ARTICLES

WHEN THE "ATTORNEY WORK PRODUCT" IS A NEW BABY: THE CASE FOR PARENTAL-LEAVE CONTINUANCE RULES

by
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Parental-Leave Continuance Rules (PLCRs) are gender-neutral procedural rules that provide specific frameworks to courts for granting requests for a continuance of a scheduled legal proceeding or deadline if a necessary counsel is unavailable because they or their parenting partner will be experiencing a birth, adoption, or foster placement of a child. Existing laws protecting parental leave in the United States are tied to employment; and since courts are not generally the employers of attorneys appearing before them, they are not obligated to honor an attorney's parental leave when scheduling a trial or other legal proceeding. While continuances are granted in legal proceedings for numerous reasons, only a few jurisdictions have adopted continuance rules that specifically contemplate postponement of a proceeding for the purposes of parental leave of an attorney. Gender biases, including both the "Motherhood Penalty" and stigmatization of fathers acting as caregivers, are still prevalent in the legal profession, and these biases can have a powerful influence on

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decisions made about continuance requests for attorneys for caregiving purposes. Adoption and acceptance of PLCRs in all jurisdictions can improve continuity of representation for clients, reduce biases and advance gender equity in the legal profession, and improve attorney health and well-being, all of which are in the best interests of clients, attorneys, and the justice system in the United States. This Article reviews the current status of PLCRs and provides recommended uniform language for PLCRs. Finally, this Article urges adoption of PLCR statutes in all remaining state, federal, and tribal court systems, and sets out a strategic approach to achieve adoption, acceptance, and effective use of PLCRs.

INTRODUCTION

In 2014, when solo attorney Stacy Ehrisman-Mickle escorted her clients into an immigration hearing in Georgia, she wore a black pantsuit over which she had strapped a baby carrier to hold her four-week-old infant.[1] Although she had previously notified the court of her impending due date and requested the hearing be delayed by 17 days, the judge denied her request.[2] When he saw Ms. Ehrisman-

[1] Associated Press & Snejana Farberov, *Pictured: Moment Attorney on Maternity Leave Showed Up in Court with Her Newborn Baby After a Judge Refused to Delay Hearing and Then 'Labeled Her a Bad Mother,'* DAILY MAIL, https://www.dailymail.co.uk/news/article-2796272/Attorney-denied-baby-time-brings-infant-court.html (Oct. 18, 2014, 10:07 AM).

[2] Debra Cassens Weiss, *Judge Scolded Me for Bringing Newborn to Court After Denying Continuance, Lawyer Alleges*, ABA J. (Oct. 16, 2014, 7:24 AM) [hereinafter Weiss, *Judge Scolded*

Mickle holding her newborn, the judge, despite being the one who had denied her request to continue the proceeding, publicly reprimanded her and even questioned her parenting skills in front of everyone in attendance.[3]

In 2022, Florida attorney Alexander Fumagali, who was expecting his first child, filed three motions in a row imploring a judge to grant a continuance[4] in a case where Mr. Fumagali was lead counsel because the trial dates conflicted with his wife's due date.[5] The judge in that case denied all three motions without providing any reason for the denials and even threatened Mr. Fumagali with sanctions.[6] Although the judge ultimately granted the continuance sua sponte,[7] and Mr. Fumagali was able to attend the birth of his child, he described this period of time as anxiety-filled for both him and his wife.[8] He indicated that he talked about it with reluctance because he does not like to revisit the experience.[9]

Both of these attorneys had to publicly confront the failure of the legal profession to address the needs of attorneys—and their clients—when the court schedules a proceeding during the attorney's maternity, paternity, or parental leave (collectively, "parental leave").[10] As poignantly expressed in the article *'You Don't*

Me], https://www.abajournal.com/news/article/lawyer_a_new_mom_says_judge_scolded_her_for_bringing_newborn_to_court_after; Bill Torpy, *Judge Doesn't Take Kindly to Lawyer's Newborn*, ATLANTA J.-CONST. (Oct. 20, 2014), https://www.ajc.com/news/state--regional/judge-doesn-take-kindly-lawyer-newborn/hX1HXIG7NTcMSdm2xGE7uJ/.

[3] Weiss, *Judge Scolded Me*, *supra* note 2.

[4] A "continuance" is defined as, "[t]he adjournment or postponement of a trial or other proceeding to a future date." *Continuance*, BLACK'S LAW DICTIONARY (12th ed. 2024). Continuances may sometimes be called by other terms, such as "adjournment" or "stay of proceeding." *See, e.g.*, MICH. CT. R. 2.503(D)(1) ("In its discretion the court may grant an adjournment to promote the cause of justice.").

[5] David Ovalle, *Attorney Seeks Parental Leave in Lawsuit. Other Side Agrees. This Miami Judge Said No*, MIA. HERALD, https://www.miamiherald.com/news/local/community/miami-dade/article265348906.html (Sept. 6, 2022, 6:08 PM); Editorial, *Men Need Parental Leave, Too. Miami-Dade Judge Shouldn't Have Called it into Question*, MIA. HERALD, https://www.miamiherald.com/opinion/editorials/article265436186.html (Sept. 7, 2022, 4:08 PM).

[6] Ovalle, *supra* note 5.

[7] "Sua sponte" is defined as, "Without prompting or suggestion; on its own motion." *Sua Sponte*, BLACK'S LAW DICTIONARY (12th ed. 2024).

[8] Zoom Interview with Alexander Fumagali, Esq., Partner, Kennedys Law, LLP (July 29, 2024) (on file with author); *see* Michael A. Mora, *When a Judge Reconsiders: Good News for Lawyer Seeking 'Paternity Leave,'* LAW.COM: DAILY BUS. REV. (Sept. 7, 2022, 12:36 PM), https://www.law.com/dailybusinessreview/2022/09/07/when-a-judge-reconsiders-good-news-for-lawyer-seeking-paternity-leave/?slreturn=20250329121150; Ovalle, *supra* note 5.

[9] Zoom Interview with Alexander Fumagali, *supra* note 8.

[10] Maternity, paternity, and parental leave have slightly different definitions, but for the purposes of this Article, all three are grouped together under the term "parental leave" to account for time off work to attend to the birth, adoption, or foster placement of a child and initial bonding time with the child, as well as recovery from childbirth for the birthing parent. Megan

Get Any Breaks,' and Other Tales of Pregnant Litigators, "The demands of parenthood are intense for all working mothers and fathers, but litigators have the extra pressures of mandatory court appearances despite pregnancy or new-parent responsibilities."[11] The stories of these litigators, and others whose continuance requests will be described, illustrate this "Hobson's choice"[12] attorneys face between their careers and their families because of the failure of all jurisdictions to adopt rules, namely Parental-Leave Continuance Rules (PLCRs), to ameliorate this issue.

Enacting PLCRs as part of the procedural rules in all jurisdictions will mitigate these experiences for attorneys because PLCRs provide express guidance for judges and attorneys about how to equitably address continuances for the purpose of accommodating parental leave of an attorney for a birth, adoption, or foster placement[13] of a child.[14] Critically, PLCRs are intentionally drafted to be gender-neutral, meaning they apply to all parents, irrespective of gender and regardless of whether the attorney requesting the continuance is a birthing parent or a non-birthing parent.[15]

PLCRs are necessary because existing statutes protecting parental leave and prohibiting discrimination against pregnant persons are based on employer–employee relationships and, as a result, are generally inapplicable to courts when scheduling legal proceedings.[16] Further, the existing continuance rules were not drafted with parental leave—and the time frames and other unique needs typically associated with parental leave—in mind.[17] As a result, these existing rules often fall short of protecting the best interests of attorneys and their clients.[18] Without PLCRs

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A. Sholar, *The History of Family Leave Policies in the United States*, ORG. OF AM. HISTORIANS, https://www.oah.org/tah/november-3/the-history-of-family-leave-policies-in-the-united-states/ (last visited March 29, 2025) (defining and differentiating between the three types of leave as follows: "Maternity leave is granted to mothers around the time of childbirth or adoption; paternity leave is reserved for fathers around the same time. After maternity and paternity leave end, parental leave provides gender-neutral leave for parents to care for small children.").

[11] Vivia Chen & Leigh Jones, *'You Don't Get Any Breaks,' and Other Tales of Pregnant Litigators*, MIA. DAILY BUS. REV. (July 25, 2016), https://plus.lexis.com/document/index?crid=6bbd0ade-edfc-45bc-9390-4042b9e136c3&pdpermalink=41610efa-4bba-4a28894456856ae6989a&pdmfid=1530671&pdisurlapi=true#/document/5d41f9bb2db0406eab49-2e2c29c827bb.

[12] A "Hobson's choice" is an "apparently free choice when there is no real alternative." *Hobson's Choice*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/Hobson%27s%20choice (last visited July 20, 2025).

[13] For conciseness, adoption of children and foster placement of children are referred to collectively as "child placement" throughout the remainder of the article.

[14] *See, e.g.*, N.C. R. APP. P. 33.1 (2025).

[15] *See, e.g.*, *id.*

[16] *See* discussion *infra* Part II.

[17] *See* discussion *infra* Part III.

[18] *See* discussion *infra* Parts IV–V.

in place, the ability for attorneys to reliably take parental leave will continue to be jeopardized by a gaping hole in the already mesh layer of protections for new parents in the United States.

As of the writing of this Article, rules specifically written to address continuances for parental leave purposes have been adopted by the highest courts of only three states.[19] In some cases, individual judges have also issued standing orders governing their courtrooms that provide guidance for parental-leave continuances.[20] Outside of these jurisdictions and courtrooms, however, attorneys face scheduling uncertainties and inconsistency when pregnant or taking parental leave.[21]

Part I of this Article provides additional important background regarding gender biases and assumptions in the legal profession relevant to decisions about continuances in legal proceedings. Part II of this Article demonstrates the ineffectiveness of existing laws regarding pregnancy and parental leave in the United States due to the dependence on employer–employee relationships, given that neither the courts nor judges in the relevant circumstances are the attorneys' employers. Part III describes the existing rules for continuances and how those specifically apply to situations in which attorneys are unavailable due to pregnancy or parental leave, and Part IV explains why the adoption of PLCRs is ultimately in the best interest of both attorneys and their clients. Part V examines judicial discretion in the context of continuances for parental leave, and the inconsistencies that often result therefrom. Part VI discusses the current status of adoptions of PLCRs and proposes uniform language for jurisdictions across the nation to use when advocating for PLCRs. Finally, Part VII looks at the actions necessary, beyond mere adoption of PLCRs, to ensure that these new rules are accepted and effectively implemented.

I. BACKGROUND

In 1991, Supreme Court Justice Blackmun, writing for the Court, declared that "women . . . may not be forced to choose between having a child and having a job."[22] Yet, nearly a quarter century later, attorneys such as Stacy Ehrisman-Mickle,

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[19] *See* discussion *infra* Sections VI. A–C (explaining that North Carolina, Florida, and Minnesota have all adopted PLCRs).

[20] John Council, *Houston Judge Issues Order Granting Pregnant Lawyers Automatic Trial Stays*, LAW.COM: TEX. LAW. (Aug. 8, 2018, 4:58 PM), https://www.law.com/texaslawyer/2018/08/08/houston-judge-issues-order-granting-pregnant-lawyers-automatic-trial-stays/ ("Judge Ravi Sandill said he came up with the idea [to issue a Parental Leave Standing Order] after reading about a pregnant Florida lawyer whose motion for continuance sparked controversy last month after her opposing counsel objected to it.").

[21] *See* discussion *infra* Part V.

[22] Auto. Workers v. Johnson Controls, Inc., 499 U.S. 187, 204 (1991).

Alexander Fumagali, and other similarly situated litigators continue to be asked to make exactly this choice between their job and their child.

The circumstances leading to Ms. Ehrisman-Mickle facing this kind of decision started when, approximately one month prior to their hearing date, she was retained by two brothers for their immigration matter.[23] At the time they retained her, their hearing had already been scheduled for October 7, 2014.[24] Since she would be on maternity leave on that date, Ms. Ehrisman-Mickle secured the consent of her clients to request a continuance to have the date of the hearing moved back by 17 days to October 24.[25] Ms. Ehrisman-Mickle filed a motion for continuance on September 8, only two days after being retained, and she attached documentation from her obstetrician confirming her impending due date and brief maternity leave dates.[26] Even though her motion was unopposed by counsel for the U.S. Government, Judge Dan Pelletier Sr. denied the request.[27] Moreover, he waited until October 2, nearly a month after the motion was filed, to deny her request.[28] The explanation for the denial was a handwritten note on the Order stating: "No good cause. Hearing date set prior to counsel accepting representation."[29]

With only five days between the order and the hearing date, Ms. Ehrisman-Mickle was unable to arrange for anyone to care for her newborn.[30] As a solo attorney, even if she had wanted to hand off the case, she had no colleague available to attend the hearing on her behalf.[31] With her request for a continuance denied, Ms. Ehrisman-Mickle was left with two options: either miss the hearing and risk the attendant harm to her clients and her own career, or show up to the hearing, still

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[23] Associated Press & Farberov, *supra* note 1; Weiss, *Judge Scolded Me*, *supra* note 2; Torpy, *supra* note 2.

[24] *See* sources cited *supra* note 23.

[25] *See* sources cited *supra* note 23.

[26] *See* sources cited *supra* note 23; *see also* Staci Zaretsky, *Judge Refuses to Postpone Hearing Because Maternity Leave Isn't a Good Enough Excuse*, ABOVE THE L. (Oct. 15, 2014, 2:30 PM), https://abovethelaw.com/2014/10/judge-refuses-to-postpone-hearing-because-maternity-leave-isnt-a-good-enough-excuse/ (exhibiting copies of the motion and attachments).

[27] *See* sources cited *supra* note 23.

[28] Zaretsky, *supra* note 26; Weiss, *Judge Scolded Me*, *supra* note 2; Torpy, *supra* note 2; Associated Press & Farberov, *supra* note 1.

[29] *See* sources cited *supra* note 28.

[30] According to her complaint, Ms. Ehrisman-Mickle's husband was traveling that week for his work, and since the couple had fairly recently moved to the area, they had no family or close friends to assist them. Even if she could have arranged for someone to care for the newborn, she very well may have needed to bring the newborn to court with her for breastfeeding or other reasons. Further, as she noted in her complaint, infants are generally not accepted into childcare before a minimum age of six weeks. *See* sources cited *supra* note 28.

[31] Zaretsky, *supra* note 26; Weiss, *Judge Scolded Me*, *supra* note 2; Torpy, *supra* note 2.

recovering from childbirth and with her newborn baby in tow. She chose to do the latter.[32]

As noted above, Judge Pelletier's response was to publicly reprimand Ms. Ehrisman-Mickle as she stood in front of him holding her newborn while also trying to do her job.[33] She later filed a formal complaint against the judge, and although the results of that complaint are not publicly available, the complaint itself was published in full.[34] In her complaint letter, Ms. Ehrisman-Mickle recounted her experience:

> When the [judge] saw me with my daughter [at the hearing], he was outraged. He scolded me for being inappropriate for bringing her. He questioned the fact that day care centers do not accept infants less than 6 weeks of age. He then questioned my mothering skills as he commented how my pediatrician must be appalled that I am exposing my daughter to so many germs in court. He humiliated me in open court. . . . I am a qualified, experienced and ethical attorney that should not have to stop practicing law upon becoming pregnant to accommodate the backward thinking of certain judges.[35]

In retrospect, if Ms. Ehrisman-Mickle had been able to rely on a PLCR, the outcome might have been different for all parties involved in this situation, including the judge whose reputation was undoubtedly harmed by both her complaint and the public media storm that ensued.[36]

Ohio attorney Chelsea Panzeca faced a similar dilemma.[37] Ms. Panzeca was pregnant with twins due May 25, 2023, and was directed by her physician to go on bed rest, which caused her to be unavailable to serve as defense counsel for a trial scheduled for May 8, 2023.[38] The trial judge denied her emergency continuance request on May 2; the hearing transcript details a discussion indicating that the judge told Ms. Panzeca she could watch the trial streamed on YouTube.[39] When Ms. Panzeca sought to stay the criminal proceeding while the continuance denial was ultimately appealed, five of the seven justices of the Ohio Supreme Court

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[32] *See* sources cited *supra* note 28.

[33] *See* sources cited *supra* note 28.

[34] Zaretsky, *supra* note 26.

[35] *Id.*

[36] *See, e.g.*, sources cited *supra* note 28.

[37] *See* Debra Cassens Weiss, *Pregnant Criminal Defense Lawyer on Bed Rest Loses Trial-Delay Bid in Top State Court*, ABA J. (May 9, 2023, 9:48 AM), https://www.abajournal.com/news/article/pregnant-criminal-defense-lawyer-on-bed-rest-loses-trial-delay-bid-in-top-state-court.

[38] *Id.*

[39] *See* State *ex rel.* Panzeca v. Highland Cnty. Ct. of Common Pleas, 170 Ohio St. 3d 1412, 2023-Ohio-1520, 208 N.E.3d 841, at ¶ 9 (Brunner, J., dissenting) (discussing, in a mandamus action, the merits of the trial court's underlying refusal to continue the criminal proceedings); *see also* Weiss, *supra* note 37.

declined to stay the criminal trial proceeding, effectively affirming the trial court's decision denying the continuance.[40]

Notably, Ohio Supreme Court Justices Jennifer Brunner and Michael P. Donnelly dissented.[41] In response to the notion that Ms. Panzeca could watch the hearing on YouTube, Justice Brunner wrote in her dissent: "Surely, this is not practicing law."[42] Justice Brunner also reasoned that there was no justification for effectively removing Ms. Panzeca as the defendant's counsel, in contravention of the defendant's Sixth Amendment right to counsel under the U.S. Constitution.[43] Justice Brunner also indicated that Ms. Panzeca's right to practice law was being harmed by the continuance denial, noting that the right to practice is a "very valuable" right, the possession and use of which ought to be protected.[44]

Compare this to an Ohio court in a wrongful death proceeding in November 2001, in which the wife of the deceased objected to a continuance requested on behalf of one of the defendant's attorneys who was, like Ms. Panzeca, experiencing complications with her pregnancy.[45] The trial court granted the requested continuance, rescheduling the trial for three months later in March 2002.[46] When the plaintiff appealed the decision, stating that the continuance resulted in prejudice to her, the appellate court affirmed the lower court's decision, calling the continuance a "minor inconvenience" to the plaintiff.[47]

In an Illinois courtroom in 2016, Judge Neal W. Cerne denied a continuance in a divorce proceeding involving marital assets of more than $21 million in a case where the husband had been the primary earner and the wife had worked as a stay-at-home mother.[48] Attorney Shaska Dice, who was pregnant and due in July, represented the wife, Janet Larocque, in the proceeding.[49] Although the parties, including Ms. Dice, had already proceeded with a portion of the trial in June, the trial exceeded previously anticipated time frames and additional July dates had to be

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[40] *Panzeca*, 208 N.E.3d ¶¶ 1–3 (Brunner, J., dissenting); *see also* Chris Williams, *Pregnant? Don't Plan On Practicing Before Ohio's Supreme Court Any Time Soon*, ABOVE THE L. (May 9, 2023, 5:48 PM), https://abovethelaw.com/2023/05/pregnant-dont-plan-on-practicing-before-ohios-supreme-court-any-time-soon/.

[41] Williams, *supra* note 40.

[42] *Panzeca*, 208 N.E.3d ¶ 9 (Brunner, J., dissenting).

[43] *Id.* ¶ 5.

[44] *Id.* ¶ 10 (quoting Dworken v. Cleveland Auto. Club, 29 Ohio N.P. (n.s.) 607, 617 (C.P. Cuyahoga 1931)).

[45] McDermott v. Tweel, 151 Ohio App. 3d 763, 2003-Ohio-885, 786 N.E.2d 67, at ¶¶ 1, 4, 7.

[46] *Id.* ¶ 7.

[47] *Id.* ¶¶ 31–32.

[48] *In re* Marriage of LaRocque, 2018 IL App (2d) 160973, ¶¶ 1–4, 25, 107 N.E.3d 349, 352–353, 357.

[49] *Id.* ¶ 25, 107 N.E.3d at 357.

scheduled.[50] With Ms. Larocque's consent, Ms. Dice and her co-counsel requested an emergency continuance for the July dates of the trial.[51] Judge Cerne denied the request, and Ms. Larocque appealed the denial to the Second District Court of Appeals.[52] Writing for the court, Justice Kathryn E. Zenoff upheld the trial court's decision denying the continuance, noting the standard required "especially grave reasons" for a continuance, and said the potential inconvenience to witnesses, the parties, and the court supported the denial.[53] She then listed the reasons the trial court had denied the motion, which included the following reasons pertaining specifically to Ms. Dice: (a) "the parties had spent a flabbergasting amount of money on the case, which meant that they could hire extra attorneys"; (b) "if it were known that Dice was pregnant, alternative plans could have been made and [o]ther people could have been brought up to speed"; (c) "Dice was not so imperative to the case that it could not be tried without her"; and (d) "there was no guarantee as to when Dice would return to work."[54] Affirming the lower court's reasoning, Justice Zenoff confirmed these were "valid reasons" for denying the mid-trial continuance motion.[55]

In a courtroom in the Western District of Washington, Chief United States District Judge Ricardo S. Martinez denied a continuance for pregnant attorney, Kellie Anne Tabor, whose due date was October 23, 2017, for a trial scheduled to begin on the same date.[56] Ms. Tabor was a "senior associate" when the case began, and because of a policy of her law firm requiring that one of the firm's shareholder attorneys also be named on any case with an associate, attorney Daniel Thieme was also listed as record counsel for the defendants.[57] Ms. Tabor asserted that she was lead counsel in the case and that the client had expressly selected her to represent them.[58] The judge denied the continuance, however, under the premise that Mr. Thieme could represent the client without Ms. Tabor's assistance.[59] The judge asserted:

> [P]regnancy would almost certainly constitute good cause for a four month continuance if Defendants were represented by a solo practitioner, [but] the

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[50] *Id.*

[51] *Id.*

[52] *Id.* ¶¶ 25, 93, 107 N.E.3d at 357, 373.

[53] *Id.* ¶¶ 94–95, 107 N.E.3d at 373 (quoting K&K Iron Works, Inc. v. Marc Realty, LLC, 2014 IL App (1st) 133688, 21 N.E.3d 1190).

[54] *Id.* ¶ 95, 107 N.E.3d at 373–374 (internal quotations omitted).

[55] *Id.* ¶ 95, 107 N.E.3d at 374.

[56] Ball v. Manalto, Inc., No. C16-1523, 2017 U.S. Dist. LEXIS 74608, at *1, *8 (W.D. Wash. May 16, 2017).

[57] *Id.* at *1–2.

[58] *Id.* at *2.

[59] *Id.* at *6 ("[T]here is no reason to believe that Mr. Thieme is not fully capable of representing Defendants, even if he has spent less time than Ms. Tabor working on this case.").

> Court finds that it does not constitute good cause when Defendants are represented by at least one other named counsel and a firm full of associates that can certainly be brought up to speed on this case.[60]

In the motion for continuance, the defendants also argued that refusing a continuance under these circumstances would contravene Washington State public policy against pregnancy discrimination.[61] Additionally, the motion argued that

> [r]efusing a short continuance for the birth of a child (both medical incapacity associated childbirth and critical bonding time with a new baby) communicates to female litigators that they either need to choose not to have children, or that they need to stop litigating for the years in which they desire to have a child.[62]

Judge Martinez reacted negatively to this argument, describing it as "offensive at best."[63]

In a California case, the opposing counsel, rather than the judge, was the source of opposition to a request for a continuance for parental leave reasons.[64] In that circumstance, the plaintiff's counsel opposed the motion for continuance, arguing that defendant's counsel's maternity leave did not constitute good cause.[65] They asserted that defendant's counsel "stubbornly insists on this particular attorney's participation" even though the defendant's law firm had "numerous offices and many attorneys, and one attorney's scheduled maternity leave [is] not a sudden, unplanned occurrence."[66] Plaintiff's counsel also alleged that the defendant's counsel was using the attorney's maternity leave for "improper purposes," namely so that defendant could "gain an advantage in upcoming settlement negotiations and to belatedly remedy its inaction in discovery."[67]

A. The Motherhood Penalty

These stories, and others like them, exemplify the way in which an attorney who is either pregnant or who recently gave birth may be harmed by the lack of clear rules about continuances for parental leave purposes. These examples are part of a larger issue that impacts mothers[68] in the paid workforce, called the

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[60] *Id.* at *7.

[61] *Id.* at *2.

[62] *Id.* at *2–3.

[63] *Id.* at *7–8.

[64] Opposition to Motion to Continue Trial at 1–3, Glacier DRS, Inc. v. Build Grp., Inc., No. 16-553647 (Cal. Super. Ct. Jan. 17, 2018).

[65] *Id.* at 3.

[66] *Id.*

[67] *Id.* at 9.

[68] The term "mother" as used throughout this Article refers to those who identify as a "mother," similarly, the terms "woman" or "women" refer to all individuals who identify as female

"Motherhood Penalty"[69] or "Maternal Wall" bias.[70] The Motherhood Penalty is a bias that can influence how others perceive of and respond to mothers in the paid workforce, especially when a conflict between family and work obligations is either assumed to arise, or when one actually does arise.[71] This motherhood bias also influences the way that mothers' skills and commitment are perceived, as well as perceptions about whether women[72] are "good" or "bad" mothers.[73] The vast body of research on the Motherhood Penalty confirms that once women become mothers, they are viewed by others in their workplace as "less committed" to their work and even "less competent."[74] Fathers[75] in the workplace, on the other hand, are usually ascribed characteristics like "dependable" and "hard-working," affording them more career opportunities and higher salaries.[76] Requests to accommodate pregnant[77] or mothering attorneys with a continuance in a legal proceeding has the possibility to trigger this motherhood bias and impact the outcome of such requests.

In addition to the biases directed at mothers, the additional caregiving requirements and expectations of mothers also impact their careers. During the last several decades, women's participation in the paid labor force in the United States

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or as women, irrespective of the gender assigned at birth. The author attempts to use gender-inclusive language throughout, while also specifying gender when discussing biases arising from traditional binary frameworks around gender identification. The terms "men" and "fathers" are intended to include all individuals who identify as male or as a father, irrespective of the gender assigned at birth. When referencing "pregnant attorneys," "birthing person," or other similar phrasing, the author includes all individuals with the capacity for pregnancy. The pronoun "their" is also sometimes used in this paper in its singular form in the place of "he" or "she."

[69] *See generally* Claudia Goldin, Sari Pekkala Kerr & Claudia Olivetti, *When the Kids Grow Up: Women's Employment and Earnings Across the Family Cycle* (Nat'l Bureau of Econ. Rsch., Working Paper No. 30323, 2022); Shelly J. Correll, Stephen Benard & In Paik, *Getting a Job: Is There a Motherhood Penalty?*, 112 AM. J. SOCIO., 1297 (2007); Michelle J. Budig, *The Fatherhood Bonus and The Motherhood Penalty: Parenthood and the Gender Gap in Pay*, THIRD WAY (Sept. 2, 2014), https://www.thirdway.org/report/the-fatherhood-bonus-and-the-motherhood-penalty-parenthood-and-the-gender-gap-in-pay.

[70] *See generally* Joan C. Williams, *The Maternal Wall*, HARV. BUS. REV., Oct. 2004, https://hbr.org/2004/10/the-maternal-wall.

[71] *See* sources cited *supra* note 69.

[72] *See* discussion *supra* note 68.

[73] *See* Tyler G. Okimoto & Madeline E. Heilman, *The "Bad Parent" Assumption: How Gender Stereotypes Affect Reactions to Working Mothers*, 68 J. SOC. ISSUES 704, 704–06, 720 (2012) (finding through four experimental studies "that people assume that mothers working in the male sex-typed occupations are worse parents than nonworking mothers").

[74] *See, e.g.*, Correll et al., *supra* note 69, at 1310, 1316.

[75] *See* discussion *supra* note 68.

[76] Khadija van der Straaten, Niccolò Pisani & Ans Kolk, *Multinationals Could Help Close Parenthood Wage Gaps. This is How*, WORLD ECON. F. (June 21, 2024), https://www.weforum.org/stories/2024/06/multinationals-can-close-parenthood-wage-gaps/.

[77] *See* discussion *supra* note 68.

has nearly doubled and women now comprise nearly 50% of the paid workforce.[78] The most dramatic shift in employment has occurred for mothers of young children.[79] Despite this dramatic shift, and despite the fact that women's income today is critical to many families' economic security, the gender pay gap for women persists.[80]

The 2019 Bright Horizons Modern Family Index study found that 69% of working Americans believe working moms are more likely than other employees to be passed up for a new job, and 60% of study respondents believe that working moms, who may be more skilled, are passed over for career opportunities in favor of less qualified employees.[81] A full 72% of both working mothers and fathers report believing "women are penalized in their careers for starting families, while men are not."[82]

While all parents and caregivers are likely to experience conflicts between their work and family responsibilities from time to time, the impact of caregiving is still disproportionately borne by mothers.[83] A study conducted by economists in 2021 to better understand the value of unpaid labor performed by families determined that nearly 80% of the caregiving work and the work necessary to maintain a household is performed by women.[84] Additionally, mothers are more likely than fathers to be treated as the "default parent" by schools and care providers.[85] This "default parent" status results in mothers, as compared to fathers, being 1.4 times more likely to be contacted by schools and to receive requests, for example, to volunteer time at school-related activities.[86] The impact of "default parent" status

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[78] *See* U.S. BUREAU OF LAB. STAT., WOMEN IN THE LABOR FORCE: A DATABOOK (2022), https://www.bls.gov/opub/reports/womens-databook/2021/.

[79] U.S. EQUAL EMP. OPPORTUNITY COMM'N, EEOC-CVG-2007-1, ENFORCEMENT GUIDANCE: UNLAWFUL DISPARATE TREATMENT OF WORKERS WITH CAREGIVING RESPONSIBILITIES (2007) [hereinafter EEOC GUIDANCE: UNLAWFUL DISPARATE TREATMENT].

[80] Budig, *supra* note 69.

[81] Kristen Raymaakers, *Modern Family Index Shows Real Motherhood Penalty in American Workplace*, BRIGHT HORIZONS (Jan. 28, 2019), https://investors.brighthorizons.com/node/11401/pdf.

[82] *Id.*

[83] Claire Suddath, *What Do We Owe Women for Child Care and Housework? $3.6 Trillion*, BLOOMBERG (Mar. 28, 2024, 1:00 PM), https://www.bloomberg.com/news/newsletters/2024-03-28/what-do-we-owe-women-for-child-care-and-housework-3-6-trillion.

[84] *Id.*

[85] Kristy Buzard, Laura Gee & Olga Stoddard, *Who You Gonna Call? Gender Inequality in External Demands for Parental Involvement* 3–4, 34 (Mar. 18, 2025) (unpublished manuscript), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4456100.

[86] *Id.* at 3–4; *see also* Liz McNeil, *Ruth Bader Ginsburg's Late Husband Marty Was the 'Only Boy Who Cared She Had a Brain,'* PEOPLE (Dec. 19, 2018, 7:20 PM), https://people.com/politics/ruth-bader-ginsburg-husband-marty-only-boy-who-cared-she-had-a-brain/ (noting that even Justice Ruth Bader Ginsburg was treated as the default parent by her children's

means attorney-mothers are more likely to have caregiving-related interruptions and caregiving obligations during their workday than similarly situated attorney-fathers; such interruptions can have an impact on mothers' productivity and their schedules.[87]

In demanding and traditionally male-dominated professions, like the legal profession, this conflict between work and family results in a "leaky pipeline" of women ascending to the highest ranks of their profession.[88] Despite women's enrollment in law schools outpacing that of men, women continue to be underrepresented[89] in roles beyond entry-level law firm associate roles.[90] The American Bar Association's (ABA) Commission on Women in the Profession (CWP) conducted a national study examining the experiences of parents and caregivers in the legal profession,[91] and the 2023 report[92] of the results confirmed that attorney-mothers experience the Motherhood Penalty:

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school, famously telling school administration once when they called: "This child has two parents. You must alternate the calls from now on, starting with this one.").

[87] *See* Buzard et al., *supra* note 85, app. at 34.

[88] *See* Amanda O'Brien, *Amid Sluggish Growth and 'Significant Leaks' in the Pipeline, Top Firms Invest in Women Associates and Partners Alike*, LAW.COM: THE AM. LAW. (June 25, 2024), https://www.law.com/americanlawyer/2024/06/25/amid-sluggish-growth-and-significant-leaks-in-the-pipeline-top-firms-invest-in-women-associates-and-partners-alike/.

[89] *Women in the Legal Profession*, AM. BAR ASS'N, https://www.americanbar.org/news/profile-legal-profession/women/ (last visited July 26, 2025). As a group, lawyers identifying as female increased from 34% to 39% during the decade from 2013–2023. In 2023, only 2.28% of lawyers at law firms identified as Black women, 2.34% as Latina women, 4.81% as Asian women, 0.07% as Native American or Alaskan Native women, and 0.04% as Native Hawaiian or other Pacific Islander women. Additionally, in 2023, 1.99% of lawyers of all genders identified as having a disability, and 4.57% of lawyers identified as LGBTQ+. Christy Bieber, *Women in Law Statistics 2025*, FORBES ADVISOR, https://www.forbes.com/advisor/legal/women-in-law-statistics/ (Mar. 20, 2024, 11:34 AM).

[90] NAT'L ASS'N FOR L. PLACEMENT, 2023 REPORT ON DIVERSITY IN U.S. LAW FIRMS 5–6, 8–9 (2024), https://www.nalp.org/uploads/Research/2023NALPReportonDiversityFinal.pdf; Debra Cassens Weiss, *For the First Time, Women Make Up Majority of Law Firm Associates, New NALP Report Says*, ABA J. (Jan. 10, 2024), https://www.americanbar.org/groups/journal/articles/2024/for-the-first-time-women-make-up-a-majority-of-law-firm-associates-nalp-report-says/.

[91] The author proposed, and subsequently served as Co-Chair for, the Parenthood and Child Caregiving Study project during her three-year term as Commissioner on the ABA Commission on Women in the Profession. STEPHANIE A. SCHARF, ROBERTA D. LIEBENBERG & PAULETTE BROWN, AM. BAR ASS'N COMM'N ON WOMEN IN THE PRO., LEGAL CAREERS OF PARENTS AND CHILD CAREGIVERS: RESULTS AND BEST PRACTICES FROM A NATIONAL STUDY OF THE LEGAL PROFESSION vi–ix (2023) [hereinafter LEGAL CAREERS OF PARENTS AND CHILD CAREGIVERS], https://www.americanbar.org/content/dam/aba/administrative/women/2023/parenthood-report-2023.pdf.

[92] *See generally id.*

- Attorney-mothers were much more likely than attorney-fathers to receive demeaning comments about being a "working parent";[93]
- Attorney-mothers were much more likely to be advised to either "stay home or put their career on hold" than attorney-fathers;[94]
- Attorney-mothers were much more likely to report feeling they were viewed as both less committed and less competent than attorney-fathers;[95]
- Attorney-mothers reported being less likely to receive important work assignments and less likely to be asked to work on matters that involved travel than attorney-fathers.[96]

These findings amplified the results of an earlier study, also conducted by the CWP, in which women lawyers with at least 20 years of practice (defined in the study as "experienced attorneys") reported being significantly more likely to be overlooked for advancement in their careers, to lack access to sponsors and business development opportunities, to be treated as a token representative for diversity purposes, and to be denied salary increases or bonuses.[97] Notably, the responses from the experienced men and women attorneys in this study also confirmed the

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[93] *Id.* at 6 ("A much higher percentage of mothers compared to fathers experience demeaning comments about being a working parent (61% of mothers vs. 26% of fathers in law firms; 60% of mothers vs. 30% of fathers in other settings)."). It is also important to note that all parents are "working," but the references to "working parents" in the studies and throughout this paper are referring to work in the paid workforce.

[94] *Id.* at 7 ("After having a child, a much higher percentage of mothers compared to fathers were advised by colleagues to stay home or put their career on hold (22% of mothers vs. 3% of fathers in law firms; 27% of mothers vs. 5% of fathers in other settings).").

[95] *Id.* at 6 ("A much higher percentage of mothers compared to fathers felt they were perceived as less committed to their careers (60% of mothers vs. 25% of fathers in law firms; 59% of mothers vs. 30% of fathers in other settings). . . . [And a] much higher percentage of mothers compared to fathers felt they were viewed as less competent (41% of mothers vs. 15% of fathers in law firms; 48% of mothers vs. 23% of fathers in other settings).").

[96] *Id.* at 6–7 ("A much higher percentage of mothers compared to fathers had trouble being assigned to important matters (25% of mothers vs. 9% of fathers in law firms; 25% of mothers vs. 16% of fathers in other settings). . . . [And m]ore mothers than fathers were not asked to work on matters that required travel (17% of mothers vs. 5% of fathers in law firms; 15% of mothers vs. 7% of fathers in other settings).").

[97] Debra Cassens Weiss, *Why Are Experienced Women Lawyers Leaving BigLaw? Survey Looks for Answers and Finds Big Disparities*, ABA J. (Nov. 14, 2019, 8:00 AM), https://www.abajournal.com/news/article/why-are-women-lawyers-leaving-biglaw-survey-looks-for-an-answer-and-finds-big-disparities (discussing findings of the report). *See generally* ROBERTA D. LIEBENBERG & STEPHANIE A. SCHARF, AM. BAR. ASS'N COMM'N ON WOMEN IN THE PRO., WALKING OUT THE DOOR: THE FACTS, FIGURES, AND FUTURE OF EXPERIENCED WOMEN LAWYERS IN PRIVATE PRACTICE (2019) [hereinafter FACTS, FIGURES, AND FUTURE OF EXPERIENCED WOMEN LAWYERS IN PRIVATE PRACTICE], https://www.americanbar.org/content/dam/aba/administrative/women/walkoutdoor_online_042320.pdf.

disproportionate child caregiving responsibilities borne by women.[98] For example, 54% of women attorney respondents, compared to 1% of male attorney respondents, reported they had "full responsibility" for arranging childcare; 32% of women attorneys, compared to 4% of male attorneys, reported they had "full responsibility" for leaving work for child caregiving reasons.[99] Perhaps it is not surprising then that child caregiving topped the list of reasons why experienced women reported leaving their law firms.[100]

In a study published March 2022, researchers found that even as workplaces become more female-dominated, the bias against women persists.[101] Among the workplaces the researchers examined, the researchers found that the legal workplace represented "the most challenging environment," noting that the legal profession has a long history of biases against women.[102] The study further noted that the "emphasis on billable hours can make it difficult for individuals with caretaking responsibilities (disproportionately women) to keep up, thus perpetuating inequities."[103]

Ultimately, as a result of the Motherhood Penalty and other biases that women face, women are not equitably represented in the legal profession, including

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[98] FACTS, FIGURES, AND FUTURE OF EXPERIENCED WOMEN LAWYERS IN PRIVATE PRACTICE, *supra* note 97, at 12.

[99] *Id.*

[100] *Id.* This Article's discussion of the Motherhood Penalty is intended to give the reader an overview of how this issue may impact mothers in trial practice and does not provide the reader with an in-depth understanding of this form of bias. Like all groups, mothers are not a monolith, and different mothers will experience varying impacts from, and reactions to, biases about mothers in the paid labor force. *See, e.g.*, Sandra M. Florian, *Racial Variation in the Effect of Motherhood on Women's Employment: Temporary or Enduring Effect?*, 73 SOC. SCI. RSCH. 80 (2018) (noting that "parenthood evokes different employment expectations for individuals by gender, race, and class," and historical attitudes about women and work, financial pressures of mothers, and societal pressures to conform to a specific motherhood ideology vary in important ways across socio-economic, racial, ethnic, and age groups; these same differences also elevate the motherhood of certain women, typically white and economically privileged women, over the motherhood of Black women and poor women); Nina Banks, *Black Women's Labor Market History Reveals Deep-Seated Race and Gender Discrimination*, ECON. POL'Y INST.: WORKING ECON. BLOG (Feb. 19, 2019, 2:11 PM), https://www.epi.org/blog/black-womens-labor-market-history-reveals-deep-seated-race-and-gender-discrimination/ (noting that Black women, in particular, have faced a "persistent and ongoing drag from gender and race discrimination" in the labor market in the U.S.).

[101] Amy Diehl, Amber L. Stephenson & Leanne M. Dzubinski, *Research: How Bias Against Women Persists in Female-Dominated Workplaces*, HARV. BUS. REV. (Mar. 2, 2022), https://hbr.org/2022/03/research-how-bias-against-women-persists-in-female-dominated-workplaces.

[102] *Id.*

[103] *Id.*

specifically in trial practice.[104] When researchers conducted a comparison of the gender of attorneys presenting arguments before the United States Court of Appeals for the Seventh Circuit in 2009 and 2019, they found that not only do men outnumber women nearly three to one in presenting arguments before the appellate court, but also that this gender gap remained essentially unchanged during the decade examined in the study.[105] In a similar study released in 2018, researchers examined a random sample of all cases filed in 2013 in the United States District Court for the Northern District of Illinois and determined that men were three times more likely than women to serve as lead counsel in civil cases.[106] The study concluded that women are "consistently underrepresented in lead counsel positions and in the role of trial attorney for all but a few types of cases."[107]

Not surprisingly, the Supreme Court is also much less likely to hear women attorneys presenting oral arguments.[108] The lack of women arguing before the Supreme Court is also likely connected to the gender disparity in Supreme Court clerkships—women only hold about one-third of those clerkships.[109] Beyond the numbers of women arguing before the Court, studies of oral arguments at the Supreme Court also show that both women attorneys and women Justices are interrupted much more often than male attorneys, another result of gender bias directed at women attorneys.[110]

As the stories of denied parental-leave continuance requests illustrate, women litigators across the spectrum of trial practice may be harmed by the lack of PLCRs, or conversely, can benefit from the adoption of PLCRs. Women, like Ms. Ehrisman-Mickle, who are in a solo practice benefit from adoption of PLCRs

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[104] AMY J. ST. EVE & JAMIE B. LUGURI, AM. BAR ASS'N COMM'N ON WOMEN IN THE PRO., HOW UNAPPEALING: AN EMPIRICAL ANALYSIS OF THE GENDER GAP AMONG APPELLATE ATTORNEYS 1 (2021) [hereinafter AN EMPIRICAL ANALYSIS OF THE GENDER GAP AMONG APPELLATE ATTORNEYS], https://www.americanbar.org/content/dam/aba/administrative/women/how-unappealing-f_1.pdf; STEPHANIE A. SCHARF & ROBERTA D. LIEBENBERG, AM. BAR ASS'N COMM'N ON WOMEN IN THE PRO., FIRST CHAIRS AT TRIAL: MORE WOMEN NEED SEATS AT THE TABLE 9 (2015) [hereinafter MORE WOMEN NEED SEATS AT THE TABLE], https://www.theredbeegroup.com/wp-content/uploads/2020/02/First-chairs-at-Trial-FINAL.pdf.

[105] AN EMPIRICAL ANALYSIS OF THE GENDER GAP AMONG APPELLATE ATTORNEYS *supra* note 104, at 10.

[106] MORE WOMEN NEED SEATS AT THE TABLE, *supra* note 104, at 8, 10.

[107] *Id.* at 4.

[108] Jennifer Crystal Mika, *The Noteworthy Absence of Women Advocates at the United States Supreme Court*, 25 AM. U.J. GENDER, SOC. POL'Y & L. 31, 35, 38 (2017).

[109] *Id.* at 40.

[110] *See, e.g.*, Tonja Jacobi & Matthew Sag, *Supreme Court Interruptions and Interventions: The Changing Role of the Chief Justice*, 103 B.U. L. REV. 1741, 1744 (2023); Dana Patton & Joseph L. Smith, *Lawyer, Interrupted: Gender Bias in Oral Arguments at the US Supreme Courts*, 5 J.L. & CTS. 337, 338 (2017).

because they cannot easily hand off the matter to a colleague in anticipation of maternity leave; moreover, a PLCR serves to protect both her health and her practice as she is better able to take time to recover from childbirth. Women in firms also benefit from PLCRs because protecting their maternity leave can help deter efforts, similar to the situations of Ms. Dice and Ms. Tabor, where judges or opposing counsel suggest that another member of the firm can simply step in on the pregnant attorney's behalf. Treating women attorneys as replaceable cogs is short-sighted and harmful not only to the attorney and her career, but also to the client who: (1) may have specifically selected the attorney to represent them; and (2) may have to absorb the costs of having another counsel come up to speed—who still may not understand the case as well as the original lead counsel.[111]

Moreover, the impact of an attorney being asked to hand off her cases when she is having a baby can have a long-term impact on her career. As noted by Craig Leen—a formerly Florida-based attorney who was instrumental in drafting and advocating for the Florida PLCR—asking women to hand off their cases "could set back a career."[112] Women being replaced as lead counsel in litigation due to a pregnancy or parental leave can create a snowball effect on their career such that they are then granted fewer opportunities both before and upon return from their leave, making it difficult to regain their momentum in their practice.[113]

To the extent that women's careers are being delayed due to the myriad challenges of balancing pregnancy and child caregiving with a legal career, the adoption of PLCRs can provide a practical solution by recognizing the conflict between work and family obligations. On a larger level, adoption of PLCRs helps to signal that the legal profession recognizes the importance of taking parental leave and can act as a "bias interrupter"[114] when judges and other lawyers are asked to grant a parental-leave continuance request.

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[111] *See* Douglas R. Richmond, *The New Law Firm Economy, Billable Hours, and Professional Responsibility*, 29 HOFSTRA L. REV. 207, 233 (2000).

[112] Craig Leen, *Declarations of Inclusion and Parental Leave Continuances: Two Causes, One Mission*, CABA BRIEFS, Summer 2016, at 32, 33. *See, e.g.*, Comm. Analysis & Action Rep. from Robert Eschenfelder, Comm. Chair, Fla. Bar Special Comm. Parental Leave Ct. Actions, to Bill Schifino, Fla. Bar President & Fla. Bar Bd. of Governors 13 (Jan. 27, 2017) [hereinafter Comm. Analysis & Action Rep.], https://www-media.floridabar.org/uploads/2019/03/309999_special20committee20on20parental20leave20final20report.pdf (describing a circumstance where an attorney sought a continuance so she could represent her clients in an upcoming trial scheduled during her maternity leave, and despite it being the first continuance she sought in the matter, it was denied because she could just "transfer her case to another attorney").

[113] Goldin et al., *supra* note 69, at 1–2; Williams, *supra* note 70, at 26.

[114] "Bias interrupters" are defined as small changes or "tweaks" to various processes that help to prevent implicit bias in the workplace, often without ever directly talking about the potential biases. *See generally* JOAN C. WILLIAMS, MARINA MULTHAUP, SU LI & RACHEL KORN, AM. BAR ASS'N COMM'N ON WOMEN IN THE PRO. & MINORITY CORP. COUNS. ASS'N, YOU CAN'T

B. Stigmatization of Fathers as Caregivers

While the challenges all women attorneys, and specifically pregnant or mothering attorneys, face in the traditionally male-dominated legal profession are well-documented,[115] men too are subject to backlash when they overtly act in contrast to expected gender norms regarding caregiving roles.[116] As gender norms and parenting expectations have evolved over the decades, men want to and do play a more active role in childbirth and parenting, and thus, PLCRs are of benefit to them too.[117]

Consider, for example, Florida attorney and father, Santo DiGangi, and the backlash he experienced when he took a one-week paternity "leave" at his law firm.[118] Mr. DiGangi explained in an essay for the Florida Bar Association's Young Lawyers Division that he "decided it was time to actually take one full week away from the office" when his second child was born to be home with his family, after noting that he only took two days off for his wedding and two days off for the birth of their first child.[119] Even though he actually worked remotely the entire week of his purported "paternity leave," his out-of-office email message and voicemail both noted he was on paternity leave.[120] Mr. DiGangi described his surprise and dismay at "the negative and condescending reaction" he received, saying he was "ridiculed by one counsel for openly admitting that [he] was on paternity leave" and that another attorney told him "putting paternity leave as a reason for being out of the office was a sign of weakness."[121]

Mr. DiGangi also said he heard from numerous male attorneys who told him they had been back in the office the same day their baby had been born.[122] While

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CHANGE WHAT YOU CAN'T SEE: INTERRUPTING RACIAL & GENDER BIAS IN THE LEGAL PROFESSION 12 (2018) [hereinafter INTERRUPTING RACIAL & GENDER BIAS].

[115] *See* discussion *supra* Section I.A.

[116] Laurie A. Rudman & Kris Mescher, *Penalizing Men Who Request a Family Leave: Is Flexibility Stigma a Femininity Stigma?*, 69 J. SOC. ISSUES 322, 324 (2013).

[117] *See* Richard J. Petts & Chris Knoester, *Are Parental Relationships Improved if Fathers Take Time Off of Work After the Birth of a Child?*, 98 SOC. FORCES: INT'L J. SOC. RSCH. 1223, 1226 (2020). *See also* Richard J. Petts, Chris Knoester & Jane Waldfogel, *Fathers' Paternity Leave-Taking and Children's Perceptions of Father-Child Relationships in the United States*, 82 SEX ROLES 173, 176 (2020) ("Increasingly, fathers express a desire to be actively engaged in their children's lives but struggle to find time to meet their desired level of involvement.").

[118] Santo DiGangi, *Yes, I Took Paternity Leave (And I'm Not Afraid to Admit It)*, FLA. BAR YOUNG LAWS. DIV., https://flayld.org/about-us/newsletter/yes-i-took-paternity-leave-and-im-not-afraid-to-admit-it/ (last visited July 27, 2025).

[119] *Id.*

[120] *Id.*

[121] *Id.*

[122] *Id.*; *see also* Cynthia Grant Bowman, *Women in the Legal Profession from the 1920s to the 1970s: What Can We Learn from Their Experience About Law and Social Change?*, 61 ME. L. REV.

Mr. DiGangi said that his law firm and colleagues had been supportive, the messages he received from others outside his firm are indicative of the social pressures that create "mutually reinforcing stereotypes" that result in limits to all parents' choices around caregiving.[123]

The Equal Employment Opportunity Commission's (EEOC) *Enforcement Guidance: Unlawful Disparate Treatment of Workers with Caregiving Responsibilities* affirms Mr. DiGangi's experience, reporting that assumptions about working fathers can lead others to stigmatize and harass fathers and even result in employers denying their requests for childcare-related leave.[124] In the context of legal proceedings, these stigmas and assumptions about fathers may result in judges denying continuances, or adverse counsel opposing continuances, when requested by men for parental leave purposes. Additionally, opposing counsel in a proceeding may see a request for a continuance from a male attorney as a tactical opportunity, rather than a significant life event deserving respectful consideration.[125]

For example, in a 2011 proceeding, attorney Bryan Erman requested a continuance so he could be present for the birth of his first child, who was due two weeks after the trial was scheduled to begin.[126] The trial was scheduled to be held in Kansas City, but Mr. Erman and his wife resided in Dallas, and he would have to travel back to Dallas for the birth. In this case, the motion for a continuance was opposed by the opposing counsel.[127] Judge Eric F. Melgren granted the continuance and rebuked the attorney opposing the request, writing:

> Regrettably, many attorneys lose sight of their role as professionals, and personalize the dispute; converting the parties' disagreement into a lawyers' spat. This is unfortunate, and unprofessional, but sadly not uncommon. . . . Certainly this judge is convinced of the importance of federal court, but he

1, 16 (2009) (discussing a story of a lawyer whose former managing partner publicly boasted about missing the birth of one of his children because he was completing an important deal, and demonstrating that narratives from the 1970s of the male-lawyer-who-missed-the-birth-of-his-child are still being told—even in 2019, at the time Mr. DiGangi took his brief paternity leave).

[123] *See* EEOC GUIDANCE: UNLAWFUL DISPARATE TREATMENT, *supra* note 79, at II.C (quoting Nev. Dep't of Hum. Res. v. Hibbs, 538 U.S. 721, 736 (2003)).

[124] *Id.*

[125] *See infra* text accompanying notes 126–32.

[126] John Schwartz, *Judge Rules for Counsel, Saying Baby Comes First*, N.Y. TIMES (Apr. 13, 2011), https://www.nytimes.com/2011/04/14/us/14judge.html; Molly McDonough, *Expectant Dad Asks for Continuance, Opposing Counsel Objects*, ABA J. (Apr. 15, 2011, 10:49 AM), https://www.abajournal.com/news/article/expectant_dad_asks_for_continuance_opposing_counsel_objects.

[127] McDonough, *supra* note 126.

> has always tried not to confuse what he does with who he is, nor to distort the priorities of his day job with his life's role.[128]

Similarly, in the case of *Johnson v. Everyrealm, Inc.*, plaintiff's attorney Shane Seppinni requested a three-week continuance because his wife had gone into labor earlier than expected and had delivered their baby.[129] Defense counsel not only opposed the continuance request but used Mr. Seppinni's circumstances as an opportunity to try to gain leverage, not only in the case at issue, but also in three other lawsuits brought by Mr. Seppinni against this defendant on behalf of other clients.[130] District Judge Paul Englemayer of the Southern District of New York granted the three-week continuance requested by Mr. Seppinni, specifically noting that Mr. Seppinni could request a further extension of the continuance as needed in the event of additional medical complications.[131] Judge Englemayer also expressed his dismay with defense counsel's failure to act professionally and civilly in response to the continuance request: "The Court reminds defense counsel of the expectation of the judges in this District that counsel will comport themselves with decency. Counsel's attempt to exploit a moment of obvious personal exigency to extract concessions from Mr. Seppinni, in other litigations no less, was unprofessional. The Court expects better."[132]

Whether fatherhood stigma played a role in the way these attorneys responded is not clear, but research indicates that societal assumptions about masculinity and the role of men in caregiving can impact decisions like these that involve fathers prioritizing caregiving.[133] In a study published in 2013 about men requesting family leave, male respondents to the study viewed other men who requested family leave as "weak," associating the men with more "feminine" traits, while also rating them lower on what are typically viewed as "masculine" traits, such as ambition and competitiveness.[134] Notably, these perceptions of weakness were predictive of harmful career outcomes to men, such as being demoted, downsized, or otherwise penalized at work.[135] Another study, conducted in California, identified that men were concerned about taking parental or other caregiving leave specifically because

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[128] Order on Motion to Continue at 1, 3, Jayhawk Cap. Mgmt., LLC v. LSB Indus., Inc., No. 08-2561 (D. Kan. Apr. 12, 2011).

[129] Kathryn Rubino, *Federal Judge Disappointed Biglaw Attorneys Can't Display Basic Compassion*, ABOVE THE L. (May 2, 2023, 2:14 PM), https://abovethelaw.com/2023/05/federal-judge-disappointed-biglaw-attorneys-cant-display-basic-compassion/.

[130] *Id.*

[131] *Id.*; Order, at 2, Johnson v. Everyrealm, Inc., No. 22-cv-6669 (S.D.N.Y. Apr. 26, 2023), ECF No. 84 (granting plaintiff's motion to continue).

[132] Order, *Johnson*, at 2, No. 22-cv-6669, ECF No. 84.

[133] Rudman & Mescher, *supra* note 116, at 324.

[134] *Id.* at 325, 330–31, 335 (finding that the results were comparable regardless of the reason given for requesting a family leave, as well as the race of the individual requesting leave).

[135] *Id.* at 330–31, 335.

of the harm they thought they would incur to both their long-term earning potential and their professional reputation.[136] Fathers also report, similar to Mr. DiGangi, that they are in fact stigmatized and shamed when they take paternity leave, even when it is offered to them as an employee benefit.[137]

If judges and other attorneys react negatively to male attorneys requesting continuances for parental leave reasons, that reaction is likely to have a chilling effect on others, particularly other male attorneys seeking to avail themselves of continuances for parental leave. In turn, this chilling effect on fathers increases the harm to mothers by shifting the caregiving role disproportionately back to them and thereby perpetuating the unlevel playing field where women "need" leave for caregiving and men do not.[138] In particular, attorneys who give birth face a particular challenge compared to non-birthing parents because they often must take off at least some time from work to physically recover from childbirth.[139] The result of this need for some recovery time, at least when considered through a more narrow gender-binary lens, results in women who have "no choice but to stall their career goals for the time being—subtly falling behind—as the men at their workplaces thrive off opportunities they left behind."[140] Adoption of gender-neutral PLCRs reinforces the notion that caregiving is not a gendered task, encourages fathers and non-birthing attorneys to take leave, and reduces the disproportionate shifting of caregiving to mothers.

For all attorney-parents, irrespective of gender, the ability to access leave has an impact on their lives, and data indicates that PLCRs will make a difference.[141] For example, in 2021, the Parental Leave Working Group of the Minnesota State Bar Association gathered data from Minnesota lawyers to better understand attitudes about PLCRs and whether adoption of a PLCR might have impacted them had one been available at the time they were pregnant or on parental leave.[142] Respondents, whose gender was not identified, provided the following comments:

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[136] Nina Franco, Comment, *Men are Winning: Why Paid Paternity Leave Has Not Taken Full Flight in the United States*, 11 PENN ST. J.L. & INT'L AFFS. 229, 231 (2022).

[137] *Id.* at 231–32.

[138] *See id.* at 230–31.

[139] *See, e.g.*, *Postpartum Recovery*, AM. PREGNANCY ASS'N, https://americanpregnancy.org/healthy-pregnancy/first-year-of-life/postpartum-recovery/ (last visited July 27, 2025) (explaining that the physical recovery period after childbirth is typically six weeks, or eight weeks for a cesarean section).

[140] Franco, *supra* note 136, at 230.

[141] *See* discussion *infra* Part IV.

[142] MINN. ST. BAR ASS'N PARENTAL LEAVE WORKING GRP., REPORT AND RECOMMENDATION REGARDING A PERSONAL LEAVE RULE 4, 6, 13–14, 16–17 (2021) [hereinafter MSBA PARENTAL WORKING GROUP], https://lprb.mncourts.gov/AboutUs/LPRBMeetingMaterials/October%2029,%202021,%20Board%20Meeting%20Materials.pdf (Attachment 5 of Lawyers Professional Responsibility Board Meeting Agenda, October 29, 2021).

- "I took a call from the hospital [after the birth of a child] . . . I also handled a telephonic discovery hearing for another matter while on leave. I did not even consider asking for leave. I don't think I would have felt comfortable doing so."[143]
- "[During very contentious litigation,] I didn't want to jeopardize my health or the health of my child, . . . [but] if the court had clear language allowing a stay of proceedings, I think I would have taken advantage of it."[144]
- "I had only given birth days prior and . . . because I was exhausted from having so little sleep, I overslept for the morning hearing and was late."[145]
- "Even when planning months in advance our profession makes it difficult to have family time during the typical work week."[146]
- "I opted not to ask for the continuance as my partners expressed the view that I had been on 'vacation.'"[147]
- "An important settlement conference was scheduled during my maternity leave. I was concerned about [the client] missing out on the opportunity to resolve the case in advance of the trial ready date, . . . so I attended."[148]
- "I worried . . . that [a leave request would result] in a report to the Board that I had failed somehow in my duties or in my professional responsibility or such."[149]

These statements demonstrate attorneys' experiences in feeling it necessary to prioritize their work over their families, as well as their own health and well-being, for fear of repercussions to their careers, and that adoption of PLCRs would have helped. In addition to addressing the Motherhood Penalty and fatherhood stigmatization, PLCRs are also necessary because, as will be further described below, the existing laws protecting pregnant workers and parental leave in the United States are tied to employer–employee relationships and do not work in tandem with the existing continuance rules that govern scheduling for legal proceedings.[150] Without PLCRs, attorneys are left caught between laws and rules that do not work together, and worse, caught between their work and their families.

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143 *Id.* at 14.

144 *Id.*

145 *Id.* at 13.

146 *Id.*

147 *Id.* at 14.

148 *Id.*

149 *Id.* at 13.

150 *See* discussion *infra* Part II.

II. EXISTING STATUTES DO NOT ADDRESS PARENTAL LEAVE IN LEGAL PROCEEDINGS

Gaining access to parental leave, particularly paid parental leave, in anticipation of childbirth or child placement is nothing short of a herculean task for most people in the United States.[151] Among the challenges to accessing leave, and the reason PLCRs are needed to help coordinate an attorney's parental leave with their court schedule, is the fact that essentially all laws in the U.S. that provide leave for birth or adoption are tied directly to an employer–employee relationship, unlike most countries in the rest of the world, where parental leave is a government benefit.[152]

In 1993, the United States enacted the Family and Medical Leave Act of 1993 (FMLA), the first federal law to ensure access to leave, albeit unpaid leave, for childbirth or adoption.[153] The protection afforded to workers under FMLA "serve[s] as the cornerstone of the Department of Labor's efforts to promote work–life balance and . . . the principle that no worker should have to choose between the job they need and the family they love."[154] However, FMLA leave is tied to the employer–employee relationship and approximately 44% of United States workers are not even eligible for this unpaid leave, either because they do not work for a covered employer, or because they have not met the length-of-work requirements to be an eligible employee, or both.[155] Of those who were ineligible for FMLA, more than 2.7 million workers in 2024 who needed leave are estimated to have foregone that leave for fear of losing their jobs, and of all workers, an estimated 7.3 million needed leave but could not afford to take unpaid leave.[156] Further research by the National Partnership for Women & Families finds that women, workers of color,

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[151] *See* NAT'L P'SHIP FOR WOMEN & FAMS., KEY FACTS: THE FAMILY AND MEDICAL LEAVE ACT 2–3 (Feb. 2025), https://nationalpartnership.org/wp-content/uploads/2023/02/key-facts-the-family-and-medical-leave-act.pdf.

[152] *See infra* notes 160–64, and accompanying text.

[153] Family Medical Leave Act of 1993, Pub. L. No. 103-3, 107 Stat. 6 (codified at 29 U.S.C. §§ 2601–2654); *see also* Megan A. Sholar, *The History of Family Leave Policies in the United States*, ORG. AM. HISTORIANS, https://www.oah.org/tah/november-3/the-history-of-family-leave-policies-in-the-united-states/ (last visited July 27, 2025).

[154] U.S. DEP'T OF LAB., WAGE & HOUR DIV., THE EMPLOYER'S GUIDE TO THE FAMILY AND MEDICAL LEAVE ACT, https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/employerguide.pdf (last visited July 28, 2025).

[155] *See* NAT'L P'SHIP FOR WOMEN & FAMS., *supra* note 151, at 2 (explaining that "[w]orkers of color are less likely to be eligible for FMLA-supported leave: 55 percent of workers who identify as Native American, Pacific Islander, or multiracial, 48 percent of Latinx, 47 percent of Asian American and 43 percent of Black workers are ineligible, compared to 42 percent of white workers").

[156] *Id.* at 2–3.

and solo parents are all more likely to be unable to take needed FMLA leave.[157] In the absence of federal protection for paid leave, a number of states have adopted mandatory paid leave laws or have additional protection for parental leave beyond what is provided for under FMLA.[158] While this development is positive, access to leave for parents based on their jurisdiction or employer type and size remains highly inconsistent.[159]

Within the global context, the United States falls extremely short in its protection for paid leave. A 2019 UNICEF study examined family-friendly policies across 41 high- and middle-income countries throughout the world, including maternity, paternity, and parental leave.[160] The study authors explain that family-friendly policies are important because such policies "help children to get a better start in life and help parents find the right balance between their commitments at work and at home."[161] Of the 41 countries included in their research, "the U.S. came in dead last in terms of paid leave available to mothers and fathers" and was "the *only* OECD country that offered a whopping zero federally mandated weeks of maternity leave."[162] The United States, not surprisingly, also ranks at the bottom of countries providing paid leave designated for fathers or non-birthing parents.[163]

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[157] *Id.* at 3 (noting "[t]here are significant inequities by race and ethnicity, gender, family structure and income among workers who needed leave but could not take it").

[158] *State Paid Family Leave Laws Across the U.S.*, BIPARTISAN POL'Y CTR., https://bipartisanpolicy.org/explainer/state-paid-family-leave-laws-across-the-u-s/ (Feb. 20, 2025) ("Thirteen states and the District of Columbia have enacted mandatory paid family leave systems. An additional ten states have voluntary systems that provide paid family leave through private insurance. Of the 24 total state leave laws, 20 have been implemented and the remaining are not yet in effect. Most of these state laws provide parental and family caregiving leave as well as temporary disability insurance to cover paid personal medical leave.").

[159] *See, e.g.*, *Work/Life and Benefits*, CHAMBERS ASSOC., https://www.chambers-associate.com/law-firms/worklife-and-benefits (last visited July 28, 2025) (comparing various leave benefits of over 90 law firms).

[160] YEKATERINA CHZHEN, ANNA GROMADA & GWYTHER REES, UNICEF OFF. OF RSCH., ARE THE WORLD'S RICHEST COUNTRIES FAMILY FRIENDLY? POLICY IN THE OECD AND EU 4 (2019), https://www.unicef.org/media/55696/file/Family-friendly%20policies%20research%202019.pdf.

[161] *Id.*

[162] Mary Beth Ferrante, *UNICEF Study Confirms: The U.S. Ranks Last for Family-Friendly Policies*, FORBES (June 21, 2019, 7:35 AM) (emphasis added), https://www.forbes.com/sites/marybethferrante/2019/06/21/unicef-study-confirms-the-u-s-ranks-last-for-family-friendly-policies/; CHZHEN, GROMADA & REES, *supra* note 160, at 7 ("The United States is the only OECD [Organization for Economic Co-operation and Development] country without nationwide, statutory, paid maternity leave, paternity leave, or parental leave.").

[163] Ferrante, *supra* note 162. Paternity leave tends to be less protected in most countries; only 26 of the 41 countries surveyed offer paid paternity leave, compared to 40 that offer paid maternity leave. Even when paid paternity leave is offered, the leave tends to be significantly shorter than maternity leave, with 14 of the 26 counties offering two weeks or less of paid leave

In October 2020, more than a year after the UNICEF study was published, the Federal Employee Paid Leave Act (FEPLA) became effective in the United States, mandating that federal employees—subject to some exceptions—receive up to 12 weeks of paid leave for birth or placement of a child, replacing the unpaid leave federal employees had previously been eligible for under FMLA.[164]

Data on the legal industry indicates a generally positive trend towards paid leave for employed attorneys.[165] Among respondents to a 2023 national survey, 69% of practicing lawyers in all employment settings reported having access through their employer to paid parental leave.[166] Moreover, the study found that at least three months, and sometimes more time, has become the common and generally expected benefit for the birthing parent.[167] Despite great strides in paid leave in the legal profession, 15% of respondents reported having no paid leave available for childbirth or adoption, and 12% reported having only between one and four weeks of maternity leave available for the birthing parent through their employer.[168]

Whether in the general worker population or within the legal profession, the protections for maternity, paternity, and parental leave are tied to employment, subject to numerous exceptions and exemptions, and often unpaid or insufficient to meet the caregiver's needs. Even those attorneys who can successfully access leave, despite the many obstacles, remain vulnerable to interruption or disregard due to the lack of clear rules around continuances in legal proceedings and judicial obligations to honor, when appropriate, the parental leave of an attorney.[169]

In addition to FMLA and FEPLA, several statutes and agency guidance prohibit discrimination against pregnant individuals, as well as those with caregiving responsibilities.[170] For example, Title VII of the Civil Rights Act was amended in 1978 to include The Pregnancy Discrimination Act, which prohibits discrimination against employees or applicants for employment on the basis of pregnancy,

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for fathers or non-birthing parents. Notably, although shorter, or perhaps because it is shorter, paternity leave globally tends to be paid at a higher rate than maternity leave. CHZHEN, GROMADA & REES, *supra* note 160, at 10.

[164] Pub L. No. 116–92, 133 Stat. 2304, 2304–2306 (2019); *Paid Parental Leave for Federal Employees*, U.S. DEP'T OF COMM., OFF. OF HUM. RES. MGMT., https://www.commerce.gov/hr/paid-parental-leave-federal-employees (last visited July 28, 2025).

[165] LEGAL CAREERS OF PARENTS AND CHILD CAREGIVERS, *supra* note 91, at 74.

[166] *Id.*

[167] *Id.* The cited report uses the terminology "birth mother," but this Article uses the term "birthing parent."

[168] *Id.*

[169] *See* discussion *infra* Part V.

[170] *See, e.g.*, EEOC GUIDANCE: UNLAWFUL DISPARATE TREATMENT, *supra* note 79; *infra* notes 171–74 and accompanying text.

childbirth, or related medical conditions.[171] The Americans with Disabilities Act (ADA) also prohibits discrimination against a pregnant employee or applicant for employment who develops a disability related to pregnancy.[172] More recently enacted, the Pregnant Workers Fairness Act of 2022 requires employers to make reasonable accommodations for workers' limitations related to pregnancy or childbirth, along with related medical conditions, provided such accommodations do not cause the employer "undue hardship."[173] Again, these statutes operate within the employment setting and do not apply in the instance that a court fails to grant a continuance in response to an attorney's pregnancy or childbirth-related need.[174]

For fathers and other non-birthing parents, little protection from biases or discrimination exists. The EEOC acknowledges that its existing laws do not prohibit discrimination against caregivers per se,[175] but employer decisions based on sex-based stereotypes regarding caregiving roles—regardless of the gender of the person—are discriminatory.[176] The EEOC also specifically outlines the perils of discrimination directed at males who engage in caregiving roles and, importantly, the way these gender-norming stereotypes create harm for all parents:

> "Stereotypes about women's domestic roles are reinforced by parallel stereotypes presuming a lack of domestic responsibilities for men. [sic] These mutually reinforcing stereotypes created a self-fulfilling cycle of discrimination." Stereotypes of men as "bread winners" can further lead to

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[171] Pub. L. No. 95–555, 95 Stat. 2076 (codified at 42 U.S.C. § 2000e(k)); *see also* Reva B. Siegel, *Employment Equality under the Pregnancy Discrimination Act of 1978*, 94 YALE L.J. 929, 929 (1985).

[172] 42 U.S.C. §§ 12112(a)–(b); U.S. EQUAL EMP. OPPORTUNITY COMM'N, EEOC-CVG-2015-1, ENFORCEMENT GUIDANCE ON PREGNANCY DISCRIMINATION AND RELATED ISSUES (2015), https://www.eeoc.gov/laws/guidance/enforcement-guidance-pregnancy-discrimination-and-related-issues#IIA ("Prior to the enactment of the ADAAA [Americans with Disabilities Amendment Act], some courts held that medical conditions related to pregnancy generally were not impairments within the meaning of the ADA, and so could not be disabilities. Although pregnancy itself is not an impairment within the meaning of the ADA, and thus is never on its own a disability, some pregnant workers may have impairments related to their pregnancies that qualify as disabilities under the ADA, as amended.").

[173] 42 U.S.C. § 2000gg–1.

[174] *See* sources cited *supra* notes 171–73.

[175] *See* EEOC GUIDANCE: UNLAWFUL DISPARATE TREATMENT, *supra* note 79, at II.A.2. *See also Family Caregiver Discrimination*, CENTER FOR WORKLIFE LAW, https://worklifelaw.org/projects/family-caregiver-discrimination/ (last visited July 28, 2025) ("Too often family caregivers face discrimination at work because employers make decisions based on stereotypes about sex, gender, and race, and assumptions that family caregivers will underperform. Despite good performance, family caregivers who experience [Family Responsibilities Discrimination] may be fired, rejected for hire, passed over for promotion, demoted, and harassed. Unfortunately, Family Responsibilities Discrimination remains legal in many cases.").

[176] EEOC GUIDANCE: UNLAWFUL DISPARATE TREATMENT, *supra* note 79, at II.A.2.

> the perception that a man who works part time is not a good father, even if he does so to care for his children. Thus, while working women have generally borne the brunt of gender-based stereotyping, unlawful assumptions about working fathers and other male caregivers have sometimes led employers to deny male employees opportunities that have been provided to working women or to subject men who are primary caregivers to harassment or other disparate treatment.[177]

The issue remains that reliance on any of these existing laws is thwarted by their inapplicability in the context of the relationship between courts and the attorneys who practice before them.

III. TRADITIONAL CONTINUANCE RULES DO NOT ADDRESS PARENTAL LEAVE

Currently, when an attorney seeks to postpone a legal proceeding for parental leave purposes, the attorney must rely on traditional continuance rules. A court's power to manage its docket and calendar, including the ability to grant continuances, derives from statute.[178] Continuances can be granted in response to a motion filed by one of the parties or the court can issue a continuance sua sponte.[179] When a continuance is filed by a party, counsel for the other party will often consent as a matter of professional courtesy.[180] Even when the parties to a proceeding have all consented to a continuance, however, the decision whether to grant or deny the continuance is ultimately left to judges in their discretion.[181]

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[177] *Id.* at II.C (footnotes omitted) (quoting Nev. Dep't of Hum. Res. v. Hibbs, 538 U.S. 721, 736 (2003)).

[178] *See* GEORGE E. GOLCOMB & EARL JOHNSON JR., 1 FEDERAL TRIAL GUIDE § 2.01 (2024) [hereinafter 1 FEDERAL TRIAL GUIDE] ("It is hard to imagine an area in which an appellate court should give a trial court more leeway than in scheduling civil trials and considering continuance motions." (quoting Prime Rate Premium Fin. Corp. v. Larson, 930 F.3d 759, 766 (6th Cir. 2019))). *But see* Rachel Bayefsky, *Administrative Stays: Power and Procedure*, 97 NOTRE DAME L. REV. 1941, 1962 (2022) (noting that federal courts have "inherent authority to manage their dockets").

[179] *See* 1 FEDERAL TRIAL GUIDE § 2.01.

[180] *See* David A. Grenardo, *A Lesson in Civility*, 32 GEO. J. LEGAL ETHICS 135, 139–40 (2019) (discussing several of the most unprofessional or disrespectful behaviors commonly seen in attorneys, emphasizing that opposition to pregnant lawyers' motions to continue based on conflicts with their due dates is particularly reprehensible); *see also* GUIDELINES OF PRO. COURTESY & CIVILITY FOR HAWAI'I LAWS. § 2 (noting that agreeing to reasonable requests for continuances is part of a lawyer's duty of courtesy and civility: "Consistent with existing law and court orders, a lawyer should agree to reasonable requests for extensions of time when the legitimate interests of the lawyer's client will not be adversely affected. Specifically, a lawyer who manifests professional courtesy and civility: (a) Agrees to reasonable requests for extensions of time or continuances without requiring motions or other formalities.").

[181] 17 AM. JUR. 2D *Continuance* § 47 (2025).

Outside of certain exceptions, which will be described later, parties have no right to a continuance as a matter of law.[182] Judges can and often do grant continuances for a variety of reasons, including additional time for counsel to prepare for the case; absence of a witness, evidence, or a party; disability or illness of a party or counsel to a party; pretrial publicity concerns;[183] addressing concerns about a criminal defendant's incapacity or illness;[184] and other similar reasons. The specific reasons why continuances may be granted, as well as the factors a court will consider when determining whether to grant or deny a continuance request, will vary somewhat depending on the type of proceeding before the court.[185]

The grant or denial of a continuance is subject to review typically under an abuse of discretion standard.[186] Judicial discretion regarding continuance decisions must be "exercised in a sound and reasonable manner and not arbitrarily or capriciously."[187] While oversight through appeal of a continuance decision is an option, the time-sensitive circumstances that can and often do surround childbirth or child placement may render such review impractical or even meaningless if it is not conducted quickly enough. For example, Ms. Ehrisman-Mickle's status as a solo practitioner on maternity leave with only five days between the denial of her continuance request and the actual hearing made seeking review of the court's decision impractical, at best.[188]

Pregnancy and parental-leave continuance requests are considered within the umbrella of "attorney unavailability" under existing continuance rules.[189] Attorney unavailability can occur for a variety of reasons: illness of the attorney or the attorney's family member, scheduling conflict with other legal proceedings, vacation, or even death of an attorney.[190] When an attorney is unavailable, the judge must exercise discretion to determine whether "good cause" exists to grant a continuance by assessing: (1) whether the need for the continuance is a result of the moving party's own lack of diligence; (2) if the moving party will be prejudiced

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[182] *See id.* § 46.

[183] *Id.* §§ 10, 21, 25, 29, 32, 42, 45.

[184] *Id.* § 74.

[185] *See* sources cited *supra* notes 183–84.

[186] *See, e.g.*, 2 TRISHA ZELLER, HANDBOOK ON WEST VIRGINIA CRIMINAL PROCEDURE § C (3rd ed. 2024). Significantly, in the context of continuances for parental leave, where childbirth or child placement may be time-sensitive, review by a higher court may be rendered meaningless to the attorney requesting the continuance.

[187] 17 AM. JUR. 2D *Continuance* § 3 (2025) (footnote omitted).

[188] *See supra* text accompanying notes 23–36.

[189] *See, e.g.*, FLA. R. JUD. ADMIN. 2.570.

[190] 17 AM. JUR. 2D *Continuance* §§ 23, 25 (2025).

without assistance of counsel; and (3) whether granting a continuance will prejudice the opposing party or inconvenience the court.[191]

Using these factors, the court must weigh a number of important values within the justice system, including the importance of the right to a speedy trial or prompt resolution of a dispute with the rights of a party to be fairly represented by the counsel they chose. As a result of this balancing of factors, the absence of a party's lead attorney does not always result in the grant of a continuance, especially in circumstances where the party is represented by additional counsel of record.[192] However, the fact that other attorneys may be available, or even that other attorneys have actually appeared in a case, is not necessarily justification to deny a continuance request, particularly where the other attorneys who have appeared are less familiar with the case.[193] Other circumstances also necessitate the granting of a continuance, such as if counsel is a solo practitioner or if the counsel who is absent "is a specialist in the matter and associate counsel is unfamiliar with all the ramifications of the case, a continuance must be granted."[194]

Federal civil courts are mandated under Federal Rules of Civil Procedure 40 and 83(a) to establish local rules for scheduling cases on the court's trial calendar.[195] Under these local rules, courts then have authority to control their schedules and the concomitant right to grant or deny a motion for continuance. Similarly, state courts also adopt rules governing the court's trial calendar, including whether and how continuances may be granted.[196] Although most federal and state procedural rules limit the grant of continuances to cases where "good cause" is shown, a few

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[191] 1 MOORE'S ANSWERGUIDE: FEDERAL CIVIL MOTION PRACTICE §§ 11.12, 11.14 (Jenner & Block, LLP eds., 2024).

[192] 17 AM. JUR. 2D *Continuance* § 23 (2025).

[193] *Id.*

[194] *Id.*

[195] "Each court must provide by rule for scheduling trials. The court must give priority to actions entitled to priority by a federal statute." FED. R. CIV. P. 40. "After giving public notice and an opportunity for comment, a district court, acting by a majority of its district judges, may adopt and amend rules governing its practice." *Id.* at 83(a).

[196] *See, e.g.*, CAL. R. CT. 3.1332; PA. R. CIV. P. 216; VT. R. CIV. P. 40; NEB. REV. STAT. § 25-1148 (2025).

courts require "exceptional circumstances" prior to granting a continuance,[197] as was demonstrated in the divorce proceeding example above.[198]

While all legal proceedings should move forward as promptly as possible, criminal proceedings where a defendant may be detained awaiting the outcome or the defendant's liberty is at stake are subject to federal and state constitutional and statutory requirements mandating a "speedy trial." Both the Sixth Amendment to the United States Constitution and the Federal Speedy Trial Act of 1974 govern a federal criminal defendant's right to a speedy trial,[199] and corollary state constitutions and statutes govern a defendant's rights to a speedy trial in state criminal court proceedings.[200]

As with civil courts, a grant or denial of a motion for a continuance in a criminal proceeding is generally left to the discretion of the judge to determine if good cause warrants the continuance,[201] and subject to review under an abuse of discretion standard, even in death penalty cases.[202] In criminal cases, a defendant who invokes the Sixth Amendment as reason to overturn a continuance ruling must establish that they were actually prejudiced by the decision.[203]

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[197] The general factors used to evaluate whether the "good cause" standard has been met in civil proceedings include: (1) the diligence of the moving party; (2) whether the continuance will cure the issue underlying the continuance request; (3) whether the outcome of the case will be prejudiced if the continuance is not granted; and (4) the potential for, and scope of, prejudice or inconvenience to the other party, witnesses, and the court. MOORE'S ANSWERGUIDE, *supra* note 191, §§ 11.12, 11.14; W. E. Shipley, Annotation, *Continuance of Civil Case Because of Illness or Death of Counsel*, 67 A.L.R. 2d 497 § 2 (1959).

[198] *See* text accompanying notes 48–55. *See also* Davis v. Shigley, 100 N.E.2d 261, 263 (Ohio Ct. App. 1950) (affirming denial for continuance because the record did not demonstrate that "senior counsel was ill on the day of trial and was unable for that reason to appear, or that he had been unable to prepare his case, or that his presence was necessary to the trial"); Two Republics Oil & Gas Co. v. Reiser, 247 S.W. 910, 911 (Tex. Civ. App. 1923) (reversing a denial for continuance because there was a question of fact as to whether appellant was entitled to a continuance, and because likelihood of success at trial was not a valid reason to deny a continuance); Commonwealth v. Jackson, 383 N.E.2d 835, 838 (Mass. 1978) (upholding denial of a continuance because defendant could not show he was prejudiced).

[199] U.S. CONST. amend. VI; 18 U.S.C. § 3161 (2023).

[200] *See, e.g.*, N.C. CONST. art. I, § 18 ("All courts shall be open; every person for an injury done him in his lands, goods, person, or reputation shall have remedy by due course of law; and right and justice shall be administered without favor, denial, or delay."); OHIO REV. CODE ANN. § 2945.71 (West 2023) (Ohio Speedy Trial statute).

[201] *See, e.g.*, MASS. R. CRIM. P. 10; MO. SUP. CT. R. 24.08; NEB. REV. STAT. § 29-1206 (2024); OKLA. 16 JUD. DIST. CT. R. 41 (2019).

[202] *See, e.g.*, Kearse v. State, 770 So. 2d 1119, 1127 (Fla. 2000); Cooper v. State, 336 So. 2d 1133, 1138 (Fla. 1976) ("While death penalty cases command [this Court's] closest scrutiny, it is still the obligation of an appellate court to review with caution the exercise of experienced discretion by a trial judge in matters such as a motion for a continuance.").

[203] *See generally* 17 AM. JUR. 2D *Continuance* §§ 46, 49 (2025).

In accordance with the Federal Speedy Trial Act, a defendant's trial must begin within 70 days of the filing of the indictment or the defendant's appearance before a judicial officer, whichever date is later.[204] In the event that a continuance is granted in a criminal proceeding, the period of delay will only be excluded from this 70 day limit if the judge expressly includes an explanation in the record of how "the ends of justice served by the granting of such continuance outweigh the best interests of the public and the defendant in a speedy trial."[205] While civil courts have more discretion to use continuances to address scheduling issues, in criminal courts, only very brief continuances may be used for purposes of "efficient court administration."[206] Otherwise, continuances for the purposes of managing a criminal court's congested calendar, or because the government has failed to obtain a witness or has not been diligent in its preparation, are not to be granted.[207]

In *Gilliam v. United States*, the court explained the balancing of rights, saying "efficiency in the conduct of [a criminal] trial is a laudable goal," but efficiency "must yield when a party has demonstrated that a requested continuance is 'reasonably necessary for a just determination of the cause.'"[208] The Sixth District Court of Appeals of Ohio in *State v. Packer* went so far as to say that "[c]ontinuances should be granted liberally, when 'necessary to maintain a fair proceeding.'"[209] Thus, despite the limitations on grants of continuances in order to ensure speedy trial for criminal defendants,[210] a review of criminal cases demonstrates that continuances are routinely granted when determined by the court that such delay is appropriate.

For example, after a jury trial in the United States District Court for the Central District of Illinois, the defendant appealed his conviction in part based on a claim that his constitutional and statutory speedy trial rights were violated.[211] In this case, the defendant requested several continuances for a variety of reasons, including changes of counsel.[212] By the time the defense was ready for trial, the prosecutor was on maternity leave, so the Government requested a continuance.[213] The Seventh Circuit affirmed the conviction and stated that the continuance for the prosecutor's maternity leave did not result in a violation of his rights, particularly in light of the numerous continuances requested on behalf of the defendant's

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[204] 18 U.S.C. § 3161(c)(1).

[205] 18 U.S.C. § 3161(h)(7)(A).

[206] *See* 17 AM. JUR. 2D *Continuance* § 50 (2025).

[207] 18 U.S.C. § 3161(h)(7)(C).

[208] Gilliam v. United States, 80 A.3d 192, 202 (D.C. 2013) (quoting O'Connor v. United States, 399 A.2d 21, 28 (D.C. 1979)).

[209] State v. Packer, 188 Ohio App. 3d 162, 2010-Ohio-2627, 934 N.E.2d 979, at ¶ 24 (quoting Losch v. Denoi, No. 89-T-4288, 1991 Ohio App. LEXIS 2369, at *8 (May 24, 1991)).

[210] *See* 17 AM. JUR. 2D *Continuance* §§ 47–49 (2025).

[211] United States v. Carrol, 228 F. App'x 605, 606 (7th Cir. 2007).

[212] *Id.*

[213] *Id.*

counsel.[214] Similarly, in a criminal case where the Government had requested one continuance because it had changed counsel and the new counsel was unavailable for trial due to paternity leave, the trial court granted a continuance and the Seventh Circuit later upheld the decision, affirming that the defendant's rights under the Speedy Trial Act had not been violated.[215] Another criminal case, originally scheduled for trial in September 2022, was continued until February 2023 because one of the defendant's attorneys was scheduled for parental leave from October through January.[216]

Whether a parental-leave continuance will be available in the context of a criminal proceeding varies by the circumstance, as one would expect. However, as with other types of proceedings, how a judge or opposing counsel will respond is often inconsistent. For example, in *United States v. Bennett*, the defendant filed an opposition to a motion for continuance, arguing that granting a continuance based on the maternity leave of an attorney would be unlawful tolling under the Speedy Trial Act because it is a "planned" medical leave as opposed to an emergency medical issue.[217] Conversely, in *United States v. Flaherty*, the court determined that granting a parental-leave continuance served the ends of justice to ensure that the parties would have sufficient time to prepare for trial and therefore was excludable time under the Speedy Trial Act.[218] However, a situation described to The Florida Bar Special Committee on Parental Leave In Court Actions had a different outcome: an eight-months pregnant prosecutor in south Florida reported being hospitalized after the third day of a criminal trial due to pregnancy complications.[219] There, when a prosecutor sought a continuance, a judge responded by telling her to find a substitute, but the prosecutor informed the judge that "no one else was familiar enough with the case to step in."[220] The judge then threatened to dismiss the case and the prosecutor decided to leave the hospital against doctor's orders to finish the trial.[221]

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[214] *Id.* at 607–08. Courts elsewhere grant continuances in criminal trials for attorney's maternity leave. For example, in *United States v. Brooks*, the court granted a six-month continuance to accommodate the defendant's attorney's maternity leave. No. 17-CR-00173-5, 2021 U.S. Dist. LEXIS 110847, at *15 (N.D. Ill. 2021).

[215] United States v. Robey, 831 F.3d 857, 863 (7th Cir. 2016).

[216] United States v. Villasenor, No. CR20-0137, 2022 U.S. Dist. LEXIS 81800, at *2–3, *5 (W.D. Wash. 2022).

[217] Defendant's Opposition to Government's Motion for Trial Date & to Exclude Time at 3, 7, United States v. Bennett, No. 8:17-cr-00472 (D. Md. Dec. 28, 2017).

[218] Stipulation to Continue Trial Dates at 4, United States v. Flaherty, No. 2:16-cr-00080 (D. Nev. Mar. 27, 2018).

[219] Comm. Analysis & Action Rep., *supra* note 112, at 12.

[220] *Id.*

[221] *Id.* While this author cannot authorize the veracity of this story because of the anonymity of the reporting party, gathering information about the incidences of denied parental leave

Various other types of federal and state courts also have rules outlining the grant or denial of continuances, including probate,[222] family,[223] bankruptcy,[224] and tax courts, as well as immigration hearings and administrative agency hearings.[225] While an exhaustive review of continuance rules in every type of proceeding is beyond the scope of this Article, an overview of federal tax court, administrative agency hearing, and immigration hearing rules are included to provide a general background regarding the factors considered in granting or denying continuances.

Federal tax court rules state that a continuance may be granted only under "exceptional circumstances,"[226] but in practice, a continuance request that is consented to by the opposing party and "based on sound reasons" will generally be granted.[227] The federal tax court rules specifically state, however, that neither conflicting engagements of counsel nor the employment of new counsel are generally sufficient grounds to grant a continuance in a federal tax proceeding.[228]

Administrative agency courts treat motions for continuance similar to civil courts, requiring the hearing officer to determine whether good cause exists to grant a continuance, and the ruling is subject to the same abuse of discretion standard.[229] A hearing officer should grant a motion for a continuance to avoid an injustice or a material hardship to a party, and in the specific circumstance where a party has retained new counsel, denying a continuance request has been found to be an abuse of discretion sufficient to overturn the hearing officer's decision.[230]

In immigration proceedings, judges may grant a motion for continuance provided that good cause is shown,[231] and a denial of such a motion should not be

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continuance requests is challenging because attorneys are often fearful of reporting these stories openly due to concerns about the duty to their client and whether confronting a judge's decision will result in harm to their client or retribution from a judge in future matters.

[222] *See, e.g.*, ALASKA R. OF PROB. P. 2(d)4; HAW. PROB. R. 13.

[223] *See, e.g.*, ARIZ. R. FAM. L.P. 34; W. VA. R. PRAC. & P. FAM. CT. 19.

[224] *See, e.g.*, BANKR. E.D. VA. R. 9013-1(J).

[225] *See infra* notes 226–34 and accompanying text.

[226] T.C. R. 133.

[227] ROBERT S. FINK, COMPREHENSIVE TAX TREATISE § 8:18.04 (2025).

[228] *Id.*; T.C. R. 133.

[229] 2 AM. JUR. 2D *Administrative Law* § 323 (2025).

[230] *Id. See, e.g.*, Iglesias v. Dep't Bus. & Pro. Regul., 739 So. 2d 707, 708 (Fla. Dist. Ct. App. 1999) (per curiam) (reversing the agency's denial of a motion for continuance where "Iglesias voiced his concerns about going forward without counsel as he was ill-equipped to argue and had language difficulties").

[231] Executive Office for Immigration Review Continuances Rule, 8 C.F.R. § 1003.29 (2015); 3A AM. JUR. 2D *Aliens and Citizens* § 250 (2025). The factors an immigration court considers when determining whether to grant or deny a continuance include: (1) the inconvenience to the immigration court; (2) "the nature of the evidence to be presented and its importance to the alien's claim"; (3) whether the need for a continuance is based upon the alien's

"arbitrary, irrational, or contrary to law."[232] Notably, in immigration cases, a continuance ruling will be upheld upon review "unless it was made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis such as invidious discrimination against a particular race or group."[233] If a continuance with sufficient good cause is denied, the denial can be considered a denial of the individual's due process rights.[234]

In all types of proceedings, the framework of "illness" is often used to assess continuances for the purposes of pregnancy and parental leave of an attorney.[235] Cases involving illness of an attorney or an attorney's relative are highly dependent upon the circumstances underlying the illness, including whether the attorney is likely to be able to resume representation and how long the circumstances of the illness are likely to continue.[236] For example, in *United States v. Griffiths*, the court attempted to accommodate the criminal defendant's choice to retain his attorney after the attorney suffered a series of strokes, expressing its willingness to move the trial back by a few weeks.[237] However, after no indication of when, or even if, the attorney might be sufficiently recovered to resume his representation of the defendant, the court ultimately decided that the defendant would have to proceed with new counsel.[238] On the other hand, in a case with somewhat unusual circumstances, an attorney moved for a continuance after he had been attacked by a moose.[239] The court in that case granted a 60 day continuance to allow the attorney time to recover from his injuries before resuming proceedings.[240]

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reasonable conduct; and (4) "the number of prior continuances granted to the alien and their duration." Baires v. INS, 856 F.2d 89, 92–93 (9th Cir. 1988).

[232] 3A AM. JUR. 2D *Aliens and Citizens* § 250 (2025).

[233] *Id.* (footnote omitted).

[234] *Id.*

[235] *See, e.g.*, Staci Zaretsky, *Biglaw Partner Accuses Small-Firm Litigator Of Using Pregnancy To Delay Trial*, ABOVE THE L. (July 25, 2018, 1:59 PM), https://abovethelaw.com/2018/07/biglaw-partner-accuses-small-firm-litigator-of-getting-pregnant-to-delay-trial/ (detailing a case in which the opposing counsel compared the attorney's pregnancy to an illness, arguing to deny the continuance request). For examples of cases in which pregnancy is compared to illness, see Salazar v. Stubbs, No. 73392, 2018 WL 4177550, at *1 (Nev. App. Aug. 10, 2018) (assessing a continuance for the appellant's pregnancy) (citing to Bongiovi v. Sullivan, 138 P.3d 433, 444 (2006), decided based on the illness of attorney); Farley v. Farley, 359 N.E.2d 583, 585 (Ind. Ct. App. 1977) (evaluating continuance for pregnancy of party to litigation using illness framework).

[236] *See* United States v. Griffiths, 750 F.3d 237, 243 (2d Cir. 2014).

[237] *Griffiths*, 750 F.3d at 243.

[238] *Id.*

[239] Motion to Continue Because of Moose Attack at 1, State v. Eaton, No. CR-17-948 (Me. Super. Ct. Mar. 2, 2018), *available at* https://loweringthebar.net/2018/08/motion-to-continue-because-of-moose-attack.html.

[240] *Id.*

In some cases, the failure to grant a requested continuance based on the illness of counsel has been adjudged as an abuse of discretion and overturned.[241] In *Releford v. United States*, the Ninth Circuit overturned a defendant's conviction, holding that the court's failure to grant a continuance when the defendant's counsel was unavailable due to illness resulted in the defendant being deprived of assistance of counsel in contravention of his Sixth Amendment rights.[242]

While continuances requested when an attorney is unavailable due to illness potentially provide some guidance for continuances for parental leave, illness and parental leave, and even pregnancy, are sufficiently different that rules specific to parental leave and pregnancy are needed. First, neither pregnancy nor childbirth are an "illness" for the birthing parent, and parental leave is certainly not an "illness" for a non-birthing parent. In the case of the adoption or placement of a child, unless the child being placed is in need of medical care, the illness framework once again is not an applicable proxy for the continuance request.

Moreover, illness as a category is rather broad and unpredictable; an illness may be as simple as a cold requiring a delay of only a couple of days, or a serious injury or illness requiring weeks or even months of time before an attorney would be able to resume representation of a client. While birth or placement of a child can also be unpredictable, a general framework for timing of parental leave has been established under existing laws for childbirth and child bonding time that can be used to frame the rules for continuances for these purposes.[243]

Second, pregnancies, unlike most illnesses, provide the pregnant attorney or pregnant person's attorney-spouse or partner with some amount of notice to be able to alert the courts in advance of the need for a continuance and allow them to more sufficiently plan for such leave; illness is unlikely to give advance warning, and usually has to be responded to on an ad hoc, more immediate basis.[244]

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[241] *See, e.g.*, Myers v. Siegel, 920 So. 2d 1241, 1242, 1245 (Fla. Dist. Ct. App. 2006) (involving husband and wife attorney team where husband was vision-impaired and needed his co-counsel-wife, who had been hospitalized, to assist with representation at trial: "The continuance requests made by [counsel for Appellant] were based on medical problems suffered by [Attorney-Wife] that adversely affected her and [Attorney-Husband]'s ability to properly prepare for trial. The continuance requests made by [counsel for Appellees], on the other hand, were based on vacations and [] convenience. . . . What is remarkable is that none of the requests made by [counsel for Appellant] were granted, but each request made by [counsel for Appellees] was."); C.M.R. v. B.T.B.S., 2023-Ohio-1973, 217 N.E.3d 859, at ¶ 7 (Ohio Ct. App. 2023) (finding that the trial court abused its discretion when it denied a continuance requested by the appellant for the purpose of obtaining counsel).

[242] Releford v. United States, 288 F.2d 298, 301–02 (9th Cir. 1961).

[243] *See, e.g.*, Family and Medical Leave Act of 1993, 29 U.S.C. §§ 2612(a)(1)(A)–(B) (allocating 12 weeks of unpaid leave during the 12 months after the birth or adoption of a child).

[244] *See generally* Shipley, *supra* note 197.

The category of illness is even less appropriate when considering a continuance request from an attorney who is not pregnant, such as a father or other non-birthing parent, including an attorney who is adopting or fostering a child. For example, a father or adoptive parent on parental leave would be more subject to an argument that a continuance is not necessary since neither is suffering from an "illness," potentially resulting in the parent being required to attend a court proceeding that conflicts with the parental leave granted by the parent's employer.

Additionally, an illness does not generally engender biases in the same way that childbirth and child caregiving do.[245] By adopting PLCRs, jurisdictions can directly confront the Motherhood Penalty and fatherhood stigmatization by providing specific rules supporting continuances for parental leave purposes. For all of these reasons, attempting to shoehorn parental leave into the jurisprudence of continuances based on illness does not work well.

IV. ADOPTION OF PLCRS IS IN THE BEST INTERESTS OF ATTORNEYS AND CLIENTS

While the "illness" framework is not an appropriate proxy for pregnancy and parental leave, the adoption and use of PLCRs *is* important for the health and well-being of lawyers and their clients. In 2017, the National Task Force on Lawyer Well-Being published a groundbreaking report about the concerning state of the mental and physical health of lawyers, noting that the legal profession has for much too long "turned a blind eye to widespread health problems" of attorneys.[246] The Task Force issued an urgent call to action across all sectors of the legal profession to address the culture that "has allowed mental health and substance use disorders to fester among our colleagues."[247]

The adoption of PLCRs is one way in which the profession can improve the health and well-being of its members by ensuring that parental leave is available, honored, and normalized. Studies consistently demonstrate that parental leave yields

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[245] The author acknowledges that illness, especially chronic illness, can certainly also engender bias. *See, e.g.*, Valerie A. Earnshaw & Diane M. Quinn, *The Impact of Stigma in Healthcare on People Living with Chronic Illnesses*, 17 J. HEALTH PSYCH. 157, 157 (2012); Valerie A. Earnshaw, Diane M. Quinn & Crystal L. Park, *Anticipated Stigma and Quality of Life Among People Living with Chronic Illnesses*, 8 CHRONIC ILLNESS 79, 80 (2012).

[246] NAT'L TASK FORCE ON LAW. WELL-BEING, THE PATH TO LAWYER WELL-BEING: PRACTICAL RECOMMENDATIONS FOR POSITIVE CHANGE 12 (2017), https://lawyerwellbeing.net/the-report/; *see also* Patrick J. Schiltz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 VAND. L. REV. 871, 871–73 (1999) (containing a damning critique of the legal profession's concern about well-being from then-Notre Dame Law School professor, now Judge, Patrick Schiltz: "Lawyers play an enormously important role in our society. . . . Thus you might expect that a lot of people would be concerned about the physical and mental health of lawyers. You would be wrong.").

[247] NAT'L TASK FORCE ON LAW. WELL-BEING, *supra* note 246, at 1, 11.

significant health benefits for birthing parents and non-birthing parents, as well as the child.[248] Maternity leave has been shown to create long-lasting impacts on both physical and mental health.[249] In fact,

> mothers who worked[250] prior to childbirth and who return to work in the first year, having less than 12 weeks of maternal leave and having less than 8 weeks of paid maternal leave are both associated with increases in depressive symptoms, and having less than 8 weeks of paid leave is associated with a reduction in overall health status."[251]

The impact of having access to maternity leave ameliorates these mental health impacts: "maternity leave policies yield significant mental health benefits for working mothers, which extend beyond the period of birth and persist into older age."[252] Access to maternity leave appears to "have profound implications for the costs of medical care [and] the social participation and the productivity of [mothers]."[253] These productivity outcomes can result in beneficial outcomes on women attorneys' employment and lifetime earnings, which has consequential impacts on their own professional and personal life, and also benefits legal employers and the legal profession.[254]

Paternity leave, too, results in beneficial impacts for both child and father.[255] Fathers who take paternity leave are more engaged in the caregiving and in the

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[248] *See, e.g.*, Maureen Sayres Van Niel, Richa Bhatia, Nicholas S. Riano, Ludmila de Faria, Lisa Catapano-Friedman et al., *The Impact of Paid Maternity Leave on the Mental and Physical Health of Mothers and Children: A Review of the Literature and Policy Implications*, 28 HARV. REV. PSYCHIATRY 113, 114, 120–21 (2020); Y. Tony Yang, Sherrie Flynt Wallington & Stephanie Morain, *Paid Leave for Fathers: Policy, Practice, and Reform*, 100 MILBANK Q. 973, 974 (2022).

[249] Van Niel et al., *supra* note 248, at 114, 120.

[250] The references to "mothers who work" or "working mothers" are used by the research articles being cited here in order to reference mothers who work in paid employment. The author of this Article affirms that all mothers are "working mothers" and acknowledges that the use of the phrase "working mothers" minimizes or disregards the critical unpaid labor of mothers (and other caregivers) who are not engaged in paid employment.

[251] Pinka Chatterji & Sara Markowitz, *Family Leave After Childbirth and the Mental Health of New Mothers*, 15 J. MENTAL HEALTH POL'Y & ECON. 61, 61–62 (2012) (finding, in addition, that "[m]aternity leave of 12 or fewer weeks, particularly if it involves full-time return to work, is associated with lower cognitive test scores, lower rates of well-child care and immunizations, and higher rates of externalizing behavior problems").

[252] Mauricio Avendano, Lisa F. Berkman, Agar Brugiavini & Giacomo Pasini, *The Long-Run Effect of Maternity Leave Benefits on Mental Health: Evidence from European Countries*, SOC. SCI. & MED., May 2015, at 45, 52.

[253] *Id.*

[254] *Id.* at 46.

[255] *See generally* Richard J. Petts & Chris Knoester, *Paternity Leave-Taking and Father Engagement*, 80 J. MARRIAGE & FAM. 1144 (2018); Yang et al., *supra* note 248.

developmental tasks of their children.[256] Early engagement in fatherhood increases fathers' caregiving competency and confidence,[257] which can be seen even at the cellular level: neurological studies of new fathers engaging in parenting tasks show "experience-induced structural neuroplasticity."[258] Parental leave has been associated with less divorce[259] and stronger long-term parent-child bonds.[260]

Among the issues that lawyers consistently point out as factors negatively impacting their health is the lack of time to care for themselves and their families.[261] The act of adopting a PLCR can not only help to protect the parental leave of attorneys, but also normalize attorneys requesting a continuance in order to care for their health and well-being in connection with the birth or placement of a child.[262]

One objection to adoption of PLCRs is an assumption that these rules only concern attorneys, and that they serve only to advance the career and personal interests of a pregnant or parenting attorney,[263] but that notion is both wrong-headed and short-sighted. As stated by the Minnesota Supreme Court when adopting its new Personal Leave Rule, "although we are sensitive to the concern . . . that this rule threatens to elevate lawyers' interests over those of their clients, we do not agree with that characterization."[264] First, attorneys' health and well-being are not only important to the attorney, but also to the ability of the attorney to competently and ethically serve their client.[265] Moreover, PLCRs also serve the best interests of clients by protecting a clients' rights to have access to counsel of their

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[256] Petts & Knoester, *supra* note 255, at 1158.

[257] *Id.* at 1159.

[258] Magdalena Martínez-García, María Paternina-Die, Sofia I. Cardenas, Oscar Vilarroya, Manuel Desco, Susanna Carmona & Darby E. Saxbe, *First-Time Fathers Show Longitudinal Gray Matter Cortical Volume Reductions: Evidence from Two International Samples*, 33 CEREBRAL CORTEX 4156, 4156 (2023).

[259] *See* Richard J. Petts, Daniel L. Carlson & Chris Knoester, *If I [Take] Leave, Will You Stay? Paternity Leave and Relationship Stability*, 49 J. SOC. POL'Y 829, 834 (2020) ("[G]iven that most Americans view egalitarian relationships as ideal, and most fathers want to be engaged parents and coparents, taking paternity leave may signal a commitment to these ideals and promote greater relationship stability." (citations omitted)).

[260] Petts & Knoester, *supra* note 117, at 1227.

[261] *See, e.g.*, Schiltz *supra* note 246, at 889–90.

[262] In the 2021 study conducted by the Parental Leave Working Group of the Minnesota State Bar Association, discussed above, one of the Minnesota respondents said that if a PLCR had been in place, it would have signaled that the attorney had permission to request the continuance: "if the court had clear language allowing a stay of proceedings, I think I would have taken advantage of it." MSBA PARENTAL LEAVE WORKING GROUP, *supra* note 142, at 14.

[263] *See* Order Promulgating Amendments to the Minnesota Rules of General Practice for the District Courts and the Minnesota Rules of Civil Appellate Procedure, at D-2, No. ADM09-8009 (Minn. Apr. 30, 2024) (Anderson, J., dissenting).

[264] *Id.* at 6.

[265] NAT'L TASK FORCE ON LAW. WELL-BEING, *supra* note 246, at 9.

choice, to have continuity of counsel, and to have a diverse pool of attorneys from which to choose.

First, the health and well-being benefits of PLCRs are critically important to the ability of attorneys to serve their clients.[266] As pointed out by the National Task Force on Lawyer Well-Being: "Lawyer well-being is part of a lawyer's ethical duty of competence. It includes lawyers' ability to make healthy, positive work/life choices to assure not only a quality of life within their families and communities, but also to help them make responsible decisions for their clients."[267] Attorneys' health and well-being also play a significant role in attorneys' professionalism, collegiality towards others in the profession, and their ability to make sound and ethical decisions.[268] As expressed by one of the attorneys participating in the Minnesota working group studying PLCRs,

> There simply must be a reprieve [from legal proceedings] so that both parents can assist and bond with their child/children in the critical first few months of life. If new mothers and fathers are not allowed leave, we are not bringing our best selves to work, and not giving 100% for ou[r] clients. Thus, the entire system suffers.[269]

Second, the ability to have counsel of one's choice is a highly valued right in our justice system, but the existing rules for continuances provide little reassurance to clients about whether their attorney of choice will be available if pregnant or anticipating parental leave. Trial courts are already required to balance the efficient administration of justice with the important countervailing right to counsel of one's choice when considering a motion for continuance.[270] Particularly in the criminal justice context, courts have recognized that counsel of one's choice is a constitutionally protected right[271] and that "a defendant must be allowed to make [their] own choices about the proper way to protect [their] own liberty."[272] All courts recognize that parties to legal proceedings have a right to be represented by counsel

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[266] *See id.* at 1, 9–10 ("To be a good lawyer, one has to be a healthy lawyer. Sadly, our profession is falling short when it comes to well-being.").

[267] *Id.* at 9; *see also* MODEL RULES OF PRO. CONDUCT rr. 1.1, 1.3 (AM. BAR ASS'N 1983); Cheryl Ann Krause & Jane Chong, *Lawyer Wellbeing as a Crisis of the Profession*, 71 S.C. L. REV. 203, 236 (2019).

[268] Krause & Chong, *supra* note 267, at 204, 232, 234–36.

[269] *See* MSBA PARENTAL LEAVE WORKING GROUP, *supra* note 142, at 13.

[270] 17 AM. JUR. 2D *Continuance* § 47 (2025).

[271] *See, e.g.*, United States v. Griffiths, 750 F.3d 237, 242–43 (2d Cir. 2014) (highlighting the importance of the "constitutionally-protected . . . right to counsel of one's choosing"); *see also* United States v. Castellano, 610 F. Supp. 1137, 1147 (S.D.N.Y. 1985) (discussing the higher standard for choice of counsel in the criminal versus civil context).

[272] Alexis Hoag, *Black on Black Representation*, 96 N.Y.U. L. REV. 1493, 1495 (2021) (quoting Weaver v. Massachusetts, 137 S. Ct. 1899, 1908 (2017)).

of their choice, even if such right may not be absolute.[273] Some circuits, like the Eighth Circuit, grant a large degree of deference to the choice of counsel, and courts in that circuit operate under a notion that they should not interfere with the party's choice.[274] PLCRs can provide more certainty and consistency for clients—ensuring that their counsel of choice is not removed due to pregnancy or parental leave. As noted by the Supreme Court in *Morris v. Slappy*, "In recognition of the importance of a defendant's relationship with his attorney, appellate courts have found constitutional violations when a trial court has denied a continuance that was sought so that an attorney retained by the defendant could represent him at trial."[275]

PLCRs also support continuity of counsel as an important value in our system of justice. In accordance with the Federal Speedy Trial Act, one of the critical factors to be considered when a judge in a criminal matter determines if the ends of justice are served by a continuance is:

> Whether the failure to grant such a continuance in a case which, taken as a whole, . . . would unreasonably deny the defendant or the Government continuity of counsel, or would deny counsel for the defendant or the attorney for the Government the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.[276]

In nearly all cases, the continuity of counsel is an important aspect of effective lawyering on behalf of a client. When a party is required to change counsel, as opposed to being able to seek a continuance that would allow the party to retain their chosen counsel, the party can face additional costs and other delays as a new counsel must familiarize her or himself with the case details.[277] While avoiding the delay that would have been incurred for an attorney's parental leave, the court and the parties may incur other delays as a result of changing counsel. Moreover, the lack of continuity of counsel may disrupt trial strategy, which could be a significant factor in a party's case.[278] Denying a continuance for parental leave may result in

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[273] *See, e.g.*, United States v. Valenzuela, 521 F.2d 414, 416 (8th Cir. 1975); Griffiths, 750 F.3d at 243–45. S*ee also* Hoag, *supra* note 272, at 1494–96, 1494 n.6, 1495-98. nn.7–8, 1496 n.17.

[274] United States v. Agosto, 675 F.2d 965, 969–70 (8th Cir. 1982). *See also* Valenzuela, 521 F.2d at 416.

[275] Morris v. Slappy, 461 U.S. 1, 21 (1982).

[276] 18 U.S.C. § 3161(h)(7)(B)(iv).

[277] *See generally The Benefits of Long-Term Attorney-Client Relationships*, HAMLIN CODY (July 11, 2024), https://hamlinlaw.com/the-benefits-of-long-term-attorney-client-relationships/ ("By maintaining a consistent relationship, clients can avoid the initial costs associated with bringing a new attorney up to speed.").

[278] *See generally id. See also* United States v. Castellano, 610 F. Supp. 1137, 1150–51 (S.D.N.Y. 1985) (recognizing "the government's interest in avoiding premature disclosure of its trial strategy" and weighing this against the defendant's constitutional right to counsel of his choice when deciding if replacing defense counsel was appropriate).

depriving a party of its right to effective counsel, and certainly can interrupt and impair the critical trust built in an attorney–party relationship that is crucial to effective representation.[279]

For example, the court in *United States v. Jondle* granted a continuance for the defendant's counsel's maternity leave, based on the determination that the defendant's continuity of counsel was in the best interest of the defendant.[280] Similarly, in *United States v. Villasenor*, the court determined that excluding time for a continuance to provide defendant with continuity of counsel was proper under the Speedy Trial Act.[281] The court went on to further state that courts have recognized childbirth and parental leave as good cause to grant continuances and that such time was excludable.[282] The court determined that the failure to grant a continuance for one of the defendant's counsel's parental leave impacted the defendant's continuity of counsel, and ruled that the failure to grant the continuance would "likely result in a miscarriage of justice."[283] Adopting PLCRs can provide greater certainty for clients in ensuring their ability to be represented by counsel of their choice and in having continuity of counsel, even if that counsel needs parental leave, which is a valuable outcome to clients. Adopting PLCRs also disincentivizes the perverse outcome of clients trying to avoid hiring an attorney who is or might become pregnant, who is planning to adopt or foster a child, or who otherwise might need parental leave.

Clients also benefit from having a large pool of attorneys with diverse backgrounds from which they can choose the attorney who they believe will be best for them.[284] A "relationship characterized by trust and confidence" is central to an effective attorney–client relationship,[285] and clients' access to attorneys who share similar cultural traits or who are highly culturally competent is crucially important to building that rapport and trusting relationship.[286] Research on attorney–client relationships reveals that "[l]awyers and clients who do not share the same culture face special challenges in developing a trusting relationship in which genuine and

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[279] *The Benefits of Long-Term Attorney-Client Relationships*, supra note 277 ("One of the primary benefits of a long-term attorney-client relationship is the development of trust. . . . When clients work with the same attorney over an extended period, they can be confident in the advice and representation they receive.").

[280] United States v. Jondle, No. 12-10122, 2015 U.S. Dist. LEXIS 176331, at *4–5 (D. Mass. 2015). The duration of the continuance was excluded from the 70-day limit afforded by the Speedy Trial Act. *Id.* at *5.

[281] United States v. Villasenor, No. CR20-0137, 2022 U.S. Dist. LEXIS 81800, at *4 (W.D. Wash. 2022).

[282] *Id.* at *3.

[283] *Id.* at *4.

[284] *See generally* Hoag, *supra* note 272.

[285] *Id.* at 1495 (quoting Morris v. Slappy, 461 U.S 1, 21 (1982) (Brennan, J., concurring)).

[286] *Id.* at 1496 & n.18.

accurate communication can occur."[287] To the extent that the Motherhood Penalty and other gender biases reduce the gender diversity within the legal profession, and particularly within trial practice, clients are left with less diverse options from which to select an attorney. Additionally, when a client has selected an attorney with whom a trusting relationship has been created, PLCRs lend support in keeping that representation in place, even if that attorney becomes pregnant or seeks parental leave.

V. JUDICIAL DISCRETION ABOUT CONTINUANCES RESULTS IN SIGNIFICANT INCONSISTENCY

Predictability, consistency, and equity in decisions about continuances for parental leave are important to clients, to attorneys, to courts, and to the reputation of the legal profession. When the lack of clear rules and guidance regarding continuances for parental leave is combined with the biases and stigmatization towards attorney-parents, the outcome of judicial discretion regarding continuance requests for parental leave can be inconsistent, uninformed, or even sometimes blatantly unfair. In his book *The Nature of the Judicial Process*, published in 1921, Supreme Court Justice Benjamin Cardozo acknowledged that judges "may try to see things as objectively as [they] please [but nonetheless, they] can never see them with any eyes except [their] own."[288] Numerous studies have confirmed Justice Cardozo's caution about judicial discretion, looking at the impact implicit biases have on judicial decision making,[289] finding repeatedly that: (1) implicit biases are "widespread among judges"; and (2) biases can and do influence judicial decision

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[287] Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 CLINICAL L. REV. 33, 42 (2001). *See also* Hoag, *supra* note 272, at 1534 ("When a Black defendant is paired with a non-Black defense lawyer, it is necessary to first break through a cross-racial barrier to develop the relationship. By contrast, a same-race defender can immediately begin to establish a deeper professional connection.").

[288] BENJAMIN NATHAN CARDOZO, THE NATURE OF THE JUDICIAL PROCESS (1921), *reprinted in* SELECTED WRITINGS OF BENJAMIN NATHAN CARDOZO: THE CHOICE OF TYCHO BRAHE 107, 110 (Margaret E. Hall ed., 1947).

[289] *E.g.*, Justin D. Levinson & Danielle Young, *Implicit Gender Bias in the Legal Profession: An Empirical Study*, 18 DUKE J. GENDER L. & POL'Y 1, 3 (2010); Melissa L. Breger, *Making the Invisible Visible: Exploring Implicit Bias, Judicial Diversity, and the Bench Trial*, 53 U. RICH. L. REV. 1039, 1055 (2019); Andrea L. Miller, *Expertise Fails to Attenuate Gendered Biases in Judicial Decision-Making*, 10 SOC. PSYCH. & PERSONALITY SCI. 227, 232–33 (2019); Justin D. Levinson, Mark W. Bennett & Koichi Hioki, *Judging Implicit Bias: A National Empirical Study of Judicial Stereotypes*, 69 FLA. L. REV. 63, 68–69 (2017); Elizabeth Thornburg, *(Un)Conscious Judging*, 76 WASH. & LEE L. REV. 1567, 1571–72 (2019). *See generally* Jeffrey J. Rachlinski, Sheri Lynn Johnson, Andrew J. Wistrich & Chris Guthrie, *Does Unconscious Racial Bias Affect Trial Judges*?, 84 NOTRE DAME L. REV. 1195, 1196 (2009).

making.[290] For example, one study asked judges to evaluate hypothetical cases, which were designed to assess their attitudes towards traditional gender roles for men and women.[291] The study determined that those judges who showed higher support for "traditional" gender roles accurately predicted greater gender disparities in their decisions and the outcomes for men and women, specifically in a child custody and employment discrimination case.[292] An ultimate finding of the study was that "judges are not immune to the effects of gendered biases in their decisions."[293]

Of course, these biases do not begin at the bench. A 2010 study of law students found that law students "implicitly associate men with work and women with the home and family," and noted that these results were replicative of studies that had been conducted with individuals outside of the legal profession.[294]

Studies assessing the impact of gender, racial, and other biases on judicial decision making contain a useful and even hopeful finding, as well—when judges are aware of the potential bias that may impact their decision making, they are able to course correct.[295] When judges are in a situation in which they wish to avoid the appearance of bias, their awareness of implicit biases is raised and they can act in ways that avoid the bias.[296] In other words, even if a PLCR is drafted so that it merely creates a presumption in favor of granting the continuance for parental leave, the fact that the PLCR gives credence to granting a parental continuance can serve as a "bias interrupter."[297] Thus, if a PLCR is employed during the judicial decision-making process regarding a parental-leave continuance request, it can raise the judge's awareness of implicit biases and reduce the impact of those biases on the decision.

PLCRs may also, depending on their specific wording, remove some judicial discretion by mandating continuances for parental leave under certain circumstances. While mandatory language in PLCRs may face greater resistance from judges, statutorily-mandated continuances already exist for a variety of circumstances, including when legal proceeding dates conflict with religious holidays or an active-duty servicemember's schedule.[298] In some jurisdictions, attorneys' vacations are also protected by a mandatory continuance, subject to certain limitations and provided that the attorney complies with the statutory

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290 Rachlinski et al., *supra* note 289, at 1225; *see also* sources cited *supra* note 289.

291 *See generally* Miller, *supra* note 289.

292 *Id.* at 232.

293 *Id.* at 230.

294 Levinson & Young, *supra* note 289, at 28–29.

295 Breger, *supra* note 289, at 1055.

296 *Id.*

297 *See* INTERRUPTING RACIAL & GENDER BIAS, *supra* note 114, at 12.

298 Dan Hinde, *Motions for Continuance*, THE ADVOCATE, Fall 2015, at 54, 55.

requirements for designating the dates and filing them with the court.[299] For example, the continuance rule in North Carolina allows attorneys to designate up to three one-week "secure leave" periods, and it is mandatory that the court continue any proceeding that conflicts with the attorney's designated secure leave periods.[300]

Of particular relevance, a number of states also statutorily mandate that a continuance be granted if an attorney, party, or witness in the matter is a member of the legislature when the legislature is in session.[301] The legislatures in these states have signaled that while prompt administration of justice is an important value, a legislative member's participation in an active legislative session takes precedence over the legal proceeding, even if it delays the trial by a significant period of time.

Outside of these mandatory reasons, under existing rules, continuances should not be granted "based on a mere whim, request, or convenience to counsel without a substantial factual or legal reason for doing so."[302] One particular line of opposition to PLCRs is that they are focused solely on "convenience to counsel"—or put more bluntly—that PLCRs merely function to ensure women lawyers will be able to advance in their careers without regard for the best interests of clients.[303] Yet, the following examples of continuances granted based "good cause" under judicial discretion offer some perspective on that line of opposition:

- In *Danos v. Avondale Industries*,[304] counsel for the defendants filed a motion for a continuance because the New Orleans Saints were playing in the National Football Conference championship game at 2:30 p.m. on Sunday, January 21, 2007, the day before the trial was scheduled to start.[305] Counsel reasoned that such a motion should be granted in order to "accommodate all fans, including the great majority of the jury pool, the parties involved in this case, and [last but not least] the counsel involved in this case."[306] The motion was

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[299] Even when a statute or court procedural rule does not mandate a continuance for an attorney's vacation, if "the parties are not dilatory in litigating the issues, lead counsel's vacation may be good cause for a continuance." Similarly, while not always statutorily mandated, in the event an attorney is scheduled for two trials that have conflicting dates, a judge will generally grant a continuance for whichever trial was scheduled second. 17 AM. JUR. 2D *Continuance* § 23 (2025).

[300] N.C. R. APP. P. 33.1.

[301] *See, e.g.*, CAL. CIV. PROC. CODE § 595 (West 2025); CAL. PEN. CODE § 1050(h) (West 2025); OKLA. STAT. ANN. tit. 12, § 667 (West 2025); TEX. R. CIV. P. 254.

[302] 17 AM. JUR. 2D *Continuance* § 6 (2025).

[303] *See* Gary Blankenship, *Lawyers Sound Off on Parental Leave Continuances*, FLA. BAR NEWS (Dec. 15, 2018), https://www.floridabar.org/the-florida-bar-news/lawyers-sound-off-on-parental-leave-continuances/.

[304] Danos v. Avondale Indus., Inc., 2007-1094 (La. App. 4 Cir. 7/2/08), 989 So. 2d 160.

[305] Motion to Continue Start of Trial by Two Days, Danos v. Avondale Indus., Inc., No. 2003-15723 (La. Civ. Dist. Ct. Jan. 17, 2007), *available at* https://www.loweringthebar.net/wp-content/uploads/2007/01/Saints_continuance.pdf.

[306] *Id.*

granted and the trial was pushed back by two days to January 24, 2007.[307]

- In explaining his request for an *emergency* motion for continuance, attorney Darrell Cook stated:

> To put it bluntly, Darrell must be in San Francisco to attend to Very Important Baseball matters and really, really needs to not be obligated to attend the hearing scheduled for October 27, 2010, as he has no one to cover for him so that he can see to his business in San Francisco.[308]

In this case, the Texas Rangers baseball team was playing the San Francisco Giants in Game 1 of the World Series.[309] He indicated that the continuance was not being sought "for delay alone, but so that justice may be done," making a witty comment about the "Post-Season justice" one of the players would deliver in the game. His emergency motion was granted, and Darrell Cook boarded a plane to San Francisco.[310]

- In his Unopposed Motion to Continue Trial Due to Conflict with the LSU Tiger's National Championship Game, Louisiana attorney Stephen Babcock, representing the defendants, submitted his reasoning for the request to Parish of West Baton Rouge District Court:

> The No. 1 ranked Ohio State Buckeyes and the No. 2 ranked Louisiana State University Tigers . . . will meet in the Allstate BCS National Championship Game on Monday, Jan. 7, 2008 in the Louisiana Superdome . . . [which] will be just the third meeting between the two schools . . . [and] represents

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[307] John Browning, *'Anything for a Continuance,'* HERALD-BANNER (May 19, 2010), https://www.roysecityheraldbanner.com/opinion/anything-for-a-continuance/article_bac20a8f-74e6-5b30-82a1-ef5a2f61d893.html.

[308] Emergency Motion for Continuance at 3–4, City of Irving v. Villas of Irving, LTD., Nos. T-01398471 01, 01398472 01, 01398473 01 & 02 (Tex. Mun. Ct. Oct. 25, 2010), *available at* https://static01.nyt.com/packages/pdf/sports/cook-motion.PDF. *See also* Lita Beck, *Lawyer Files Motion So He Won't Miss World Series*, NBC DFW, https://www.nbcdfw.com/news/sports/lawyer-files-motion-so-he-wont-miss-world-series/1856192/ (Oct. 27, 2010, 12:03 PM); Debra Cassens Weiss, *Dallas Lawyer Wins Continuance for 'Very Important Baseball Matters,'* ABA J. (Oct. 27 2010, 5:50 PM), https://www.abajournal.com/news/article/dallas_lawyer_seeks_continuance_for_very_important_baseball_matters; John Eligon, *But Judge, Who Knew the Rangers Would Advance?*, N.Y. TIMES: BATS BLOG, https://archive.nytimes.com/bats.blogs.nytimes.com/2010/10/28/but-judge-who-knew-the-rangers-would-make-the-series/ (Oct. 28, 2010, 9:47 PM).

[309] *See* sources cited *supra* note 308.

[310] *See* sources cited *supra* note 308.

> LSU's chance to even their win to loss ratio with Ohio State.[311]
>
> The motion also assured the court that "[a]ll opposing counsel are self-professed LSU fans, and consequentially, have no objection to having this matter continued."[312] The memorandum in support of his motion claimed that "the veracity of these grounds, and importance of such an event in our society has been recognized jurisprudentially," citing to an unrelated decision involving a college football team in another jurisdiction.[313] The Honorable Alvin Batiste granted the continuance and postponed the trial, which had been scheduled to begin on January 7. The order continuing the trial scheduled a status conference for February 11.[314]

- In a motion entitled, [Defendant]'s Motion for Judicial Notice on Motion Continuance Because of Deer Season, Arkansas attorney John Wesley Hall Jr. requested that his client's criminal trial scheduled for November 8, 2006 be delayed to avoid conflicting with the start of deer season.[315] Attorney Hall argued that it would be difficult to empanel a representative jury for that date because "approximately 20% of the registered voters in Lonoke County are deer hunters."[316] The presiding judge in the case granted the motion,

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[311] Unopposed Motion to Continue Trial Due to Conflict with the LSU Tiger's National Championship Game, Memorandum in Support of Unopposed Motion to Continue Trial Due to Conflict with the LSU Tiger's National Championship Game, Order at 1–2, Harrell v. Spencer, No. 35572 (La. Dist. Ct. 18th, Dec. 20, 2008) [hereinafter Unopposed Motion to Continue for LSU Game] (footnotes omitted), *available at* https://www.legaljuice.com/files/2013/09/Mot_to_Continue-LSU.pdf.

[312] *Id.* at 2 (footnote omitted).

[313] *Id.* at 4. Disconcertingly and distastefully, the case relied upon by counsel to assert the importance of football games in support of his motion involved an Indiana State University scholarship football player who had tragically suffered an injury during football practice, rendering him a quadriplegic, and the issue before the court was whether the player was entitled to benefits as an "employee" of the university. *See* Rensing v. Ind. State Univ. Bd. of Trs., 437 N.E.2d 78, 79, 89 (Ind. Ct. App. 1982).

[314] Unopposed Motion to Continue for LSU Game, *supra* note 311, at 5.

[315] Cox's Motion for Judicial Notice on Motion Continuance Because of Deer Season at 1, State v. Cox, No. CR06-494-4 (Ark. Cir. Ct., Sept. 13, 2006), *available at* https://www.loweringthebar.net/wp-content/uploads/2006/11/RFJN_of_deer_hunting_facts.pdf.

[316] *Id.* at 4–5.

noting in the hearing that "he hadn't missed the start of deer season himself since 1967."[317]

- Alabama attorney Jon B. Terry filed a motion to continue, stating that "[m]ost of the attorneys representing all of the named Defendants have tickets and reservations to be in Pasadena on the 6th day of January, 2010" to watch the Crimson Tide football team play in a national championship game and that the existing trial date would conflict travel times and schedules for the game.[318] Terry had unsuccessfully attempted to get consent from plaintiff's counsel, stating in his motion that "[a]ttempts to resolve this conflict directly with the Plaintiffs has been unfruitful as the reply has been that they are for the other great team in this State who did not make the playoffs."[319] Mr. Terry further characterized their failure to consent to his continuance request as "short-sighted" since "they may one day find themselves in the same position that the Defendant attorneys are in."[320] Apparently the judge in the matter also planned to attend the championship game.[321] Mr. Terry's motion noted that the court's calendar appeared to have some availability in the months of "February, March, or April" and that he

  > believe[d] that there would be no harm, considering the magnitude of this event and its impact on this State, and the fact such an event only comes infrequently during a person's lifetime and is an achievement of such a magnitude that all involved in this litigation should want everyone to fully participate in this achievement.[322]

  Mr. Terry ended his motion in an enthusiastic "ROLL TIDE!!" and noted that "although [his] secretary is for the other great team of this State, she feels that [he] need[s] to attend this championship game!"[323] Such arguments, despite the fact that plaintiff's counsel

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[317] Kevin Underhill, *Update: Deer Season Continuance Granted*, LOWERING THE BAR (Nov. 29, 2006), https://www.loweringthebar.net/2006/11/update_deer_sea.html.

[318] Motion to Continue ¶ 4, Traywick v. Energen Corp., No. CV 2005-927 (Ala. Cir. Ct., Dec. 15, 2009) [hereinafter Motion to Continue for Alabama Game], *available at* https://www.fitsnews.com/wp-content/uploads/2009/12/mot-to-continue.pdf.

[319] *Id.* ¶ 6.

[320] *Id. See also* Elie Mystal, *Best. Motion to Continue. Ever.*, ABOVE THE L. (Dec. 16, 2009, 12:31 PM) https://abovethelaw.com/2009/12/best-motion-to-continue-ever/; Browning, *supra* note 307.

[321] Motion to Continue for Alabama Game, *supra* note 318, ¶ 5; Browning, *supra* note 307; Mystal, *supra* note 320.

[322] Motion to Continue for Alabama Game, *supra* note 318, ¶ 7.

[323] *Id.* ¶ 9.

> opposed the motion,[324] were evidently sufficient to meet the "good cause" standard, because the motion was granted and the trial continued to a later date.[325]

These examples of continuances granted for sporting or hunting purposes provide a stark contrast with cases in which continuances are denied for pregnancy and parental leave and demonstrate the wildly inconsistent outcomes of "good cause" determinations under existing continuance rules. These examples also are likely reflective of implicit gender biases in judicial discretion and are an important counter to certain lines of opposition to PLCRs.

VI. ADOPTION OF PLCRS

In January 2019, at the ABA Mid-Year Meeting, the Young Lawyers Division proposed a resolution in support of PLCRs to address the kinds of issues described in this Article.[326] The resolution urges that all states, territories, and tribal legislative bodies, as well as all federal courts, enact PLCRs.[327] The resolution recommends that courts grant a request for a continuance for parental leave purposes if the continuance is consented to by all parties to a proceeding.[328] In the event that all parties do not consent, the resolution recommends that courts still grant the continuance so long as: (i) the motion was made within a reasonable time; (ii) no substantial prejudice would result; (iii) a criminal defendant's speedy trial rights would not be prejudiced; and (iv) the court determines that the request was made

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[324] Plaintiff's Response to Defendants' Motion to Continue ¶¶ 3-4, Traywick v. Energen Corp., No. CV 2005-927 (Ala. Cir. Ct., Dec. 16, 2009), *available at* https://media.al.com/bn/other/Plaintiff%20wants%20no%20delay.pdf ("This case is a very serious case involving the death of the plaintiff's mother. . . . Simply stated, some things are more important than football.").

[325] Browning, *supra* note 307. *But see* Louis Casiano, *Attorney Asks for Day Off Trial to Enter Ernest Hemingway Look-a-Like Contest*, NBC NEWS (June 29, 2012, 9:55 AM), https://www.nbcnews.com/news/world/attorney-asks-day-trial-enter-ernest-hemingway-look-contest-flna853872 (describing a case where an attorney's request for continuance in order to attend an annual Hemingway look-alike contest was denied by the court who stated: "Between a murder-for hire trial and an annual look-alike contest, surely Hemingway, a perfervid admirer of grace under pressure, would choose the trial." (quoting United States v. Bottorff, No. 8:11-cr-269-T-23AEP, 2012 WL 2449858, at *1 (M.D. Fla. June 22, 2012))).

[326] Andrew Strickler, *ABA Backs Rules for Continuations Based on Parental Leave*, LAW360 (Jan. 28, 2019, 10:11 PM), https://www.law360.com/articles/1122773/aba-backs-rules-for-continuations-based-on-parental-leave; AM. BAR ASS'N, RESOLUTIONS WITH REPORTS TO THE HOUSE OF DELEGATES 101B (2019), https://www.americanbar.org/content/dam/aba/administrative/house_of_delegates/ebook-of-resolutions-with-reports/2019-midyear-ebook-of-resolutions-with-reports.pdf.

[327] AM. BAR ASS'N, *supra* note 326, at 101B.

[328] *See id.*

in good faith and not made in an attempt to unduly delay the proceeding.[329] The ABA Board of Governors adopted the resolution.[330]

Within months of the adoption of the ABA resolution, two states had adopted PLCRs, namely North Carolina[331] and Florida.[332] Then, in April 2024, Minnesota adopted a pilot rule called "Personal Leave Continuance," which specifically addresses parental leave, along with other specified personal leave needs.[333] Some individual judges have also issued "standing orders" or have otherwise enacted policies within their own courts to signal their support for continuances based on parental leave.[334] Additionally, advocates in a few other jurisdictions have undertaken efforts to get PLCRs adopted, including Kentucky,[335] South Carolina,[336] and Texas.[337]

A. North Carolina's "Mandatory" Approach

In September 2019, the North Carolina Supreme Court amended Rule 26 of its General Rules of Practice[338] and Rule 33.1 of its Rules of Appellate Procedure,[339]

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[329] *See id.*

[330] *Id.*; Strickler, *supra* note 326.

[331] *See* discussion *infra* Section VI.A.

[332] *See* discussion *infra* Section VI.B.

[333] *See* discussion *infra* Section VI.C.

[334] *E.g.*, Genevieve Douglas, *Trial Date v. Due Date: Courts Make Room for Parental Leave*, BLOOMBERG L.: DAILY LAB. REP. (July 31, 2018, 5:15 AM), https://news.bloomberglaw.com/daily-labor-report/trial-date-v-due-date-courts-make-room-for-parental-leave; Council, *supra* note 20.

[335] *Parental Continuance*, MOTHERSESQUIRE, https://mothersesquire.org/pcr (last visited Aug. 2, 2025) ("The Kentucky Supreme Court should adopt a new Kentucky Rule of Civil Procedure requiring a parental-leave period for attorneys who are new parents.").

[336] Order *In re* Extension of Pilot Program for the Designation of Secure Leave Periods by Lawyers, S.C. Sup. Ct. Order dated June 19, 2024 (Davis Adv. Sh. No. 23), *available at* https://www.sccourts.org/media/courtOrders/PDFs/2024-06-19-01.pdf ("This Court is also reviewing a number of other potential changes to the Pilot . . . includ[ing], among other things, allowing individual days of secure leave and creating other forms of leave, such as medical and parental.").

[337] Subcomm. Recommendation: Parental Continuance Rule from Subcomm. (TEX. R. CIV. P. 216–219a) to Tex. Sup. Ct. Advisory Comm. (June 3, 2020), https://scac.jw.com/wp-content/uploads/2020/06/SCAC-June-19-2020-Meeting-Agenda-TAB-E-June-3-2020-Parental-Continuance-Rule-Proposal.pdf; Angela Morris, *Texas Supreme Court to Ponder Parental-Leave Continuance Rule*, TEX. LAW. (Oct. 8, 2019, 5:02 PM), https://www.law.com/texaslawyer/2019/10/08/texas-supreme-court-to-ponder-parental-leave-continuance-rule/?slreturn=20250407-14110 [https://www.bloomberglaw.com/document/X4TJA8J0000000].

[338] N.C. GEN. R. PRAC. FOR SUPER. & DIST. CTS. 26 (2024).

[339] N.C. R. APP. P. 33.1.

entitled "Secure-Leave Periods for Attorneys," to add language specific to parental-leave continuance requests.[340] Under these rules prior to their 2019 amendment, attorneys were permitted to submit three "secure-leave periods" of one complete calendar week during which a court was not permitted to hold a proceeding in a case where that attorney was of record,[341] essentially resulting in statutorily-mandated continuances for attorney vacation time, provided the attorney has complied with the procedural requirements.

The court amended the rules to allow attorneys to designate up to 12 additional weeks of secure-leave periods within 24 weeks after the birth or adoption of an attorney's child.[342] Whether the secure-leave designation is for a week or for 12 weeks, the amended superior and district court rule requires that the attorney supply certain information, including a statement that the secure-leave period "is not being designated for the purpose of interfering with the timely disposition of any proceeding" and a statement confirming that "the attorney has taken adequate measures to protect the interests of the attorney's clients during the secure-leave period."[343] The superior and district court rule applies in cases of criminal proceedings, civil proceedings, special proceedings, estate proceedings, and juvenile proceedings, and both rules direct attorneys where to submit their leave notices based on the type of proceeding.[344]

Attorneys must submit their secure-leave period designations at least 90 days before the secure-leave period begins and prior to the beginning of any proceeding that would conflict with the secure-leave period.[345] Notably, subsection (f) of the superior and district court rule and subsection (d) of the appellate rule requires that a scheduling authority make reasonable exceptions to the 90 day submission requirement due to the uncertainty that can surround a child's birth or adoption date.[346] The amended superior and district court rule also specifically reiterates the court's inherent power to grant additional leave not designated under this rule as the court deems appropriate.[347]

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[340] Order Amending the General Rules of Practice for the Superior & District Courts, 372 N.C. 896, at 898–99 (2019) [hereinafter N.C. Rule 26 Amendment]; Order Amending the Rules of Appellate Procedure, 372 N.C. 902, at 904–05 (2019) [hereinafter N.C. Rule 33.1 Amendment].

[341] *See* N.C. Rule 26 Amendment, *supra* note 340, at 896–98; N.C Rule 33.1 Amendment, *supra* note 340, at 904.

[342] N.C. R. APP. P. 33.1(b)(2); N.C. GEN. R. PRAC. FOR SUPER. & DIST. CTS. 26(b)(2). *See also* N.C. Rule 26 Amendment, *supra* note 340, at 899; N.C. Rule 33.1 Amendment, *supra* note 340, at 904.

[343] N.C. GEN. R. PRAC. FOR SUPER. & DIST. CTS. 26(d).

[344] N.C. GEN. R. PRAC. FOR SUPER. & DIST. CTS. 26(e); N.C. R. APP. P. 33.1(d).

[345] N.C. GEN. R. PRAC. FOR SUPER. & DIST. CTS. 26(f); N.C. R. APP. P. 33.1(d).

[346] N.C. GEN. R. PRAC. FOR SUPER. & DIST. CTS. 26(f); N.C. R. APP. P. 33.1(d).

[347] N.C. GEN. R. PRAC. FOR SUPER. & DIST. CTS. 26(h).

B. Florida's "Presumptive" Approach

Although North Carolina became the first state in the United States to officially adopt a PLCR in 2019, advocates had already been advocating for the adoption of a PLCR in Florida for several years.[348] In 2016, an initial version of a Florida PLCR faced headwinds when the Florida Bar Association's Rules of Judicial Administration Committee would not take up the rule.[349] The language in the rule at that time mandated a continuance for parental leave purposes under certain circumstances, which was opposed in large part because of the removal of the broad judicial discretion traditionally afforded courts in the determination of whether to grant a requested continuance.[350]

Additionally, various opponents to the proposed rule at that time suggested attorneys would use the PLCR tactically as a method for delaying ongoing litigation.[351] In response to this criticism, a member of the Florida Bar of Governors at this time responded, "When women are leaving the profession in droves during childbearing years, I think we need to give practicing attorneys the benefit of the doubt that they are not going to misuse this continuance policy."[352]

Meanwhile, an attorney in a 2018 case in Florida may have unintentionally spurred the movement to adopt a PLCR forward.[353] When pregnant attorney Christen Luikart, lead counsel for defendant in a products liability case, requested a continuance due to her impending due date, plaintiff's counsel, Paul Reid, vigorously opposed.[354] In support of his opposition to the request, Mr. Reid not only stated that the impending due date of Ms. Luikart was not a "compelling circumstance" warranting a continuance, but he also insinuated that Ms. Luikart had gotten pregnant on purpose in order to delay the case.[355] Mr. Reid's insinuation was clear enough to the presiding judge in the matter that she explicitly addressed it in her order granting the continuance, saying that she "[did not] believe Ms. Luikart got pregnant in response to this case."[356] The case also garnered considerable media

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[348] *See* Amber Nimocks, *Teamwork and Tenacity: The Story Behind the Secure Leave Initiative*, N.C. ADVOCS. FOR JUST. (Jan. 26, 2020), https://www.ncaj.com/news/teamwork-and-tenacity-the-story-behind-the-secure-leave-initiative; Debra Cassens Weiss, *Should Judges Be Required to Grant Continuances for Parental Leave? Florida Considers a Rule Change*, ABA J. (July 21, 2016, 7:30 AM), https://www.abajournal.com/news/article/should_judges_ be_ required_ to_ grant_ continuances_ for_ parental_leave_florida.

[349] Weiss, *supra* note 348.

[350] *Id.*

[351] *Id.*

[352] *Id.*

[353] Zaretsky, *supra* note 235.

[354] *Id.*

[355] *Id.*

[356] *Id.*

attention in Florida and provided additional support to the advocacy efforts for adoption of a PLCR.[357]

In December 2019, despite initial challenges, the considerable and sustained efforts of the Florida Association of Women Lawyers (FAWL) and various other advocates[358] resulted in the adoption of Florida Rule of General Practice and Judicial Administration 2.570 by the Florida Supreme Court.[359] Under the rule, attorneys may request up to three months for a parental-leave continuance, and may request additional time if they can show good cause for the request for a longer period.[360] Rather than the mandatory continuance approach taken by North Carolina, the Florida rule instead creates a presumption in favor of the requesting party by shifting the burden to any objecting party to show that the continuance should not be granted.[361] The Florida PLCR is limited in certain ways, including that it only expressly applies when the lead attorney is in need of the parental continuance, meaning that the rule will not apply if the attorney in need of leave is not listed as lead counsel.[362] Additionally, the Florida PLCR expressly excludes cases from this burden-shifting language if they fall under the Florida criminal or juvenile codes, as well as cases involving the involuntary civil commitment of sexually violent predators.[363]

Unfortunately, the ability to evaluate the successful implementation of the Florida PLCR was upended when the global COVID-19 pandemic began in March 2020, only months after the adoption of the PLCR. Then, as the country and its court systems began to emerge from the pandemic, Florida issued an emergency

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[357] *See id.*

[358] To listen the oral arguments presented before the Florida Supreme Court, including the arguments presented by the author of this Article (found at minute 37:04) see Fla. Sup. Ct., *SC18-1554 In Re: Amendments to the Florida Rules of Judicial Administration-Parental Leave*, YOUTUBE (Oct. 16, 2019), https://www.youtube.com/watch?v=Ar0ZxkVxxxI. *See also* Blankenship, *supra* note 303.

[359] For additional information about Florida's adoption of the rule and advocacy for adoption of parental continuance rules nationwide see Katie Miesner, Comment, *Baby Steps: Why the Florida Supreme Court's New Parental Leave Continuance Rule Reinvigorates the FMLA's Underlying Gender Equity Goals Within the Legal Profession and Why More States Should Follow Suit*, 18 FIU L. REV. 235, 236 (2023). *See also* Gary Blankenship, *Parental Leave Continuance Rule Approved*, FLA. BAR NEWS (Dec. 19, 2019), https://www.floridabar.org/the-florida-bar-news/parental-leave-continuance-rule-approved/.

[360] FLA. R. JUD. ADMIN. 2.570(a), (c).

[361] FLA. R. JUD. ADMIN. 2.570(d). If the objecting party makes "a prima facie demonstration of substantial prejudice," then the burden shifts back to the requesting party to demonstrate that any prejudice caused to the objecting party is outweighed by the "prejudice to the requesting party caused by the denial of the motion." *Id.*

[362] FLA. R. JUD. ADMIN. 2.570(a).

[363] FLA. R. JUD. ADMIN. 2.570(f).

administrative order to address the backlog of cases resulting from the pandemic.[364] Uncertainty about whether the PLCR was being properly considered by courts arose at that time.[365] In an article from December 2022 entitled, *The Parental Leave Rule: Give It A Fighting Chance*, two Florida attorneys urged the courts to reconsider whether continuances for parental leave reasons were being properly considered, noting:

> The toll that the emergency administrative order takes on the mental health of lawyers who are balancing learning to become a parent while juggling often too many cases is overwhelming. . . . The courts must not lose sight of the fact that the litigators are people too, with families and children that sometimes require their needs to be put first.[366]

The case discussed in the introduction of this Article involving Mr. Fumagali and his difficulty in obtaining a continuance to attend the birth of his child, even after the Florida PLCR had already been adopted,[367] is also illustrative of the work that must be done in coordination with the adoption of a PLCR to ensure that the rules are not only adopted into law, but also used effectively and appropriately by courts.

C. Minnesota's "Personal Leave" Approach

In February 2023, the Chief Judge of the Minnesota Tax Court adopted a Personal Leave Rule (PRL), making the rule applicable to the tax courts of the state, and citing the importance of parental leave highlighted in the 2017 National Task Force Report.[368] The tax court PRL immediately granted a continuance, subject to an objection procedure, for "personal leave" reasons, including: (1) a health condition causing the attorney to be temporarily unable to represent the client; (2) parental leave for birth or adoption of a child, irrespective of gender of attorney; (3) the attorney's need to care for a family member with a serious health condition; and (4) the death of a member of the attorney's family.[369] The Chief Justice of the Minnesota Tax Court wrote in her administrative order promulgating the rule: "The

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[364] Order *In re* COVID-19 Health & Safety Protocols & Emergency Operational Measures for Florida Appellate & Trial Courts, No. AOSC21-17 (Fla. June 4, 2021); *see also* Jennifer Feld & Alexandra Paez, *The Parental Leave Rule: Give It a Fighting Chance*, ABOVE THE L. (Dec. 8, 2022, 11:15 AM), https://abovethelaw.com/2022/12/the-parental-leave-rule-give-it-a-fighting-chance/.

[365] Feld & Paez, *supra* note 364.

[366] *Id.*

[367] *See* discussion *supra* Section VI.B.

[368] Order Concerning Personal Leave Continuances at 1, ADM2023-001 (Minn. T.C., Feb. 14, 2023); *see generally* NAT'L TASK FORCE ON LAW. WELL-BEING, *supra* note 246.

[369] Order Concerning Personal Leave Continuances, *supra* note 368, at 2.

Tax Court recognizes it plays a role in promoting attorney well-being, including providing for continuances where appropriate."[370]

Just under a year later, in January 2024, Minnesota's Supreme Court amended its procedural court rules on a pilot basis to add language very similar to that adopted by the tax court based on the recommendations of its Minnesota Supreme Court Advisory Committee on General Rules of Practice.[371] While the PLR amendments create a mandatory continuance without a hearing for the same four personal leave reasons outlined above, a number of cases are excluded from the mandate, namely criminal, juvenile, adoption, and civil commitment cases, as well as cases involving orders of protection and harassment restraining orders.[372] Even in these excepted case types, continuances may be granted under the PRL if the court, in its discretion, determines that a continuance is appropriate under the circumstances.[373]

The Minnesota PRL establishes a leave period of up to 90 days, while stating that longer periods may be granted with a showing of good cause.[374] Although the rule creates a "mandatory" continuance for the four personal leave reasons, the Minnesota PRL includes an objection process to allow a party to object to the granting of the continuance; the rule also shifts the burden of proof as to why the continuance should not be granted to the objecting party.[375]

D. Proposed Uniform Language

The adoption of these variations on PLCRs will allow for evaluation of whether one variation is more effective than another, and all of the rules will provide data regarding any impediments to their implementation and strategies to mitigate those impediments to adoption and effective use.[376] However, this author assisted, along with a committee of the nonprofit organization MothersEsquire,[377] in drafting the

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[370] *Id.*

[371] Order Promulgating Amendments to the Minnesota Rules of General Practice for the District Courts & the Minnesota Rules of Civil Appellate Procedure at 1, Nos. ADM09-8009, ADM04-8001, ADM09-8006 (Minn. Apr. 30, 2024).

[372] *Id.* at 3–4.

[373] *Id.* at 3.

[374] *Id.* at 4–5.

[375] *Id.* at 4, 7.

[376] *See* discussion *supra* Sections VI.A–VI.C.

[377] MOTHERSESQUIRE, https://mothersesquire.org/ (last visited Aug. 3, 2025). This author is the founder of MothersEsquire, which she began as a small Facebook group in 2013, but which is now a non-profit organization with a mission focused on gender equity and addressing the Motherhood Penalty in the legal profession. *See, e.g.*, Modern Law Library, *'My Mom, the Lawyer' Explores Women's Work and Personal Lives Through the Eyes of Their Children*, ABA J. (June 21, 2023), https://www.americanbar.org/groups/journal/podcast/my-mom-the-lawyer-explores-womens-work-and-personal-lives-through-the-eyes-of-their-children/.

proposed uniform language set out in full below[378] and urges adoption of this, or similar, language by the Uniform Law Commission.[379] From the three approaches adopted thus far, the use of a parental-leave-specific rule that is presumptive, rather than mandatory, is the approach that we believe will be most readily adopted and will best balance the various interests involved in continuance determinations.

This proposed language is grounded in the goals expressed by the ABA's resolution on PLCRs,[380] and informed by the language of the Florida and North Carolina rules,[381] as well as various challenges and feedback acquired as those states sought passage of their PLCRs.[382] The proposed language formalizes and communicates the shared policy goals amongst advocates for adoption of PLCRs, and provides a shared starting point for advocates across a multitude of jurisdictions, preventing duplication of efforts and reducing the initial workload necessary to begin policy change efforts.

Advocates in each jurisdiction can work from the uniform language, while also being able to point to North Carolina's "mandatory" approach, Florida's "presumptive" approach, and Minnesota's broader "personal leave" approach, in order to assess which approach, or combination of approaches, will work best for the jurisdiction at issue. The use of this uniform language can provide consistency while also attempting to meet the needs and goals of individual jurisdictions, recognizing the complexity of seeking adoption of PLCRs across a wide variety of jurisdictions.

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[378] *See Kentucky Rule of Civil Procedure. Parental-Leave Period for Attorneys*, MOTHERSESQUIRE, https://static1.squarespace.com/static/5946760a2cba5e6df4872b87/t/61e57f2b228da66caefe400c/1642430251702/2145_ME_KYProposedParentalContinuanceRule.pdf (last visited Aug. 3, 2025).

[379] UNIFORM L. COMM'N, https://www.uniformlaws.org/home (last visited Aug. 3, 2025) ("The ULC promotes state autonomy by providing a process for state governments to collaborate on issues where uniformity of law is necessary but federal oversight is not. Uniform acts provide rules and procedures that are consistent from state to state but that also reflect the diverse experience of the states when appropriate.").

[380] *See* AM. BAR ASS'N, *supra* note 326, at 101B.

[381] *See* discussion *supra* Sections VI.A–VI.B.

[382] *See, e.g.*, Order *In re*: Amendments to the Florida Rules of Judicial Administration—Parental Leave at 2–3, No. SC18-1554 (Fla. Dec. 19, 2019) (per curium) (discussing comments received by the Florida Supreme Court in response to drafts of the parental leave rule).

Proposed Parental-Leave Continuance Rule Language

(a) Leave Period. Establishing a parental-leave period for attorneys reinforces the values and beliefs that an attorney's health and well-being are necessary to clients, attorneys, our justice system, and the reputation and regard by the public for the legal profession. To that end, an attorney, regardless of gender or counsel status, shall be entitled to up to 12 weeks of leave from court proceedings for any case in which that attorney is an attorney of record, for the purposes of caring for their medical and family needs following the birth or adoption of the attorney's child, or when a child is placed in the attorney's care through foster care.

(b) Designation of Leave Period. An attorney shall make their intention to take parental leave known by filing a notice in each court in which a case is pending, with the following information: (1) the attorney's name, address, telephone number, and email; (2) the date on which the leave period is expected to begin and the date on which it is expected to end; (3) a statement as to whether the leave period will conflict with any previously scheduled case events and, if so, a list of these events; (4) a statement that the attorney's client has been notified of the leave period; (5) a statement that the leave period is not being designated for the purpose of interfering with the timely disposition of any proceeding; and (6) the attorney's signature and the date on which the attorney submits the designation.

(c) When to Submit Designation. Subject to subsection (d), an attorney shall submit their parental-leave designation as soon as practical, but at least 60 days before the leave period begins. Once they have sufficient knowledge that they will request a continuance pursuant to this Rule, an attorney should attempt to avoid scheduling a proceeding in any of their cases during the period of intended leave.

(d) Revisions to Designations and Submission Requirements Permitted. Because of the uncertainty of a birth, adoption, or placement date, and because health emergencies or other unanticipated issues may arise, if the attorney is unable to submit their designation in accordance with the time frames set out in subsection (c), or if the attorney's designation in accordance with time frames in subsection (c) will compromise the attorney's professional responsibility to the client, or if the attorney determines that their period of leave will change after their designation of the leave period, the attorney shall file their designation, or revised designation, as soon as possible, and the court shall make reasonable exception to the requirements above to allow the attorney to address their obligations to their client, their family's medical needs, and bonding time with their child.

(e) Proceedings Stayed During Leave Period. Court proceedings shall be stayed during the attorney's parental leave period in all cases in which a designation of leave has been filed, regardless of counsel status or the

presence of alternative counsel of record. A party shall not notice a deposition to be taken during another attorney's designated leave period. A party shall not propound written discovery to the client(s) of the attorney on leave.

(f) Burden of Proof. An attorney who has filed a designation of leave is presumptively entitled to such leave. If another party believes it would suffer substantial prejudice as a result of the leave, that party may file a motion seeking relief from the presumptive continuance of the proceedings. Such motion must be filed within seven days of receipt of the parental continuance designation and shall state with specificity all allegations of substantial prejudice. The party opposing the stay of proceedings bears the burden of proof. If a court determines that a hearing on the issue is necessary, such hearing shall occur within 30 days of the motion for relief being filed. A continuance shall not be denied solely on the basis that another attorney is of record with the attorney seeking the parental-leave continuance.

(g) Other or Additional Leave. Nothing in this rule limits the inherent power of the courts to allow an attorney to enjoy leave that has not been designated according to this rule, leave that is necessary to attend to medical issues relating to pregnancy, or to allow a period of parental leave that is greater than that which is provided for by this rule.

VII. BEYOND ADOPTION OF PLCRS

Beyond the adoption of PLCRs, advocates, courts, and others must also engage in a broader, systems-based approach to ensure that these changes are also effectively implemented. As first referenced in the Introduction, Florida attorney and father, Alexander Fumagali, experienced seeking a continuance with the benefit of a PLCR which shows that adoption alone may not be effective in achieving support and protection for parental leave for litigators. Mr. Fumagali filed a motion on September 1, 2022, requesting that that Miami-Dade Circuit Judge David C. Miller grant a parental-leave continuance in an upcoming trial so that Mr. Fumagali could attend the birth of his first child.[383] He filed his motion in compliance with Florida's PLCR, Florida Rule of General Practice and Judicial Administration 2.570.[384] Mr. Fumagali's client had specifically selected him for the

[383] Defendant South Florida Stadium, LLC's Agreed/Unopposed Third Motion for Parental-Leave Continuance at 1, Welborn v. Miami-Dade Cnty., No. 2020 027603-CA-01 (Fla. Cir. Ct. Sept. 1, 2022) [hereinafter Defendant South Florida Stadium's Unopposed Third Motion].

[384] FLA. R. JUD. ADMIN. 2.570.

matter[385] and his client was in full support of his continuance request. The motion was also unopposed by the defendant's counsel in the matter.[386] Nonetheless, the judge—without explanation—denied Mr. Fumagali's continuance request.[387] In fact, the September 1 motion Mr. Fumagali filed was his *third* motion seeking to have this continuance granted; the judge had similarly denied the previous two motions.[388]

In this third request for a continuance, Mr. Fumagali felt obligated to enter deeply personal and sensitive information on the record about both himself and his wife, with the hopes that doing so would convey to the judge the import of his request:

> In 2021, after several years of attempting to conceive a child, undersigned counsel's wife underwent a round of IVF (in-vitro fertilization). Unfortunately, undersigned counsel's wife suffered a miscarriage at the end of her first trimester. In January 2022, undersigned counsel's wife underwent a second IVF attempt. Due to the result of the first IVF attempt, undersigned counsel and his wife proceeded with significant caution before receiving medical assurances that this current pregnancy would, in fact, result in the birth of a healthy child during October 2022. Upon receiving those medical assurances, undersigned counsel began the timely process of seeking a continuance from this Court under Rule 2.570. . . . If the trial in this matter remains scheduled for October 2022, undersigned counsel will likely miss the birth of his first child and the initial parent-child bonding time that is supposed to be provided under Rule 2.570. Further, he will be unable to support his wife during that same period—immediately following a very complicated pregnancy.[389]

Despite his reliance on the Florida PLCR, Judge Miller denied the motion again only one day later, on September 2, reasoning that "[s]omeone else from the

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[385] Michael A. Mora, *Baby or Client? Lawyer Claims He'll Be Denied Paternity Leave as Judge Threatens Sanctions*, LAW.COM: DAILY BUS. REV. (Sept. 6, 2022), https://www.law.com/dailybusinessreview/2022/09/06/baby-or-client-lawyer-claims-hell-be-denied-paternity-leave-as-judge-threatens-sanctions/ [https://plus.lexis.com/api/permalink/263863ad-cd38-44b3-8abc-421fbf0b304d/?context=1530671] (quoting Mr. Fumagali: "I'm the lead counsel and the client hired me specifically. I love being a lawyer, but more importantly, I want to be a good father and husband. And I don't know how this is going to affect those duties, which are most important.").

[386] Defendant South Florida Stadium's Unopposed Third Motion, *supra* note 383, at 1.

[387] Order Denying Defendant South Florida Stadium, LLC's Agreed/Unopposed Third Motion for Parental-Leave Continuance at 1, Welborn v. Miami Dade County, No. 2020-027603-CA-01 (Fla. Cir. Ct. Sept. 2, 2022) [hereinafter Order Denying Unopposed Third Motion].

[388] Defendant South Florida Stadium's Unopposed Third Motion, *supra* note 383, at 1.

[389] *Id.* at 2–3, 5.

firm will need to try the Case if the baby is born at the time this case is tried."[390] The judge went on to also rebuke Mr. Fumagali and his firm, warning them if they filed another motion requesting a continuance, such action would result in sanctions.[391]

The refusal to grant the requested parental continuance to Mr. Fumagali garnered significant negative media attention for the judge.[392] Four days later, on September 6, Judge Miller issued an order sua sponte granting Mr. Fumagali's requested continuance, vaguely indicating that the case had come up for reconsideration and he was now granting the continuance "given the circumstances relating to Defense Counsel's need for Parental leave."[393]

While there is no evidence in the record to indicate that Judge Miller had any negative intent or that he was acting on gender-based stereotypes about fathers as caregivers, the possibility that such assumptions could influence a judge's or other attorney's perspective on a continuance motion for parental leave is part of the reason adoption of PLCRs, without a coordinated campaign, will not necessarily be effective. Adoption must be accompanied by a campaigned effort grounded in systems theory[394] to help the legal profession understand the need for PLCRs. Figure 1 below demonstrates this multi-dimensional approach.

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[390] Order Denying Unopposed Third Motion, *supra* note 387, at 1.

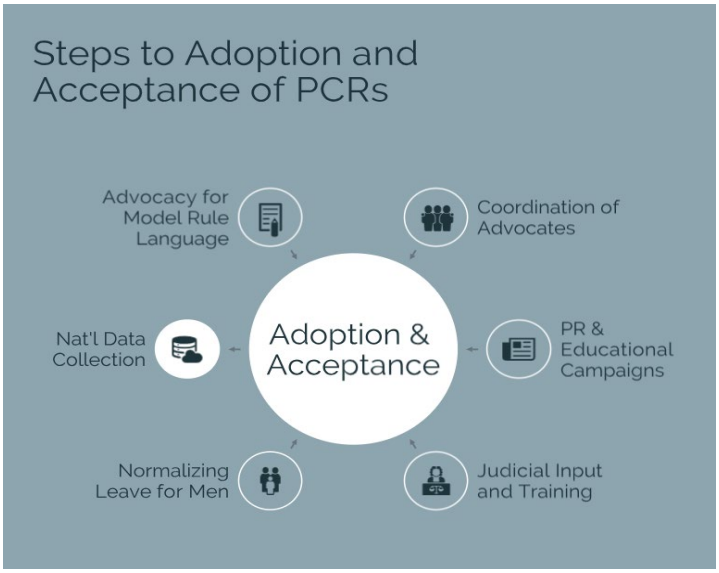
[391] *Id.*

[392] *See, e.g.*, Debra Cassens Weiss, *Judge Agrees to Parental-Leave Continuance After Denying Three Requests, Warning of Sanctions*, ABA J. (Sept. 7, 2022, 5:00 PM), https://www.abajournal.com/news/article/judge-agrees-to-parental-leave-continuance-after-denying-three-requests-warning-of-sanctions.

[393] Order Granting Agreed Continuance, Welborn v. Miami Dade Cnty., No. 2020-027603-CA-01 (Fla. Cir. Ct., Sept. 6, 2022); *see also* Weiss, *supra* note 392.

[394] Systems theory involves taking a holistic approach to understanding and working within complex systems and environments, seeking to understand the interconnectedness of various components of and dynamics within and between systems that contribute to a particular social issue. Systems theory specifically focuses on addressing root causes of social issues, as opposed to trying to simply reduce harmful or negative outcomes of the problem. *See* Guido Maes & Geert Van Hootegem, *A Systems Model of Organizational Change*, 32 J. ORGANIZATIONAL CHANGE MGMT. 725, 725 (2019); Emma Blomkamp, *Systemic Design Practice for Participatory Policymaking*, 5 POL'Y DESIGN & PRAC. 12, 20 (2022).

Figure 1.[395]



Perhaps most important to the efforts to increase effective implementation of PLCRs, and hopefully avoid circumstances like those Mr. Fumagali faced, is the development of a media strategy and educational campaign focused on garnering acceptance for the use of PLCRs, as well as ongoing efforts to reduce gender biases and shift social norms within the legal community in support of parental leave.

Beyond educational and media work, advocacy for PLCRs will be most effective if a central organizing group is put in place to develop strategy, seek and distribute funding and resources, develop and maintain a national data repository, and help appoint and coordinate advocates.[396] The purpose of the national data repository will be used to gather, organize, and make accessible resources, including educational and media materials, and data, including information tracking the outcomes of motions filed for parental leave purposes. Advocates for PLCRs must also engage thoughtfully with judges in each jurisdiction to seek their input, garner support for PLCRs, and educate the judiciary about the ways in which PLCRs are important to clients and to the health and well-being of attorneys. A centralized model for advocacy will improve efficiency and consistency, will avoid unnecessary duplication of both advocate time and resources, and ultimately will result in adoption and effective implementation of PLCRs nationwide.

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[395] Figure created by author for the purposes of this Article.

[396] The highly successful work of Military Spouse JD Network ("MSJDN") in effectuating changes to attorney licensing laws on a jurisdiction-by-jurisdiction basis, using a centralized organization and strategy, is instructive. *See State Licensing Efforts*, MIL. SPOUSE J.D. NETWORK FOUND., https://msjdn.org/rule-change/ (last visited Aug. 3, 2025).

CONCLUSION

When attorneys seek to take parental leave, existing court scheduling processes can result in a conflict between their leave and their court schedule for legal proceedings. As the rules exist today, an attorney can be on parental leave protected by law but nonetheless may be required to appear in a legal proceeding during that leave. Three jurisdictions have adopted three different variations of PLCRs in order to address this conflict. This Article urges all jurisdictions to adopt PLCRs and provides uniform language that can be used towards this end. Finally, adoption of PLCRs must be accompanied by educational efforts about the importance of parental leave and the role of PLCRs in helping secure parental leave in order to address gender and caregiver biases, including the Motherhood Penalty and fatherhood stigmatization. The adoption, acceptance, and effective use of PLCRs will benefit attorneys, clients, and the legal profession as a whole.