

IN THE SUPREME COURT OF FLORIDA

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

CASE NO.: 18-1554

**SECOND COMMENT OF THE JUVENILE COURT RULES COMMITTEE
ON PROPOSED RULE OF JUDICIAL ADMINISTRATION 2.570**

David Neal Silverstein, Chair of the Juvenile Court Rules Committee (“JCRC”), and Joshua E. Doyle, Executive Director of The Florida Bar, file this second comment, pursuant to Florida Rule of Judicial Administration 2.140, on the out-of-cycle report filed by the Rules of Judicial Administration Committee (“RJAC”).

At the request of this Court, the RJAC submitted a proposal for a new Rule of Judicial Administration to address the issue of continuances based on parental leave in Florida’s state courts. The JCRC submitted a comment to the RJAC, which was included with the RJAC’s filing of the proposal to the Court. Briefly, the JCRC commented that it is not opposed to a parental leave rule in theory but due to the time-sensitive nature of juvenile proceedings, the JCRC respectfully requested this Court reject the rule as proposed. As an alternative should this Court decide to adopt a version of the proposed Rule 2.570, the JCRC proposed two possible amendments, one to Rule 2.570 and the other to Rule 8.000 to account for concerns outlined in the JCRC’s comment. (See page 38-39 of the Appendix filed with the RJAC’s no action report filed on September 14, 2018)

After receiving the JCRC’s comment along with several others, the RJAC reached out to various groups to see whether an amended proposal could resolve concerns raised in the various comments. The RJAC thereafter filed an amended proposal in the RJAC’s Response to Comments docketed on December 21, 2018. The JCRC appreciates the additional efforts of the RJAC in incorporating feedback provided by the JCRC and other juvenile practitioners. After further review, the JCRC approved this comment by a vote of 17-0-1.

Although the JCRC maintains that the issue of continuances should be left to the sound discretion of judges governed by existing law due to the risk any delay poses to children and families in juvenile proceedings, as detailed in the JCRC’s original comment, if the Court decides to adopt a parental leave rule, then the

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modifications proposed are acceptable as the amended proposal provides that the juvenile rules will still govern continuances, along with Rule 2.545(e), in juvenile cases. To ensure a complete assessment of the rights and interests of those involved in the proceedings, the JCRC recommends the amendments below to the amended proposal.

The JCRC would be remiss if it did not point out that the updated proposal contains terminology, which this Court declined to adopt in In re: Amendments to the Florida Rules of Judicial Administration, Florida Rule of Criminal Procedure 3.010, & Florida Rule of Appellate Procedure 9.440, 225 So. 3d 220 (Fla. 2017). Specifically, the updated proposal uses the term “lead attorney” in three places, however, at present, this term is not defined in the Rules of Judicial Administration. In declining to adopt such terminology, this Court aptly observed:

While the attempt to develop one body of comprehensive rules that classifies different types of representation and governs how attorneys appear and terminate an appearance in a case is laudable, we believe more refined rules that address these matters for each of the various practice areas should be considered; and there should be more active involvement of and communication between all the affected rules committees before new proposals are finalized.

Id. at 221–22. As such, due to the substantial concerns regarding such terminology raised by multiple committees, including the JCRC, the JCRC believes that until such terminology is adopted by this Court after being fully vetted through the rules process, should this Court decide to adopt a rule regarding parental leave, the rule should simply refer to a request of “an attorney” rather than “a lead attorney.”

For the ease of the court, the proposed amendments by the JCRC are indicated below with double strike through and double underline.

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 an ~~an-lead~~ attorney in a case must be granted if made within a reasonable time after the later of:

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

(2) 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 an ~~an-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 an ~~an-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, but the court must assess such a request within the procedural, statutory, and constitutional constraints applicable to proceedings governed by this subdivision.

Respectfully submitted on April 1, 2019.

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This Second Comment by the Juvenile Court Rules Committee has been served on the following people in conjunction with the filing through the Florida Courts E-Filing Portal on this 1st day of April 2019:

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CERTIFICATION OF COMPLIANCE

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

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