

The Kentucky Supreme Court should adopt a new Kentucky Rule of Civil Procedure requiring a parental-leave period for attorneys who are new parents. Such rule reinforces that an attorney's personal well-being provides value to the profession and their clients. Attorneys should never find themselves forced to choose their job over caring for the needs of their family.

New parents often feel unreasonably forced to choose between caring for a new child and doing their job. Parental-leave periods are designed to increase families' abilities to balance the needs of the workplace with home while ensuring the health and safety of a new child.

The enactment of a parental-leave period for male and female attorneys alike provides a continuance of all court matters, as well as discovery, due to the birth or adoption of a child, or the placement of

a child through foster care. An attorney, regardless of gender or counsel status, is entitled to a parental-leave period pursuant to the proposed Parental-Leave Continuance Rule.

During this period, an attorney is entitled to twelve (12) weeks to care for the child during the first twenty-four (24) weeks after a birth, adoption, or foster care placement. This Rule would prevent Courts from unreasonably withholding a continuance in any case in which that attorney is an attorney of record.

WHY IT'S IMPORTANT

The establishment of a secure-leave period for new parents will have positive implications for the parents, the clients, the courts, and the entire legal profession.

A. Mother and Child

Women need a reasonable time to heal from the physical stress they undergo during childbirth. The average physical recovery time from a vaginal delivery is six to eight weeks, notwithstanding potential complications that could increase that recovery time. A mother who has undergone a Cesarean delivery (C-section) is generally considered "in recovery" for eight weeks after the birth of the child and has more restrictions on what she is able to do in comparison to those who have undergone a vaginal birth. During this eight-week recovery period, mothers are discouraged from climbing stairs, driving, and lifting heavy objects. As of 2019, C-sections represented 31.7 percent of births in the United States.

Mental recovery after the birth of a child must also be taken into consideration. Fluctuations in hormones after childbirth may cause complications such as postpartum depression. A mother's presence is also important to the mental and emotional health of the baby. Research has found that maternal separation is a major psychological stressor on the infant.

In addition, a mother's body is also providing nourishment for the child. For mothers who choose to breast-feed their baby, they are encouraged to do so 8-12 times per day for the first six months of the baby's life. If the baby is away from the mother for long periods of time, it has a negative effect on the amount of breast milk produced.

B. Father

There are early-development, mental health, and family-relationship benefits to having a parental-leave period for new fathers, as well. Furthermore, men taking parental-leave would create profound societal benefits. Those include: increasing female labor-force participation, maintaining wage equity between men and women, and diminishing harmful stereotypes that men can't be "caregivers" in the family. Thus, it is crucial that this parental-leave period applies to female and male attorneys equally.

WHY IT'S IMPORTANT

“A judge in Kansas granted a delay to a civil case because a father was expecting his first child two weeks after the trial was expected to start. In the judge’s official order, he suggests that those who would deny such a continuance “lose sight of their role as professionals and personalize the dispute; converting the parties’ disagreement into a lawyers’ spat.” The opinion concluded with “Defendants’ motion is granted. The Ermans are congratulated.”

C. Judge

This rule provides guidance for Kentucky judges when notices for continuance are filed, ensuring continuity across the Commonwealth. As very few Parental-leave Continuance Rules have been adopted by other states and jurisdictions, judges vary greatly as to how such individual motions should be handled. While some grant the motion willingly and happily, others have denied reasonable requests or acquiesced only after practitioners filed private medical records proving a pregnancy, conducted multiple hearings on the continuance, or attorneys threatened to remove themselves from representation. The parental-leave continuance rule creates a standard for the courts to follow, thereby creating a uniformity that the legal profession depends on.

D. Client

Attorneys have a duty to their clients. Without a parental-leave period, an attorney will have to choose whether to “hand off” their case and client to a less-knowledgeable attorney while they are on leave or advocate for their client under unfit conditions, such as the emotional stress of being away from their child too soon, fatigue from early mother/fatherhood, or physical recovery from childbirth. Neither option leaves the client with quality representation. This rule allows a client to exercise their right to choose their counsel and ensure that their representation is to the highest standard possible.

E. Firm

The attorney’s firm has a similar interest – the best representation for the client. Additionally, by supporting parental-leave continuances, firms fulfill potential requirements under the Family Medical Leave Act and promote diversity goals within the office.

F. Co-Counsels

These continuances shall be permitted not only for lead counsel, but for the leave of any attorney working on the case. This is important because, although a young partner may not have the title of “lead,” they are still necessary to the proper representation of the client. Limiting continuances to only the “lead” counsel disadvantages the client most directly, but also impacts the career track of younger attorneys. Lastly, often “lead” counsel is a distinction without a difference, for example when “co-counsel” is the second member of a two-person legal team.

G. Legal Profession

Like many professions, the legal field should strive to be more inclusive and compassionate to its members. The longevity of the field is dependent upon the general wellbeing of those within. Without making members’ overall health a priority, the equity and retention of the field may deplete over time.

Between 2010 and 2013, 11 Kentucky attorneys committed suicide. In a three-week span between December 2020 and January 2021, four Kentucky attorneys committed suicide. It is well-established that attorneys experience higher rates of stress, anxiety, and depression than the general public. While much needs to be done to support our colleagues, recognizing and mitigating the stress that accompanies the addition of a new family member can be an important step.

WHY IT'S NECESSARY

For the above reasons, parental-leave periods benefit individual families as well as the profession. However, attorneys often feel discouraged to ask for parental-leave periods. This is especially true for women because women are more likely to feel obligated to take parental-leave compared to men. A 2014 survey of “highly paid professional U.S. fathers” revealed that “only about 5% took no paternity leave, but over 80% took two weeks of leave or less.” The denial of parental-leave motions adds to the daunting list of obstacles female lawyers face in the workforce. These obstacles include unequal pay, less opportunity to promotion benefits, low-quality work assignments, lack of access to mentoring and networking opportunities, etc. These obstacles cause women to feel torn to ask for a parental-leave period, knowing more time will significantly benefit the

child’s health and development but potentially jeopardize the success and progress made in her career. Even if a motion for continuance was granted, female attorneys are faced with fears of being replaced at work, receiving less chances for future promotions, missed opportunities to excel in their field, etc. Systemic change is necessary.

Having a presumptive parental continuance rule in place affirms the importance of work-life balance for practitioners and mitigates the harmful professional bias by the judicial system against individuals wanting to grow their families. Further, it behooves practitioners in the Commonwealth of Kentucky to have one cohesive rule and set of standards to which courts may look as they review motions for parental-leave periods.

For these reasons, Mothers Esquire supports the addition of the Parental-Leave Period to the Kentucky Rules of Civil Procedure, and asks for your support as well.

A pregnant lawyer in Miami, Fla., was forced to defend her request for a continuance when the trial date conflicted with her due date. Despite her doctor urging her not to travel during the final five weeks of her pregnancy, opposing counsel objected to her request for a continuance. The opposing counsel argued, “cases involving illness of counsel or a party does not mandate reversal in all circumstances.” This argument wrongly suggests that pregnancy should be treated similarly to any other medical leave request. Pregnancy deserves its own rule because it is a regular, repeatable, and fairly standard condition experienced by a significant number of practitioners. Furthermore, pregnancy cases have implications for another person’s health – the child’s – not found with other medical conditions. In this case, her motion was eventually granted. However, these objections can greatly discourage other parent attorneys from requesting a secure-leave period.

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