

Supreme Court of Florida

No. AOSC09-30

IN RE: STATEWIDE STANDARDS FOR ELECTRONIC
 ACCESS TO THE COURTS

ADMINISTRATIVE ORDER

The judicial branch of Florida has long embraced the use of information technologies to increase the effectiveness, efficiency, and accessibility of the courts. Technology holds great promise for both the courts and court users. Technology has and will continue to impact court operations, similar to the way in which technology has changed business practices in other organizations. This Court recognizes that the transition of Florida's courts from paper-based information management to systems that rely primarily on digital records represents a fundamental change in the internal operations of the courts. Accordingly, care must be taken to ensure that this transformation is accomplished in a deliberate and responsible manner. As this Court said with regard to electronic access by the public to court records, "these issues are not merely

technical but are central to the future functioning of the courts and to relations between citizens and their government.”¹

Section 16, Chapter 2009-61, Laws of Florida (Committee Substitute for Senate Bill 1718), provides:

The Legislature requests that, no later than July 1, 2009, the Supreme Court set statewide standards for electronic filing to be used by the clerks of court to implement electronic filing. The standards should specify the required information for the duties of the clerks of court and the judiciary for case management.

Electronic filing of court records primarily concerns the electronic transmission of records and supporting documentation from lawyers and litigants to the clerks of court, and further transmissions among first parties to an action, other parties, and clerks. This technology can make the process of submitting documents to the court and to other parties simpler, quicker, and less costly. It can also reduce the costs incurred by clerks of court for storing and transferring documents.

Electronic filing by itself does not effectuate migration of a court to a digital record system. Electronic filing is only one component, albeit perhaps the most critical component, of a comprehensive environment in which other components of the court process are also automated. This broader digital environment can be

¹ In Re: Implementation of Report and Recommendations of the Committee on Privacy and Court Records, AOSC06-20 (Fla. June 30, 2006).

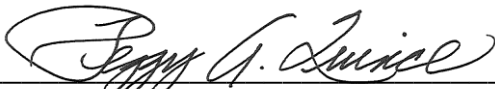
understood as electronic access to the courts, which integrates electronic filing, electronic records management, automated scheduling, electronic records access, as well as other aspects of the court process. Electronic filing systems implemented in the Florida judicial branch must be compatible with this Court's goal of migration toward a comprehensive digital environment in an orderly fashion.

Related to the implementation of electronic filing is the concept of a single statewide Internet portal for electronic access to and transmission of court records to and from all Florida courts. This Court has previously endorsed the portal concept and directed the Electronic Filing Committee of the Florida Courts Technology Commission to develop a plan for implementation of the Florida Courts E-Portal. Thus, electronic filing systems must also be compatible with the Florida Courts E-Portal.

The Florida Courts Technology Commission is charged with advising the Chief Justice and Supreme Court on matters relating to the use of technology in the Judicial Branch. The Florida Courts Technology Commission and the Electronic Filing Committee have reviewed and proposed revisions to the electronic filing standards. The attached Florida Supreme Court Statewide Standards for Electronic Access to the Courts are hereby adopted, incorporated herein by reference, and shall be effective upon the signing of this order. These standards may be revised

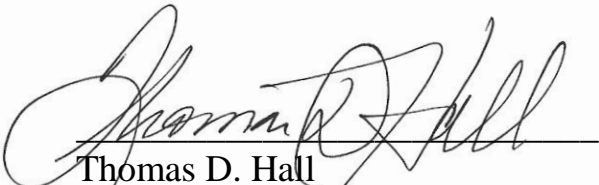
by the Court in the future, as may be necessary to achieve the mutual objectives of the judicial and legislative branches as identified in Chapter 2009-61, Laws of Florida.

DONE AND ORDERED at Tallahassee, Florida, on July 1, 2009.

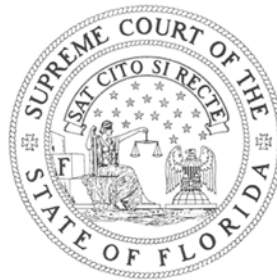


Chief Justice Peggy A. Quince

ATTEST:



Thomas D. Hall
Clerk, Supreme Court



*Florida Supreme Court
Standards for Electronic Access to the Courts
June 2009*

TABLE OF CONTENTS

1.0. EXECUTIVE SUMMARY	4
2.0. DEFINITIONS	6
3.0. FLORIDA COURTS E-PORTAL (E-PORTAL)	6
3.1. E-PORTAL FUNCTIONALITY	8
4.0 REQUESTS FOR ELECTRONIC TRANSMISSION AND FILING OF DOCUMENT INITIATIVES	9
4.1. E-FILING STANDARDS	9
4.1.1. SIZE OF FILING	9
4.1.2. DOCUMENT FORMAT	9
4.1.3. ELECTRONIC COVER SHEETS - DATA ACCOMPANYING SUBMITTED DOCUMENTS	9
4.1.4. UNIFORM PERSONAL IDENTIFICATION	10
4.1.5. ELECTRONIC NOTIFICATION OF RECEIPT	10
4.1.6. SECURITY	10
4.1.7. FILING PROCESS AND PAYMENT	10
4.1.8. WEB BASED APPLICATION STANDARDS	10
4.1.9. LEGAL TRANSMISSION ENVELOPE	11
4.1.10. COURT CONTROL OF COURT DOCUMENTS - DATA STORAGE	11
4.1.11. LOCAL VALIDATION	11
4.1.12. DOCUMENT FIDELITY AND AUTHENTICITY	11
4.1.13. EMBEDDED HYPERLINKS	11
4.1.14. EXHIBITS	12
4.1.15. DOCUMENTS EXEMPT FROM PUBLIC ACCESS	12
4.1.16. ARCHIVING	12
4.1.17. ACCOMMODATION OF PAPER SUBMISSIONS	12
4.1.18. PUBLIC ACCESS	12
4.1.19. SELF-REPRESENTED LITIGANTS	12

4.1.20. ADDING A PARTY	12
4.2. TECHNICAL FAILURE	13
4.2.1.DETERMINATION OF FAILURE AND EFFECT ON DUE DATE	13
4.2.2.PROCEDURE WHERE NOTICE OF ELECTRONIC FILING NOT RECEIVED	13
4.2.3.RETRANSMISSION OF ELECTRONIC FILING	13
4.2.4.SYSTEM AVAILABILITY AND RECOVERY PLANNING.....	13
4.3. CONSIDERATION OF RECOMMENDED COURT REQUIREMENTS	15
4.3.1 ACCESS.....	15
4.4. ADA AND TECHNOLOGY COMPLIANCE	15
ACCESSIBILITY REQUIREMENTS	15
5.0. ELECTRONIC SERVICE	16
5.1. COMPUTATION OF TIME	16
6.0. DELIVERY OF ELECTRONIC CASE FILES.....	16
7.0. ELECTRONIC SIGNATURES	17
7.1. SIGNATURES OF REGISTERED USERS	17
7.2. MULTIPLE ATTORNEYS OF RECORD SIGNATURES	18
7.3. ORIGINAL DOCUMENTS AND/OR HANDWRITTEN SIGNATURES	18
7.4. JUDGE SIGNATURE	18
8.0. CASE MANAGEMENT SYSTEM DESIGN FRAMEWORK	18
OVERVIEW	18
APPELLATE CASE MANAGEMENT.....	19
DESIGN GUIDELINES	19
CURRENT DATA COLLECTION SYSTEMS	21
SECURITY AND CONFIDENTIALITY	22
OTHER STANDARDS	22
9.0. GOVERNANCE	22

1.0. EXECUTIVE SUMMARY

On May 27, 2009, Chapter 2009-61, Laws of Florida (Committee Substitute for Senate Bill 1718), was signed into law and it requests that by July 1, 2009, the Court establish e-filing standards to be used by the clerks of court to implement electronic filing. This legislation requests that the standards specify the information that the clerks of court need to perform their duties and that the judiciary needs for case management, and directs the clerks of court to begin implementation no later than October 1, 2009.

The judiciary welcomes this legislative support for its constitutional operations and functions, and through the implementation of the attached Standards, will work with the Legislature in making Florida's courts fully capable of functioning in our modern electronic age.

The term "E-Filing" used in Senate Bill 1718 in a strict sense means the electronic delivery of documents to the court. In its broader and more accepted usage, however, e-filing is used to describe electronic access to the courts in the future, where the public, their judges, the clerks, lawyers, and all who participate in our judicial system can fully utilize modern technology to obtain greater efficiencies in and access to our court system. Through SB 1718 and other initiatives the Florida courts of today will be able to effectuate electronic access to the courts in the future.

The people of the State of Florida, whether through their judicial officers, the clerks of court, their representatives (state attorneys, public defenders and private attorneys) or directly themselves, will benefit greatly from electronic access to the courts. The Commission realizes that requiring all court users to file their documents electronically would be more cost-effective than requiring courts to receive and maintain paper as well as electronic records. However the Commission also recognizes that requiring e-filing may restrict access to Florida's courts for some users. The Commission will continue to study and discuss all of the ramifications of implementing e-filing and the means of effecting e-filing throughout the state so that the people's access to their courts will not be limited by a transition to this new means of transmitting records to courts.

An electronic court file, fully accessible by all participants in the judicial system subject to the limits of Florida law and the Florida Constitution, will provide significant opportunities for increased efficiencies and ultimate cost savings to the Judicial Branch. These standards fully promote these goals through better case management, and modern electronic access to and use of an electronic record for all parties in recognition of and compliance with both the principle of public access and the legitimate right to privacy.

Electronic filing is an integral part of the Florida Courts Case Management program. Statewide standards provide for a single uniform access point, uniform standards and data elements for filing, docketing, calendaring, workflow, document development and case management. These Standards are embodied in a living document that is expected to be updated and improved as technology, business requirements, and other regulations change.

The Florida Courts E-Portal (E-Portal) is included as an essential part of these standards. The E-Portal will be a single uniform point of access for all state court electronic court filing. This E-Portal will be designed to ensure one uniform access interface throughout the state. All

electronic court filings shall be processed through the E-Portal once it is established, and any other electronic filing access methods must be approved by the FCTC E-Filing Committee. Any local e-filing or related systems that are currently operating or in the process of development must become compatible with the E-Portal when it is approved by the Florida Courts Technology Commission. Continued approvals of clerk e-filing requests are contingent upon those improvements becoming compatible with the E-Portal.

The standards provide for electronic filing of court documents and delivery of electronic data to populate the local court and clerk of court databases and the creation of an electronic court file. The electronic data elements submitted in the cover sheets that are required by rules of procedure shall be received by the management service and available to populate existing and future case management systems developed by the court and/or clerk of court.

The electronic file created by this system shall be delivered electronically by the clerk to the judiciary in a form and manner that provides an improved workflow and work environment for the judiciary. The judiciary must approve any e-filing system application or e-filing system now implemented that intends to deliver the electronic files without the hard copy to the judiciary, as well as any electronic workflow and electronic judicial work environment.

This document contains four primary sections:

Florida Courts E-Portal – On April 30, 2008, the Supreme Court, in conference, approved the “E-filing Operational Policies, Florida Statewide Electronic Filing Portal” document. The document addressed the concept for a statewide electronic access to and transmission of court records to and from all Florida courts. To enable the implementation process to move forward, the Court intends to establish competitive solicitation to obtain assistance from qualified vendors.

Standards for Electronic Filing - This updated version of the electronic filing standards has been developed and recommended by the Florida Courts Technology Commission and the Electronic Filing Committee. This updated version replaces the previous version approved in 2004 (Supreme Court Administrative Order AOSC04-11) and shall be used by any party submitting an electronic filing plan for consideration by the Supreme Court.

Case Management System Design Framework – In April 2003, Supreme Court administrative order AOSC03-16, IN RE: Adoption of Functional Requirements, Technical Standards and Strategic Plan, was executed. The order set forth certain directives to bring standardization and automation to trial court technology. These documents were created to establish certain automated/electronic criteria that would assist judges in performing their duties. Even though six years have passed since the adoption of the functional standards included in these documents, they contain considerable information that will provide a framework to move forward with a base-line for a court case management system.

Governance – As noted in Supreme Court administrative order AOSC09-23, the purpose of the Florida Courts Technology Commission is to advise the Chief Justice and the Supreme Court on matters relating to the use of technology in the Judicial Branch. In order to effectively manage the multitude of technology-related activities facing the branch, there is a critical need to establish a system of governance. This governance process will assure integration of court technology at all levels and provide oversight for compliance with established standards. The

FCTC plans to submit a recommendation for a proposed rule of judicial administration to address governance.

2.0. DEFINITIONS

Florida Courts E-Portal (E-Portal) means a statewide access point for electronic access and transmission of court records to and from the Florida courts. All filers of court records, lawyers and non-lawyers, would use the E-Portal for secure access to all courts for electronic access to the court including e-filing. The E-Portal will be capable of accepting electronic filings from multiple sources, using common data elements passing to and from each local case system.

E-filing means filing court records to a case through electronic systems and processes in compliance with Florida Rules of Judicial Administration, Rule 2.525. E-filing includes filing a court record with accompanying data elements necessary to either establish an index of records for new cases or associate the record with an existing case in the case management system. E-filing may also be referred to using the acronym ECF (Electronic Court Filing as established by The National Center for State Courts).

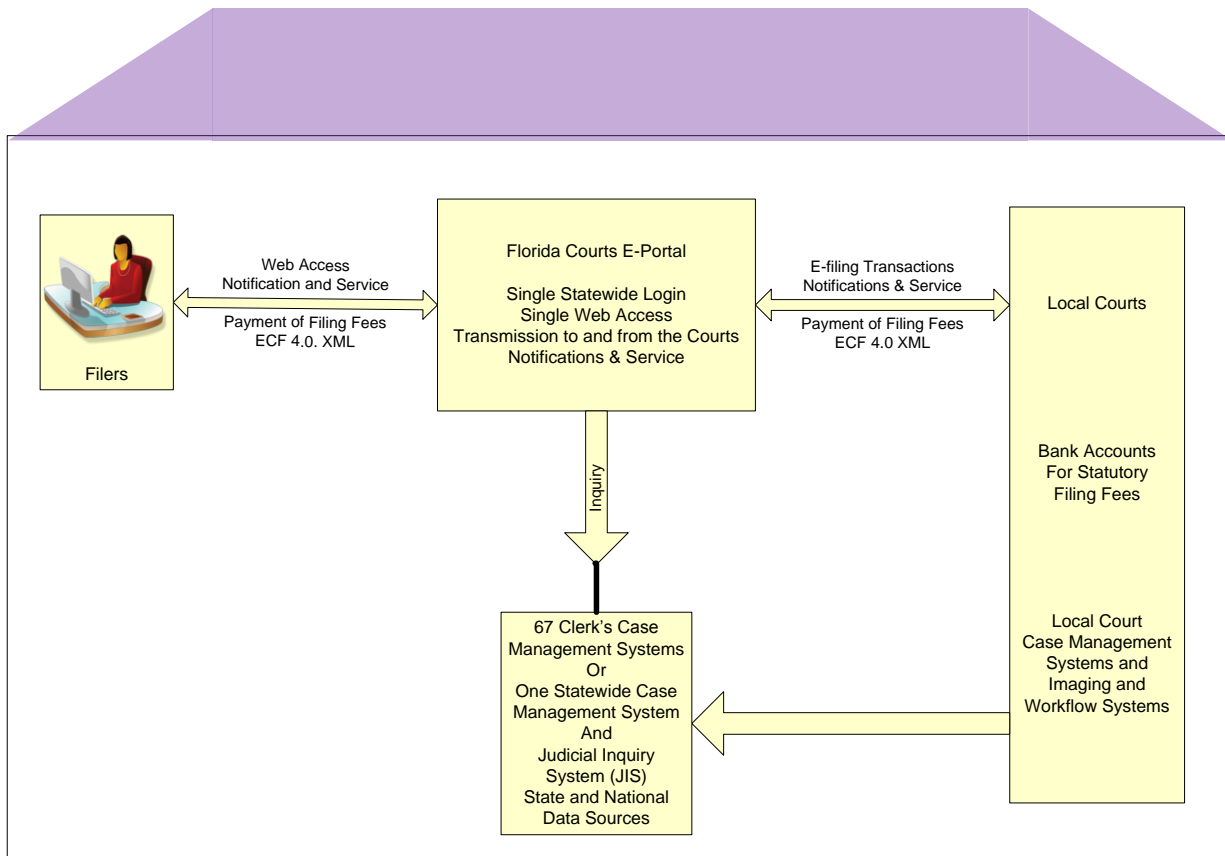
Electronic Court Records means those records as defined in Florida Rules of Judicial Administration, Rule 2.430 filed with and/or maintained by the clerk in electronic format. Electronic court records are electronic records created, generated, sent, communicated, received, or stored by electronic means which are capable of being printed as paper, or transferred to archival media, without loss of content or material alteration of appearance. Court records may be created or converted to electronic formats by the filer and electronically filed with clerks who maintain them using electronic case maintenance systems. Court records that have been filed in paper format may be converted to electronic records using scanning technology. Electronic court records shall constitute the official record and are the equivalent to court records filed in paper. Filing with the clerk shall be accomplished by electronic transmission as stated in Florida Rules of Judicial Administration, Rule 2.525.

Electronic Access to the Courts encompasses many levels of information, functionality, and case processing conducted in the judicial branch that may be completed by electronic means. Electronic access to the courts may include technology such as e-filing, electronic access to documents, electronic calendaring, case management systems, records management systems, statistics, resource management systems, and e-commerce.

3.0. FLORIDA COURTS E-PORTAL

The E-Portal will provide capability for a common entry point for all court e-filings in the State of Florida. The E-Portal will be developed in compliance with all existing and new e-filing rules as set forth in Rule 2.525, Florida Rules of Judicial Administration, and developed by the Supreme Court’s Electronic Filing Committee and subsequently approved by the Supreme Court. The Court will solicit vendors through a competitive process in accordance with Florida Law. The E-Portal will be built to maintain interfaces with other existing statewide information systems. The following diagram represents the current conceptual model of the proposed Florida Courts E-Portal:

Florida Courts E-Portal



3.1. E-Portal Functionality

The E-Portal has the following minimum functionality:

1. Single statewide login
2. Process for non-attorneys and for self-represented users to access the system
3. Uniform authentication method
4. Single point of access
5. Consolidated electronic notification section
6. Process for local validation
7. Automated interface with other e-filing systems
8. Utilize XML ECF 4.0. Standards.
9. Accommodate bi-directional transmissions to/from Courts
10. Integrate with other established state-wide systems
11. Accept electronic forms of payment

4.0 REQUESTS FOR ELECTRONIC TRANSMISSION AND FILING OF DOCUMENT INITIATIVES

In accordance with Rule 2.525, Florida Rules of Judicial Administration, a court of general or limited jurisdiction must apply to the Supreme Court for an Interim Order approving the acceptance of electronic transmission of documents for filing. Specific testing criteria must be put into place and reported during a 90 day period. After an initial period of testing the e-filing system, a site review will be conducted to verify that the electronic system meets all testing criteria, and the clerk may apply for a final order permitting e-filing with no follow-up paper filing. (Rule 2.525 (2))

The courts have been extremely flexible in allowing different types of e-filing requests to be approved. We are now at the point where there must be a standard approach to e-filing requests which should include the courts and the clerks agreeing which divisions should first implement e-filing. This will give both the court and the clerks time to update the cover sheets as specified in Section 4.1.3 Electronic Cover Sheets - Data Accompanying Submitted Documents.

4.1. E-Filing Standards

4.1.1. Size of Filing

Submissions shall not exceed 25 megabytes (25 MB) in size. No combination of files in one transmission may exceed more than 25 megabytes (25 MB) in size.

4.1.2. Document Format

Any information that will become part of, or is related to, a court case file, and which is being transmitted electronically to the clerk of court must be described in a format that can be rendered with high fidelity to originals and is searchable, tagged and complies with accessibility requirements in Chapter 282.601-606.

Appellate Court document formats will be adopted to improve the readability of the document image, improve the redaction process by providing standard fonts and font sizes, and provide consistency of appearance for images. Appellate court standards include Times New Roman font size 14 or Courier New font size 12.

4.1.3. Electronic Cover Sheets - Data Accompanying Submitted Documents

Filing entities are required to transmit data identifying a submitted document, the filing party and sufficient other information for entry in the court's docket or register of actions. In the case of a document initiating a new case, sufficient other information must be included to provide data to support the creation of a new case in the court's case management information system.

Filers are required to complete and transmit with any e-filing uniform cover sheets that comply with current rules of procedure. The court shall develop, define and continuously update the uniform electronic cover sheets. The cover sheets will be maintained on the e-filing system.

The cover sheets shall be designed to collect the data elements in .XML format that support the filing, indexing, docketing, calendaring, accounting, reporting, document development, case management and other necessary functions of the court.

In an effort to reduce redundant data entry, emphasis is placed on providing the ability to extract text from the electronic submission. For this process, word processing, .PDF or .XML file formats created by text based processors are required. Facsimile transmissions will not be allowed because they do not allow for automatic extraction of data.

4.1.4. Uniform Personal Identification

Uniform personal identification standards are necessary to promote electronic filing throughout the State of Florida. Each person provided with a unique identifier for purposes of filing documents electronically must use that identifier when submitting any documents. Documents filed with the unique identifier will be presumed to have been filed by that person.

All electronic filing information systems must support the use of a uniform personal identifier.

4.1.5. Electronic Notification of Receipt

All electronic document submissions must generate an acknowledgment message that is transmitted to the filer to indicate that the clerk received the document.

At a minimum the acknowledgment should include the date and time the document was received (which should be a court's official date/time stamp), and a court assigned case number, if available, or document reference number.

4.1.6. Security

Any computer utilized to accept e-filings, particularly from sources external to the court, must be protected from unauthorized network intrusions, viruses, and worms and isolated from other court networks or applications. Software and security devices such as antivirus, firewalls, access control lists, and other filters must be utilized. Media capable of carrying viruses into court computers (e.g., computer networks and electronic media) must be scanned for computer viruses prior to processing.

4.1.7. Filing Process and Payment

E-filing systems shall support an interactive filing process and/or a batch (non interactive) process. E-filing systems shall support electronic payment methods.

4.1.8. Web Based Application Standards

All court based e-filing processes will use Internet based open standards architecture as defined in the following:

- Rule 2.525, Florida Rules of Judicial Administration
- Supreme Court Administrative Order - AOSC03-16

- ECF 4.0 (National Center for State Courts (NCSC) – Electronic Court Filing Standard)
- Standards as defined in this document

Other reference sources of information may include:

Consolidated Case Management System Functional Standard V.0.20 (NCSC)

4.1.9. Legal Transmission Envelope

Any electronic document or information submitted to a court with a filing or subsequent case action must be transmitted using a data structure that provides universal access at any court. Submissions shall not exceed 25 megabytes (25 MB) in size. No combination of files in one transmission may accumulate to more than 25 megabytes in size.

The e-filing system shall perform a validation of the documents filed to insure that any discrepancies (such as incomplete data or viruses) are detected prior to the filing being submitted to the courts. Where possible, the user will be notified immediately if the e-filing system detects errors in the filing process. There will be different validation rules based upon the type of filing (for example: new case initiation as opposed to filings in an existing case).

4.1.10. Court Control of Court Documents - Data Storage

Original court data must reside in Florida with the intent to ensure that the original court record will reside within the State of Florida on technology which is under the direct control of the Court and in the custody of the clerks. This does not preclude additional copies to be stored within or outside the State of Florida for the purposes of disaster recovery/business continuity.

4.1.11. Local Validation

When information has been filed electronically to the clerk, the clerk will perform a local validation to examine the filing and determine that it complies with e-filing requirements and is otherwise acceptable. This local validation process will be similar for each clerk's office.

4.1.12. Document Fidelity and Authenticity

All documents filed electronically must be printable as paper documents without loss of content or appearance. A mechanism must be provided to ensure the authenticity of the electronically filed document. This requires the ability to verify the identity of the filing entity and the ability to verify that a document has not been altered after the time it was transmitted by the filing entity.

4.1.13. Embedded Hyperlinks

Hyperlinks embedded within an e-filing should refer only to information within the same document, or to external documents or information sources that are known to be trustworthy and stable over long periods of time. Hyperlinks should not be used to refer to external documents or information sources that are likely to change.

4.1.14. Exhibits

Every implementation of e-filing must accommodate the submission of non-electronic documents or exhibits. Examples of articles include such documentary evidence as court approved forms, executed wills, and non-documentary items such as cassettes, video tapes, weapons, drugs, etc.

Each exhibit that is filed in a proceeding before the Court shall be in its original form or such form as permitted under Florida Statutes or court rules pertaining to the admission of evidence, except for copies of exhibits that are submitted as attachments to pleadings, unless otherwise agreed by the parties of record,.

4.1.15. Documents Exempt from Public Access

If a filer who electronically files a document containing information identified as exempt from public access pursuant to Rule 2.420, Florida Rules of Judicial Administration and applicable statute, the filer shall indicate that the document contains confidential information by placing the notation “confidential” in the comments section. Documents that are exempt or claimed to be exempt from public access shall be processed pursuant to Rule 2.420.

4.1.16. Archiving

Electronic documents must be stored in, or convertible to a format that maintains content appearance and can be archived in accordance with standards adopted by the Supreme Court of Florida.

4.1.17. Accommodation of Paper Submissions

Documents submitted to the court in paper form shall be converted to an electronic format to facilitate the creation of a single electronic case file.

4.1.18. Public Access

Public access to electronically filed documents must be provided in accordance with the judicial branch policy on access to court records. Electronic documents must comply with Section 4.4 of this document.

4.1.19. Self-Represented Litigants

Self-represented litigants shall be provided a means to file documents electronically

4.1.20. Adding a Party

The e-filing system will accept additional parties after the initial pleading is filed.

4.2. TECHNICAL FAILURE

4.2.1. Determination of failure and effect on due date

The clerk shall deem the E-Filing System to be subject to a technical failure on a given day if the clerk's server is unable to receive and accept filings in accordance with these e-filing operational policies, either continuously or intermittently over the course of any period of time after 12:00 noon that amounts in the aggregate to more than one hour on that day. In the event of a technical failure, filings due that day which were not filed due solely to such technical failures shall be considered as due the next business day.

Delayed filings shall be rejected unless they are accompanied by a declaration or affidavit attesting to the filer's attempts to file electronically that failed after 12:00 P.M. on at least two occasions that are separated by at least one hour due to such technical failure.

4.2.2. Procedure Where Notice of Electronic Filing Not Received

If a Notice of Electronic Filing is not received from the clerk in response to a transmission of a document for filing, the document will not be deemed filed. The person making the filing must attempt to refile the information electronically until such a Notice is received. Persons who file electronically bear the responsibility of ensuring that documents and other filings are electronically filed and received.

4.2.3. Retransmission of Electronic Filing

If, within 24 hours after filing information electronically, any filer discovers that the version of the document available for viewing through the Electronic Case Filing System is incomplete, garbled or otherwise does not conform to the document as transmitted when it was filed, that filer shall notify the clerk immediately and retransmit the filing if necessary.

4.2.4. System Availability and Recovery Planning

Computer systems that are used for e-filings must protect electronically filed documents against system and security failures during periods of system availability. Additionally, contingencies for system failures and disaster recovery mechanisms must be established. Scheduled downtime for maintenance and updates should be planned, and a notification shall be provided to filers in advance of the outage. Planned outages shall occur outside normal business hours as determined by the Chief Judicial Administrative Officer of the Court. E-filing systems shall comply with the security and backup policies created by the Florida Courts Technology Commission.

Plan 1: Contingency Plan

Timeframe: Immediate - during normal working hours.

Scope: Localized system failures while court is still open and operational. This plan will also be put into operation while COOP and Disaster Plans are under way.

Operational Levels: Levels of operation will be temporarily limited and may be conducted in electronic or manual processes. Since court will still be open, this plan must address how documents will be received while the system is down.

Objectives:

- Allow the Court to continue with minimum delays by providing a temporary alternate solution for access to court files.
- Conduct tests to verify the restoration process.
- Have local and local off site backup of the operating system, application software, and user data available for immediate recovery operations.
- Identify areas where redundancy is required to reduce downtime, and provide for hot standby equipment that can be utilized in the event the Contingency Plan is activated.

Plan 2: Business Continuity/Disaster Recovery

Timeframe: Disaster dependent, varies.

Scope: Declared disasters either local or regional that impact the geographic area.

Operational Levels: Temporarily unavailable or limited until facilities are deemed functional or alternate facilities can be established. Mission Essential Functions defined the Court's COOP for the affected area must be addressed in the designated priorities and timeframes.

Objectives:

- Allow court operations to recover in the existing location or alternate facility
- Provide cooperative efforts with impacted entities to establish access to court files and allow for the continuance of court proceedings
- Provide in the Contingency Plan a temporary method to meet or exceed Mission Essential Functions identified in the Court's COOP.
- Provide another tier level of recoverability by having a backup copy of the operating system, application software, and user data in a protected environment outside of the local area not subject to the same risks as the primary location for purposes of recovery according to standards approved by the FCTC.
- This plan may provide another out-of-state tier for data backup provided that the non-local in-state tier is established.

4.3. CONSIDERATION OF RECOMMENDED COURT REQUIREMENTS

4.3.1. Access

The clerk will provide free public access to court records as authorized in state statutes and in Rule 2.420, Florida Rules of Judicial Administration to the electronic case file according to statute or rule of court or Administrative Order of the Supreme Court.

The clerk will provide access to dockets, calendars and other electronic court records as authorized by statute or rule of court or Administrative Order of the Supreme Court.

4.4. ADA AND TECHNOLOGY COMPLIANCE

Accessibility Requirements

Accessibility standards for electronic and information technology are covered by federal law, known as Section 508 of the Rehabilitation Act of 1973 (as amended), which lists standards necessary to make electronic and information technology accessible to persons with disabilities. These standards, together with the requirements of the Americans with Disabilities Act and Florida law, must be met. References to these requirements throughout this document will be noted as “Section 508, Florida law and the ADA”.

The following list provides reference information for understanding the requirements of Section 508, Florida law and the ADA:

- Chapters 282.601-282.606, Fla. Stat. – The Florida Accessible Electronic and Information Technology Act
- Section 508 of the Rehabilitation Act of 1973 (as amended) – United States Federal Access Board: Electronic & Information Technology Accessibility Standards (<http://www.access-board.gov/gs.htm>)
- The Americans with Disabilities Act of 1990 (ADA)

Other reference sources of information may include:

- World Wide Web Consortium (W3C) Web Access Initiative Guidelines (<http://www.w3.org/>)
- ADA Best Practices Tool Kit for State and Local Governments – Chapter 5, Website accessibility Under Title II of the ADA: <http://www.ada.gov/pcatoolkit/chap5toolkit.htm>
- Section 508 – (<http://www.section508.gov>)

All technology and information used to support creation of an electronic case file and to provide access to court records will comply with court technology standards, and the Florida AeIT Bill [Accessible Electronic and Information Technology], s. 282.601-282.606. Fla. Stat.

Additionally, all e-filing applications submitted for approval include a “Statement of Accessibility/Certification.”

5.0. ELECTRONIC SERVICE

By signing the Electronic Filing Registration Form, a filer consents to receive notice electronically, and waives the right to receive notice by personal service or first class mail of any document filed electronically, except with regard to service of a complaint or summons or other filing that requires personal service. This registration form does not constitute consent to electronic service of a document that is not filed with the Court. However, written consent to electronic service of such documents may be given separately.

There may be a need to later define a process by which the clerk's office can address "an emergency" e-filing.

5.1. Computation of Time

The Court should adopt a standard that establishes when an e-filing is accomplished for purposes of the court record.

6.0. DELIVERY OF ELECTRONIC CASE FILES

An electronic case file being utilized by the court should meet or exceed the capabilities and ease of use currently provided by a paper case file. Electronic documents shall be available to court officers and personnel in a manner that provides timely and easy access. In addition, the electronic display should present information to courtroom participants that enables any person to immediately retrieve docket and case-specific information in a manner that is no more difficult than paging through a paper file. The application shall not have a negative operational impact on the court. Therefore the court shall have the opportunity to review and approve any changes to the current business process before the system may be implemented.

To meet the basic requirements of timeliness in a court environment, access to electronic court records should be almost instantaneous with a retrieval time of one to three seconds for cases on the daily calendar, five to eight seconds for cases that have had activity during the past 60 days, and 30 seconds for closed or inactive cases. The system should provide some method to notify the requesting entity if a longer time delay will occur, such as when a case has been archived.

Simultaneous access for multiple courtroom participants to view the same case file and/or document shall be provided.

Monitors shall be of sufficient size to allow comfortable viewing of electronic documents. There shall be a method to search for and select specific documents for viewing. Regardless of the document retrieval techniques employed, a viewer should have the ability to quickly page through an electronic document or a case file.

Forms and documents that a judge or other courtroom personnel normally prepare during a particular proceeding should be electronically prepared, reviewed, signed, printed, and distributed as another function supported by the automated electronic case management system.

Any system that intends to deliver electronic files instead of paper files to the judiciary must have the electronic workflow, functionality, and electronic judicial document management service approved by the judiciary before paper may be discontinued. The electronic file created by the clerk shall be made available and delivered to the judiciary in a manner that provides improved workflow and document management service to the judiciary and court staff. Filings in an electronic file that is created or updated by any system shall be available for viewing by the court immediately upon acceptance by the clerk.

According to the NCSC document Standards for Electronic Filing Processes (Technical and Business Approaches) -

“to avoid the unintended connotation associated with the term “electronic filing” that may be interpreted as referring only to the process by which documents are submitted to a court for filing.

That is only one part of a mature, full blown electronic documents process. Focusing only upon the initial filing aspect runs the risk of losing most of the potential benefits of electronic filing. At the extreme, the failure to look at electronic filing as part of a much larger process can result in an expensive system that is of little utility to court users such as judges, lawyers, litigants, and court staff. *Electronic Filing Processes* is also preferable to “Electronic Court Documents” which might apply simply to court imaging systems that create electronic documents by scanning paper filings.

“Electronic Court documents” would also include standards for document management systems, which are not within the scope of these standards. *Electronic Filing Processes* incorporate scanning of paper documents, but only as an ancillary process for capturing historical documents not created for the purpose of litigation and for converting paper documents submitted by parties incapable of using electronic filing means. An *Electronic Filing Process* relies upon submission of the great bulk of documents in electronic form without requiring the routine use of paper at any step in the process.

7.0. ELECTRONIC SIGNATURES

7.1. Signatures of Registered Users

A pleading or other document is not required to bear the electronic image of the handwritten signature or an encrypted signature of the filer, but may be signed in the following manner when electronically filed through a registered user’s login and password.

s/ John Doe

John Doe (e-mail address)

Bar Number 12345

Attorney for (Plaintiff/Defendant) XYZ Company

ABC Law Firm

123 South Street

Orlando, FL 32800

Telephone: (407) 123-4567

7.2. Multiple Attorneys of Record Signatures

The following procedure applies when a stipulation or other document (*e.g.*, a joint motion) requires the signatures of two or more attorneys of record:

The filing attorney shall initially confirm that the content of the document is acceptable to all attorneys required to sign the document and shall obtain the signatures of all attorneys on the document. For purposes of this procedure, physical, facsimile, or electronic signatures are permitted.

The filing attorney then shall file the document electronically, indicating the signatories, (*e.g.*, “s/ Jane Doe,” “s/ John Smith,” etc.) for each attorney’s signature.

7.3. Original Documents and/or Handwritten Signatures

Original documents (Death Certificates, etc.) or those that contain original signatures such as affidavits, deeds, mortgages and wills must be filed manually until the court has determined the digital format by which these issues are addressed.

7.4. Judge Signature

Judges are authorized to electronically sign all orders and judgments indicating the signature as (s/ Jane Doe, Circuit Court Judge).

8.0. CASE MANAGEMENT SYSTEM DESIGN FRAMEWORK

Overview

In pursuit of the mission and vision of the Florida Judicial Branch, the courts are committed to an effective, responsive and accountable judicial system. While understanding that the quality of justice cannot be measured solely by statistics and reports, the court believes that case information is critical to its efficient management of judicial cases and it should form one cornerstone of sound court management. To that end, the Florida court system must establish a uniform statewide case management system that will provide reliable and accurate case data.

Section 16 of Senate Bill 1718 requests that the court establish standards for electronic filing including the “... duties of the clerks of court and the judiciary for case management.” This section addresses case management.

A case management system can broadly be considered the set of functional standards and requirements and the resultant collection of programs, utilities, and protocols that collectively provide for initiation, processing, tracking management and reporting of cases through the judicial system. In addition to enabling the efficient flow of day to day operations, an effective case management system must provide for comprehensive and uniform reporting of case level and court activity data as required for overall court management. This critical collection and reporting component ensures fundamental accountability for efficient and effective management of court activity at all levels of the courts.

This case management system framework design contains sufficient detail to provide immediate guidance to clerks of court and other stakeholders with respect to their duties and responsibilities to the court while remaining general enough to provide for the incremental development required for this complex project. The framework builds upon existing case management work and strives to present a consistent method for system development. It presents a standard definition for a case management system and outlines the guiding design principles to be applied at all levels. Applying these principles will ensure a viable case management system that encapsulates flexibility, modularity, consistency, quality, reporting and accountability, and accessibility. This case management system is expected to incorporate case maintenance as well as case management functionality.

Appellate Case Management

Although the legislature did not specifically direct the clerks of the appellate courts to commence electronic filing by October 1, 2009, providing the appellate courts with electronic courts capability is equally important. The appellate courts and the Supreme Court cannot accept electronic records from appeals from the trial courts if they do not have the capacity to receive and store documents electronically. In any appellate electronic filing and case management system, additional functionality must be included. Particularly, collaboration elements are essential to any appellate court system, as all decisions require review by at least three judges in the appellate courts and more in the Supreme Court. The appellate courts have already attempted to design a system but funding issues prevented further development. They are currently exploring other systems. Additional funding will be necessary to make the appellate courts and the Supreme Court electronic, but the investment will save operational costs just as it will in the trial courts.

Design Guidelines

The case management system design shall be based upon the work of the Florida Courts Technology Commission as codified in Supreme Court Administrative Order AOSC03-16, IN RE: Adoption of Functional Requirement, Technical Standards and Strategic Plan. Clerks of court and court administration should submit design and implementation plans to the Florida Courts Technology Commission for review and approval before software or hardware is purchased or system development begins.

Key concepts in the design of this uniform case management system are flexibility, modularity, consistency and quality. The complexity of a uniform system dictates that it be developed as an

interoperable suite of component modules such as e-filing or civil case management, rather than as one monolithic application. To ensure that users obtain the most benefit from this system as quickly as possible, design managers must ensure that each component provides significant, if not full, functionality without critical dependence on other, as yet undeveloped, components. Interoperability and independence require that each component include the intrinsic capability to share data and other common resources in a consistent manner across all components of the system.

Such interoperability is a challenge, given that the case management needs of the various divisions of court and of court programs differ significantly. However, every effort should be made to define a common framework upon which the case processing components for each division of court and court program can be based. For example, existing standards define a cross divisional case flow with the following common functional components:

- Case Initiation and Indexing
- Docketing and Related Record Keeping Function
- Schedule and Case Management
- Ticklers, User Alerts & Automated Workflow and Forms Generation
- Document Processing
- Calendaring
- Hearings
- Disposition
- Case Closure
- Accounting
- Audit Trail Management
- File Archival and Destruction
- Document Management
- Exhibit Management
- Statistical Reports
- Management Reports
- Electronic Designation of Appellate Records

The technical standards and plan described in Administrative Order AOSC03-16 is a solid starting point for the development work ahead. However, like all systems which serve the public, court processes and court needs evolve over time in response to changes in statutes, other law, court rules and best practices. As each component of the overall case management system is developed, systems design managers should review the above standards for applicability and update requirements and standards as necessary. Also, as the functional requirements and technical standards encapsulated in AOSC03-16 were developed in 2003, the system design managers should, as a first planning step, conduct a complete review and update of the cross functional requirements to ensure that they have a comprehensive, up-to-date picture of common elements upon which to base a uniform system design.

Actual implementation of the uniform case management system components may require additions or deletions to these specifications to ensure that the final system is relevant to the case and data management issues facing court managers today and in the future. However, frequent

changes, even those that are considered necessary, can negatively impact systems development and usability leading to inefficient or ineffective systems. The development plan for each component should provide for periodic expansion cycles to ensure that the case management system remains responsive to evolving court needs and to changes in statutes or rules of court.

One purpose of any case management system is to facilitate the administration of case activity within the courts and to provide court managers with the supporting information that is necessary to effectively manage that activity. Consequently, it is critical that the system remain relevant to its users at all levels of court. This is achieved by recognizing the information needs of the users and by facilitating the addition of new elements as required through a well defined and responsive expansion process. Data that is collected should be available in a timeframe that best fits the needs of the users. The system should provide the capability for case management users to easily extract data or perform non-standard query actions as required by emerging needs.

As an integral aspect of general design, system development should incorporate quality elements such as specific input data validations and mechanisms for monitoring and correcting data that fail validation as close to the input level as possible. Data should be checked for inadmissible data combinations, incompatible data, and missing data. The system should provide for the straightforward correction of data at the level closest to origination which includes the point of document submission. This will increase the likelihood that data will be accurate and reliable and reduce the amount of effort that must be expended to ensure that accuracy. Additionally, the case management system should provide for macro level quality evaluation including audit trails, automated checks and reasonableness reviews by subject matter experts. System design should ensure that conducting these evaluations on a regular basis is a simple and straightforward process.

All case management system components should be designed to easily allow for two-way sharing of data with other internal system components and with external sources at the state or national level. Wherever possible, the case management system should implement statewide and national standard concepts and classifications and a common methodology for data representation and transfer. This would allow data from multiple sources both within and without the court system to interoperate seamlessly within the context of case management and reporting.

Current Data Collection Systems

Existing data collection systems provide critical management data to the courts at all levels. The modular nature of the development process for a case management system requires the careful consideration of existing reporting requirements to ensure that completion of one component of the system does not inadvertently reduce the quality or quantity of data currently collected. The court has several critical data collection and reporting mechanisms currently in place, such as are detailed in Florida Rules of Judicial Administration 2.240, 2.245 and 2.250 and §25.075, Florida Statutes and other relevant rules and statutes. These reporting mechanisms cannot and should not be abandoned prematurely. Although every effort will be made to consolidate data collection and reporting mechanisms during the development process, clerks of court, circuit court administration and other reporting entities should expect to continue data collection and reporting under the appropriate guidelines until directed otherwise by the courts.

Security and Confidentiality

All case management components should employ the utmost care in ensuring the confidentiality of case records as appropriate and at all levels of case and data processing. Redaction software should be deployed as appropriate to ensure that confidentiality is protected on display or archive. Appropriate security and encryption measures should be built into the system so that the transfer and storage of data within the system does not expose sensitive data to unauthorized access. Statutory requirements for retention, availability, display and purging of cases that are sealed or expunged or otherwise restricted should be strictly and programmatically enforced. System design should provide for the secure deletion of case records as necessary across separate system components.

Other Standards

As individual case management components are developed, similar work at the national level should be considered. For example, the National Center for State Courts (NCSC) has identified the general movement of a case through the judicial system as presented in their “Introduction to Function Standards, Draft February 2, 2001.” The NCSC has also provided a series of general Case Management Standards which may serve as a resource in the development process. However, no uniformly accepted national standards exist. Consequently, systems design methodology managers should review the standards articulated by the National Center for State Courts in their Case Management Standards (http://www.ncsconline.org/d_tech/standards/default.asp) for applicability to individual case management components and incorporate those standards which are determined to be relevant to an efficient and effective Florida case management system.

9.0. GOVERNANCE

A Governance Structure shall be established to make certain that initiatives regarding electronic access to the court meet established standards, maximize and/or improve workflow processes, improve accessibility to the court, and allow stakeholders to communicate in a manner that allows for effective integration of systems. Governance shall be established by the Court once recommendations by the Florida Courts Technology Commission have been received.

Efforts to integrate systems such as e-filing and case management offer many opportunities to be more cost effective and efficient. Integration brings with it the critical need to have collaboration among stakeholders who share an interest in using the information, content of information, and the functionality of software applications. The introduction of new systems or changes to existing systems with the goal to improve processes may also bring with it unintended negative impact upon others who have a shared interest or need.

The goals of governance are the following:

1. Governance provides a process whereby new systems or major changes to existing systems may be vetted to maximize workflow and to reduce potential negative impact and implementation issues.

2. Governance provides a process to verify that at all times the system meets required standards and rules, so that the person who seeks to acquire new systems or change an existing system may seek and receive approval to do so.
3. Governance provides a means for needed changes in business workflow to be accepted and implemented into the organizational culture.

The FCTC will draft a proposed rule of judicial administration to address how governance will be implemented within the judicial branch.

Electronic Filing in Florida's Courts

The Florida State Courts System has been working on automating the process for filing court documents for many years. In 2008, the Legislature supported these efforts by mandating a transition to the electronic filing – “e-filing” – of court records and requesting the Supreme Court to set standards, which it did on July 1, 2009. One of those standards provided that a statewide electronic filing portal – “ePortal” – would be developed under the direction of the Supreme Court. On June 21, 2012, the Supreme Court issued opinions adopting recommendations on the phased in implementation of electronic filing, as well as electronic service. A corrected opinion regarding electronic service was issued on June 26, 2012.

Why should the courts implement e-filing?

The use of automation and technology is making many government functions more accessible and more convenient for citizens to use. Filing court documents is no different. In addition to saving litigants time and money, e-filing will also significantly reduce the costs of paper and storage for the courts.

Why is it taking some time to achieve e-filing?

Judicial records lie at the heart of the judicial function. The ability to receive, review, and issue court records and court orders is essential for a judge to be able to rule in a case. Since electronic files will replace the traditional paper court file, they must contain everything a judge needs to make decisions, just as the paper file did. A thorough understanding of how an electronic file is best used by a trial judge hearing cases in the courtroom is essential to the success of e-filing.

E-filing is expected to save the state money. But reducing costs for clerks of court and the judiciary is not the only goal that e-filing must achieve. State law (section 28.22205) specifically states that e-filing must give courts the information they need to decide cases more quickly and to improve judicial case management. These two goals – increased timeliness in the processing of cases and improved judicial case management – are critically important and must not be overlooked or overshadowed. These goals can be met only if judges get all the information they need to decide cases properly and manage their dockets efficiently. It's equally important that e-filing provide the judicial branch with the necessary data to be able to best allocate the resources that are available to the courts.

What is the e-filing portal?

The electronic filing portal is a uniform public electronic gateway to be used for the transmission of electronically-filed documents from filers to the courts. It is governed by the Florida Courts E-Filing Authority (CEFA), which is made up of eight trial court clerks (including the chair), and the Supreme Court Clerk, as designee for the Chief Justice, who serves as the vice-chair. The ePortal will provide for e-filing of court documents in all five district courts of appeal and the Florida Supreme Court as well as in all 20 judicial circuits. The electronic filing portal provides parties with a common entry point for filing and viewing court documents that are electronically filed.

With regard to e-filing, what is the role of the clerks of court?

A clerk's duties begin when the document or record is received. The acceptance of a filing is a ministerial duty to effectuate the clerk's statutory duty to maintain the court record. Individual clerks of court use e-filing systems to maintain court records.

When the e-filing portal is implemented, the clerks will continue to perform their ministerial duties concerning the court record. The ePortal will uniformly deliver to the clerks statutorily-mandated filing fees and electronic filings in a form that the clerks can immediately receive, review, accept, docket, file, and maintain. Until the local court approves the elimination of paper, the clerk will also continue to have duties respecting paper filing.

What is the status of e-filing?

The Supreme Court has had rules on e-filing since 1979. Under those rules, Supreme Court approval is required for all e-filing systems implemented in the courts. In 2010 the Supreme Court adopted Rule 2.236, Florida Rules of Judicial Administration, In re: Florida Courts Technology Commission, which delegated the authority for the approval of electronic initiatives to the chair of the Florida Courts Technology Commission.

As of May 2012, two district courts of appeal and all 67 counties have been approved for e-filing in at least one court division, and all but five counties have been approved for e-filing in all court divisions. Additionally, 15 counties have received approval, in at least one court division, to discontinue the requirement for attorneys who e-file to immediately thereafter also file a paper copy of the document (referred to as the follow up filing). In addition to approved electronic filing systems, there are also 4 counties with approved electronic distribution systems, 18 counties with approved electronic/digital signature systems, and 10 other automated systems that have been approved.

Electronic filing commenced through the statewide ePortal on January 1, 2011. As of April 30, 2012, there have been 65,089 cases filed through the statewide ePortal; 89,107 documents filed; and there are 2,360 active e-filing users registered.

In 2011, the Florida Courts Technology Commission, in consultation with the Florida Association of Court Clerks and Comptrollers, made a recommendation to the Supreme Court for implementation of mandatory e-filing by attorneys. The implementation plan is currently pending before the Supreme Court.

On June 21, 2012 the Supreme Court issued an opinion, adopting the recommendations for a phased- in implementation of e-filing. The e-filing implementation opinion can be read in its entirety by clicking on the following hyperlink – [SC11-399 Opinion \(E-Filing\)](#)

- The new rules and amendments to the existing rules at issue in this case will require attorneys to file documents with the trial and appellate courts by electronic transmission and will operate in tandem with the new mandatory e-mail service requirements for pleadings and documents.
- The new electronic filing requirements the Court adopts will become effective in the civil, probate, small claims, and family law divisions of the trial courts, as well as for appeals to the circuit courts in these categories of cases, on April 1, 2013, at 12:01 a.m., except as may be otherwise provided by administrative order. Electronic filing will be mandatory in these divisions pursuant to rule 2.525 on that date. However, until the new rules take effect in these divisions, any clerk who is already accepting documents filed by electronic transmission under the current rules should continue to do so; attorneys in these counties are encouraged to file documents electronically under the current rules.
- The new electronic filing requirements the Court adopts will become effective in the criminal, traffic, and juvenile divisions of the trial courts, as well as for appeals to the circuit court in these

categories of cases, on October 1, 2013, at 12:01 a.m., except as may be otherwise provided by administrative order. Electronic filing will be mandatory in these divisions under rule 2.525 on that date. As stated above, until the new rules take effect in these divisions, any clerk who is already accepting electronically filed documents under the current rules should continue to do so; attorneys are again encouraged to utilize existing electronic filing procedures under the current rules.

- In the Supreme Court and in the district courts of appeal, the new electronic filing procedures adopted in this case will become effective October 1, 2012, at 12:01 a.m., except as may be otherwise provided by administrative order.
- Clerks will not be required to electronically transmit the record on appeal until January 1, 2013, at 12:01 a.m. Until January 1, we encourage clerks, whenever possible, to electronically transmit the record under the new rules and requirements.

The Supreme Court also issued an opinion on the use of electronic service (e-service) by attorneys. The e-service opinion can be read in its entirety by clicking on the following hyperlink – [SC10-2101 Corrected Opinion \(e-service\)](#)

- We accept the workgroup's recommendation to delay mandatory e-mail service in the criminal, traffic, and juvenile divisions of the trial court until electronic filing is also mandatory in these divisions. Accordingly, the rule amendments that we adopt in this case will become effective September 1, 2012, at 12:01 a.m.; however, they will be implemented as set forth in this opinion.
- E-mail service will be mandatory for attorneys practicing in the civil, probate, small claims, and family law divisions of the trial courts, as well as in all appellate cases, when the rule amendments take effect on September 1, 2012.
- When the rules take effect on September 1, attorneys practicing in the criminal, traffic, and juvenile divisions of the trial court may voluntarily choose to serve documents by e-mail under the new procedures, or they may continue to operate under the existing rules.
- E-mail service will be mandatory for attorneys practicing in these divisions on October 1, 2013, at 12:01 a.m. (the date on which electronic filing will be mandatory in these divisions).
- Pursuant to rule 2.516(b)(1), self-represented parties involved in any type of case in any Florida court, may, but are not required to, serve documents by e-mail. Attorneys excused from e-mail service are also not obligated to comply with the new e-mail service requirements.

What is the status of the e-filing portal?

In 2010, the Florida Courts E-Filing Authority was created as a public agency by interlocal agreement, as set forth in chapter 163, Florida Statutes. The Florida Courts E-Filing Authority has contracted with the Florida Association of Court Clerks and Comptrollers to design, develop, implement, operate, upgrade, support and maintain an electronic portal (ePortal) for the filing of court records. The ePortal is to serve as a statewide access point for the electronic access and transmission of court records to and from the courts. The ePortal includes the following features: (1) a single statewide log-in; (2) a single Internet

access to court records by authorized users; (3) transmissions to and from the appropriate courts; (4) the ability to provide electronic service of notification receipt of an electronic filing and confirmation of filing in the appropriate court file; (5) open standards-based integration ability with existing statewide information systems and county e-filing applications; and (6) compliance with the Electronic Court Filing Standard 4.0, the Global Justice Extensible Markup Language and Oasis Legal Markup Language.

The ePortal opened on January 1, 2011, as required in the Interlocal Agreement. As the number of counties connecting to the ePortal increases, the Florida Courts E-Filing Authority continues to work in close coordination with the Florida Courts Technology Commission to ensure that the statewide ePortal is developed in accordance court system standards and rules.

*Updated by the Office of the State Courts Administrator
6/26/2012 5:30 PM*

Service by E-Mail and E-Filing

An update on Service by E-Mail and
E-Filing in Florida Courts, including
2012 Rule Changes

Why do you care?
Mandatory Rules

Opinions Issued
by
Florida Supreme Court
on
June 21, 2012

Service by E-Mail: [SC10-2101](#)

[E-Filing: SC11-399](#)

On July 5, 2012, an opinion was issued regarding electronic discovery. SC 11-1542 This e-subject is not addressed in these materials.

Effective Dates

Service by E-Mail:

- **Mandatory** as of September 1, 2012,* for:
 - Trial court divisions:
 - Civil
 - Probate
 - Small Claims
 - Family
 - Appellate cases**
- **APPLIES TO ALL CASES, EVEN THOSE PENDING AS OF SEPTEMBER 1, 2012**

* The effective date announced by the court was July 1, 2012 in its opinion issued on June 21, 2012. A corrected opinion later changed July 1, 2012 to September 1, 2012 throughout the opinion.

** References to “appellate” includes the Supreme Court and the District Courts of Appeal, as well as the Circuit Court when sitting as an appellate court.

Effective Dates

Service by E-Mail:

- **Mandatory*** on October 1, 2013, for:
 - Trial court divisions
 - Criminal
 - Traffic
 - Juvenile
- **APPLIES TO ALL CASES, EVEN THOSE PENDING AS OF OCTOBER 1, 2012**

* Attorneys may voluntarily serve and receive documents by e-mail in these divisions for 13 months, from September 1, 2012, to October 1, 2013, if both attorneys agree.

Effective Dates

E-Filing:

- Except as provided by administrative order,*
mandatory as of October 1, 2012, for:
 - Supreme Court
 - District Court of Appeal
- **Mandatory**** as of January 1, 2013
 - Clerks electronically transmit record on appeal

* An administrative order will likely be issued extending the date for mandatory e-filing in the Supreme Court and the District Courts of Appeal.

** This requirement is for the appellate clerks, not for counsel. Clerks are encouraged to transmit record electronically before January 1, 2013.

Effective Dates

E-Filing:

- **Mandatory** as of April 1, 2013, for:
 - Trial court divisions:
 - Civil
 - Probate
 - Small Claims
 - Family
 - Appeals to Circuit Courts for these types of cases

Effective Dates

E-Filing:

- **Mandatory** as of October 1, 2013 for:
 - Trial court divisions:
 - Criminal
 - Traffic
 - Juvenile*
 - Appeals to Circuit Courts for these types of cases

* Juvenile includes juvenile delinquency proceedings, dependency and termination of parental rights proceedings, and proceedings for families and children in need of services.

Effective Dates

Summary of Mandatory Dates

- September 1, 2012: **Service by e-mail** for non-criminal trial court and appellate cases
- October 1, 2012: **E-filing** for Supreme Court and District Court of Appeal (unless deferred by Administrative Order)
- January 1, 2013: Clerks must transmit record electronically
- April 1, 2013: **E-filing** for non-criminal trial court and non-criminal appeals to circuit court
- October 1, 2013: **Service by e-mail** for criminal trial court
- October 1, 2013: **E-filing** for criminal trial court and criminal appeals to circuit court

Service by E-Mail versus E-Filing

Service by E-Mail

The remainder of this presentation will review the requirements for service by e-mail

E-Filing

Stay tuned for additional educational opportunities

Service by E-Mail

New and Changed Rules

SC10-2101

Rules with Significant Changes

- Rule 2.515* Signature of Attorneys and Parties
- Rule 2.516** Service of Pleadings and Papers

Many rules with conforming and minor changes

* Changes to an existing rule

** New rule

Signature of Attorneys and Parties

Rule 2.515

An Overview

- Before these changes, all pleadings and other papers filed by a party represented by counsel required a signature of at least one attorney of record.
 - The rule also required the attorney’s:
 - individual name
 - address
 - telephone number, including area code and
 - Florida Bar number
- Those requirements continue and the rule now also requires:
 - primary e-mail address and secondary e-mail addresses, if any,
- The rule clarifies the address to be provided is to be the address on record with The Florida Bar. The addition of “current record Florida Bar” only modifies “address,” not the other required information.
 - Therefore, the e-mail address provided in the official bar record does not need to be one of the e-mail address(es) provided as part of the signature of an attorney under Rule 2.515.

Signature of Attorneys and Parties

Rule 2.515

The Rule As Changed

(a) Attorney Signature. Every pleading and other paper of a party represented by an attorney shall be signed by at least 1 attorney of record in that attorney’s individual name whose current record Florida Bar address, telephone number, including area code, primary e-mail address and secondary e-mail addresses, if any, and Florida Bar number shall be stated, and who shall be duly licensed to practice law in Florida or who shall have received permission to appear in the particular case as provided in rule 2.510. The attorney may be required by the court to give the address of, and to vouch for the attorney’s authority to represent, the party. Except when otherwise specifically provided by an applicable rule or statute, pleadings need not be verified or accompanied by affidavit. The signature of an attorney shall constitute a certificate by the attorney that the attorney has read the pleading or other paper; that to the best of the attorney’s knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. If a pleading is not signed or is signed with intent to defeat the purpose of this rule, it may be stricken and the action may proceed as though the pleading or other paper had not been served.

Signature of Attorneys and Parties

Rule 2.515

Considerations Regarding E-Mail Addresses – Page 1

Primary and Secondary E-Mail Addresses

- Primary e-mail address:
 - Primary e-mail address of attorney under Rule 2.515 need not be same as the business e-mail address as part of official record*
 - Best practice will be to provide the attorney’s official bar e-mail address** as the primary Rule 2.515 e-mail address
 - Primary e-mail address should be the e-mail address of an attorney
- Secondary e-mail address(es):
 - Not required
 - A secondary e-mail address provided for a particular matter could be:
 - Standardized e-mail address for all filings for the law firm established solely for receiving service, *i.e.*, Service@LairdALile.com
 - Similar to a mail clerk’s desk prior to the e-world
 - An e-mail address for legal assistants, paralegals, Residents At Law, associates
 - The Client’s e-mail address

* A business e-mail address is required to be provided as part of official bar record if the member has one.
Rule 1-3.3 of Rules Regulating The Florida Bar

** The Florida Bar requirement to provide a business e-mail address as part of an attorney’s official bar record is distinct from the requirements under Rule 2.515. The e-mail address provided for the official bar record may or may not be the same as the primary or one of the secondary e-mail addresses for a particular proceeding.

Signature of Attorneys and Parties

Rule 2.515

[Considerations Regarding E-Mail Addresses – Page 2](#)

Primary and Secondary E-Mail Addresses

- Both the primary e-mail address and the secondary e-mail address(es) can vary from one case to another
- If more than one attorney appears in a proceeding, the rules regarding e-mail addresses described above apply to each attorney

Signature of Attorneys and Parties

Rule 2.515

Considerations Regarding Signatures

Format of the signature of the attorney

- Traditional format still acceptable
 - Print a hard copy, sign with a pen and scan the signed document
- New formats also acceptable
 - /s/
 - Type “/s/” followed by the attorney’s name, in place of the actual signature
 - Example: /s/ Laird A. Lile
 - Electronic version can be created without the need to print a hard copy
 - Referred to in Rule 2.516(b)(1)(E)(ii), authorized for document served by e-mail
 - s/ and /s alternatives
 - s/ was adopted for electronic signatures in Administrative Order 09-30
 - /s is referred to by Office of State Court Administrator as preferred format
 - Practically, any of these new formats (/s,s/,/s) should be sufficient

Service of Pleadings and Documents

Rule 2.516

An Overview

- New Rule, modeled on former Rule of Civil Procedure 1.080
- Structure of Rule 2.516
 - (a) Service; When Required
 - (b) Service; How Made
 - (1) Service by Electronic Mail (“e-mail”)
 - (A) Service on Attorneys
 - (B) Exception to E-mail Service* on Attorneys
 - (C) Service on and by Parties Not Represented by an Attorney
 - (D) Time of Service
 - (E) Format of E-mail for Service
 - (2) Service by Other Means
 - (c) Service; Numerous Defendants
 - (d) Filing
 - (e) Filing Defined
 - (f) Certificate of Service
 - (g) Service by Clerk
 - (h) Service of Orders

* The type of service anticipated by this Rule is best referred to as “service by e-mail.” The term “E-Mail Service” is used interchangeably with this preferred term throughout the opinion and Rule 2.516. The term “e-service” is something different and may be offered through the e-portal at some point in the future.

Service of Pleadings and Documents

Rule 2.516

(a) Service; When Required

- Service* required in accordance with this new rule nearly all of the time
- Limited Exceptions:
 - Unless the court otherwise orders (same as in former Rule 1.080)
 - Unless a statute or Supreme Court administrative order specifies a different means of service
 - Not required for applications for witness subpoenas (same as in former Rule 1.080)
 - Not required for documents served by formal notice or required to be served in the manner provided for service of formal notice (a concept carried over from special probate rules)
 - No service need be made on parties against whom a default has been entered, except that pleadings asserting new or additional claims against them must be served in the manner provided for service of summons (same as in former Rule 1.080)

* This subsection only requires service, not necessarily e-mail. The manner in which service is made is addressed in subsection(b).

Service of Pleadings and Documents

Rule 2.516

(b) Service; How Made

(b)(1) Service by Electronic Mail (“e-mail”)

- Service to be made upon a party represented by an attorney must be made upon the attorney unless court orders otherwise. (same as in former Rule 1.080)
- **Service by e-mail is mandated for all documents required or permitted to be served on another party, unless this rule otherwise provides.**
- A document may, in addition to being served by e-mail, be served by another means provided for in this rule.
 - Any different time limits and other provisions applicable to that other means of service control over the time limits established by the service by e-mail.
 - The other means of service must be in addition to, not in place of, service by e-mail.

Service of Pleadings and Documents

Rule 2.516

(b)(1)(A) Service on Attorneys

- An attorney appearing in a proceeding must serve a designation of a primary e-mail address
 - Although not required, the best practice will be to utilize the attorney's official bar e-mail address as the designated primary e-mail address
- An attorney appearing in a proceeding may designate no more than two secondary e-mail addresses
 - These secondary e-mail addresses may vary from matter to matter. See discussion of Rule 2.515(a)

Service of Pleadings and Documents

Rule 2.516

(b)(1)(A) Service on Attorneys

- The rules do not specify any particular format for the designations.
- In existing matters, the designation could be in a separate filing or incorporated in a filing prior to the relevant effective date
- In new matters, the designation could be included in the initial filing by the attorney
- Changes in e-mail addresses should be handled in the same manner as changes in mailing addresses have been handled.

Service of Pleadings and Documents

Rule 2.516

[Sample Form of Designation](#)

[CASE CAPTION]

DESIGNATION OF E-MAIL ADDRESSES PURSUANT TO RULE 2.516

Laird A. Lile, as attorney for Justin Brenner, in his capacity as personal representative of the Estate of Jane Doe, hereby designates, pursuant to Rule 2.516 (effective September 1, 2012), the following e-mail addresses for the purpose of service of all documents required to be served pursuant to Rule 2.516 in this proceeding:

Primary E-Mail Address: LLile@LairdLile.com

Secondary E-Mail Addresses: Assistant@LairdLile.com and Service@LairdLile.com

Laird A. Lile, Esq.

Attorney for Justin Brenner as personal representative of the Estate of Jane Doe

Florida Bar Number 443141

Laird A. Lile, P.A.

3033 Riviera Drive, Suite #104

Naples, FL 34103

Telephone: (239) 649.7778

Fax: (239) 649.7780

[CERTIFICATE OF SERVICE]

Service of Pleadings and Documents

Rule 2.516

(b)(1)(A) Service on Attorneys

- All subsequent filings must include the primary and any secondary e-mail addresses of that attorney
- Failing to designate an e-mail address in a filing does not let the attorney avoid service by e-mail
 - Documents may be served on that attorney at the e-mail address on record with The Florida Bar*
 - If an attorney in a proceeding fails to make an e-mail address available (i.e., none designated and none on record with The Florida Bar), a telephone call to the attorney with reference to these new rules should suffice. Hopefully court intervention will not be necessary.

* Select Find a Member at www.FlaBar.org.

Service of Pleadings and Documents

Rule 2.516

(b)(1)(B) Exception to E-Mail Service on Attorneys

- Can an attorney avoid the new mandatory service by e-mail rules?
 - Yes, but only by court order, in each proceeding.
- The court may excuse an attorney from service by e-mail rules, if the attorney demonstrates that:
 - The attorney has no* e-mail account; and
 - The attorney lacks access to Internet at the attorney's office
- If an exception is granted, then the attorney will neither be required to serve by e-mail nor receive service by e-mail
- The other service rules (see 2.516(b)(2)) will then apply.

* The bar rules refer to a business e-mail account. This rule does not include the modifier of "business." Therefore, if an attorney has any e-mail account, the attorney may not be exempted from service by e-mail.

Service of Pleadings and Documents

Rule 2.516

(b)(1)(B) Exception to E-Mail Service on Attorneys

- For an attorney attempting to avoid the mandatory service by e-mail rules, a motion will be required for each proceeding
- The requirement is in the conjunctive – both parts must be met.
 - An attorney with any e-mail address, even a personal one, will not be permitted to avoid the new rules
 - An attorney with any access to Internet at the attorney's office, even if only used sporadically, will not be permitted to avoid the new rules
- The court is permitted, but not required, to excuse the attorney from service by e-mail rules
- Of the 90,000+ members of The Florida Bar, very, very few are expected to qualify to seek this exception

Service of Pleadings and Documents

Rule 2.516

(b)(1)(C) Service on and by Parties Not Represented by Attorneys

- A party not represented by an attorney (“unrepresented party”) may, at the party’s election, participate in service by e-mail
 - Optional, not mandatory
- To participate in service by e-mail, an unrepresented party must serve a designation of a primary e-mail address
 - The designation may include up to two secondary e-mail addresses
- If an unrepresented party does not chose to participate in service by e-mail, then service must be made by means other than e-mail (see subdivision (b)(2))

Service of Pleadings and Documents

Rule 2.516

(b)(1)(D) Time of Service

- Service by e-mail is complete when the e-mail is sent.
- “Sent” is not specifically defined in the rules.
- From the sender’s viewpoint, the clicking of “Send” will likely be treated as when the e-mail is “sent.”
- Depending upon the sender’s computer system, clicking “Send” may or may not cause the e-mail to be transmitted to the Internet for delivery to the recipient
 - Some systems include internal e-mail servers that may require internal processing before releasing the e-mail to the Internet for delivery to the recipient
- Attorneys using delayed sending or other e-mail management features do so at their own peril if the feature results in the e-mail not being sent as anticipated.

Service of Pleadings and Documents

Rule 2.516

(b)(1)(D) Time of Service

- Sometimes the sender of an e-mail is notified* of a issue that has precluded the e-mail from reaching the sender.
- If that occurs, the sender of the e-mail is required to immediately send another copy:
 - by e-mail or
 - by a means other than e-mail as authorized in this rule at subdivision (b)(2)
- Service by e-mail is treated as service by regular mail for purposes of computing time
- Including for purposes of allowing an additional 5 days**

* Notice might be from the sender's system indicating a delay in delivery or a rejection notice from an Internet Service Provider (ISP). The source of the notice is not relevant. If the sender is on notice of a delivery issue, the sender is required to take action.

** Court rules (i.e., Rule 1.090(e) and 5.042(d)) have traditionally allowed an additional 5 days for a party to act after being served by mail. The 5 additional days is, effective October 1, 2012, provided for in Rule 2.514. See SC10-2299

Service of Pleadings and Documents

Rule 2.516

(b)(1)(E) Format of E-Mail for Service

- The document being served must be attached in a “pdf” format.
 - PDF stands for “portable document format”
 - Universally recognized format
 - Originally proprietary format by Adobe Systems
 - Since at least 2001, free readers of PDF documents available from Adobe
 - Free writers now also available on the internet
 - Most word processors now include a print to PDF function
 - Most scanners default to creating a document in PDF

Service of Pleadings and Documents

Rule 2.516

(b)(1)(E) Format of E-Mail for Service

- The e-mail by which the document is served must be sent to all addresses designated by the attorney or party
 - A single e-mail to all those being served is expected, instead of separate e-mails to each attorney or party
- The subject line of the e-mail must
 - begin with “SERVICE OF COURT DOCUMENT”
 - All capital letters are required
- followed by the case number of the proceeding in which the document is being served
 - The format of the case number is not specified in the rule
 - A format utilized in local practice should be sufficient.
 - An alternative is the uniform case number (UCN)*. This number consists of 20 characters consisting of:
 - 2 digit numeric county designation (i.e., 01, 11, 67)
 - 4 digit numeric year in which case was opened (i.e., 2012)
 - 2 alpha code for court type (i.e., CA, CP, SC)
 - 6 digit sequential number assigned by the clerk
 - 6 characters available for use by clerks for internal management

* When e-filing through the e-portal, the UCN is required. The e-portal interface has been updated to include a simpler interface for completing the UCN. This format will likely become the preferred format as e-things continue to develop.

Service of Pleadings and Documents

Rule 2.516

(b)(1)(E) Format of E-Mail for Service

- The body of the e-mail by which the document is served must identify:
 - The court in which the proceeding is pending
 - The case number*
 - The name of the initial party on each side of the case
 - The title of each document served with that e-mail
 - More than one document may be serve in a single e-mail
 - The sender's name and telephone number

* The requirement for the case number is in addition to the requirement for the case number to also be in the subject line of the e-mail.

Service of Pleadings and Documents

Rule 2.516

(b)(1)(E) Format of E-Mail for Service

- The document being served may be signed using a /s/ format
- However, the original document filed with the clerk must be signed “in accordance with the applicable rule of procedure.”
- An e-mail and attachment may not exceed 5 megabytes (5 MB)
 - If more than 5 MB* is to be served, then attachments must be served by separate e-mails, none of which exceed 5 MB and all of which are numbered sequentially in the subject line.
 - If the size is in doubt, the sender could first save the e-mail and check the size in the draft folder.

* The size limitation applies to the size of the e-mail, not the size of an attachment to the e-mail.

Service of Pleadings and Documents

Rule 2.516

[\(b\)\(1\)\(E\) Format of E-Mail for Service](#)

Summary of Format Requirements


- Each e-mail must be addressed to all e-mail addresses designated by each person being served
- Only attach PDFs
- Subject line: SERVICE OF COURT DOCUMENT – followed by case number
- Body: court; case number; the name of the initial party on each side; title of each attached document; sender’s name and telephone number.
- 5 MB Limit on size of e-mail

Service of Pleadings and Documents

Rule 2.516

(b)(1)(E) Format of E-Mail for Service

Example

- To: GAYoung@CarltonFields.com; EKPetitis@haliczerpettis.com
- Attachment: 
- Subject: SERVICE OF COURT DOCUMENT 112012CA000070xxxxxx
- Body: Hi, Gwynne and Gene. Attached is the Defendant's Motion to Dismiss that I have filed in Coleman v. Cohen, 112012CA000070xxxxxx in the Circuit Court. You can reach me at my office number 239.649.7778.
Laird A. Lile

Service of Pleadings and Documents

Rule 2.516

(b)(2) Service by Other Means

- In addition to serving by e-mail, a document may also be served by other means.
- Substance of this part of Rule 2.516 is from former Rule 1.080
- Service by other means will be utilized in two situations:
 - (i) When service by e-mail is not allowed:
 - Parties not represented by an attorney who have not designated an e-mail address
 - An attorney who has obtained an order exempting from service by e-mail
 - (ii) As an additional means of service

Service of Pleadings and Documents

Rule 2.516

(b)(2) Service by Other Means

- Service by one of these other means in addition to service by e-mail might be beneficial to:
 - Shorten a response period
 - For instance, service by hand of a document that commences a period within which a response is required will shorten the response period by 5 days.
 - Eliminate dispute over receipt of the document by the intended recipient
 - An attorney may wish to also mail a document to an attorney who demonstrates a pattern of asserting documents served by e-mail are not received.

Service of Pleadings and Documents

Rule 2.516

(c), (d), (e), and (f)

- The following subdivisions of Rule 2.516 are not changed from former Rule 1.080:
 - (c) Service; Numerous Defendants
 - (d) Filing.
 - (e) Filing Defined
- Subdivision (f) is similar to former Rule 1.080 and adds a reference to e-mail in the form Certificate of Service

Service of Pleadings and Documents

Rule 2.516

(g)

- Subdivision (g) refers to service by clerks
- “(g) Service by Clerk. Service of notices and other documents required to be made by the clerk must also be done as provided in subdivision (b).”
 - E-mail is permissive, not required, when clerks serve
 - Reference in (g) is to (b), not just (b)(1)
 - (b)(1) describes service by e-mail
 - (b)(2) describes service by other means
 - Opinion clearly makes service by e-mail optional for clerks
- “[Subdivision (g) and (h)] authorize, but do not require, the clerks and the courts to utilize e-mail service if they are equipped to do so.”

Service of Pleadings and Documents

Rule 2.516

(h)

- Subdivision (h) refers to service by the court
- Most of (h) is from former Rule 1.080(h)
- One new sentence at the end of (h)(1):

“The court may serve any order or judgment by e-mail to all attorneys who have not been excused from e-mail service and to all parties not represented by an attorney who have designated an e-mail address for service.”

- E-mail is permissive, not required, for the court
 - Opinion clearly makes service by e-mail optional for clerks
- “[Subdivision (g) and (h)] authorize, but do not require, the clerks and the courts to utilize e-mail service if they are equipped to do so.”

Practical Considerations – page 1

Rules 2.515 and 2.516

- Must the attorney who is serving the document personally send the e-mail by which service is effected?
 - Although not addressed in the rule, the answer should be no different than the answer to the question of whether the attorney must hand a document served by U.S. mail to the postperson.
- Must the attorney who is serving the document personally “sign” the document being filed?
 - The requirement for the attorney to “sign” is not dependent upon the manner of signing (i.e., traditional signing and then scanning or signing by typing an “s” with one or more “/”). Ethics opinion 87-11 concludes a nonlawyer should not sign an attorney’s name. Although not issued in an e-context, strict compliance with this opinion suggests only an attorney should type the /s/, s/, or /s.
- Should a copy of the e-mail be sent to the judge or judicial assistant?
 - **ONLY** if you would copy the judge or judicial assistant with a paper filing, which presumably would be very unusual.
 - Even then some judges and judicial assistants are not accepting e-mails.

Practical Considerations – page 2

Rules 2.515 and 2.516

- Can I automate the handling of e-mail that I receive with service of documents?
 - You could implement a rule in your e-mail program (i.e., Microsoft® Outlook) (See appendix 1)
 - Test the rule once established
- How can I manage e-mail addresses for matters with multiple attorneys and multiple e-mail addresses for those attorneys?
 - A group e-mail address could be established with all e-mail addresses for a particular matter.
 - E-mails could then be sent to the group, instead of to the individual e-mail addresses
 - When using the group e-mail address, consider expanding the list to show its members for proof of the members of the group at the time being sent.

Practical Considerations – page 3

Rules 2.515 and 2.516

- How can I be sure the intended document is attached?
 - Open each document after attaching to the e-mail and prior to sending
 - Utilize naming protocols that are descriptive of the contents of the document
 - Personal Representative Kelley’s Motion for Reconsideration.pdf instead of csxbzy42.pdf
- On whom should the designations be served?
 - Rule 2.516(a) requires every document to be served on each party with limited exceptions:
 - Applications for witness subpoenas
 - Documents served by formal notice or in manner provided for service of formal notice (Rule 5.040)
 - In probate, an interested person is a party. (Rule 5.041)

Practical Considerations – page 4

Rules 2.515 and 2.516

- Should party not represented by an attorney be encouraged to designation e-mail address?
 - Simplify service by attorneys
 - Encourage extraneous communications

List of Other Rules Changed Service by E-Mail

Conforming changes and changes to cross-references

- Rule 1.080
- Rule 1.170
- Rule 1.351
- Rule 1.410
- Rule 1.440
- Rule 1.442
- Rule 1.510
- Rule 1.630
- Rule 3.030
- Rule 3.070
- Rule 3.852
- Rule 5.030
- Rule 5.040
- Rule 5.041
- Rule 5.060
- Rule 5.120
- Rule 5.200
- Rule 5.340
- Rule 5.342
- Rule 5.350
- Rule 5.355
- Rule 5.360
- Rule 5.370
- Rule 5.380
- Rule 5.385
- Rule 5.386
- Rule 5.400
- Rule 5.401
- Rule 5.402
- Rule 5.403
- Rule 5.405
- Rule 5.406
- Rule 5.407
- Rule 5.430
- Rule 5.440
- Rule 5.460
- Rule 5.470
- Rule 5.475
- Rule 5.496
- Rule 5.498
- Rule 5.499
- Rule 5.510
- Rule 5.530
- Rule 5.620
- Rule 5.630
- Rule 5.650
- Rule 5.670
- Rule 5.680
- Rule 5.690
- Rule 5.695
- Rule 5.696
- Rule 5.700
- Rule 6.370
- Rule 7.080
- Rule 7.050
- Rule 8.085
- Rule 8.225
- Rule 8.635
- Rule 9.420
- Rule 12.040
- Rule 12.080
- Rule 12.090
- Rule 12.170
- Rule 12.285
- Rule 12.351
- Rule 12.410
- Rule 12.440
- Rule 12.510
- Rule 12.611
- Rule 12.615
- Rule 12.630

E-Filing

New and Changed Rules

SC11-399

- Rules with Significant Changes
 - 2.520 Documents
 - 2.525 Electronic Filing
- Many rules with conforming and minor changes
- Additional guidance to be provided on e-filing

E-Filing

An Overview

- Rule 2.520(a) requires all documents filed in any court to be filed by electronic transmission as provided in rule 2.525
- Rule 2.525(a) defines electronic transmission of documents to include filing through the centralized e-portal
- Although not effective until April 1, 2013 for civil divisions and October 1, 2013 for criminal divisions, the e-portal is available now

E-Filing

Access to the e-portal: www.myflcourtagency.com

Florida Courts eFiling Portal - Windows Internet Explorer
https://www.myflcourtagency.com/

File Edit View Favorites Tools Help
Suggested Sites Free Hotmail Get More Add-ons


Florida Courts eFiling Portal

Welcome to the Florida Courts eFiling Portal

NOTICE: The Florida Courts ePortal will be unavailable from Saturday, August 25 @ 12:00 AM ET until Monday, August 27 @ 6:00 AM ET

* User Name: * Password: [Sign In](#)

[Register Now!](#) [Forgot Password?](#)



[Terms Of Use](#) | [Privacy Statement](#) | [Request eFiling Support for Attorneys & Paralegals](#)

© 2012 FACC Services Group

Internet 80%

E-Filing

Access to the e-Filer Documentation – 47 page manual
https://www.myflcourtaaccess.com/Docs/Filer_072012.pdf



Conclusion

Service by E-Mail becomes **mandatory** on September 1, 2012 for certain proceedings.

E-Filing becomes **mandatory** for non-appellate matters on April 1, 2013. Watch for additional educational opportunities.

Appendix 1: Slide 1 of 4

Outlook 2010 E-Mail Rules

Set up Outlook 2010 to copy incoming e-mail service messages to a special mail folder
(The original incoming e-mail will remain in your Inbox.)
by
Rohan Kelley

This must be performed on the computer of each person who may receive E-mail service

1. In your Microsoft Outlook 2010 program, click the “File” tab at the upper left above the “New E-mail” icon.
2. Click the last button “Manage Rules & Alerts”
3. A Rules and Alerts panel opens. The E-mail Rules tab should be active. Click “New Rule” on the far left.
4. A Rules Wizard panel opens. In “Step 1: Select a template” under “Start from a blank rule” click “Apply rule on messages I receive.”
5. Still in Step 1.; Under “Stay Organized” click the second item, “Move messages with specific words in the subject to a folder”
6. Still in the same Rules Wizard panel, in the “Step 2: Edit the rule description” area, click “specific words”.

Appendix 1: Slide 2 of 4

Outlook 2010 E-Mail Rules

7. A “Search Text” panel opens. In the field, “Specify words or phrases to search for in the subject:” type “SERVICE OF COURT” without the quote marks.. (I suggest not including the word, “DOCUMENTS” in the phrase.) Be sure it’s spelled correctly! “Search Text” entries are not case sensitive.
8. Click Add. The typed words will appear in the lower “Search lists” panel. Then click OK.
9. Back in the Rules Wizard panel, in the lower window, “Step 2: Edit the rule description”, click “specified”.
10. A “Rules and Alerts” panel opens. Click the NEW button
11. A “Create New Folder” panel opens. Under “Name” type the name of the folder you want to use to collect the e-mail service messages, for example, “(your initials) e-mail service received” (without the quote marks and typing your actual initials instead of “your initials”). For example, I typed “rk e-mail service received”.
12. Click OK. A new mail folder with the name you specified will appear in your Inbox as a subfolder. (It might be necessary to click the arrow head to the left of “Inbox” to see it.) Click OK.

Appendix 1: Slide 3 of 4

Outlook 2010 E-Mail Rules

13. In the Rules Wizard panel, click the “Next>” button.
14. In the Rules Wizard panel, under “Step 1: Select condition(s),” “with specific words in the subject” is checked. Also check “which has an attachment”. (You may need to scroll down to find it.) Click “Next>”
15. Under “Step 1: Select action(s)” the “stop processing more rules” and “move it to the specified folder” should be checked. Click “move it to the specified folder to deselect it and click “move a copy to the selected folder”.
16. In “Step 2: Edit the rule description”, click specified.
17. A Rules and Alerts panel will open. Click the new email folder you created above to highlight it. Then click “OK”
18. The Rules Wizard panel “Are there any exceptions” opens. Click “Next>”
19. A new Rules Wizard panel “Finish rule setup” opens. Be sure the “Turn on this rule” box is checked, then click “Finish”
20. In the Rules and Alerts panel Click OK. This concludes the setup.

Appendix 1: Slide 4 of 4

Outlook 2010 E-Mail Rules

Test this by sending yourself an e-mail conforming to the rule requirements. If the Outlook rule doesn't work properly, or you wish to change some of the rule parameters, it may be edited without starting over by clicking the Manage Rules & Alerts button under the File tab then clicking "Change Rule" in the Rules and Alerts panel and selecting "Edit Rule Settings".

**IF THIS DOESN'T WORK FOR YOU, CONTACT YOUR REGULAR IT SUPPORT RESOURCE.
Neither the author of these e-mail rules, Rohan Kelley, nor The Florida Bar can
provide support.**

Version Control

v1 to v2.1

The initial released version of these materials was numbered v1. This version is v2.1. The substantive changes between these two versions are summarized as follows:

- Slide 2: added reference to e-discovery
- Slide 11 and Slide 13: Emphasize difference between e-mail addresses required in Rule 2.515 and business e-mail as part of official bar record
- Slide 14: Emphasis on likely acceptability of any of the new formats for signing
- Slide 15: addition of footnote re terminology
- New Slide 20: added sample form of designation of email address
- Old 21/New 22: addition of footnote
- Old 24/New 25: addition of comment regarding e-mail management tools
- Old 27/new 28: addition of footnote regarding UCN
- Old 28/new 29: addition of footnote
- Old 29/new 30: Clarifies the size limit applies to the e-mail, not the size of an attachment
- Old 30/new 31: Clarifies recipients of e-mail and application of size limits
- Old 33 was moved to new 36 and the added reference to ethics opinion 87-11 and possible application to new format of signing and added guidance on sending e-mails to judges and judicial assistants
- In addition to substantive changes, some formatting changes and grammatical corrections have been incorporated in this version.

Version Control

v2.1 to v3.0

The second released version of these materials was numbered v2.1. This version is v3.0. The substantive changes between these two versions are summarized as follows:

- Slides 3 and 4: added emphasis about applicability to existing cases
- Slide 11: clarified comment regarding e-mail address provided as part of official bar record
- New Slide 14: Added additional slide regarding Considerations Regarding E-Mail Addresses
- Old Slide 21/New Slide 22: Added reference to website to find e-mail addresses
- New Slide 38: Added additional slide regarding Practical Considerations
- In addition to substantive changes, some formatting changes and grammatical corrections have been incorporated in this version.

Version Control

V3.0 to v4.0

The third released version of these materials was numbered v3.0. This version is v4.0. The substantive changes between these two versions are summarized as follows:

- Slide 31: Replaces suggested manner to check size of e-mail (with attachments) with a better suggestion for determining size for compliance with 5 MB limitation
 - New Slides 37 and 38: Expand upon the provisions for service by clerks and by the court
 - Old Slide 38/New Slide 40: Adds reference to Appendix 1 (Outlook rule for E-mail)
 - Old Slide 39/New Slide 41: Adds practical consideration
 - New Slides 41 and 42: Added additional Practical Considerations
 - New Slides 45 to 47: Added information about e-filing
 - New Slides 49 to 52: Added Appendix 1 regarding Outlook rules for E-mail
- In addition to substantive changes, some formatting changes and grammatical corrections have been incorporated in this version.

Subdivision (c) was adopted to ensure that a 1 1/2 inch square at the top right-hand corner of all filings is reserved for use by the clerk of court. Subdivision (d) was adopted to ensure that all papers and documents submitted for filing will be considered filed on the date of submission regardless of paper size. Subdivision (d) also ensures that after the 1-year transition period of subdivision (e), filings that are not in compliance with the rule are resubmitted on paper measuring 8 1/2 by 11 inches.

This rule is not intended to apply to those instruments and documents presented to the clerk of the circuit court for recording in the Official Records under section 28.222, Florida Statutes (1987). It is also not intended to apply to matters submitted to the clerk of the circuit court in the capacity as ex officio clerk of the board of county commissioners pursuant to article VIII, section (1)(d), Florida Constitution.

1996 Amendment. Subdivision (c) was amended to make the blank space requirements for use by the clerk of the court consistent with section 695.26, Florida Statutes (1995). Subdivision (e) was eliminated because the transition period for letter-size and recycled paper was no longer necessary.

RULE 2.525. ELECTRONIC FILING

(a) Definition. “Electronic transmission of documents” means the transmission by electronic signals, to or from a court or clerk of the court, of information which when received can be transformed and stored or reproduced on paper, microfilm, magnetic storage device, optical imaging system, or other electronic record keeping system authorized by the Supreme Court of Florida in a format sufficient to communicate the information on the original document in a readable format.

(b) Application. Any court or clerk of the court may accept the electronic transmission of documents for filing after the clerk, together with input from the chief judge of the circuit, has obtained approval of the procedures and program for doing so from the Supreme Court of Florida.

(c) Documents Affected.

(1) All documents that are court records, as defined in rule 2.430(a)(1), may be filed by electronic transmission provided that:

(A) the clerk of court has the ability to accept and retain such documents;

(B) the clerk of court or the chief judge of the circuit has requested permission to accept documents filed by electronic transmission; and

(C) the Supreme Court of Florida has entered an order granting permission to the clerk of court to accept documents filed by electronic transmission.

Any attorney, party, or other person who files a document by electronic transmission shall, immediately thereafter, file the identical document, in paper form, with an original signature of the attorney, party, or other person if a signature is otherwise required by these rules (hereinafter called the follow-up filing).

(2) The follow-up filing of any document that has previously been filed by electronic transmission may be discontinued if:

(A) after a 90-day period of accepting electronically filed documents, the clerk of court or the chief judge of the circuit certifies to the Supreme Court of Florida that the electronic filing system is efficient, reliable, and meets the demands of all parties;

(B) the clerk of court or the chief judge of the circuit requests permission to discontinue that portion of the rule requiring a follow-up filing of documents in paper form, except as otherwise required by general law, statute, or court rule; and

(C) the Supreme Court of Florida enters an order directing the clerk of court to discontinue accepting the follow-up filing.

(d) Service.

(1) Electronic transmission may be used by a court for the service of all orders of whatever nature provided the clerk, together with input from the chief judge of the circuit, has obtained approval from the Supreme Court of Florida of the specific procedures and program to be used in transmitting the orders. All other requirements for the service of such an order shall be met.

(2) Any document electronically transmitted to a court or clerk of the court shall also be served on all parties and interested persons in accordance with the applicable rules of court.

(e) Transmission Difficulties. Any attorney, party, or other person who elects to file any document by electronic transmission shall be responsible for any delay, disruption, interruption of the electronic signals, and readability of the document, and accepts the full risk that the document may not be properly filed with the clerk as a result.

(f) Administration.

(1) Any clerk of the court who, after obtaining Supreme Court of Florida approval, accepts for filing documents that have been electronically transmitted shall:

(A) provide electronic or telephonic access to its equipment during regular business hours; and

(B) accept electronic transmission of documents up to 10 pages in length.

(2) All attorneys, parties, or other persons using this rule to file documents are required to make arrangements with the court or clerk of the court for the payment of any charges authorized by general law or the Supreme Court of Florida before filing any document by electronic transmission.

(3) The filing date for an electronically transmitted document shall be the date the last page thereof is received by the court or clerk of the court.

(4) Any court or clerk of the court may extend the hours of access or increase the page limitations set forth in this subdivision.

(g) Accessibility. All documents transmitted in any electronic form under this rule must comply with the accessibility requirements of Florida Rule of Judicial Administration 2.526.

Court Commentary

1997 Amendment. Originally, the rule provided that the follow-up filing had to occur within ten days. In the 1997 amendment to the rule, that requirement was modified to provide that the follow-up filing must occur “immediately” after a document is electronically filed. The “immediately thereafter” language is consistent with language used in the rules of procedure where, in a somewhat analogous situation, the filing of a document may occur after service. *See, e.g.*, Florida Rule of Civil Procedure 1.080(d) (“All original papers shall be filed with the court either before service or *immediately thereafter*.”) (emphasis added). “Immediately thereafter” has been interpreted to mean “filed with reasonable promptness.” *Miami Transit Co. v. Ford*, 155 So.2d 360 (Fla.1963).

The use of the words “other person” in this rule is not meant to allow a nonlawyer to sign and file pleadings or other papers on behalf of another. Such conduct would constitute the unauthorized practice of law.

RULE 2.526. ACCESSIBILITY OF INFORMATION AND TECHNOLOGY

Any document that is or will become a judicial branch record, as defined in rule 2.420(b)(1), and that is transmitted in an electronic form, as defined in rule 2.525, must be formatted in a manner that complies with all state and federal laws requiring that electronic judicial records be accessible to persons with disabilities, including without limitation the Americans with Disabilities Act and Section 508 of the federal Rehabilitation Act of 1973 as incorporated into Florida law by section 282.603(1), Florida Statutes (2010), and any related federal or state regulations or administrative rules.

RULE 2.530. COMMUNICATION EQUIPMENT

(a) Definition. Communication equipment means a conference telephone or other electronic device that permits all those appearing or participating to hear and speak to each other, provided that all conversation of all parties is audible to all persons present.

(b) Use by All Parties. A county or circuit court judge may, upon the court’s own motion or upon the written request of a party, direct that communication equipment be used for a motion hearing, pretrial conference, or a status conference. A judge must give notice to the parties and consider any objections they may have to the use of communication equipment before directing that communication equipment be used. The decision to use communication equipment over the objection of parties will be in the sound discretion of the trial court, except as noted below.

interposed for delay. If a pleading is not signed or is signed with intent to defeat the purpose of this rule, it may be stricken and the action may proceed as though the pleading or other paper had not been served.

(b) Pro Se Litigant Signature. A party who is not represented by an attorney shall sign any pleading or other paper and state the party's address and telephone number, including area code.

(c) Form of Signature.

(1) The signatures required on pleadings and papers by subdivisions (a) and (b) of this rule may be:

(A) original signatures;

(B) original signatures that have been reproduced by electronic means, such as on electronically transmitted documents or photocopied documents; or

(C) any other signature format authorized by general law, so long as the clerk where the proceeding is pending has the capability of receiving and has obtained approval from the Supreme Court of Florida to accept pleadings and papers with that signature format.

(2) An attorney, party, or other person who files a pleading or paper by electronic transmission that does not contain the original signature of that attorney, party, or other person shall file that identical pleading or paper in paper form containing an original signature of that attorney, party, or other person (hereinafter called the follow-up filing) immediately thereafter. The follow-up filing is not required if the Supreme Court of Florida has entered an order directing the clerk of court to discontinue accepting the follow-up filing.

RULE 2.516 SERVICE OF PLEADINGS AND DOCUMENTS

(a) Service; When Required. Unless the court otherwise orders, or a statute or supreme court administrative order specifies a different means of service, every pleading subsequent to the initial pleading and every other document filed in any court proceeding, except applications for witness subpoenas and documents served by formal notice or required to be served in the manner provided for service of formal notice, must be served in accordance with this rule on each party. No service need be made on parties against whom a default has been entered, except that pleadings asserting new or additional claims against them must be served in the manner provided for service of summons.

(b) Service; How Made. When service is required or permitted to be made upon a party represented by an attorney, service must be made upon the attorney unless service upon the party is ordered by the court.

(1) Service by Electronic Mail (“e-mail”). All documents required or permitted to be served on another party must be served by e-mail, unless this rule otherwise provides. When, in addition to service by e-mail, the sender also utilizes another means of service provided for in subdivision (b)(2), any differing time limits and other provisions applicable to that other means of service control.

(A) Service on Attorneys. Upon appearing in a proceeding, an attorney must serve a designation of a primary e-mail address and may designate no more than two secondary e-mail addresses. Thereafter, service must be directed to all designated e-mail addresses in that proceeding. Every document filed by an attorney thereafter must include the primary e-mail address of that attorney and any secondary e-mail addresses. If an attorney does not designate any e-mail address for service, documents may be served on that attorney at the e-mail address on record with The Florida Bar.

(B) Exception to E-mail Service on Attorneys. Service by an attorney on another attorney must be made by e-mail unless excused by the court. Upon motion by an attorney demonstrating that the attorney has no e-mail account and lacks access to the Internet at the attorney’s office, the court may excuse the attorney from the requirements of e-mail service. Service on and by an attorney excused by the court from e-mail service must be by the means provided in subdivision (b)(2) of this rule.

(C) Service on and by Parties Not Represented by an Attorney. Any party not represented by an attorney may serve a designation of a primary e-mail address and also may designate no more than two secondary e-mail addresses to which service must be directed in that proceeding by the means provided in subdivision (b)(1) of this rule. If a party not represented by an attorney does not designate an e-mail address for service in a proceeding, service on and by that party must be by the means provided in subdivision (b)(2) of this rule.

(D) Time of Service. Service by e-mail is complete when it is sent.

(i) An e-mail is deemed served on the date it is sent.

(ii) If the sender learns that the e-mail did not reach the address of the person to be served, the sender must immediately send another copy by e-mail, or by a means authorized by subdivision (b)(2) of this rule.

(iii) E-mail service is treated as service by mail for the computation of time.

(E) Format of E-mail for Service. Service of a document by e-mail is made by attaching a copy of the document in PDF format to an e-mail sent to all addresses designated by the attorney or party.

(i) All documents served by e-mail must be attached to an e-mail message containing a subject line beginning with the words “SERVICE OF COURT

DOCUMENT” in all capital letters, followed by the case number of the proceeding in which the documents are being served.

(ii) The body of the e-mail must identify the court in which the proceeding is pending, the case number, the name of the initial party on each side, the title of each document served with that e-mail, and the sender’s name and telephone number.

(iii) Any document served by e-mail may be signed by the “/s/” format, as long as the filed original is signed in accordance with the applicable rule of procedure.

(iv) Any e-mail which, together with its attached documents, exceeds five megabytes (5MB) in size, must be divided and sent as separate e-mails, no one of which may exceed 5MB in size and each of which must be sequentially numbered in the subject line.

(2) Service by Other Means. In addition to, and not in lieu of, service by e-mail, service may also be made upon attorneys by any of the means specified in this subdivision (b)(2). Service on and by all parties who are not represented by an attorney and who do not designate an e-mail address, and on and by all attorneys excused from e-mail service, must be made by delivering a copy of the document or by mailing it to the party or attorney at their last known address or, if no address is known, by leaving it with the clerk of the court. Service by mail is complete upon mailing. Delivery of a copy within this rule is complete upon:

- (A) handing it to the attorney or to the party,
- (B) leaving it at the attorney’s or party’s office with a clerk or other person in charge thereof,
- (C) if there is no one in charge, leaving it in a conspicuous place therein,
- (D) if the office is closed or the person to be served has no office, leaving it at the person’s usual place of abode with some person of his or her family above 15 years of age and informing such person of the contents, or
- (E) transmitting it by facsimile to the attorney’s or party’s office with a cover sheet containing the sender’s name, firm, address, telephone number, and facsimile number, and the number of pages transmitted. When service is made by facsimile, a copy must also be served by any other method permitted by this rule. Facsimile service occurs when transmission is complete.
- (F) Service by delivery after 5:00 p.m. must be deemed to have been made by mailing on the date of delivery.

(c) **Service; Numerous Defendants.** In actions when the parties are unusually numerous, the court may regulate the service contemplated by these rules on motion or on its own initiative in such manner as may be found to be just and reasonable.

(d) **Filing.** All original documents must be filed with the court either before service or immediately thereafter, unless otherwise provided for by general law or other rules. If the original of any bond or other document is not placed in the court file, a certified copy must be so placed by the clerk.

(e) **Filing Defined.** The filing of documents with the court as required by these rules must be made by filing them with the clerk, except that the judge may permit documents to be filed with the judge, in which event the judge must note the filing date before him or her on the documents and transmit them to the clerk. The date of filing is that shown on the face of the document by the judge's notation or the clerk's time stamp, whichever is earlier.

(f) **Certificate of Service.** When any attorney certifies in substance:

"I certify that a copy hereof has been furnished to (here insert name or names and addresses used for service) by (e-mail) (delivery) (mail) (fax) on (date)

Attorney"

the certificate is taken as prima facie proof of such service in compliance with this rule.

(g) **Service by Clerk.** When the clerk is required to serve notices and other documents, the clerk may do so by e-mail as provided in subdivision (b)(1) or by any other method permitted under subdivision (b)(2). Service by a clerk is not required to be by e-mail.

(h) **Service of Orders.**

(1) A copy of all orders or judgments must be transmitted by the court or under its direction to all parties at the time of entry of the order or judgment. No service need be made on parties against whom a default has been entered except orders setting an action for trial and final judgments that must be prepared and served as provided in subdivision (h)(2). The court may require that orders or judgments be prepared by a party, may require the party to furnish the court with stamped, addressed envelopes for service of the order or judgment, and may require that proposed orders and judgments be furnished to all parties before entry by the court of the order or judgment. The court may serve any order or judgment by e-mail to all attorneys who have not been excused from e-mail service and to all parties not represented by an attorney who have designated an e-mail address for service.

(2) When a final judgment is entered against a party in default, the court must mail a conformed copy of it to the party. The party in whose favor the judgment is entered must furnish the court with a copy of the judgment, unless it is prepared by the court, with the address of the party to be served. If the address is unknown, the copy need not be furnished.

(3) This subdivision is directory and a failure to comply with it does not affect the order or judgment, its finality, or any proceedings arising in the action.

RULE 2.520. PAPER

(a) **Type and Size.** All pleadings, motions, petitions, briefs, notices, orders, judgments, decrees, opinions, and other papers and official documents filed in any court shall be filed on recycled paper measuring 8 1/2 by 11 inches. For purposes of this rule, paper is recycled if it contains a minimum content of 50 percent waste paper. Xerographic reduction of legal-size (8 1/2 by 14 inches) documents to letter size (8 1/2 by 11 inches) is prohibited.

(b) **Exhibits.** Any exhibit or attachment filed with pleadings or papers may be filed in its original size.

(c) **Recording Space.** On all papers and documents prepared and filed by the court or by any party to a proceeding which are to be recorded in the public records of any county, including but not limited to final money judgments and notices of lis pendens, a 3-inch by 3-inch space at the top right-hand corner on the first page and a 1-inch by 3-inch space at the top right-hand corner on each subsequent page shall be left blank and reserved for use by the clerk of court.

(d) **Exceptions to Recording Space.** Any papers or documents created by persons or entities over which the filing party has no control, including but not limited to wills, codicils, trusts, or other testamentary documents; documents prepared or executed by any public officer; documents prepared, executed, acknowledged, or proved outside of the State of Florida; or documents created by State or Federal government agencies, may be filed without the space required by this rule.

(e) **Noncompliance.** No clerk of court shall refuse for filing any document or paper because of noncompliance with this rule. However, upon request of the clerk of court, noncomplying documents shall be resubmitted in accordance with this rule.

Court Commentary

1989 Adoption. Rule 2.055 [renumbered as 2.520 in 2006] is new. This rule aligns Florida's court system with the federal court system and the court systems of the majority of our sister states by requiring in subdivision (a) that all pleadings, motions, petitions, briefs, notices, orders, judgments, decrees, opinions, or other papers filed with any Florida court be submitted on paper measuring 8 1/2 by 11 inches. Subdivision (e) provides a 1-year transition period from the effective date of January 1, 1990, to January 1, 1991, during which time filings that traditionally have been accepted on legal-size paper will be accepted on either legal- or letter-size paper. The 1-year transition period was provided to allow for the depletion of inventories of legal-size paper and forms. The 1-year transition period was not intended to affect compliance with Florida Rule of Appellate Procedure 9.210(a)(1), which requires that typewritten appellate briefs be filed on paper measuring 8 1/2 by 11 inches. Nor was it intended that the requirement of Florida Rule of Appellate Procedure 9.210(a)(1) that printed briefs measure 6 by 9 inches be affected by the requirements of subdivision (a).

Subdivision (b), which recognizes an exception for exhibits or attachments, is intended to apply to documents such as wills and traffic citations which traditionally have not been generated on letter-size paper.

732.703 Effect of divorce, dissolution, or invalidity of marriage on disposition of certain assets at death

(1) As used in this section, unless the context requires otherwise, the term:

(a) "Asset," when not modified by other words or phrases, means an asset described in subsection (3), except as provided in paragraph (4)(j).

(b) "Beneficiary" means any person designated in a governing instrument to receive an interest in an asset upon the death of the decedent.

(c) "Death certificate" means a certified copy of a death certificate issued by an official or agency for the place where the decedent's death occurred.

(d) "Employee benefit plan" means any funded or unfunded plan, program, or fund established by an employer to provide an employee's beneficiaries with benefits that may be payable on the employee's death.

(e) "Governing instrument" means any writing or contract governing the disposition of all or any part of an asset upon the death of the decedent.

(f) "Payor" means any person obligated to make payment of the decedent's interest in an asset upon the death of the decedent, and any other person who is in control or possession of an asset.

(g) "Primary beneficiary" means a beneficiary designated under the governing instrument to receive an interest in an asset upon the death of the decedent who is not a secondary beneficiary. A person who receives an interest in the asset upon the death of the decedent due to the death of another beneficiary prior to the decedent's death is also a primary beneficiary.

(h) "Secondary beneficiary" means a beneficiary designated under the governing instrument who will receive an interest in an asset if the designation of the primary beneficiary is revoked or otherwise cannot be given effect.

(2) A designation made by or on behalf of the decedent providing for the payment or transfer at death of an interest in an asset to or for the benefit of the decedent's former spouse is void as of the time the decedent's marriage was judicially dissolved or declared invalid by court order prior to the decedent's death, if the designation was made prior to the dissolution or court order. The decedent's interest in the asset shall pass as if the decedent's former spouse predeceased the decedent. An individual retirement account described in s. 408 or s. 408A of the Internal Revenue Code of 1986, or an employee benefit plan, may not be treated as a trust for purposes of this section.

(3) Subsection (2) applies to the following assets in which a resident of this state has an interest at the time of the resident's death:

(a) A life insurance policy, qualified annuity, or other similar tax-deferred contract held within an employee benefit plan.

(b) An employee benefit plan.

(c) An individual retirement account described in s. 408 or s. 408A of the Internal Revenue Code of 1986, including an individual retirement annuity described in s. 408(b) of the Internal Revenue Code of 1986.

(d) A payable-on-death account.

- (e) A security or other account registered in a transfer-on-death form.
 - (f) A life insurance policy, annuity, or other similar contract that is not held within an employee benefit plan or a tax-qualified retirement account.
- (4) Subsection (2) does not apply:
- (a) To the extent that controlling federal law provides otherwise;
 - (b) If the governing instrument is signed by the decedent, or on behalf of the decedent, after the order of dissolution or order declaring the marriage invalid and such governing instrument expressly provides that benefits will be payable to the decedent's former spouse;
 - (c) To the extent a will or trust governs the disposition of the assets and s. 732.507(2) or s. 736.1005 applies;
 - (d) If the order of dissolution or order declaring the marriage invalid requires that the decedent acquire or maintain the asset for the benefit of a former spouse or children of the marriage, payable upon the death of the decedent either outright or in trust, only if other assets of the decedent fulfilling such a requirement for the benefit of the former spouse or children of the marriage do not exist upon the death of the decedent;
 - (e) If, under the terms of the order of dissolution or order declaring the marriage invalid, the decedent could not have unilaterally terminated or modified the ownership of the asset, or its disposition upon the death of the decedent;
 - (f) If the designation of the decedent's former spouse as a beneficiary is irrevocable under applicable law;
 - (g) If the instrument directing the disposition of the asset at death is governed by the laws of a state other than this state;
 - (h) To an asset held in two or more names as to which the death of one coowner vests ownership of the asset in the surviving coowner or coowners;
 - (i) If the decedent remarries the person whose interest would otherwise have been revoked under this section and the decedent and that person are married to one another at the time of the decedent's death; or
 - (j) To state-administered retirement plans under chapter 121.
- (5) In the case of an asset described in paragraph (3)(a), paragraph (3)(b), or paragraph (3)(c), unless payment or transfer would violate a court order directed to, and served as required by law on, the payor:
- (a) If the governing instrument does not explicitly specify the relationship of the beneficiary to the decedent or if the governing instrument explicitly provides that the beneficiary is not the decedent's spouse, the payor is not liable for making any payment on account of, or transferring any interest in, the asset to the beneficiary.
 - (b) As to any portion of the asset required by the governing instrument to be paid after the decedent's death to a primary beneficiary explicitly designated in the governing instrument as the decedent's spouse:
 1. If the death certificate states that the decedent was married at the time of his or her death to that spouse, the payor is not liable for making a payment on account of, or for transferring an interest in, that portion of the asset to such primary beneficiary.

2. If the death certificate states that the decedent was not married at the time of his or her death, or if the death certificate states that the decedent was married to a person other than the spouse designated as the primary beneficiary at the time of his or her death, the payor is not liable for making a payment on account of, or for transferring an interest in, that portion of the asset to a secondary beneficiary under the governing instrument.

3. If the death certificate is silent as to the decedent's marital status at the time of his or her death, the payor is not liable for making a payment on account of, or for transferring an interest in, that portion of the asset to the primary beneficiary upon delivery to the payor of an affidavit validly executed by the primary beneficiary in substantially the following form: STATE OF COUNTY OF Before me, the undersigned authority, personally appeared (type or print Affiant's name) ("Affiant"), who swore or affirmed that: 1. (Type or print name of Decedent) ("Decedent") died on (type or print the date of the Decedent's death) .2. Affiant is a "primary beneficiary" as that term is defined in Section 732.703, Florida Statutes. Affiant and Decedent were married on (type or print the date of marriage) , and were legally married to one another on the date of the Decedent's death. (Affiant) Sworn to or affirmed before me by the affiant who is personally known to me or who has produced (state type of identification) as identification this day of (month) , ... (year) ... (Signature of Officer) (Print, Type, or Stamp Commissioned name of Notary Public)

4. If the death certificate is silent as to the decedent's marital status at the time of his or her death, the payor is not liable for making a payment on account of, or for transferring an interest in, that portion of the asset to the secondary beneficiary upon delivery to the payor of an affidavit validly executed by the secondary beneficiary affidavit in substantially the following form: STATE OF COUNTY OF Before me, the undersigned authority, personally appeared (type or print Affiant's name) ("Affiant"), who swore or affirmed that: 1. (Type or print name of Decedent) ("Decedent") died on (type or print the date of the Decedent's death) .2. Affiant is a "secondary beneficiary" as that term is defined in Section 732.703, Florida Statutes. On the date of the Decedent's death, the Decedent was not legally married to the spouse designated as the "primary beneficiary" as that term is defined in Section 732.703, Florida Statutes. Sworn to or affirmed before me by the affiant who is personally known to me or who has produced (state type of identification) as identification this day of (month) , (year) . (Signature of Officer) (Print, Type, or Stamp Commissioned name of Notary Public)

(6) In the case of an asset described in paragraph (3)(d), paragraph (3)(e), or paragraph (3)(f), the payor is not liable for making any payment on account of, or transferring any interest in, the asset to any beneficiary.

(7) Subsections (5) and (6) apply notwithstanding the payor's knowledge that the person to whom the asset is transferred is different from the person who would own the interest pursuant to subsection (2).

(8) This section does not affect the ownership of an interest in an asset as between the former spouse and any other person entitled to such interest by operation of this section, the rights of any purchaser for value of any such interest, the rights of any creditor of the former spouse or any other person entitled to such interest, or the rights and duties of any insurance company, financial institution, trustee, administrator, or other third party.

(9) This section applies to all designations made by or on behalf of decedents dying on or after July 1, 2012, regardless of when the designation was made.

History.—s. 1, ch. 2012-148.