

IN THE SUPREME COURT OF FLORIDA

IN RE:

Case No. SC18-1554

AMENDMENTS TO THE FLORIDA
RULES OF JUDICIAL ADMINISTRATION –
PARENTAL LEAVE

_____/

**THE FLORIDA ASSOCIATION FOR WOMEN LAWYERS’
NOTICE OF SUPPLEMENTAL FILING IN SUPPORT OF AMENDMENTS
TO THE FLORIDA RULES OF JUDICIAL ADMINISTRATION –
PARENTAL LEAVE**

The Florida Association of Women Lawyers (“FAWL”) respectfully submits the following supplemental comments and documents in support for Proposed Rule of Judicial Administration 2.570. In its initial comment, filed on November 15, 2018, FAWL provided many examples of the denial of continuance requests experienced by attorneys across the state. (FAWL Comment at 2-3.) As noted previously, the vast majority of the women would shared their experiences with FAWL wished to remaining anonymous, due to both their duties to their clients and the fear of retaliation from the judges who have denied these continuances and in front of whom these women continue to appear. Recently, however, FAWL has been made aware of more examples of continuance denials within the last few years and some of those attorneys are willing to share the motions, orders and transcripts from those cases. Some attorneys, understandably, still wish to remain anonymous.

RECEIVED, 08/21/2019 01:57:32 PM, Clerk, Supreme Court

FAWL submits those additional testimonials and case documents for consideration by the Court in considering Rule 2.570.

Even for those women who have courageously come forward, FAWL has redacted the names from the case documents submitted, as well as opposing counsel and the judges involved. This issue is a systematic problem across the state and is not limited to any one jurist or opposing counsel; thus, no single person should be singled out in consideration of rule. Further, as will be shown by the examples below, this issue occurs across the state, in both large and small counties, and in both state and federal court.

The additional examples of experiences of attorneys being denied parental leave continuances are:

1. FAWL CLE, Parental Leave: The Proposed Continuance Rule and Practical Strategies to Make it Work (Oct. 12, 2018), available at <https://www.youtube.com/watch?v=jSrSSi6wx28&feature=youtu.be>. As referenced in its November 15, 2018 comment, FAWL hosted a CLE in October 12, 2018 on the proposed rule and the experience of Florida women lawyers in taking parental leave and requesting continuances. This CLE is now publicly available for viewing.

The speakers include:

- a. Kelli Lueckert, AndersonGlen LLP, available at <https://youtu.be/jSrSSi6wx28?t=440>

b. Christen E. Luikart, Murphy & Anderson, available at <https://youtu.be/jSrSSi6wx28?t=785>; *see also* Raychel Lean, Female Attorneys Fuming After Miami Lawyer Opposed a Pregnant Lead Attorney's Request for Continuance, Daily Business Review (July 24, 2018) (attached as Appendix A).

c. Lindsay Tygart, Coker Law, available at <https://youtu.be/jSrSSi6wx28>; *see also* Lindsay L. Tygart JBA Board of Governors, Commentary: Gender Bias Alive and Well in the Legal Community, Jax Daily Record (June 4, 2018), available at <https://www.jaxdailyrecord.com/article/commentary-gender-bias-alive-and-well-in-the-legal-community>.

d. Amber Donley, Donley Law Firm, P.L.L.C., available at <https://youtu.be/jSrSSi6wx28?t=1921>

2. On January 2016, in the Southern District of Florida, a female lawyer, who had been recently retained in by the defendant, was denied continuance for parental leave. The case commenced on June 5, 2015 with a removal to federal court. On June 18, 2015, the court entered a scheduling order, setting trial for March 21, 2016. On January 7, 2016, having been recently retained, the female partner and her male partner appeared in the case on behalf of the defendant. At the time of her appearance, the female partner was six months pregnant and due in March 2016.

Shortly thereafter, on January 14, 2016, the female partner moved to continue the trial due in part to her planned maternity leave. (Appendix B, Motion to Continue Trial and/or Extend Discovery Deadline.) While her male partner had appeared in the case with her, the female partner was the primary attorney on the case. A week later, the judge denied the request for continuance, finding specifically that “[the female partner] only joined this matter a week before filing the instant Motion, and knew the date of this trial prior to taking on the representation of Defendant. Accordingly, as Defendant has other counsel who can represent him at trial . . . I do not find good cause to continue the trial.” (Appendix C, Order Denying Motion for Continuance and/or Extension of Discovery Deadline.)

3. In November 2017, in Lee County Circuit Court, an unopposed motion to continue a trial set for February 2018 due to the maternity leave of both the primary counsel and the associate assigned to the case was filed. (Appendix D, Motion to Continue Trial.) Both primary counsel and the assigned associate, were scheduled to be out on maternity leave at the same time, in February 2018. The court denied the motion without explanation. (Appendix E, Order on Motion to Continue Trial.) As a result, another partner had to try a case.

4. In November 2017, in Broward County Circuit Court, a female attorney moved to continue a trial that was set for April 2018, due to her pregnancy and maternity leave which was scheduled for April 2018 through June 2018. (Appendix

F, Defendant's Motion for Continuance of Trial.) Opposing counsel originally informed the female attorney, a partner, that he did not object to the continuance, so the female partner sent an associate to the hearing to secure the unopposed order. However, the opposing counsel sent another coverage attorney to the hearing who contested the continuance. (Appendix G, Transcript of Hearing on Motion for Continuance.) Rather than continue the trial, the judge moved the case up three months instead. Thereafter, the female partner filed a motion to expedite discovery or in the alternative for reconsideration of the denial of the continuance, citing in part the pending parental leave rule. (Appendix H, Defendant's Motion to Expedite Discovery or in the alternative Motion for Reconsideration and/or Rehearing on Defendant's Motion for Continuance.) The judge reconsidered the motion and continued the case.

5. In January 2018, in Collier County Circuit Court, a female attorney was denied a continuance. In November 2017, the female attorney filed a Notice of Unavailability, citing her maternity leave from April 1, 2018 until July 1, 2018 as the reason for her unavailability and requesting that no hearings or trial be scheduled at that time. (Appendix I, Defendant's Notice of Unavailability.) The case was set for a three-day jury trial during the period from February 26, 2018 to March 23, 2018. Opposing counsel, due to a federal case being set for trial in March 2018, moved to continue the trial. (Appendix J, Unopposed Motion to Continue Trial.)

Opposing counsel noted in his motion that the female attorney “indicated she [had] no objection to continuance of the trial, so long as it is continued to August 2018 at the earliest, because of her expected and imminent maternity leave.” The judge, however, in granting the unopposed motion, continued the trial to the period from April 8, 2019 until May 4, 2018, during the female attorney maternity leave. (Appendix K, Order Granting Motion for Continuance.) The female attorney requested that the judge move the case to the week prior to April 8th so that she could attend the trial, but that request was denied. The case went forward to trial without the female attorney.

6. In February 2018, in Collier County Circuit Court, the parties jointly requested more time for discovery during the period in which the female partner and associate on the case were both expected to be out on maternity leave. The judge denied the request and further commented that, as of February, she would not entertain any continuance of the trial, which was set to commence in April 2018. The judge ultimately continued the trial for other reasons after the female attorney returned from leave.

7. In July 2018, in Broward County Circuit Court, a motion for continuance based in part on parental leave was opposed, but ultimately granted by the trial judge. The female attorney was a partner in her law firm, who had taken every deposition in the case, handled every hearing in the matter up until that time.

Another more senior male attorney had also appeared, but the female attorney was the primary counsel. After the continuance was granted, opposing counsel moved for reconsideration. In both filings, opposing counsel continued to diminish the female attorney's role in the case, referring to her as "non-lead counsel" purely on the basis that she was not the most senior attorney who had appeared in the case.

8. In October 2018, in Okaloosa County Circuit Court, plaintiff's counsel filed an Emergency Motion for Case Management Conference in an attempt to preempt a female defense attorney's planned motion for continuance due to the fact that she was pregnant and scheduled to give birth a week before the scheduled trial date in February 2019. The female attorney was internally re-assigned the case by her law firm to be lead trial counsel approximately three weeks before the motion. In his motion, plaintiff's counsel noted that the defense law firm had approximately 150 attorneys and argued that the case could be assigned to another law firm. He went on to argue that it was "unfair for the [law] firm to assign this case to [the female attorney], an associate with only 3 years of Florida litigation experience, and expect her to endure the stress of trial preparation while she is 6 months pregnant, while at the same time having a 'leading trial attorney' in [a senior male partner] in the same office." In fact, the female attorney had seven years of experience and was an experienced trial attorney. Ultimately, the court granted the continuance and the case remains pending to date.

The Rules of Judicial Administration Committee (RJAC) submitted to the Court that this proposed rule is neither necessary or advised. As stated in their initial No Action Report, the RJAC believes that these instances are mere occasional mistakes and that:

To the extent that there may be some members of Florida's judiciary who in the past were not properly cognizant of the value that ought to be given parental leave, the committee respectfully suggests that the almost three-year debate about the adoption of so form of a parental-leave continuance rule in Florida has succeeded in elevating the discussion to a point where few judges, if any, will now ignore the issue. The very widely publicized robust debate over the issue has sensitized both practioners and the judiciary.

(Pet. at 6.) However, as shown by these additional examples, even after three years of a "widely publicized robust debate" and after this No Action Report was submitted to the Court, skepticism and resistance to parental leave by both judges and opposing counsel persists. The proposed Rule is the proper vehicle for address this issue and provide written guidance to both the judiciary and counsel of this state.

Respectfully Submitted,

Florida Association of Women Lawyers

s/Kyleen Hinkle

Kyleen Hinkle

President

Florida Bar No. 59033

Florida Association of Women Lawyers

P.O. Box 731685

Ormond Beach, FL 32173-1685

CERTIFICATE OF SERVICE

This Notice of Supplemental Filing has been served on the following people in conjunction with the filing through the Florida Courts E-Filing Portal on this 21st day of August 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 1/2 SE 6th Avenue
Delray Beach, FL 33482
erin@deadylaw.com
Florida Bar No. 367310

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

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

Abbe Sheila Rifkin
Broward Cty. Women Lawyers Assoc.
106 Southeast 9th 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

Amanda R. Jesteadt
Palm Beach Cty., Fla. Ass. for Women
P. O. Box 3102
West Palm Beach, FL 33402
ajesteadt@carltonfields.com
Florida Bar No. 73149

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

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

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

Mikalla Davis
JCRC Attorney Liaison
The Florida Bar
651 E. Jefferson Street
Tallahassee, FL 32399-2300

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

Christa L. McCann
Palm Beach Cty., Fla. Ass. for Women
P.O. Box 3102
West Palm Beach, FL 33402
christa.l.mccann@gmail.com
Florida Bar No. 92329

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

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

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

Joshua E. Doyle
Executive Director
The Florida Bar
651 E. Jefferson Street
Tallahassee, FL 32399-2300

mdavis@floridabar.org
Florida Bar No. 100529

Lara Bueso Bach
Weil, Gotshal & Manges LLP
1395 Brickell Ave., Ste. 1200
Miami, FL 33131-3368
Lara.bach@weil.com
Florida Bar No. 86734

Craig E. Leen
Vice Chair
Rules of Jud. Admin. Comm.
Constitution Ave. NW, Rm. C3325
Washington, DC 20210-0001
(202) 693-1115
leen.craig@dol.gov
Florida Bar No. 701696

jdoyle@floridabar.org
Florida Bar No. 25902

David Neal Silverstein
Juvenile Court Rules Comm.
Children's Legal Services
1301 6th Ave. W., Ste. 101
Bradenton, FL 34205-7403
david.silverstein@myflfamilies.com
Florida Bar No. 906166

Hon. Josephine Gagliardi
Incoming Chair
Rules of Judicial Admin. Comm. 200
1700 Monroe Street
Fort Myers, FL 33901-3071
(239) 533-8268
jgagliardi@ca.cjis20.org
Florida Bar No. 714569

CERTIFICATION OF COMPLIANCE

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

s/Kyleen Hinkle
Kyleen Hinkle
Florida Bar No. 059033
Florida Association for Women Lawyers