

OPINION & COMMENTARY

FROM DAILY BUSINESS REVIEW EDITORS & GUESTS

The Need for Balancing Our Obligations as Lawyers

The potential conflict between a lawyer's obligation to speak on behalf of his client's interests and his obligation to demonstrate respect for other lawyers manifested publicly when a pregnant lawyer moved to continue a trial.

Her opposing counsel, who represented a plaintiff whose medical condition had resulted in a leg amputation during the pendency of the litigation, asked the court to either move the trial earlier than scheduled to avoid the expected time of the maternity leave or to require that others in the moving lawyer's firm try the case. He also argued his client could not accept what he perceived as further delay.

Lawyers often must execute a delicate balance between seemingly competing obligations of our profession. Chapter 4 of the Florida Rules of Professional Conduct requires a lawyer to both "zealously assert the client's position under the rules of the adversary system" and also to "demonstrate respect for the legal system and those who serve it, including other lawyers."

In the case at hand, the trial judge, in the absence of clear case law or an existing rule of procedure or judicial administration, applied a commendable degree of wisdom and grace in effecting the spirit of a proposed rule that currently is before the Florida Supreme Court.

The American Board of Trial Advocates Miami chapter wholeheartedly endorses the proposed rule. Proposed Florida Rule of Judicial Administration 2.570 provides two important protections to a lead lawyer requesting a continuance for parental leave: first, it creates a rebuttable presumption she is entitled to the continuance and, second, it provides a presumption the continuance should be for three months. In addition to these presumptions, the rule also contains protections for both the opposing party and the moving lawyer. The opposing party is provided the opportunity, consistent with the rules of zealous advocacy and respect for the legal system and those who serve it, to proffer evidence that granting the continuance would cause "substantial prejudice." If the opposing party meets this burden of showing "substantial prejudice," then the lawyer requesting parental leave has the burden of demonstrating lack of substantial prejudice to the opposing party. (The committee notes grant some guidance on what may be considered substantial prejudice.) The trial judge then weighs the equities of both positions to determine whether to grant the motion on the facts presented. An additional protection the rule affords the moving lawyer is the opportunity to "show good cause" for a continuance longer than three months. Again, the court has discretion in ruling on an extension.

The proposed rule does not, as some proponents and detractors may believe, grant an automatic right to a continuance based on parental leave. It does, however, guarantee the filer has a presumption in her favor, all sides in-



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involved have a voice with both the right and opportunity to be heard, and the court has the final say. If substantial prejudice would result — as may occur in cases of terminal illness, elderly parties, speedy trial, or numerous prior continuances — the opposing party has the opportunity to establish this and keep the trial date. If three months is insufficient parental leave for the moving party, she has the opportunity to establish this and be granted a longer extension.

This proposed rule balances competing interests and creates a structure all sides can reasonably rely upon and work within. Even without it having been officially approved, the court in the matter under scrutiny did just that. She gave every lawyer present the opportunity to be heard on the issue. She listened completely to every lawyer who chose to speak. She weighed the facts, granted the continuance for approximately three months and compassionately ex-

plained her reasoning to the plaintiff who was present. She was reasoned in her decision, and she was respectful to everyone present and to the process itself. As lawyers, we must hold ourselves to the same standard. While in most cases there may be no need to oppose a motion for parental leave, if as an advocate the need is there, it must be done professionally and civilly.

One of ABOTA Miami's specific purposes is "to elevate the standards of integrity, honor and courtesy in the legal profession." Another is to "discuss and study matters of interest to trial lawyers." We operate within an adversary system, but we are and must always remain professionals and civil. Now is an appropriate time to discuss these matters and to make this a teachable moment.

ABOTA Miami is a chapter of the American Board of Trial Advocates. ABOTA Miami is dedicated to preserving and promoting the right to a civil jury trial — a right provided by the Seventh Amendment to the U.S. Constitution. The membership consists of the finest civil lawyers and judges in America.

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