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

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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

Katie Miesner*

ABSTRACT

Although women are enrolling in law school and joining the legal profession in significant numbers, law firms are struggling to retain female lawyers. This poses a significant challenge to achieving gender equity at the highest levels of the legal profession, prompting several important questions: Why are women leaving the profession early; what policies or changes should be implemented to address this problem; and who is best suited to lead these efforts?

One of the main reasons women leave the profession early is due to their disproportionate caregiving responsibilities. In response, both public and private measures have been introduced to address this issue. The Family Medical Leave Act (“FMLA”) was introduced to help equalize and destigmatize caregiving responsibilities between genders, while law firms are offering competitive paid family leave benefits to attract and retain female talent.

Florida has taken a noteworthy step in addressing this problem with the introduction of Rule 2.570, widely referred to as the Parental Leave Continuance Rule, which was officially enacted in 2019 and came into effect on January 1, 2020. This presumptive three-month continuance rule requires judges to grant a lead attorney’s parental leave continuance if specific conditions are met. Parental leave continuance rules like Rule 2.570 are positive steps toward achieving gender parity within the legal profession, and other states should seriously consider implementing similar measures.

I. INTRODUCTION ........................................................................................................... 236

* Juris Doctor, 2024, Candidate at Florida International University (“FIU”) College of Law. Many thanks to Professor Kerri Stone for her feedback throughout the writing process and a special thank you to my family for their continued support and encouragement.
I. INTRODUCTION

In 2017, the Florida Supreme Court drafted and proposed Rule 2.570, better known as the Parental Leave Continuance Rule. Rule 2.570 is a presumptive three-month continuance rule that requires judges to grant a lead attorney’s parental leave continuance if certain conditions are met. The Florida Supreme Court officially enacted the Parental Leave Continuance rule in 2019, and it took effect January 1, 2020.

Florida’s Parental Leave Continuance Rule represents another step towards the legal profession’s path towards gender parity. Gender equity within the legal profession, a profession designed to favor traditional male norms, is a colossal goal. Women are currently entering law school and the profession in high volumes; however, law firms are struggling to retain women lawyers. A major obstacle to achieving gender equity within the

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2 See id.
4 S. Elizabeth Foster, The Glass Ceiling in the Legal Profession: Why Do Law Firms Still Have So Few Female Partners?, 42 UCLA L. REV. 1631, 1649 (1995) (“The profession gives disproportionate advantage to workers with male norms and responsibilities and discriminates against workers with female norms and responsibilities. ... While most male lawyers [can] voluntarily, sacrific[e] other areas of their lives in exchange for prestige and financial reward, female lawyers are often forced by family needs to limit their working hours and sacrifice career advancement accordingly.”).
upper levels of the legal profession is the high attrition rate of women lawyers, which statistically is primarily associated with women’s disproportionate caretaking responsibilities.  

The number of dual income households has dramatically increased over the last several decades. Additionally, the U.S. Census has established that lawyers are most likely to marry within the profession. But data has shown that even in these modern two-lawyer households, women still bear grossly disproportionate caretaking responsibilities.

Several solutions have attempted to equalize this caretaking burden. Nationally, the FMLA was intended to level the playing field across all professions by allowing both genders to take time off for numerous medical conditions without reinforcing the stereotype that only women will need to take time off. The general hypothesis was that the FMLA’s gender-neutral policy would prevent employers from discriminating because both genders average law firm, from associate to equity partner, women’s representation has increased by no more than a percentage point, a statistic that’s been depressingly static for years.


9 Adam Pearce & Dorothy Gambrell, This Chart Shows Who Marries CEOs, Doctors, Chefs and Janitors, BLOOMBERG (Feb. 11, 2016), https://www.bloomberg.com/graphics/2016-who-marries-whom (“High-earning women (doctors, lawyers) tend to pair up with their economic equals, while middle- and lower-tier women often marry up.”).


12 See U.S. DEP’T OF LAB., WAGE & HOUR DIV., THE EMPLOYER’S GUIDE TO THE FAMILY AND MEDICAL LEAVE ACT 2 (2016), https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/employerguide.pdf (“Since its enactment in 1993, the Family and Medical Leave Act (FMLA) has served as the cornerstone of the Department of Labor’s efforts to promote work-life balance and we have worked in support of the principle that no worker should have to choose between the job they need and the family they love.”).
would now be able to take leave. However, law firms’ unique structure prevents the FMLA from being more effective within the profession.

On a more focused scale, law firms themselves have implemented more family-friendly policies aimed at improving attrition and attracting top talent. However, despite offering more generous policies, fathers are shying away from taking advantage of these policies because of the associated stigma and professional setbacks. When men do not take advantage of their family leave, the caretaking burden falls squarely upon women who are now further disadvantaged in their legal careers.

In this paper, I argue that parental leave continuance rules, like Florida’s Rule 2.570, are the most effective next baby step in the legal profession’s long journey towards gender parity because they help to destigmatize family leave. Rule 2.570 is a positive step in encouraging both men and women to take advantage of parental leave policies in the legal profession, which in turn will improve gender equity under the FMLA’s underlying theory. Absent a parental leave continuance rule, these continuances fall entirely within the judiciary’s discretion. But anecdotal evidence indicates that judicial discretion has resulted in parents being denied their parental leave. Additionally, parental leave continuance rules further state bar associations’

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13 Deborah J. Anthony, The Hidden Harms of the Family and Medical Leave Act: Gender-Neutral Versus Gender-Equal, 16 AM. U.J. GENDER, SOC. POL’Y & L. 459, 473 (2008) (“Indeed, gender was largely on the mind of Congress when it passed the FMLA; the stated purpose of the law was to ‘minimize the potential for employment discrimination on the basis of sex by ensuring generally that leave is available for eligible medical reasons (including maternity-related disability) and for compelling family reasons, on a gender-neutral basis.’ Thus, the congressional intent behind the FMLA was clearly to alleviate a pattern of historic and unconstitutional gender discrimination. The law sought to ‘promote the goal of equal employment opportunity for women and men, pursuant to [the Equal Protection] clause.’”) (alteration in original).

14 Heather A. Peterson, The Daddy Track: Locating the Male Employee Within the Family and Medical Leave Act, 15 WASH. U. J.L. & POL’Y 253, 273 (2004) (“Law firms are uniquely affected by the FMLA’s limited application to businesses employing a minimum of fifty employees—many small and mid-size firms remain outside of the Act’s purview.”).


commitment to improving the profession and supporting attorney well-being by improving the legal profession’s sustainability.\textsuperscript{18}

Specifically, this paper will first outline Florida’s new Parental Leave Continuance Rule, then zoom out to place this rule within the legal profession’s broader context. It will articulate the caretaking conundrum plaguing women lawyers and its gendered impact on the legal labor force, and discuss the various steps already undertaken towards gender parity within the profession. Then, this paper argues why other state bar associations should enact similar parental leave continuance rules to destigmatize parental leave within the legal profession and consequently reinvigorate the FMLA’s underlying gender equity goals.

II. MEET FLORIDA RULE 2.570 OR THE PARENTAL LEAVE CONTINUANCE RULE

“If men had to pass something through their body the size of a bowling ball, this would be the first rule of procedure.” – Paul SanGiovanni\textsuperscript{19}

On January 1, 2020, after an almost 3-year process, the Florida Supreme Court effectuated another innovative solution designed to improve the inclusivity entered into force, Rule 2.570—more popularly referred to as the Parental Leave Continuance Rule. The pertinent section provides:

RULE 2.570. PARENTAL-LEAVE CONTINUANCE
(a) Generally. Absent one or more of the findings listed in subdivision (e) of this rule, a court shall grant a timely motion for continuance based on the parental leave of the movant’s lead attorney in the case, due to the birth or adoption of a child, if the motion is made within a reasonable time after the later of:

(1) the movant’s lead attorney learning of the basis for the continuance; or


(2) the setting of the specific proceeding(s) or the scheduling of the matter(s) for which the continuance is sought,\textsuperscript{20}

Before Rule 2.570, granting or denying continuances was entirely within judges’ discretion, and continuances were “routinely granted without opposition for weddings, planned surgical procedures, football games, and Broadway shows.”\textsuperscript{21} However, the alarming anecdotal evidence presented by the Florida Association for Women Lawyers (“FAWL”) in support of Rule 2.570 indicates that women are repeatedly denied continuances for maternity leave purposes.\textsuperscript{22} FAWL submitted comments riddled with anecdotal evidence anonymously submitted by women attorneys highlighting this systemic problem in the legal industry.\textsuperscript{23}

FAWL’s evidence, submitted pursuant to Rule 2.570’s notice and comment period, included stories of a young litigation associate who, after handling all the pre-trial matters and developing a relationship with the client, was accused by opposing counsel—in front of the judge—of purposefully scheduling her cesarean section for the week of trial to secure a continuance and gain an unfair advantage.\textsuperscript{24} As well as a case where opposing counsel equated an attorney filing a motion to continue one of her trials because it conflicted with her due date, with an attorney filing a motion to continue because of an illness.\textsuperscript{25} Additionally, it included a story about a judge who did not find good cause to continue the trial despite the trial date conflicting with the attorney’s maternity leave because “defendant ha[d] other counsel who could represent him at trial.”\textsuperscript{26} Specific examples include:

In 2016, Tara S. Lynn, a Floridian attorney, was in a hearing and at its conclusion, the judge asked her to prepare a document and submit it in five days. Lynn responded that would be impossible; after a difficult pregnancy, she was scheduled for a cesarean section that weekend. The judge gave her 10 days to file the document.\textsuperscript{27}

\textsuperscript{20} In Re: Florida Rule of Judicial Administration 2.570, No. SC18-1554 (Fla. Dec. 19, 2019).
dcomments.pdf.
\textsuperscript{23} Id.
\textsuperscript{25} Id.
\textsuperscript{26} FAWL, supra note 22.
\textsuperscript{27} Blankenship, supra note 21.
Or when then-pregnant Floridian attorney Christen E. Luikart filed a motion for continuance when trial for a products liability suit was scheduled to coincide with her due date. However, opposing counsel objected and suggested in court that Luikart’s request was a strategic delaying tactic. Luckily for Luikart, the judge did not give credence to opposing counsel’s argument, stating “I don’t believe [counsel] got pregnant in response to this case. I do believe [counsel] is entitled to have some time for her to deliver her child and take care of her child before coming back to resume her duties as an attorney.”

Even after the effectuation of Rule 2.570, at least one judge has denied counsel’s motion for continuance on the basis of family leave. In September 2022, a Miami judge warned that he would impose sanctions on a partner at a large law firm, who was lead counsel on a personal injury case, if counsel were to file a fourth motion for continuance. The attorney, citing Rule 2.570, was seeking the continuance because the October trial conflicted with the birth of his first child, and asked for a continuance until August to ensure “his wife’s pregnancy was stable following previous setbacks and difficulties.” Luckily the judge had a change of heart and granted the continuance, but the experience proved that even when there is a rule governing conduct, judges do not always take family leave seriously.

Alarming stories like this are not just unique to Florida, which is why other states should also be concerned with how parental leave continuances are being ignored. For example, in Georgia, a solo practitioner named Stacy M. Ehrisman-Mickle filed a motion for continuance, accompanied by a note from her obstetrician, because her upcoming hearing was scheduled to occur one month after her due date. The judge denied her continuance one week

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31 Weiss, supra note 29; Order, supra note 30, at 1.

32 Order, supra note 30, at 1; Weiss, supra note 29 (“Unfortunately, the legal profession seems to need occasional reminders that the practice of law needs to include civility and a sense of humanity.”).

before the hearing because he found she had “no good cause.”

Ehrisman-Mickle was consequently forced to bring her child to immigration court with her for the hearing. When she arrived, the same judge that denied her continuance became “outraged” and “scolded [her] for being inappropriate for bringing her [child].” First, he questioned her explanation that she could not put her infant in day care because Georgia day care centers do not accept infants less than 6 weeks of age. He then questioned her mothering and commented how her pediatrician must be appalled that she was exposing her daughter to so many germs in court.

Similarly, in New York, defense attorney Deborah Misir was admonished by a federal district judge for engaging in ex parte communications when she called chambers to reschedule a court appearance because of a national conference. In his order, the judge questioned her travel plans because in her previous motions for continuances, Misir moved to postpone the upcoming trial because her obstetrician had advised her “to restrict travel and activity during the remainder of [her] pregnancy.”

To defend herself, Misir wrote to the judge explaining:

Such limited travel, during the sixth month of pregnancy, is quite different than engaging in the long hours, high stress, and daily activity of a lengthy and intense federal criminal trial, including a four-hour driving commute, for two months during the eighth and ninth months of my pregnancy. That is when premature labor and other complications often occur, which could threaten the life of my baby. I could go into labor in the courtroom.

Back in 2015, Rules of Judicial Administration Committee (“RJAC”) member Craig Leen raised a parental leave continuance issue to his fellow members after hearing of multiple instances where a pregnancy-based continuance was denied. Leen’s visceral reaction to those stories was that

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34 Id.
35 Id.
36 Id.
37 Id.
38 Id.
40 See sources cited supra note 39.
41 See sources cited supra note 39.
“attorneys having children should not have to suffer negative consequences for choosing to have a family,” “female attorney[s] should not have to give up their careers,” “male attorneys should not suffer a stigma for choosing to spend time as a parent,” and “clients should not have to lose their attorney when that attorney has a child.” 43 Next, the RJAC and other organizations, conducted research about whether a rule specifically requiring parental leave continuances during court proceedings was necessary. 44

Even though the first draft of Rule 2.570 was submitted back in 2017, it was not approved by the Florida Supreme Court until December 2019, and only after being amended to carve out exceptions for criminal, juvenile, and involuntary civil commitment of sexually violent predatory cases. 45 Florida Bar president, Jimmy Stewart, presented to the Florida Supreme Court:

The rule as proposed advances the Bar’s missions; one is promoting diversity and advancement in . . . our profession . . . . It advances the Bar’s mission to encourage health and wellness and to encourage work/life integration so physically and mentally healthy lawyers better serve their clients. And importantly, as has been addressed, this rule advances the best interests in putting the public and clients first in ensuring they get the lawyers of their choice. 46

Although the Florida Supreme Court did not ultimately enact the final draft of its Parental Leave Continuance Rule 47 until 2019, Florida’s research and proposal caught the attention of other states.

For example, in Houston, Texas, Judge Ravi K. Sandill of the 127th Civil District Court, was inspired by the discussions in Florida about “pitting pregnancy due dates against trial schedules” 48 and signed a standing order that puts parental leave for expecting attorneys in his courtroom before

43 See id. at 2.
44 See id. at 4.
45 Fla. R. Jud. Admin. 2.570 (2022) (“In a case governed by the Florida Rules of Criminal Procedure, by the Florida Rules of Juvenile Procedure, or by the Florida Rules of Civil Procedure for Involuntary Commitment of Sexually Violent Predators, a motion for continuance based on the parental leave of the lead attorney is governed by rule 2.545(e) and by any applicable Florida Rule of Criminal Procedure, Florida Rule of Juvenile Procedure, or Florida Rule of Civil Procedure for Involuntary Commitment of Sexually Violent Predators, rather than by this rule, except that in a case governed by Part III of the Florida Rules of Juvenile Procedure, a motion for continuance based on the parental leave of the lead attorney is governed by Florida Rule of Juvenile Procedure 8.240(d).”).
46 Blankenship, supra note 3.
47 Id.
keeping trials on schedule. Judge Sandill’s standing order reads: “[A]ny lead counsel who has been actively engaged in litigation may seek an automatic continuance of a trial setting for up to 120 days for the birth or adoption of a child.”

Additionally, in response to the research presented to the ABA from various groups and committees who supported Florida’s original Parental Leave Continuance Rule, the ABA published a resolution regarding parental leave continuances in January 2019.

RESOLVED, That the American Bar Association urges the enactment of a rule by all state, local, territorial, and tribal legislative bodies or their highest courts charged with the regulation of the legal profession, as well as by all federal courts, providing that a motion for continuance based on parental leave of either the lead attorney or another integrally involved attorney in the matter be granted if:

a) consented to by all parties
b) or if not consented to by all parties
   i. the motion is made within a reasonable time after the reason for the continuance has been discovered;
   ii. there is no substantial prejudice to another party;
   iii. the criminal defendant’s speedy trial rights are not prejudiced, and
   iv. the judge finds that the request was not made in bad faith, including for purposes of undue delay.

Following the ABA’s resolution, Chief Justice Cheri Beasley, in 2019, announced a new change in the North Carolina’s Supreme Court General Rules of Practice and Rules of Appellate Procedure designed to “ensure that new parents who work in [North Carolina] courts are able to take time to bond with their new children.” This new rule allows litigators in North Carolina

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50 See generally Attorney Comments, In Re: Florida Rule of Judicial Administration 2.570, No. SC17-1611 (Fla. Aug. 31, 2017).


52 Id.

to now take up to 12 weeks during the 24 weeks after the birth or the adoption of a child.\textsuperscript{54}

As of May 2023, Florida and North Carolina remain the only two states who have formally adopted a parental leave continuance, however, similar parental leave continuances modeled off of Florida’s 2017 draft have been proposed to the State Bar of Texas\textsuperscript{55} as well as the State Bar of Minnesota.\textsuperscript{56} Specifically, the Minnesota State Bar Association (“MSBA”) Parental Leave Working Group grounded their parental leave continuance rule proposal in the profession’s responsibility to care for the health of its lawyers.\textsuperscript{57} Additionally, Mothers Esquire, a group “devoted to increasing the retention and promotion rates of women in the law, with particular emphasis on women with children,”\textsuperscript{58} is currently advocating for the Kentucky Supreme Court to enact its own Parental Leave Continuance Rule.\textsuperscript{59}

\section{III. Women in the Legal Profession}

\textit{“Lack of Advancement is not a ‘woman’ problem, it’s a ‘profession’ problem.”} – Patricia Lee Refo\textsuperscript{60}

Women have made great strides in the legal profession. In 1970, only 3\% of lawyers were women; in 2022, that number has grown to 38\%.\textsuperscript{61} Similarly, in 1964 only 877 women were enrolled as first year law students compared with the 23,928 women enrolled as first year law students in

\footnotesize
\begin{itemize}
\item \textsuperscript{54} \textit{Id.; see Katie Scott, North Carolina Supreme Court Enhances Secured Parental Leave for Attorneys}, EMP. BENEFITS (Sept. 12, 2019, 11:05 AM), https://employeefund.co.uk/north-carolina-supreme-court-parental/.
\item \textsuperscript{55} SCAC Meeting Agenda, TEX. SUP. CT. ADVISORY COMM. (Feb. 28, 2020), https://www.txcourts.gov/media/1447107/scac-february-28-2020-meeting-notebook.pdf.
\item \textsuperscript{56} MINN. STATE BAR ASS’N, MSBA PARENTAL LEAVE WORKING GROUP REPORT AND RECOMMENDATION REGARDING A PERSONAL LEAVE RULE (2021), https://www.mnbar.org/docs/default-source/default-document-library/amendments-to-court-rules4be50c4e1d754691b3f0203d94ef3b4c.pdf?sfvrsn=0.
\item \textsuperscript{57} \textit{Id.}
\item \textsuperscript{58} \textit{History, Mothers Esquire}, https://mothersesquire.org/about (last visited Nov. 19, 2022).
\item \textsuperscript{59} \textit{Parental Continuance, Mothers Esquire}, https://mothersesquire.org/per (last visited Nov. 19, 2022).
\item \textsuperscript{61} \textit{Women in the Legal Profession: Demographics}, A.B.A., https://www.abalegalprofile.com/women.php#anchor1 (last visited Nov. 5, 2022) (“In 2010, fewer than one-third of all lawyers (31\%) were women. Twelve years later, in 2022, 38\% of all lawyers were women.”).
\end{itemize}
2021.\textsuperscript{62} Since 2016, women have achieved majority status in ABA-accredited law schools.\textsuperscript{63} There has thus never been such a high percentage of women entering the legal profession.

Numerous factions of the legal community have conceptualized and implemented innovative solutions to help evolve the profession’s inclusivity. The Mansfield Rule, inspired by a winning idea at the 2016 Women in Law Hackathon,\textsuperscript{64} “measures whether law firms have affirmatively considered at least 30% women, lawyers of color, LGBTQ+ lawyers, and lawyers with disabilities” for leadership roles.\textsuperscript{65} During the 2021 year, all 118 law participating law firms achieved Mansfield certification.\textsuperscript{66} The program also observed that its 41 pilot program firms had increased their diversity within the management committees.\textsuperscript{67} Recently, FAWL has received positive attention for its “Nursing Rooms in Courthouses Project”\textsuperscript{68} and for publishing a “Courthouse Lactation Room Handbook”\textsuperscript{69} on its website to help breastfeeding women.\textsuperscript{70}

But, in 1988, an ABA Report predicted that many women merely entering the legal field would not automatically eliminate barriers to women’s advancement to leadership positions in the profession.\textsuperscript{71} This prediction has been realized today. Although large numbers of women are

\textsuperscript{62} Women in the Legal Profession: Women in Law Schools, supra note 5.

\textsuperscript{63} Id. ("Women make up a majority of law school students in the United States: 55.3% in 2021. That’s up from 48.4% in 2000.").

\textsuperscript{64} 2016 Women in Law Hackathon, DIVERSITY LAB, https://www.diversitylab.com/hackathons/ (last visited Nov. 8, 2022) ("The 2016 Women in Law Hackathon—a Shark Tank style pitch competition created by the Diversity Lab in collaboration with Stanford Law School and Bloomberg Law—was one of most innovative and solution-orientated events ever launched with the purpose of advancing women in the legal profession.").

\textsuperscript{65} An Open Letter From the 2020-2021 Mansfield Law Firms’ Chairs & Managing Partners, DIVERSITY LAB, https://www.diversitylab.com/mansfield-rule-4-0/ (last visited Nov. 8, 2022).


\textsuperscript{67} Id. ("Earlier this year, Diversity Lab released promising data on the first 41 firms that participated in the 2017 pilot program. A data analysis found that these firms saw racial and ethnic diversity in their management committees increase more than other firms-by a factor of 30."").


\textsuperscript{69} Lactation Space, FLA. ASS’N WOMEN LAWS., https://fawl.org/page/lactation_space (last visited Nov. 8, 2022).


\textsuperscript{71} Hillary R. Clinton, Report of the Comm’n on Women in the Profession: Part 1, 9 BUS. LAW. UPDATE 6, 7 (1988).
attending law school, and nearly half of all associates (47%) are women, there is a sharp decline in the number of women equity partners (22%) and law firm leadership positions (12% of managing partners, 28% of governance committee members, and 27% of practice group leaders). The ABA hypothesizes that the high attrition rate of women lawyers is a major hurdle to women reaching the upper echelons of the profession.

To understand the reason behind the high attrition rates, the then-ABA president, Hilarie Bass, launched a Presidential Initiative on Achieving Long Term Careers for Women in Law. The ABA’s “groundbreaking initiative was begun because of the troubling fact that far too many experienced women lawyers are leaving the legal profession when they are in the prime of their careers and should be enjoying the most success.” Part of the initiative involved innovative research studies focusing on both men and women lawyers from the nation’s largest law firms to understand why women are leaving the profession. The top reason listed by 58% of women respondents was caretaking commitments.

After caretaking commitments, three other top reasons women cited as major reasons for their departure were billable hour requirements, work-life balance, and rainmaking. But these reasons also fall under caretaking, because it is the vast amount of time and energy that women are having to

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72 See Women in the Legal Profession: Women in Law Schools, supra note 5.
75 Women in the Legal Profession: Women in Law Firms, supra note 73; Smith & Stark, supra note 74.
76 Amanda M. Fisher, New Beginnings: A Feminist Evaluation of Gendered Stigma in the Modern Legal Profession, 19 Rutgers J. L. & Pub. Pol’y 164, 179 (2021) (“Recent research by the ABA focused on why women leave the profession even after fifteen years of practice or more. According to their findings, this attrition is likely part of the reason women are not reaching the upper echelons of the legal profession.”) (footnotes omitted).
77 LIEBENBERG & SCHARF, supra note 10, at i.
78 Id.
79 Id. at 12; Jackson, supra note 7 (“In ‘Walking Out the Door: The Fact, Figures, and Future of Experienced Women Lawyers in Private Practice,’ about 58% of women respondents cited caretaking duties as an ‘important influence on women leaving their firms.’”).
80 LIEBENBERG & SCHARF, supra note 10, at 12.
spend on caretaking that prevents them from being able to meet high billable hour requirements or do more rainmaking.

IV. CARETAKING CONUNDRUM

“Women will have achieved true equality when men share with them the responsibility of bringing up the next generation.” – Ruth Bader Ginsburg

A recent ABA study shows that women are leaving firms at what should be the prime of their career because the insurmountable pressure to bill many hours, originate business, and meet caretaking commitments makes it impossible for women to strike an acceptable work/life balance. This phenomenon is referred to as “death by a thousand cuts.”

Even more striking, the stark gender gap in childcare responsibilities shows that even today, women shoulder disproportionate responsibility for arranging childcare (54% women; 1% men), leaving work for childcare (32% women; 4% men), children’s extracurriculars (20% women; 4% men), evening childcare (17% women; 4% men), and daytime childcare (10% women; 1% men). It is no wonder then that the ABA’s Presidential Initiative on Achieving Long Term Careers for Women in Law study revealed that 58% of women respondents are leaving the legal profession primarily because of their caretaking commitments.

81 See Lea E. Delossantos, A Tangled Situation of Gender Discrimination: In the Face of an Ineffective Antidiscrimination Rule and Challenges for Women in Law Firms—What Is the Next Step to Promote Gender Diversity in the Legal Profession?, 44 CAL. W. L. REV. 295, 303 n.32 (2007). A high billable hour requirement can preclude women from being seriously considered for partnership. This is because, following the disproportionate caretaking theory, family responsibilities may make women unavailable to take advantage of non-billable events or client facing opportunities that can connect them with other sources for their billables. When women bear the burden of all the household’s family responsibilities, they are unable to gain professionally from these opportunities, which may hinder their career down the road. Id.

82 Foster, supra note 4, at 1643–44 (“[A]n increasingly important criterion for partnership admission is a lawyer’s perceived and proven rainmaking, or business-generating, ability. Women are disadvantaged by lack of time for rainmaking activities.”).


84 LIEBENBERG & SCHARF, supra note 10, at 12.

85 Id. at 9.

86 Id. at 12; Nicole Buonocore Porter, The Blame Game: How the Rhetoric of Choice Blames the Achievement Gap on Women, 8 FIU L. REV. 447, 460 (2013) (“It is undoubtedly true that even today, women, on average, spend far more time on caregiving and homemaking tasks than men, even when they work full time.”).

87 Jackson, supra note 7 (“In ‘Walking Out the Door: The Fact, Figures, and Future of Experienced Women Lawyers in Private Practice,’ about 58% of women respondents cited caretaking duties as an
Although theoretically childcare is not gendered, there is a “gendered pattern to labor force participation with women being seven times more likely to be working part-time or report that they are unemployed.”88 Unsurprisingly, most of the surveyed women report childcare as the reason behind this decision.89

Women often experience a “motherhood penalty” associated with their caretaking responsibilities while men experience a “fatherhood premium.”90 In an experiment done by Cornell, a focus group was given resumes with identical qualifications apart from a line that listed “parent teacher association coordinator” under relevant activities.91 While women with the parent teacher association coordinator role were half as likely to be chosen, men with the same line were more likely to be called back than men without.92

Even when women choose to return, or are hired back, women attorneys at large firms feel “professionally handicapped if they take maternity leave”93 and are forced to choose between the “mommy track” and the “partnership track.”94 Furthermore, the accompanying unconscious bias that mother-attorneys are less committed to their career or that they lack the availability for high profile matters makes it difficult for mothers returning from parental leave to obtain enough high-quality work for career advancement.95 A

89 Id.; Fiona M. Kay et al., Undermining Gender Equality: Female Attrition from Private Law Practice, 50 L. & Soc’y Rev. 766, 773 (2016) (“In a survey of the University of Virginia law school graduates, Monahan and Swanson (2009) concluded the gender difference in law graduates’ full-time employment was largely accounted for by having children at home, though two-thirds of women with two children at home continued to work full-time.”).
92 Id. at 1316–17; Djak, supra note 90, at 530 (“Women thus not only bear the physical cost of pregnancy, childbirth, and nursing, but are stigmatized as uncommitted and incompetent for taking an active role in the education of their children.”).
94 Id.
95 Indira K. Sharma, Unconscious Bias Awaits Attorney Mothers After Maternity Leave, BLOOMBERG L. https://www.americanbar.org/groups/young_lawyers/projects/no-limits/unconscious-
common pattern is that a woman returns from maternity leave, and although she is not let go for taking maternity leave, when she is unable to obtain enough work to meet her high billable hours requirement, she is let go.\(^96\)

As the Cravath scale continues to hike the salaries of associates,\(^97\) law firms are consequently requiring higher billable hours. An in-depth study of professional service firms revealed that 64% of full-time lawyers described “long hours” as “a highly important part of performing well.”\(^98\) Higher-ups at firms set the tone, and if “all the powerful people are working 100 hours a week, then that’s communicating something back about what’s valued.”\(^99\) However, these staggering billables render it nearly impossible for women who have primary caregiving responsibilities to participate.\(^100\)

It is important to note that data has established that women assuming a disproportionate load of caretaking responsibilities is not due to fathers’ lack of desire to be more involved in childrearing.\(^101\) A vast majority of fathers rated their children as high priorities in their lives;\(^102\) more than three-fourths of fathers expressed a desire to spend more time with their children,\(^103\) and more than two-thirds believe that caregiving should be divided evenly.\(^104\) However, there is theory, and then there is reality. Reality reveals that most

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\(^99\) Id.

\(^100\) Foster, *supra* note 4, at 1651 (“The popular portrait of the ideal professional woman continues to reflect male norms in which ‘[p]ersonal history—such as marriage, parenthood, and possibly divorce—is extraneous.’ Such norms define the institutional rules of the game, and those who play by these rules may succeed. Yet the number of billable hours required for success in the 1990s deems it nearly impossible to participate in a legal practice while retaining primary caregiving responsibility for others. Indeed, the time demands of most law firms now approach the impossible for anyone—female or male—who needs or wants to have life consist of anything more than a job.”).


\(^102\) Id. at 2 (“The nearly 3,000 fathers we have interviewed or surveyed have clearly demonstrated signs that things are changing. The vast majority of fathers rated their children as their top priority in life.”).

\(^103\) Id. (“More than three out of four expressed their desire to spend more time with their children than they do presently.”).

\(^104\) Id. (“More than two out of three fathers said that caregiving for their children should be a 50/50 proposition and wanted to evenly divide this responsibility with their spouses. And slightly more than half said they would seriously consider the possibility of being full-time, at-home dads . . . .”).
fathers went back to work after only one week or less. A father’s inability to be an active co-parent early on in their children’s lives sets a caretaking precedent that is difficult to change. This current caretaking system is equally disadvantageous to both genders: women are being hindered professionally, and men are unable to be more involved in their children’s lives.

V. **The First Stab: The FMLA**

“Family and medical leave is a matter of pure common sense and a matter of common decency.” – Bill Clinton

The Florida Bar’s Special Committee on Parental Leave in Court in its Final Report and Recommendation of the Committee properly recognized the importance of Rule 2.570 and its potential impact on gender equity in the profession:

> Adopting and expanding policies that promote parental leave would serve as a meaningful step towards closing the gender gap as well as encourage more male attorneys’ participation in paternity leave. When fathers take leave, it increases the opportunity and ability of mothers to engage in paid work, with a positive effect on female labor force participation as well as women’s wages.

The committee’s logic behind the Parental Leave Continuance Rule mirrors Congress’ logic behind the Family Medical Leave Act (“FMLA”). The FMLA was Bill Clinton’s first major piece of legislation and was intended to be “an anti-discrimination measure that would promote gender

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105 *Id.* at 3 (“In our research, the majority of fathers take only about one day of leave time to bond with their new children for every month the typical mother takes. In our earlier study, 76% of fathers went back to work after one week or less and 96% after two weeks or less.”).

106 *Id.* (“This failure of men to be active co-parents in the first few months of the children’s lives sets a pattern in motion that is difficult to change. For three, four, six months, or even more, the mother develops a close bond with her child as well as the confidence and competence to become the primary caregiver. The father is immediately cast in the role of a supporting actor. Unless some extraordinary event occurs—for example the father takes an extended leave following the mother’s return to work—there seems to be a low likelihood that the roles will be reversed or even equalized.”).


108 See 29 U.S.C. § 2601 (articulating that one purpose behind the FMLA is to “minimize[] the potential for employment discrimination on the basis of sex by ensuring generally that leave is available for eligible medical reasons (including maternity-related disability) and for compelling family reasons, on a gender-neutral basis”).
equality in the workplace by providing women and men with the ability to take job-protected leave to care for sick family members or at the birth of a child.”

When passed, the FMLA was widely celebrated because up until 1993, the United States was the only industrialized nation in the world that lacked a national policy guaranteeing its workers some kind of maternity, family, or medical leave.

Congress observed the increased number of single-parent and dual-earner households and established the FMLA to create job-protected leave. The FMLA gives certain employees the right to 12 weeks of unpaid leave per year to care for a newborn, a newly adopted child, a seriously ill family member, or to attend to one’s own serious health condition.

Employers are prohibited from interfering with, restraining, or denying the exercise of any FMLA right.

“An employer is [also] prohibited from discriminating or retaliating against an employee or prospective employee for having exercised or attempted to exercise any FMLA right.”

When Congress enacted the FMLA, one of their goals was to equalize the childcare burden by offering caretaking leave to both men and women. Although Congress’ language was gender neutral, it is evident that the main target of the FMLA is females, specifically mothers. Congress surmised that because child care responsibilities usually fall on the shoulders of women, requiring employers to grant employees twelve weeks of extended leave would protect women from gendered employment discrimination by “lessen[ing] the burden on working women.” Additionally, the FMLA would support national interests in “preserving family integrity” by

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110 Megan A. Sholar, The History of Family Leave Policies in the United States, ORG. AM. HISTORIANS, https://www.oah.org/tah/issues/2016/november/the-history-of-family-leave-policies-in-the-united-states/ (last visited Nov. 19, 2022) (“Despite the shortcomings of the FMLA, its passage was a major accomplishment. The law would go on to help millions of workers by ensuring their job security while on leave. Moreover, it was a symbolic victory that demonstrated the significant role that policy makers can and should play in improving the work-life balance of American workers.”). See generally MEGAN A. SHOLAR, GETTING PAID WHILE TAKING TIME: THE WOMEN’S MOVEMENT AND THE DEVELOPMENT OF PAID FAMILY LEAVE POLICIES IN THE UNITED STATES (2016).

111 García, supra note 109, at 6.


114 Id.

115 See Moran, supra note 112, at 494; see also García, supra note 109, at 5–6.


balancing an employee’s personal familial care needs with their employer’s economic operational needs.\textsuperscript{118}

The FMLA was intentionally designed to further gender equity in the workplace because theoretically if men and women would both leave their jobs and share the childrearing burden, both candidates would be equally unattractive to employers, allowing women to achieve equality in the home and in the workplace.\textsuperscript{119} This legislation sought to combat societal norms of women bearing the primary responsibility for family caretaking at the expense of their working lives by providing leave to men.\textsuperscript{120} In \textit{Nevada Department of Human Resources v. Hibbs}, the first significant FMLA case, Justice Rehnquist articulated these goals:

By creating an across-the-board, routine employment benefit for all eligible employees, Congress sought to ensure that family-care leave would no longer be stigmatized as an inordinate drain on the workplace caused by female employees, and that employers could not evade leave obligations simply by hiring men. By setting a minimum standard of family leave for all eligible employees, irrespective of gender, the FMLA attacks the formerly state-sanctioned stereotype that only women are responsible for family caregiving thereby reducing employers’ incentives to engage in discrimination by basing hiring and promotion decision on stereotypes.\textsuperscript{121}

However, despite the FMLA’s well-intentioned goals, there are several shortcomings specific to law firms that prevent the FMLA’s effectiveness.\textsuperscript{122} First, there is the size. The FMLA is applicable to businesses employing a minimum of fifty employees—meaning small and some midsized firms are automatically precluded from coverage.\textsuperscript{123} Courts have also held that law firm partners are not considered “employees” under the FLSA,\textsuperscript{124} depriving

\begin{itemize}
\item[\textsuperscript{118}] Id. at 258–59.
\item[\textsuperscript{119}] See generally Moran, supra note 112, at 496–98.
\item[\textsuperscript{120}] Garcia, supra note 109, at 5–6.
\item[\textsuperscript{122}] Peterson, supra note 14, at 273–74.
\item[\textsuperscript{123}] 29 U.S.C. § 2611(4)(A) (“In general [t]he term ‘employer’—(i) means any person engaged in commerce or in any industry or activity affecting commerce who employs 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year[.]”); Peterson, supra note 14, at 273 (“Law firms are uniquely affected by the FMLA’s limited application to businesses employing a minimum of fifty employees—many small and mid-size firms remain outside of the Act’s purview.”).
\item[\textsuperscript{124}] U.S. DEP’T OF LAB., WAGE & HOUR DIV., supra note 12, at 1, 17, 58, 67 (holding that FLSA definitions and standards for key terms are applicable for the FMLA analysis).
\end{itemize}
partners of the FMLA’s protections. This means that not only are partners precluded but also that partners are not able to be counted as one of the fifty employees needed for an organization to be covered under the FMLA.

Additionally, the FMLA’s “highly compensated employee exception” can also curtail partners from being able to take advantage of the FMLA’s protections and shift the caretaking burden over to their partners. The highly compensated employee exception “excuses an employer’s normal duty to reinstate employees who take advantage of the FMLA’s leave provisions when they are among the highest-paid 10% of all employees within seventy-five miles of the worksite and their reinstatement would otherwise result in substantial harm to the employer.” Particularly when men constitute so many of the highest earners in the legal field.

VI. SECOND STAB: LAW FIRMS

“[S]aying you’re female- and family-friendly doesn’t mean much if it’s not ingrained in your firm’s culture.” – Kate Reder Sheikh

Firms have an interest in achieving gender diversity, and the high attrition of women lawyers impedes that goal. Astronomical attrition rates


128 Peterson, supra note 14, at 270.

129 See Women in the Legal Profession: Women in Law Firms, supra note 73; see also Smith & Stark, supra note 74 (noting that the percentage of female attorneys relative to male attorneys drastically drops off at the partner level, and even further at the senior partner level).


131 Lucy Leach, Transforming Women’s Leadership in the Law Global Report 2020: How to Improve Gender Diversity at Senior Levels Within Law Firms, THOMSON REUTERS (Oct. 5, 2020), https://www.thomsonreuters.com/en-us/posts/legal/twll-global-report-2020/ (“Gender diversity in law firms positively impacts law firm success, research shows, with gender diverse teams in law firms achieving 10% higher client spend. More widely, organizations in the top quartile for gender diversity have been shown to be 15% more likely to achieve above average financial returns.”).

132 Anne Brafford, New Strategies for Engaging and Retaining Women Lawyers, L. PRAC. TODAY (Feb. 14, 2017), https://www.lawpracticedaily.org/article/engaging-retaining-women-lawyers/ (“Attrition of women lawyers is one big obstacle to improving gender diversity at the top. When asked
and a lack of diversity cost firms valuable clients as in-house counsel and large institutional clients who are prioritizing diversity within their own companies also look to a firm’s attrition rates when deciding who to work with.\(^\text{133}\) For example, in 2004, Rick Palmore, the CLO of Sara Lee and member of the Board of Directors of the Association of Corporate Counsel (“ACC”), authored a Diversity Call to Action asking companies to pledge to make decisions regarding which law firms to hire based in significant part on the diversity performance of the firms.\(^\text{134}\)

Internally, associate attrition is also costly to law firms in terms of “money, morale, reputation, and time.”\(^\text{135}\) As starting salaries for associates climb higher and higher,\(^\text{136}\) law firms are not profiting off associates until they reach their third or fourth year.\(^\text{137}\) However, research shows that associate turnover rates at AmLaw 100 firms are up to 25%,\(^\text{138}\) and within five years more than two thirds of associates leave their law firm.\(^\text{139}\)

Law firms invest substantial time and resources into training women associates, and those investments are lost when their associates leave.\(^\text{140}\) As

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\(^\text{133}\) See, e.g., Joan C. Williams, The Politics of Time in the Legal Profession, 4 U. ST. THOMAS L.J. 379, 399 (2007) (“‘Firms losing associates is a big issue for us,’ one in-house counsel told PAR, ‘and frankly it has caused us to move away from certain firms.’ Corporations are implementing diversity among their own leaders, and they expect their lawyers to do so, too.”).

\(^\text{134}\) Rick Palmore, A Call to Action: Diversity in the Legal Profession, ASS’N CORP. COUNS. (Oct. 2004), https://www.acc.com/sites/default/files/resources/vl/public/Article/16074_1.pdf (“As Chief Legal Officers, we hereby reaffirm our commitment to diversity in the legal profession. Our action is based on the need to enhance opportunity in the legal profession and our recognition that the legal and business interests of our clients require legal representation that reflects the diversity of our employees, customers, and the communities where we do business. In furtherance of this renewed commitment, this is intended to be a Call to Action for the profession generally and for our law departments and for the law firms with which our companies do business.”).


\(^\text{137}\) Williams, supra note 133, at 401.


\(^\text{139}\) Williams, supra note 133, at 401 (“Research has shown that, given such high starting salaries, law firms do not make a profit on associates until they reach their third or fourth year; but, within five years, more than two-thirds of associates leave their law firms, usually to seek better work-life balance.”).

\(^\text{140}\) LIEBENBERG & SCHARF, supra note 10, at 12; Steven Rushing, The Cost of Law Firm Associate Turnover, ABOVE L. (May 13, 2022, 12:42 PM), https://abovethelaw.com/2022/05/the-cost-of-law-firm-
one partner at a large New York City law firm stated, “I’ve been increasingly persuaded that we’ve been kidding ourselves to hire and train all these women and then lose them. As an economic proposition that’s an absurdity.”

In response, numerous large law firms are rolling out or enhancing their family leave programs to “reflect [their] firm’s ongoing commitment to support [their] lawyers and attract the best talent.” A majority of firms view offering market competitive parental leave policies as strategically important, and are offering parental leave policies ranging from 10 to 22 weeks. Some more creative ways law firms have sought to address childcare needs are by providing onsite childcare, daycare contracts, or offering back-up childcare and elder care. However, it is not enough that law firms offer generous family leave if the employees do not take it.

There are numerous unique professional demands within the legal profession that may prevent an attorney from taking advantage of their firm’s personal leave offerings. For example:

The attorney preparing to take leave must determine the best time to discuss the issue with partners, staff, and clients, and the timing of these discussions is impacted by many factors, including trial strategy, discovery conferences, deadlines, extensions, and continuances. Attorneys often must consider when to stop taking on new matters and may be forced to seek substitute counsel to monitor their caseload. In a profession in which success relies heavily on client service and caseload, attorneys forced to seek substitute counsel due to parental leave are put at a professional disadvantage that can hinder careers. Workers face tensions when trying to balance their roles as professionals and parents, especially

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141 Williams, supra note 133, at 401.
143 Id.; see generally Work/Life & Benefits, supra note 15.
when there are adverse professional consequences to prioritizing family over work.145

Another obstacle that prevents legal professionals, particularly men, from availing themselves of their firm’s parental leave policies is that paternity leave is highly stigmatized.146 Destigmatizing paternity leave requires more than firms just offering paid gender-neutral policies; it requires fostering an alternative office culture where fathers feel free to use paternity leave absent fear of retribution, financial harm, or mockery.147 A 2016 Pew Research study showed that a majority of men surveyed (54%) needed or desired leave time, but refrained because they risked losing their jobs and 42% of men believed that time off could inhibit their job advancement.148 Sadly, the statistics show that men’s fears are substantiated.

Men who choose to fulfill family obligations by decreasing work were found to be subject to the same gender stereotyping and negative judgments about their commitment to the firm that women face.149 Similarly, studies showed that men who took extended parental leave of absence were financially harmed because they were given lower overall performance ratings and lower bonus recommendations.150 A longitudinal study from the University of Oregon supports these fathers’ economic fears because the study revealed “when men reduced their hours for family reasons, they lost 15.5% in earnings over the course of their careers, on average, compared with a drop of 9.8% for women and 11.2% for men who reduced their hours for other reasons.”151


146 Alexandra Navarre-Davis, Perspectives on Paternity Leave Bias in Law Firms, A.B.A. (May 16, 2019), https://www.americanbar.org/groups/litigation/committees/diversity-inclusion/articles/2019/spring2019-paternity-leave-bias-law-firms/; Djak, supra note 90, at 536 (“Nationwide, eighty-nine percent of fathers take some time off after their baby’s birth, but two-thirds take one week or less, and usually use sick or vacation days to do it[,]”).

147 See Navarre-Davis, supra note 146; Djak, supra note 90, at 537.


151 Djak, supra note 90, at 537 (“A University of Oregon study found that taking time off for family reasons reduced men’s earning capacity by about 15% over the course of their careers while women lost about 10%. One study found that controlling for other factors, men who requested time off were at greater risk of being demoted or laid off because they were perceived to have feminine traits such as weakness and uncertainty. In another study, men who sought flexible work arrangements were given lower job evaluations and rated lower on masculine prescriptive traits.”) (footnotes omitted).
Furthermore, anecdotal evidence from father-attorneys describes attorneys who took paternity leave being “ridiculed by one counsel for openly admitting [he] was on paternity leave.” Recently, Tucker Carlson mocked Secretary of Transportation Pete Buttigieg on Fox News for taking paternity leave following the adoption of his twins saying, “[p]aternity leave they call it, trying to figure out how to breastfeed, no word on how that went.”

VII. THIRD TIME’S THE CHARM: THE ABA AND PARENTAL LEAVE CONTINUANCE RULES

“The instances of attorneys being denied continuances based on the need for parental leave following the birth or adoption of a child shows that the ABA’s voice and opinion is necessary to lead the way on this matter.”

– Tommy D. Preston, Jr.

As this paper has explored, the current solutions intended to address the disproportionate caretaking burden that women lawyers shoulder are not having the desired impact. Therefore, it is time for a new solution. Parental leave continuance rules provide an opportunity for state bar associations to implement procedural rules in accordance with their duty to look after their member’s wellbeing, which will incidentally further gender parity within the profession.

In 2017, the ABA published the findings and recommendations of its National Task Force on Lawyer Well-Being after a 2016 study revealed the alarming parade of difficulties plaguing both currently practicing lawyers


154 A.B.A. NAT’L TASK FORCE ON LAW. WELL-BEING, supra note 18, at 25.

155 See id.

156 Id. at 7 (“[The Study] found that between 21 and 36% qualify as problem drinkers, and that approximately 28%, 19%, and 23% are struggling with some level of depression, anxiety, and stress, respectively. The parade of difficulties also includes suicide, social alienation, work addiction, sleep deprivation, job dissatisfaction, a ‘diversity crisis,’ complaints of work-life conflict, incivility, a narrowing of values so that profit predominates, and negative public perception. Notably, the Study found that younger lawyers in the first ten years of practice and those working in private firms experience the highest rates of problem drinking and depression.”).
and law students. Well-being is inextricably intertwined with a lawyer’s ethical duty of competence\[^{157}\] and “includes [a] lawyer[’]s ability to make healthy, positive work/life choices to assure . . . a quality of life within their families and communities.”\[^{158}\]

According to the ABA’s State of the Legal Profession, the top two reasons for having negative experiences at a firm are “[n]ot much time for self” and “[n]ot much time for family.”\[^{159}\] “Half of surveyed lawyers believe they do not have enough time for themselves or their families, and nearly three-quarters of lawyers with children have difficulty balancing professional and personal demands.”\[^{160}\]

In 2019, the ABA released a resolution urging state bar associations to enact a parental leave continuance rule like Florida’s.\[^{161}\] In fact, the ABA’s rule went even farther than Florida’s and permitted attorneys other than the lead attorney on a case to take advantage of presumptive parental leave continuances.\[^{162}\] The ABA stressed that parental leave continuance rules help “[p]romote full and equal participation in the association, our profession, and the justice system by all persons.”\[^{163}\] This is because they permit an individual to be represented by the attorney of their choice and helps facilitate equal participation by ensuring both men and women are not being driven out of the legal profession because of caretaking responsibilities.\[^{164}\]

**VIII. CONCLUSION**

“The journey of a thousand miles begins with a single step.” – Lao Tzu

As I mentioned in the beginning of this paper, the journey towards achieving gender parity in the legal profession is a long one. The FMLA and the efforts of law firms to offer generous family leave policies each represent steps along this journey. And now, the Florida Supreme Court’s new Parental Leave Continuance Rule is standing on the shoulders of those previous steps and has the potential, if other states enact similar parental leave continuance rules, to reinvigorate the FMLA’s underlying equitable purposes, bringing the legal profession closer to its parity goals.

\[^{157}\] *Model Rules of Prof. Conduct r. 1.1 (A.M. Bar Ass’n 1983).*


\[^{160}\] Cunningham, *supra* note 98, at 980.

\[^{161}\] *See* Preston, *supra* note 51.

\[^{162}\] *Id.* at 3.

\[^{163}\] *Id.* at 4.

\[^{164}\] *Id.* at 5.
As more women enter the legal profession, both law firms and bar associations have a duty to maintain diversity by curbing attrition. As noted in the ABA’s study, a major reason women leave the profession is due to caretaking responsibilities. State bars, specifically following the urging of the ABA, should help their attorneys achieve work life balance by establishing rules that do not make their members choose between caring for their family and caring for their livelihood. Parental Leave Continuance rules, like Florida’s, create a presumption that attorneys are more than their jobs, and serves as a meaningful step in the journey to close the gender gap in the upper echelons of the legal profession.

Congress was on the right track with their theory that if caretaking responsibilities are neutralized, the genders will be equally disadvantaged from the employer’s perspective, finally giving women a chance to match their male counterparts. Similarly, if state bar associations enact a parental leave continuance rule like Florida’s, more male attorneys will avail themselves of paternal leave policies because of the rule’s destigmatizing impact and result in less women leaving the profession at what should be their prime.

165 See generally LIEBENBERG & SCHARF, supra note 10.
166 See 29 U.S.C. § 2601(a)(5).