

**STATE BAR OF TEXAS
COMMITTEE ON COURT RULES
PROPOSAL TO CHANGE EXISTING RULE
TEXAS RULES OF CIVIL PROCEDURE**

. **Exact wording of existing Rule:**

RULE 253. ABSENCE OF COUNSEL AS GROUND FOR CONTINUANCE

Except as provided elsewhere in these rules, absence of counsel will not be good cause for a continuance or postponement of the cause when called for trial, except it be allowed in the discretion of the court, upon cause shown or upon matters within the knowledge or information of the judge to be stated on the record.

. **Proposed Rule:**

RULE 253. PARENTAL LEAVE OR ABSENCE OF COUNSEL AS GROUND FOR CONTINUANCE OF TRIAL

(a) For purposes of this rule, “parental leave continuance” means a continuance of a trial setting in connection with the birth or adoption of a child by an applicant, regardless of the applicant’s gender. Three months is the presumptive maximum length of a parental leave continuance, absent a showing of good cause that a longer time is appropriate. This rule does not apply to cases arising under Chapters 54 or 262 of the Family Code.

(1) Any application made under this rule must be filed within a reasonable time after the later of:

(A) the applicant learning of the basis for the continuance; or

(b) the applicant learning the setting of the proceeding for which the continuance is sought.

(2) Application by Lead Attorney. Except where the attorney was employed within ten days of the date the suit is set for trial, an application for parental leave continuance based on the parental leave of a lead attorney in a case must be granted. In cases where an attorney was employed within ten days of the date the suit is set for trial, the right to continuance based on the parental leave of a lead attorney in a case shall be discretionary.

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(3) Application by Attorney Other than Lead Attorney. The court in its discretion may grant an application for parental leave continuance based on the parental leave of an attorney other than the lead attorney in a case if such application is made in accordance with this rule. If the application for parental leave continuance by an attorney other than the lead attorney is challenged by another party that makes a prima facie demonstration of substantial prejudice, the burden shifts to the applicant to demonstrate that the prejudice caused by denying the continuance exceeds the burden that would be caused to the objecting party if the continuance were to be granted. The court must enter a written order setting forth its ruling on the application for parental leave continuance and, if the court denies the requested continuance, the specific grounds for denial shall be set forth in the order.

(b) Except as provided elsewhere in these rules, absence of counsel will not be good cause for a continuance or postponement of the cause when called for trial, except it may be allowed in the discretion of the court, upon cause shown or upon matters within the knowledge or information of the judge to be stated on the record.

. Brief statement of reasons for requested changes and advantages to be served by the proposed new Rule:

The Committee is committed to the concept of parental leave for men and women alike and to minimizing dispute and uncertainty surrounding applications for continuance based on the birth or adoption of a child. Under this rule, an application for parental leave continuance of a trial date would be mandatory for lead attorneys on the case, so long as the attorney is employed more than ten days of the trial setting. Further, applications for continuance made by an attorney other than the lead attorney on a case would be discretionary, and may be denied in the sound discretion of the court when, for example, there would be substantial prejudice to another party, when an emergency or time-sensitive matter would be unreasonably delayed as a result of the continuance, when a significant number of continuances have already been granted, or when the substantial rights of the parties may otherwise be adversely affected.

Attorneys would continue to have the ability to request continuances of settings other than trial settings under the existing Rules.

Shortly after the Committee's unanimous approval of this proposed amendment, the ABA House of Delegates approved Resolution 101B, encouraging all states to promulgate a parental leave rule.