional comments were previously submitted to the Committee and attached to its Report for the Court’s consideration. Of the comments filed with the Court, eleven support the proposed rule, one is opposed to the proposed rule and the concept of “mandatory parental leave continuances,” and three oppose the application of the proposed rule to criminal, juvenile, and/or dependency proceedings. Of the four comments received by the Committee before it filed the Report, one opposes the rule, two support the adoption of the parental-leave

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continuance rule, and one opposes application of the proposed rule to juvenile proceedings.

Specifically, Theodore F. Greene filed a comment opposing the rule because, rather than “ask[ing] that consideration be given for family leave,” the rule proposes “to force the litigants, to force the judge, and to force opposing counsel to delay their own plans based on an individual decision of one attorney to take time away from work.” (Greene comment, page 1.) According to Mr. Greene, “[a] lawyer’s decision to take personal time off [for parental leave] should not be a means of forcing two (or more) people into a mandatory delay of their dispute.” Mr. Greene further argues that “[w]e have a system that works already” and that “a one-size-fits-all mandate” is an inappropriate fix for a matter that is not broken. Harry Anderson, in an emailed comment attached to the Report, expressed concern about the “potential abuse of parental leave continuance[s].” (Report, Appendix Page 34.) As an example, he shared a situation in which an attorney sought and obtained a stay based on paternity leave but, while on leave, nonetheless continued “to actively perform legal activities” in that case, including “engaging in witness conferences” and “obtaining sworn affidavits.”

Thirteen comments were submitted in support of the proposed rule; eleven were filed with the Court, and two were submitted to the Committee and attached to its Report. Eight of those comments (six filed and two attached to the Committee’s Report) are from individuals who recount personal stories in which requests for continuances or accommodations based on parental leave encountered resistance, opposition, and judicial denials. Additionally, comments in support of the proposed rule were received from four associations of women lawyers and from The Florida Bar Board of Governors. These thirteen commenters opined that the proposed rule should be adopted for a variety of reasons, including: the importance of parental leave to families, children, the legal profession, and society at large; the professional difficulties that presently hinder lawyers’ efforts to take parental leave, especially for those in solo and small practices; the present undervaluing of parental leave by many lawyers and judges; the existing negative attitudes and resulting stigma that are associated with parental leave by many in the legal profession; the importance of parental-leave continuances to achieve gender

equality, close the gender pay gap, and provide equal professional opportunities to lawyers of all genders; and the need to have clear guidance and procedures to facilitate and confer legitimacy on requests for parental-leave continuances.

The issues raised by the forgoing commenters are among the many issues that the Committee considered and addressed during its meetings and in the majority and minority subcommittee reports submitted as part of the Committee's Report to the Court. Though the Committee appreciates and respects the concerns raised in these comments, any additional response to these specific comments would do little more than reiterate what the Committee has already stated in its Report and in the subcommittee reports attached thereto supporting the Committee's recommendation against adoption of the parental-leave continuance rule and supporting the minority recommendation to adopt the rule. Although these comments certainly raise concerns for the Court's consideration, the concerns do not warrant any amendments by the Committee to the language of the proposed Rule 2.570. For that reason, at this time, the Committee would simply like to express its appreciation to these commenters for their valuable input and insights.

Four additional commenters, however, raised concerns that have warranted further Committee action. Three comments filed in response to the Court's publication notice and one attached to the Committee's Report opposed the proposed rule based on its potential deleterious impacts on criminal and juvenile proceedings and the participants in those proceedings, as well as the rule's potential to run afoul of constitutional and statutory requirements specifically applicable to those proceedings. Although the Committee had briefly discussed these issues at its June meeting, the language of the proposed Rule 2.570 was never modified to address those concerns because the Committee instead voted at that meeting to recommend that the rule not be adopted. Since it received the filed comments, however, the Committee has worked with these organizations to develop the attached amendments.

Specifically, the Juvenile Court Rules Committee ("JCRC"), the Department of Children and Families ("DCF"), and the Statewide Guardian ad Litem Program ("GAL") filed comments opposing the proposed Rule 2.570, at least to the extent that the rule would be applied to juvenile proceedings. In its comment, the JCRC

explained to the Committee that “[j]uvenile proceedings occupy a unique space in the legal landscape in that the length of the proceedings has a direct and substantial influence on the eventual outcomes of the proceedings and on the well-being of the parties involved.” (Report, Appendix Page 35.) Although the JCRC “is not opposed to a parental leave rule in theory,” the JCRC “believes that adopting the rule as proposed will substantially and detrimentally affect juvenile proceedings due to the imposition of unrecoverable delays in the proceedings.” (*Id.* at 35-36.) As a possible solution, the JCRC suggested an amendment to proposed Rule 2.570 and an amendment to Florida Rule of Juvenile Procedure 8.000 (Scope and Purpose) that would exempt proceedings governed by the Florida Rules of Juvenile Procedure from Rule 2.570. In its comment, the DCF initially indicated its “support of the sentiment that lead to the proposal” of Rule 2.570, but echoed the JCRC’s comments in opposition to adoption of the rule, urging that the proposed rule is “contrary to the provisions of Chapter 39 that mandate timely permanency for dependent children” and specifically pointing out that the continuance-limiting provisions of Section 39.0136, Florida Statutes, conflict with the proposed rule (DCF Comment, page 1.) The DCF further supported the JCRC’s suggested amendment to proposed Rule 2.570. The GAL similarly followed suit in its comments and supported the JCRC’s suggested amendment to proposed Rule 2.570. Though “not offering general opposition” to the goal of the proposed parental-leave continuance rule, the GAL explained that “the Legislature has expressly prescribed the requirements related to time limitations and continuances in abuse and neglect proceedings and designated these matters as a right of the child,” and it urged that the Court not approve a rule “that will be in conflict with both the child’s rights and the Legislature’s sound public policy in these proceedings.” (GAL Comment, pages 1–2.)

The Florida Public Defender Association, Inc. (“FPDA”) also filed a comment opposing the proposed rule because of the speedy-trial requirements for criminal cases arising under the Sixth and Fourteenth Amendments to the U.S. Constitution and under Florida Rule of Criminal Procedure 3.191. Because defendants are entitled to speedy trials, the FPDA explained, the established and generally satisfactory custom within the criminal practice field is that, “absent a waiver of speedy trial, colleagues are substituted in pending cases for lead counsel

who take parental leave.” (FPDA Comment, page 2.) Further, the FPDA urged that “[f]ailure to exclude criminal prosecutions from proposed Rule 2.570 will undermine this practice, cause avoidable delays in criminal cases, and imperil defendants’ speedy trial rights.” (*Id.*) As a solution, the FPDA suggested adding an exception clause at the beginning of the proposed rule.

In reaction to these four comments, as well as in recognition of the potential impact of the newly-adopted amendments to Article I, Section 16 of the Florida Constitution (in particular Sections 16(b)(10) and 16(d)), the Committee coordinated with the DCF, GAL, and FPDA and with both the Juvenile Court Rules Committee and the Criminal Procedure Rules Committee to finalize a proposed amendment that would appropriately address the concerns that were raised. Although the Committee has *not* reconsidered or changed its fundamental opposition to the adoption of the parental-leave continuance rule, the Committee has approved amendments to the version of Rule 2.570 that is under consideration in this case. Simply, *if a parental-leave continuance rule is adopted by the Court*, the Committee suggests the rule contain newly-approved amendments to address the concerns raised about juvenile and criminal proceedings. As a result of discussions arising from these comments, cases governed by the Rules of Civil Procedure for Involuntary Commitment of Sexually Violent Predators are also addressed in the amendments. Specifically, the Committee suggests numbering the initial paragraph of Rule 2.570 as new subdivision (a) and renumbering the provisions setting forth the events that trigger the timing for parental-leave continuance motions as subdivisions (a)(1) and (a)(2). A newly created subdivision (b) is then added after the previously-proposed rule language to establish an exemption from the rule for cases “governed by the Florida Rules of Criminal Procedure, by the Florida Rules of Juvenile Procedure, or by the Florida Rules of Civil Procedure for Involuntary Commitment of Sexually Violent Predators” and to place any request for a parental-leave continuance under the governance of Rule 2.545(e) or other applicable rule of procedure. (Response Appendix A.) The rule further requires the courts to use their existing discretion to provide a reasonable accommodation when a parental-leave continuance is requested by an attorney in proceedings otherwise exempted from the rule. The Committee Note is then amended to include a statement regarding new subdivision (b) that encourages

courts to “exercise their available discretion to reasonably accommodate parental-leave requests.” (Response Appendix A, page 2.)

DCF has authorized the Committee to report that these new amendments resolve DCF’s objection to the proposed rule. The GAL, however, has reported to the Committee that the revisions to proposed Rule 2.570 satisfy some of the GAL’s concerns, but raise others, and that the GAL will continue to stand on its comment, which opposes adoption of the rule. As of this filing, the FPDA and the JCRC have not informed the Committee whether the newly-proposed amendments resolve their concerns with and objections to the proposed rule.

Notwithstanding its submission of an amendment to the proposed Rule 2.570 as part of this Response to Comments, the Committee has neither reconsidered nor withdrawn its opposition to the adoption of the parental-leave continuance rule, which the majority of the Committee voted against at its June meeting. Nonetheless, if the Court desires to move forward with a rule establishing a parental-leave continuance, then the Committee requests that the Court take into consideration the proposed amendments jointly created as a result of the comments of the DCF, the FPDA, the JCRC, and the GAL.

Respectfully submitted on December 21, 2018.

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## CERTIFICATE OF SERVICE

This Response to Comments has been served on the following people in conjunction with the filing through the Florida Courts E-Filing Portal on this 21st day of December 2018:

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### **CERTIFICATION OF COMPLIANCE**

I certify that this motion was prepared in compliance with the font requirements of Florida Rules of Judicial Administration 9.210(a)(2).

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## **RULE 2.570. PARENTAL-LEAVE CONTINUANCE**

(a) 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:

(a1) the movant learning of the basis for the continuance; or

(b2) 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.

(b) In a case governed by the Florida Rules of Criminal Procedure, by the Florida Rules of Juvenile Procedure, or by the Florida Rules of Civil Procedure for Involuntary Commitment of Sexually Violent Predators, a motion for continuance based on the parental leave of a lead attorney is governed by rule 2.545(e) and by any applicable Florida Rule of Criminal Procedure, Florida Rule of Juvenile Procedure, or Florida Rule of Civil Procedure for Involuntary Commitment of Sexually Violent Predators, rather than by this rule, except that in a case governed by Part III of the Florida Rules of Juvenile Procedure, a motion for continuance based on the parental leave of a lead attorney is governed by Florida Rule of Juvenile Procedure 8.240(d). The court should exercise any discretion available to it to reasonably accommodate a request for parental leave within the procedural, statutory, and constitutional constraints applicable to proceedings governed by this subdivision.

### **Committee Note**

**2018 Adoption.** For purposes of this rule, “parental-leave continuance” means a continuance sought in connection with the birth or adoption of a child by

the movant. The Florida Supreme Court and The Florida Bar are committed to the concept of parental leave and to the importance of an appropriate work/life balance. Subdivision (a) of Tthis rule provides a strong presumption that a continuance for parental leave, generally not exceeding three months, will be granted when the request for relief is made within a reasonable time after the basis for continuance is reasonably discernible. However, a continuance or stay may be denied in the sound discretion of the court wherewhen there would be substantial prejudice to another party, wherewhen an emergency or time-sensitive matter would be unreasonably delayed, wherewhen a significant number of continuances have already been granted, or wherewhen the substantial rights of the parties may otherwise be adversely affected. Subdivision (b) recognizes that the procedural, statutory, and constitutional constraints in cases governed by the Florida Rules of Criminal Procedure, the Florida Rules of Juvenile Procedure, and the Florida Rules of Civil Procedure for Involuntary Commitment of Sexually Violent Predators restrict the availability of the parental-leave continuances contemplated by subdivision (a), but nonetheless encourages courts to exercise their available discretion to reasonably accommodate parental-leave requests where the circumstances permit.

### Proposed Rule

#### **RULE 2.570. PARENTAL-LEAVE CONTINUANCE**

(a) 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:

(a1) the movant learning of the basis for the continuance; or

(b2) 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.

(b) In a case governed by the Florida Rules of Criminal Procedure, by the Florida Rules of Juvenile Procedure, or by the Florida Rules of Civil Procedure for Involuntary Commitment of Sexually Violent Predators, a motion for continuance based on the parental leave of a lead attorney is

### Reason for Change

Proposed title for rule.

Text and renumbering of proposed subdivision (a) would establish a presumed continuance of court matters for a lead attorney in a case who is a parent of a newly born or adopted child.

The presumed maximum term of continuance would be three months.

A prejudice analysis is employed to address challenges to parental-leave continuance motions.

Proposed subdivision (b) would exempt cases that fall under the Florida Rules of Criminal Procedure, Florida Rules of Juvenile Procedure, and Florida Rules of Civil Procedure for Involuntary Commitment of Sexually Violent Predators, but would encourage courts to exercise otherwise available

governed by rule 2.545(e) and by any applicable Florida Rule of Criminal Procedure, Florida Rule of Juvenile Procedure, or Florida Rule of Civil Procedure for Involuntary Commitment of Sexually Violent Predators, rather than by this rule, except that in a case governed by Part III of the Florida Rules of Juvenile Procedure, a motion for continuance based on the parental leave of a lead attorney is governed by Florida Rule of Juvenile Procedure 8.240(d). The court should exercise any discretion available to it to reasonably accommodate a request for parental leave within the procedural, statutory, and constitutional constraints applicable to proceedings governed by this subdivision.

### **Committee Note**

**2018 Adoption.** For purposes of this rule, “parental-leave continuance” means a continuance sought in connection with the birth or adoption of a child by the movant. The Florida Supreme Court and The Florida Bar are committed to the concept of parental leave and to the importance of an appropriate work/life balance. Subdivision (a) of this rule provides a strong presumption that a continuance for parental leave, generally not exceeding three months, will be granted when the request for relief is made within a reasonable time after the basis for continuance is reasonably discernible. However, a continuance or stay may be denied in the sound discretion of the court ~~wherewhen~~ there would be substantial prejudice to another party, ~~wherewhen~~ an emergency or time-sensitive matter would be unreasonably delayed, ~~wherewhen~~ a significant number of continuances have already been granted, or ~~wherewhen~~ the substantial rights of the parties may otherwise be adversely affected. Subdivision (b) recognizes that the procedural, statutory, and constitutional constraints in cases governed by the Florida Rules of Criminal Procedure, the Florida Rules of

discretion to reasonably accommodate parental-leave requests where the circumstances in such cases permit.

The Committee Note shares an explanation of parental-leave continuances and commends the legal profession to honor the concept.

The Committee Note explains the intent and method of the proposed rule.

Juvenile Procedure, and the Florida Rules of Civil Procedure for Involuntary Commitment of Sexually Violent Predators restrict the availability of the parental-leave continuances contemplated by subdivision (a), but nonetheless encourages courts to exercise their available discretion to reasonably accommodate parental-leave requests where the circumstances permit.

The Committee Note also explains the continuance limitations placed on certain types of court cases due to constitutional, statutory, or rule timing requirements.