

**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.

This rule-making proceeding began when the 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 were submitted for consideration at that stage: fifteen comments were filed in response to the Court’s publication notice, and four additional comments were submitted previously to the Committee and attached to its Report for the Court’s consideration

After reviewing the comments filed with the Court, the Committee worked with several commenters to amend the rule initially presented to the Court. Although the Committee did not reconsider or change its recommendation that the proposed parental-leave continuance rule should not be adopted, revisions to the rule under consideration were nonetheless approved by the Committee to address the comments, and the Committee filed a revised draft rule.

The Court published the revised draft rule for comment, and six comments were filed with the Court.

Three of the filed comments (viz., the comments of The Florida Bar Board of Governors and of The Florida Bar Young Lawyers Division, the comments of the Florida Public Defender Association, Inc., and the comments of the Department of

RECEIVED, 04/22/2019 04:42:33 PM, Clerk, Supreme Court

Children and Families) have either expressed support for, or a lack of objection to, the adoption of the revised draft rule. Two of those comments were filed by parties (the Florida Public Defender Association, Inc., and the Department of Children and Families) that had previously opposed the initial proposed rule.

The other three comments were filed by parties (Thomas F. Greene, the Juvenile Court Rules Committee (“JCRC”), and the Florida Guardian ad Litem Program (“GAL”)) that had previously filed comments opposing the initial proposed rule and that continue to oppose adoption of the revised draft rule.

Specifically, Theodore F. Greene states that “[t]he revised proposed rule has not in any way addressed (or alleviated) [his] previously stated reasons for opposition.” Greene additionally contends that the proposed rule would cater to the narcissism of “attorneys who choose to expand their own families” and “demand that others bear the burden of that choice and put their plans on hold so that the attorney” is not inconvenienced. According to Greene, “[w]e have a system in place right now that allows an expectant father or mother to request a reasonable professional extension either from their adversary or from the court. There is no need to adopt the proposed rule, nor is there any good justification for doing so.”

In its comment, the JCRC continues to maintain, relying on its initial comment, “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.” Nonetheless, the JCRC also states that “if the Court decides to adopt a parental leave rule, then the 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.”

The JCRC, however, also takes issue with the use of the term “lead attorney,” which the JCRC points out is undefined in the rules and is among the terminology that the Court previously 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), when it declined to adopt “one body of comprehensive rules that classifies different types of representation and governs how attorneys appear and terminate an appearance in a

case.” As a result, the JCRC suggests that the revised draft rule be further amended to substitute “attorney” for “lead attorney” within the proposed rule.

In its comments, the GAL opposes the revised draft rule “because the proposed rule is at odds with the statute governing continuances in dependency proceedings” and “even with the proposed change it is likely the proposed rule will still result in additional delays not authorized by substantive law.” The GAL further expresses the view that the Rules of Juvenile Procedure should be self-contained and not governed by a parental leave continuance rule found in the Rules of Judicial Administration. Additionally, like the JCRC, the GAL takes issue with the revised draft rule’s continued use of the term “lead attorney,” but, unlike the JCRC, the GAL appears to conclude that the term “lead attorney” would extend the parental leave continuance rule, even as revised, to too many attorneys in dependency cases.

The issues raised by the forgoing commenters are among the many issues that the Committee considered and addressed during its meetings, in the majority and minority subcommittee reports submitted as part of the Committee’s Report to the Court, and in its prior Response to Comments in which it submitted the revised draft rule. Although the Committee appreciates and respects the viewpoints raised in these comments, with one exception, any additional response to these specific comments would do little more than reiterate what the Committee has already stated in its submissions to the Court. For that reason, at this time, the Committee would simply like to express its appreciation to these commenters for their valuable input and insights.

The one exception that the Committee believes merits brief additional comment is the objections by the JCRC and the GAL to the revised draft rule’s use of the term “lead attorney” and the JCRC’s suggestion that the term “lead attorney” be replaced with the term “attorney.” The Committee had considered and rejected these issues and concerns when it drafted the initial proposed rule. The Committee was concerned that a parental continuance rule requiring a continuance for any and all attorneys involved or appearing in a case, no matter how tangentially, would be too disruptive, unworkable, and unnecessary. As a compromise to address this concern while still advancing the parental leave goals of the rule, the Committee

drafted the rule to reflect that a parental leave continuance would be required in a case, but only for the “lead attorney,” that is, for the attorney having primary, critical responsibility for the case; any parental leave needs of additional attorneys involved in a case would be addressed through the existing rules governing continuances. The RJAC majority that has opposed the rule, however, was not without concerns about this compromise and the use of the term “lead attorney”:

The proposed rule is . . . mute as to consideration of the requesting attorney’s relationship to the case and role in the proceedings. For instance, is the “lead” attorney a sole practitioner or the member of a larger firm or governmental group of attorneys? Is the “lead” attorney new to that role, having only recently appeared in the case or assumed that mantle? What reasons have been given by the requesting attorney for claiming the role as “lead”? Are other attorneys available who could fill in for the requesting attorney on some or all proceedings during the presumptive-three month period?

Report, Appendix at 15. But the JCRC proposal that would unqualifiedly require a parental leave continuance for any and all lawyers involved in a case without limitation and without regard to their role in the case is not a workable solution. Additionally, the Committee has never believed that the proposed rule’s use of the term “lead attorney” runs afoul of this Court’s decision 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*, because the proposed parental leave continuance rule in no way seeks to create “one body of comprehensive rules that classifies different types of representation and governs how attorneys appear and terminate an appearance in a case.” Rather, the Committee was simply using the term “lead attorney” to place a court-manageable limitation on the scope of the continuances mandated for parental leave. With respect to the GAL’s additional concerns that even this limitation would be too disruptive to proceedings governed by the Rules of Juvenile Procedure, the Committee points out that the revised draft rule now provides that “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).” Moreover, to the extent that the revised draft rule directs a court in juvenile and dependency proceedings to “exercise any discretion available to it to reasonably accommodate a request for parental leave,” the revised draft rule also makes it clear that the court can only do so “within the procedural, statutory, and constitutional constraints” applicable to those particular proceedings. As a result, the concerns the GAL has identified should only arise under the revised draft rule if it were applied erroneously.

Respectfully submitted on April 22, 2019.

/s/ Eduardo I. Sánchez  
Eduardo I. Sánchez  
Chair  
Rules of Jud. Admin. Comm.  
99 NE 4<sup>th</sup> Street, Ste. 800  
Miami, FL 33132-2131  
(305) 961-9057  
eduardo.i.sanchez@usdoj.gov  
Florida Bar No. 877875

/s/ Joshua E. Doyle  
Joshua E. Doyle  
Executive Director  
The Florida Bar  
651 E. Jefferson Street  
Tallahassee, FL 32399-2300  
(850) 561-5600  
jdoyle@floridabar.org  
Florida Bar No. 25902

### **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 22nd day of April 2019:

Catherine Cole  
Katz & Doorakian Law Firm  
625 N. Flagler Dr., Ste. 605  
West Palm Beach, FL 33401  
ccole@katzlawpl.com  
Florida Bar No. 72848

Michelle Browning Coughlin  
MothersEsquire, Inc.  
500 W. Jefferson St., Ste. 2800  
Louisville, KY 40207  
mcoughlin@wyattfirm.com

Theodore F. Greene, III  
Law Office of Theodore F. Greene, LC  
P.O. Box 720157  
Orlando, FL 3287209157  
tfgreene3@msn.com  
Florida Bar No. 502634

Glen Gifford  
Office of the Public Defender  
301 S. Monroe St., Ste. 401  
Tallahassee, FL 32301  
glen.gifford@flpd2.com  
Florida Bar No. 664261

Tara Scott Lynn  
Law Office of Tara J. Scott PA  
1809 Peppertree Dr.  
Oldsmar, FL 34677  
tara@tarajscott.com  
Florida Bar No. 781851

Jane West  
Jane West Law, P.L.  
24 Cathedral Place, Ste. 504  
St. Augustine, FL 32084-4459  
jane@janewestlaw.com  
Florida Bar No. 159417

Erin L. Deady  
Erin L. Deady, P.A.  
54 ½ SE 6<sup>th</sup> Avenue  
Delray Beach, FL 33482  
erin@deadylaw.com  
Florida Bar No. 367310

Stephanie C. Zimmerman  
DCF Children's Legal Services  
1301 6<sup>th</sup> Avenue West, Ste. 101  
Bradenton, FL 34205  
stephanie.zimmerman@myflfamilies.com  
Florida Bar No. 691089

Kimberly Kanoff Berman  
Marshall Dennehey et al  
100 NE 3<sup>rd</sup> Avenue, Ste 1100  
Ft. Lauderdale, FL 33301-1428  
kkberman@mdwgcg.com  
Florida Bar No. 15399

Abbe Sheila Rifkin  
Broward Cty. Women Lawyers Assoc.  
106 Southeast 9<sup>th</sup> Street  
Ft. Lauderdale, FL 33316  
abberifkin@miamisao.com  
Florida Bar No. 355992

Michelle Renee Suskauer  
Dimond Kaplan & Rothstein, P.A.  
515 N. Flagler Dr., Ste. P300  
West Palm Beach, FL 33401-4326  
michelle@dkrpa.com  
Florida Bar No. 908230

David R. Bear  
Bear Legal Solutions  
111 N. Orange Ave., Ste. 800  
Orlando, FL 32801-2381  
david@bearlegalsolutions.com  
Florida Bar No. 43269

Amanda R. Jesteadt  
Palm Beach Cty., Fla. Ass. for Women  
P. O. Box 3102

Christa L. McCann  
Palm Beach Cty., Fla. Ass. for Women  
P.O. Box 3102

West Palm Beach, FL 33402  
ajesteadt@carltonfields.com  
Florida Bar No. 73149

West Palm Beach, FL 33402  
christa.l.mccann@gmail.com  
Florida Bar No. 92329

Jennifer Shoaf Richardson  
FL Assoc of Women Lawyers  
501 Riverside Ave., Ste. 902  
Jacksonville, FL 32202-4940  
Jennifer.richardson@jacksonlewis.com  
Florida Bar No. 67998

Alan F. Abramowitz  
Statewide Guardian ad Litem Program  
2574 Goldenrod Way  
Tallahassee, FL 32311-1654  
alan.abramowitz@gal.fl.gov  
Florida Bar No. 812889

Dennis W. Moore  
Statewide Guardian ad Litem  
P.O. Box 10628  
Tallahassee, FL 32302  
dennis.moore@gal.fl.gov  
Florida Bar No. 273340

Thomasina F. Moore  
Statewide Guardian ad Litem  
P.O. Box 10628  
Tallahassee, FL 32302  
Thomasina.moore@gal.fl.gov  
Florida Bar No. 57990

John M. Stewart  
Rossway Swan Tierney et al  
2101 Indian River Blvd.  
Vero Beach, FL 32960-5409  
jstewart@rosswayswan.com  
Florida Bar No. 120472

Christian P. George  
Akerman LLP  
50 N. Laura Street, Ste. 3100  
Jacksonville, FL 32202-3659  
Christian.george@akerman.com  
Florida Bar No. 41055

Mikalla Davis  
JCRC Attorney Liaison  
The Florida Bar  
651 E. Jefferson Street  
Tallahassee, FL 32399-6584  
mdavis@floridabar.org  
Florida Bar No. 100529

**CERTIFICATION OF COMPLIANCE**

I certify that this motion was prepared in compliance with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

*/s/ Krys Godwin*

---

Krys Godwin, Staff Liaison  
Rules of Jud. Admin. Committee  
The Florida Bar  
651 East Jefferson Street  
Tallahassee, Florida 32399-2300  
850/561-5706  
kgodwin@floridabar.org  
Florida Bar No. 2305