

OUTLINE FOR 2/20/14 GROUP 8 INN OF COURT PROGRAM
Paul Donnelly, Moderator

1. Efiling/eserving – Ryan Curtis, Elizabeth Martin, Tom Edwards, Kit Macdonald – 15 minutes
 - a. Skit
 - b. Top ten excuses for missing e-filing
 - c. Issues * (see * below)
2. Top ten apps of which attorneys should be aware – Zack West, Michelle Farkas, Sergio Flores – 15 mins
3. Ediscovery/Metadata – Dale Paleschic, Ray Brady, Bruce Robinson, Josh Corriveau – 20 minutes
4. Ethical issues/malpractice ramifications – Charles Hughes, Rob Griscti, Larry Turner, Kris Eisenmenger (and Carl Schwait on social media sites/use of social media) – 20 minutes

* Issues related to efiling/eserving (for 1st subgroup presentation):

- a. Delay in issuance of summons
- b. Serving other attorneys through eportal
- c. Certifying service on a Sunday
- d. Reasons to designate more than one email address
- e. Eportal down/not functioning on your deadline
- f. Not receiving emailed served documents or orders, perhaps because your service is blocking them as spam
- g. Each county is different
- h. local rules on efiling (Ryan will print and bring for handouts)
- i. Jean Sperbeck's top comments
 - i. issue of re-open fee
 - eportal is not automatically assessing re-open fee
 - if eportal says case is closed but it isn't, push "next" and efile
 - what is listed on LINDAS is correct – we can rely on it and ignore the eportal message
 - ii. If a fee is due, it can be paid on eportal
 - paying a fee on eportal is preferred
 - fee should be paid on eportal with a document, such as an invoice or a letter, as eportal is for efiling
 - iii documents that are unreadable
 - sometimes because of a problem with how it was scanned
 - sometimes because a notary stamp color or sheriff stamp color shows through on back side of paper
 - ink showing through results in a 3rd page that is unreadable
 - keep your audience in mind – the Judge is the end reader – pay attention to whether the document is readable and whether the Judge will be able to read it
 - iv Size of documents
 - up to 25 megs technically
 - eservice option only does 5 megs
 - breaking a document into 5 megs
 - broken up randomly by eportal
 - therefore keep filings under 5 megs and label them
 - i.e. petition for summary administration with five exhibits, totaling 40 megs – if breaking it up, cuts off an exhibit in middle, so therefore put cover sheets on the 5-meg batches
 - put the title and case number on each of the 5-meg batches so Clerk can identify which case number
 - A document converted to Word or pdf can be 300 pages or 100 pages – takes up a lot less room than a scanned document – so better to use a Word or pdf document
 - Option says size-based on number of megs
 - v. Jean Sperbeck's phone number is 337-6142



E-DISCOVERY

Will it byte you or your client?

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PALESCHIC
LAW FIRM



SOME TERMINOLOGY TO KNOW AND UNDERSTAND

- Imaged format - files designed to look like a page in the original creating application (TIFF and PDF, for e.g.)
- Native format - files with structures defined by the original creating application (MS Word, Excel)
- Metadata - data about data
- Mirror or ghost image - entire platter copied bit by bit
- Logical image - excludes deleted data (cheaper and quicker)
- Hash value - value assigned to data after being run through a mathematical algorithm; a “digital fingerprint”; common hash algorithms include MD5 and SHA
- Load file - file that relates to a scanned set of images or processed files and shows where pages and attachments to documents, etc., are located



E-DISCOVERY

- **Florida Rules Civil Procedure - Rule 1.280**

- (d) **Limitations on Discovery of Electronically Stored Information.**

- (1) **A person may object to discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of burden or cost.** On motion to compel discovery or for a protective order, the person from whom discovery is sought must show that the information sought or the format requested is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order the discovery from such sources or in such formats if the requesting party shows good cause. The court may specify conditions of the discovery, including ordering that some or all of the expenses incurred by the person from whom discovery is sought be paid by the party seeking the discovery.



E-DISCOVERY

- **Florida Rules Civil Procedure - Rule 1.280**

- (d) **Limitations on Discovery of Electronically Stored Information.**

- (2) In determining any motion involving discovery of electronically stored information, the court must limit the frequency or extent of discovery otherwise allowed by these rules if it determines that (i) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from another source or in another manner that is more convenient, less burdensome, or less expensive; or (ii) **the burden or expense of the discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues.**

WHAT ARE YOUR OBLIGATIONS? THE LITIGATION HOLD

- Who?
- What?
- When?
- How?



WHAT ARE YOUR OBLIGATIONS? THE LITIGATION HOLD

- Who?

*The who issue is straightforward: “The preservation obligation **runs first to counsel**, who has a duty to advise his client of the type of information potentially relevant to the lawsuit and of the necessity of preventing its destruction.”*

Point Blank Solutions, Inc. v. Toyobo Am., Inc., 09-61166-CIV, 2011 WL 1456029 (S.D. Fla. Apr. 5, 2011)

WHAT ARE YOUR OBLIGATIONS? THE LITIGATION HOLD

- What?



Individual Custodians' Email:
Sent, Received, Filed and Archived

WHAT ARE YOUR OBLIGATIONS? THE LITIGATION HOLD

- What?



Individual Custodians' Documents:

Word, Excel, PowerPoint, Image (PDFs, JPEGs, TIFFs for eg.),
Outlook PST, Lotus NSF, Groupwise,
Video (mp4, wmv for eg.), and Native Files, etc.

WHAT ARE YOUR OBLIGATIONS? THE LITIGATION HOLD

- When?



*Once a party files suit or reasonably anticipates doing so, however, it has an obligation to make a conscientious effort to preserve electronically stored information that would be relevant to the dispute. **Peskoff v. Faber, 251 F.R.D. 59, 62 (D.D.C.2008).** A party has an obligation to retain relevant documents, including emails, once litigation is reasonably anticipated. **Managed Care Solutions, 786 F.Supp.2d at 1324.** See also **Fed.R.Civ.P. 37, advisory committee notes to 2006 amendments** (“When a party is under a duty to preserve information because of pending or reasonably anticipated litigation, intervention in the routine operation of an information system is one aspect of what is often called a ‘litigation hold.’”).*

Point Blank Solutions, Inc. v. Toyobo Am., Inc., 09-61166-CIV, 2011 WL 1456029 (S.D. Fla. Apr. 5, 2011)

WHAT ARE YOUR OBLIGATIONS? THE LITIGATION HOLD

- How?

Concerning the how issue, a litigation hold must be implemented—and affirmative steps must be taken to monitor compliance “so that all sources of discoverable information are identified and searched.”

Point Blank Solutions, Inc. v. Toyobo Am., Inc., 09-61166-CIV, 2011 WL 1456029 (S.D. Fla. Apr. 5, 2011)

WHAT ARE YOUR OBLIGATIONS? THE LITIGATION HOLD

- How?
- Get a data map
- Interview key personnel
- Review potential data sources
- Review data to be collected

- W servers, PC hard drives, handheld devices, DVDs, thumb drives, phones, tablets, home computers, private email sites, social networking sites
- R
- P

WHAT ARE YOUR OBLIGATIONS?

Some cases to consider

ZUBULAKE V. UBS WARBURG, LLC

ZUBULAKE V. UBS WARBURG, LLC

“The conduct of both counsel and client thus calls to mind the now-famous words of the prison captain in Cool Hand Luke: ‘What we've got here is a failure to communicate.’ Because of this failure by both UBS and its counsel, Zubulake has been prejudiced. As a result, sanctions are warranted.”

The Honorable Shira A. Scheindlin, U.S. District Court, Southern District of New York

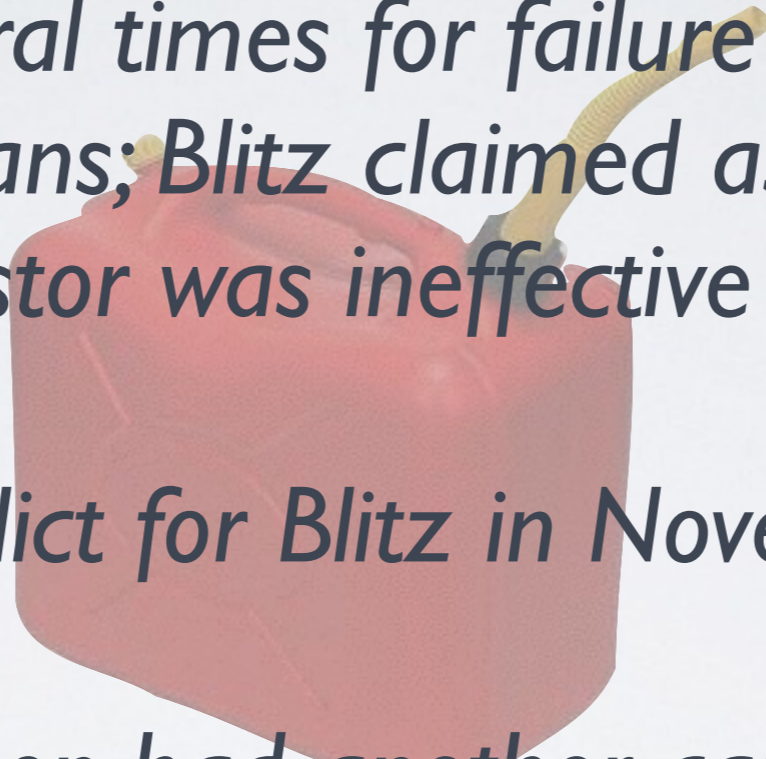
Zubulake v. UBS Warburg LLC, 229 F.R.D. 422, 424 (S.D.N.Y. 2004)

ZUBULAKE V. UBS WARBURG, LLC

- “Once a “litigation hold” is in place, a party and her counsel must make certain that all sources of potentially relevant information are identified and placed ‘on hold,’ **To do this, counsel must become fully familiar with her client's document retention policies, as well as the client's data retention architecture.**”

GREEN V. BLITZ USA, INC.

2:07-CV-372 TJW, 2011 WL 806011 (E.D. Tex. Mar. 1, 2011)

- *Blitz was sued several times for failure to design a flame arrestor in its gas cans; Blitz claimed as one of its defenses that the flame arrestor was ineffective*
 - *Jury returned a verdict for Blitz in November 2008*
 - *Counsel for Ms. Green had another case against Blitz*
 - *In February 2010 counsel learns of emails and other ESI not produced by Blitz in the the Green matter but was produced in the subsequent matter*
- 

GREEN V. BLITZ USA, INC.

2:07-CV-372 TJW, 2011 WL 806011 (E.D. Tex. Mar. 1, 2011)

- *Blitz's procedure was to have an employee meet with counsel. The employee would be contacted regarding when a claim was filed, and that request for discoveries were made. They would then sit with local counsel (they had no national coordinating counsel at the time). It was strictly a local defense attorney in that particular state.*
- *The employee did not institute a litigation-hold of documents, do any electronic word searches for emails, or talk with the IT department regarding how to search for electronic documents. He acknowledged he was "computer illiterate."*
- *Green Plaintiff moved to re-open matter and for sanctions*

GREEN V. BLITZ USA, INC.

2:07-CV-372 TJW, 2011 WL 806011 (E.D. Tex. Mar. 1, 2011)

- Blitz to **pay \$250,000.00 fine** for civil contempt sanctions to the plaintiff.
- Blitz has thirty (30) days from the date of this Memorandum Opinion & Order **to furnish a copy of this Memorandum Opinion & Order to every Plaintiff in every lawsuit** it has had proceeding against it, or is currently proceeding against it, for the past two years.
- An **additional \$500,000.00 sanction that will be tolled** for thirty (30) days from the date of this Memorandum Opinion & Order. At the end of that time period, if Blitz has certified with this Court that it has complied with the Court's order, the \$500,000.00 sanction will be extinguished.
- Finally, for the next five years, Blitz was ordered that in every new lawsuit it participates in as a party, whether plaintiff, defendant, or in another official capacity, **it must file a copy of this Memorandum Opinion and Order with its first pleading or filing** in that particular court.

WHAT ARE YOUR OBLIGATIONS?

*“As a result, it often times appears that this litigation was conducted in an **Inspector Clouseau-like fashion**. However, unlike a Pink Panther film, there was nothing amusing about this conduct and it did not conclude neatly.”*

MARCIA G. COOKE, District Judge

*Coquina Investments v. Rothstein, 10-60786-CIV, 2012 WL 3202273
(S.D. Fla. Aug. 3, 2012)*

*Coquina Investments v. Rothstein,
10-60786-CIV, 2012 WL 3202273 (S.D. Fla.
Aug. 3, 2012)*

“The individual Greenberg Traurig attorneys' handling of this case left much to be desired. The document review and production appears to have been conducted in an almost ad hoc manner. The attorneys failed to adequately conduct document searches in response to Coquina's counsel's requests and this Court's inquiries. The attorneys produced key documents on the eve of trial, and in the midst of trial, because of failures in their document search and production procedures. **Although I recognize that the attorneys were dealing with a high volume of documents, the amount of production errors that occurred throughout these proceedings were simply incredible, especially coming from lawyers in a well regarded firm like Greenberg Traurig, which in many ways earns its reputation from being able to litigate large, complex actions.”**

E-DISCOVERY PRODUCTION

- Considerations:
 - Amount of data and custodians
 - Time requirements
 - Format
 - Metadata

WHAT ARE YOUR OBLIGATIONS DURING DISCOVERY?

*While instituting a “litigation hold” may be an important first step in the discovery process, the obligation to conduct a reasonable search for responsive documents continues throughout the litigation. See Fed.R.Civ.P. 26(e)(2) (a party is under a duty seasonably to amend discovery responses “if the party learns that the response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing”). A “litigation hold,” without more, will not suffice to satisfy the “reasonable inquiry” requirement in Rule 26(g)(2). **Counsel retains an on-going responsibility to take appropriate measures to ensure that the client has provided all available information and documents which are responsive to discovery requests.***

Cache La Poudre Feeds, LLC v. Land O'Lakes, Inc., 244 F.R.D. 614, 630 (D. Colo. 2007)

WHAT ARE YOUR OBLIGATIONS DURING DISCOVERY?

*Given the paucity of documents produced by Defendants to date, as well as counsel's own acknowledgment that Defendants' productions have been incomplete, the court shares Plaintiff's concerns about the inadequacy of Defendants' search for responsive documents. **Defense counsel has not been sufficiently proactive** in ensuring that his clients are conducting thorough and appropriate document searches, especially in light of obvious gaps and underproduction. Under such circumstances, it is not enough for counsel to simply give instructions to his clients and count on them to fulfill their discovery obligations. **The Federal Rules of Civil Procedure place an affirmative obligation on an attorney to ensure that a client's search for responsive documents and information is complete.***

Logtale, Ltd. v. IKOR, Inc., C-11-05452 CW (DMR), 2013 WL 3967750 (N.D. Cal. July 31, 2013)

INDEP. MKTG. GRP., INC. V. KEEN,

3:11-CV-447-J-25MCR, 2012 WL 207032 (M.D. FLA. JAN. 24, 2012)

- Defendants served their RFP on Plaintiff, seeking an array of ESI
- Plaintiff produced a limited number of documents compiled into one PDF file that lacked any metadata or any searchable text.
- Defendants sent a letter requesting that Plaintiff make a reasonably diligent search for relevant, responsive documents and supplement its response within 10 days.

INDEP. MKTG. GRP., INC. V. KEEN,

3:11-CV-447-J-25MCR, 2012 WL 207032 (M.D. FLA. JAN. 24, 2012)

- Plaintiff sent Defendants a computer disk containing four poor quality PDF files, each consisting of hundreds of pages. Again, these files lacked any metadata or any searchable text.
- Defendants contacted Plaintiff expressing issues with the format of its production.
- Plaintiff responded and stated that the third-party vendor it selected to produce and process the documents was “unable to produce the documents” and thus, it is using another vendor which should have “a very quick turnaround time.” Then, Plaintiff stated that it was now refusing to produce documents in a different format because the estimated costs of \$10,000 to do so is “a prohibitive cost”

INDEP. MKTG. GRP., INC. V. KEEN,

3:11-CV-447-J-25MCR, 2012 WL 207032 (M.D. FLA. JAN. 24, 2012)

- First, the Court finds that the **burden and expense Plaintiff will incur is outweighed by the benefit Defendants will receive in their ability to review documents that may be relevant to their defenses.** Indeed, it was Plaintiff that identified its computer server as the location of responsive documents.
- Second, this case is **claimed to be worth many hundreds of thousands of dollars, in addition to potential punitive damages and attorneys' fees.** Plaintiff is a corporation, likely with substantial resources, while this lawsuit was brought against three individual Defendants. Finally, Plaintiff's refusal to produce documents in an appropriate and usable format creates a significant disadvantage and prohibits Defendants from potentially discovering information that may be relevant to their defenses

WHAT ARE YOUR OBLIGATIONS DURING DISCOVERY?

**You have an affirmative duty
to know what your clients'
e-discovery responses
represent and how they
were obtained!**

BOTTOM LINE

REFERENCE MATERIALS



- The Sedona Conference Publications
- <https://thesedonaconference.org/publications>



E-DISCOVERY

Will it byte you or your client?

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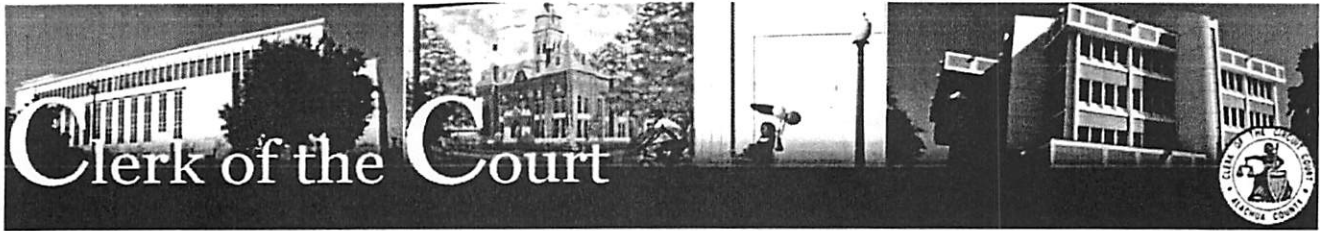


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Stay Engaged



Electronic Filing (eFiling) Information

The Florida Supreme Court has authorized Clerks of Court to accept documents electronically filed through the [Florida ePortal](#). Clerks are not authorized to accept documents for filing by e-mail.

At this time the ePortal can only be used by attorneys admitted to practice in Florida. It cannot be used by non-attorneys or attorneys admitted in other states. The Florida ePortal, governed by the [Florida eFiling Authority Board](#), provides eFiling capability to filers with a single statewide login. The Florida eFiling Authority web page provides training videos and other documentation and information on eFiling.

[Click here to visit the ePortal website.](#)

The Alachua County Clerk's Office accepts electronic filings on new and existing cases for all Civil case types: Circuit Civil, County Civil, Domestic Relations, Probate, and Dependency.

To register for an ePortal account, click on the 'ePortal' link. For assistance with creating an account or with password resets, contact the FCCC Services Group at 1-850-577-4609 or email support@myflcourtagency.com. When registering, be sure your first and last name match the records with the Florida Bar. You can verify your name and email address on file with the Florida Bar on the Florida Bar Website at <http://www.floridabar.org/names.nsf/MEsearchDK?OpenForm>

For training, there are two ePortal videos that demonstrate how to eFile a new case and how to eFile in an existing case:

- [Video Demonstration for Filing a New Case](#)
- [Video Demonstration for Filing in an Existing Case](#)

Retain documents at your office unless it is a document type that must also be filed in paper form. There is no need to file follow-up paper copies unless the rule of procedure governing your proceeding requires a paper original to be filed.

PAPER filings--The clerk's office will accept these documents in paper form:

- Last Will and Testament (Death certificates do NOT need to be paper-filed).
- Documents ordered by the Court; and
- Any other documents required by law, rule, or the court to be filed in paper format.

To determine whether paper documents need to be filed for your case, check the Eighth Judicial Circuit website or contact the office of your assigned judge or hearing officer.

If you file a document in paper form that is not required to be maintained by the clerk's office in paper form, it will be stored temporarily and then may be discarded. If you wish to have such documents returned, you may provide a stamped, addressed envelope and the document will be returned to you.

Payment through the Florida ePortal for statutory filing fees or costs includes an additional credit card or bank transaction fee. These are convenience fees established statewide to offset the use of electronic funds transfers, whether using a credit, charge or debit card, or an ACH transaction. The ePortal accepts MasterCard, Discover, and American Express cards at a rate of 3 percent. VISA is not accepted. The fee for an ACH transaction is a \$3.00 flat fee. You can save your payment information in the ePortal for future use.

Reopen fees are not automatically assessed in the ePortal. Reopen fees can be added in the Additional Fees section on the General Information screen. All motions filed will be reviewed by the clerk to determine if a reopen fee is applicable. If the clerk determines a reopen fee is due, the attorney will be notified.

Additional Fee Options

Enter 1 for Reopen Fee \$50.00

Non Certified Copies (# of Pages)

Enter 1 for Reopen Fee \$25.00

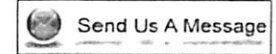
of certified mail fees

Envelopes

Summons prepared and issued by Clerk \$17 each

Amount

Online Help



Number of Defendants to Enter on Portal—these are the business rules for counting parties:

- COUNT all named parties.
- COUNT Unknown spouse and “unknown parties claiming through named individual defendants who are not known to be dead or alive” regardless of the relationship of the unknown party to the known party.
- DO NOT count: Unknown Tenants or John Doe’s until parties are named in the suit.

Lis Pendens Indexing—COUNT all names shown for the plaintiff and defendant, including aliases, former names, assignor names, now known as names, merger names, etc. If the name is listed it must be indexed. DO NOT count unknown parties as they cannot be indexed. A fee of \$1.00 per name for the number of names over 4 is assessed. For example, when a party is named as xyz trustee as trustee of the John Doe Revocable Trust, both names, (1) xyz as trustee and (2) John Doe Revocable Trust, would be indexed.

If a fee waiver is requested and it is not approved, the Clerk’s Office will contact you to arrange for payment of the outstanding fees.

State Agencies exempt from fee payment can utilize the ‘fee waiver’ process at the payment screen. Enter “ Exempt Under FS28.345 ” from the dropdown menu in fee waiver reason box.

Request Fee Waiver? Waiver Reason:

Fee payments are processed when the filing is accepted. If your filing has a fee attached, the payment is not processed until the filing is accepted. The payment will not be processed while the filing is in the pending queue and there is no charge if the filing is moved to Judicial Review. When pending queue filings are re-processed filers have to re-enter their payment information to re-authorize the payment.

To e-file in an existing case, select Existing on the Portal’s map page. Select the Court Type (i.e. Probate). Then enter the case number using the fields provided. Then click the SEARCH button. This screen (Case Information Screen) contains additional fee options. When your case comes up, click the NEXT button. At the party screen select your party and click the NEXT button on that screen. On the document screen, click ADD a document. Then select a case group and document type. Browse your computer for the correct document and click open when you find your document. You may continue to add documents by clicking on the ADD button. Follow the remaining prompts to finish e-filing your document.

Case number entry on existing case filings: The case number on an Alachua County case will look something like 01-2011-CA-4321. The 01 is the code for Alachua County and is not used on the Portal, because it includes that in your case number automatically, since you have already selected Alachua County for your e-filing. The Portal defaults to the current year, change the year to the correct 4-digit year. You will already have selected the Division and for most divisions, that determines the Court Type. If the division you are filing has more than one case type, such as Probate, you will need to select the court type by clicking the one of the options in the COURT TYPE box. This will place the correct Court Type code in the box. The remaining numbers go in the SEQUENCE # box, which in the above example would be 4321. This is the sequential number of your case.

Please enter values below and click search to locate
 Case year must be a valid
 Sequence # must be 6 Digits or less.
 You can enter 2 Character Court Type or select from the list
 Party Identifier is optional and
 Branch Location Identifier is optional

* Year * Sequence # * Court Type

Court Type Selection

Party Identifier Branch Location

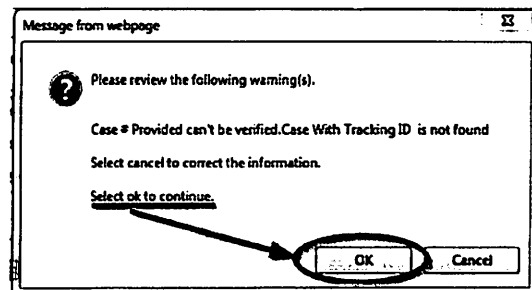


Division Description	Clerk Case No.	Portal Year	Portal Sequence Number	Portal 2-Digit Court Type
Domestic Relations/ Family & Adoptions*	2012-DR-003425	2012	3425	DR
Circuit Civil	2011-CA-004321	2011	4321	CA
County Civil/ Small Claims	2009-CC-012345	2009	12345	CC
	2013-SC-000013	2013	13	SC
Probate/ Guardianship/ Mental Health	2011-CP-002424	2011	2424	CP
	2008-GA-003113	2008	3113	GA
Dependency**	2010-DP-000345	2010	345	DP

*Domestic Violence cases are treated as confidential the case number search will "not find" DV case numbers to protect the confidentiality of the cases. Filing of new Domestic Violence case types is not supported at this time.

**Dependency cases are confidential and the Portal will "not find" DP case numbers to protect the confidentiality of the cases. If you get an error message because the case number is not found, confirm your case number and click OK on the error message.

Case number error messages can occur if the case is deemed "confidential" by the system. If you know your case number is correct and the case type is a mental health, dependency, or other confidential case type, you can still add documents to the case and submit the documents for filing. Please check BOTH the year and sequence number when entering. Filings with incorrect case numbers that cannot be located will be put in the Pending Queue for correction.



Parties in existing cases cannot be added directly to the Clerk's case maintenance system from the ePortal. When an eFiled document contains added parties, the Clerk's office will add the party, if appropriate. When reviewing for parties, be sure to scroll down through all of the parties to be sure the party you are looking for is not there.

Document descriptions might not exactly match the title of your document. If you can't find your document on the list of available document types, please select the document type closest to the descriptions available. Each document group should have an OTHER group category and an OTHER document type. You can select this for any document not listed. You can view a list of criminal document titles [here](#). The document will be added to the clerk's case maintenance system as it is titled. If you believe that what you have is a frequently filed document type that needs to be added to this group type, please notify our office.

Cover letters are not needed. The first page of the filing should be the first page of the lead document (i.e. the Petition/Pleading/Paper) that you are filing. The electronic date stamp is placed on the first page of the pleading efiled, so if a cover letter is submitted as the first page then the date stamp will not be on the actual pleading document. If you do need to file a cover letter, please file this as a separate document.

Civil/Family cover sheets are created when you e-file a new case. No additional cover sheet is needed.

E-service is now available on the ePortal. If the attorney you need to serve does not appear on the e-service page of your filing, add the attorney and email addresses and they will be saved for future filings. When an attorney files in a case, the e-portal associates that attorney and the attorneys email addresses to that case, and that attorney will then appear on the e-service options for that case for future e-filing sessions

Status email updates: Each time the status of your eFiling changes the ePortal sends an email. This status can also be

viewed on the "My Filings" screen on the ePortal. One of the following status types will assigned to your filing as it progresses through the system:

- **Received** - The case was successfully received by the ePortal system
- **Validating Filing** - The case is being validated for acceptance into the Clerk of the Court's system
- **Pending Filing** - The case is awaiting a clerk to review the case and docket it into the system.
- **Filed** - The case has been approved and filed. It is now viewable via the Clerk's web Viewer, LINDAS.
- **Pending Queue** - The clerk has reviewed the case and identified a problem with the submission. There will be a comment added to the case that will explain what needs to be fixed in order for the submission to be accepted.
- **Filed for Judicial Review** - The case was held in the Pending Queue for 5 days with no correction. The eFiling will now need to be resubmitted by eFile.

The **Pending Queue** is for filings that cannot be processed. If your filing was sent to the Pending Queue you have an opportunity to correct the filing by accessing it on your "My Trial Court Filings" on the ePortal and clicking on the ePortal reference number (not the case number). Efilings are sent to the Pending Queue when documents or partial documents are corrupted or efiled in the wrong county; multiple documents are filed as a single document, or there is some other reason our office is unable to process the filing. Regardless of the reason, you will need to correct the filing within 5 business days of receiving notice that the case was moved to the Pending Queue. After that time, the filing will be irretrievably moved to the Judicial Review Queue, which means that no further action can be taken with that filing.

To correct a filing in the Pending Queue you need to REMOVE the incorrect document and ADD the revised document by following these steps:

1. From the "My Trial Court Filings" screen, click on the underlined Filing # associated with the filing that has been set to PENDING QUEUE status. The filing will re-open in the case information screen.
2. Select the "Documents" tab to go directly to the document edit screen.
3. The following actions can now be performed:
 - a. ADD a new document to the filing
 - a. If you add a new document to the filing the new document will receive a new time stamp.
 - b. DELETE/ADD a document to the filing
 - a. If you delete a document and replace it with another, the new document will receive a new time stamp

Note that any edits made on an eFiling that is sent to the PENDING QUEUE status will NOT change the original SUBMISSION DATE of the entire filing but may change the time stamp on an individual document. When the document is docketed on the Clerk's case maintenance system, the docketing date will be the date the Clerk's Office accepted the document for processing. That date may not be the same as the ePortal filing date. However, for purposes of computing filing deadlines, the ePortal time stamp rather than the docketing date will control. The ePortal time stamp will be visible on the document image.

Filings cannot be changed, once a filing is submitted to the ePortal. It can only be changed if it was sent to the PENDING QUEUE. If your document has not yet been set to FILED status, you can contact the division you are filing in and request that they send the filing to the PENDING QUEUE. This will allow you to update or replace a pleading document or add/change parties on the filing before it is FILED.

Signatures, per Florida Rule of Judicial Administration 2.515, on documents that are eFiled are not required to bear the electronic image of the handwritten signature or an encrypted signature of the filer. Instead, the requirement of a signature on an electronically filed document may be met as follows:

s/ or /s or /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

email address abc@email.com

↗ [See Florida Rule of Judicial Administration 2.515 Signature of Attorneys and Parties, Page 94](#)

System requirements are: Windows XP or Higher PC or Mac.

Microsoft Word, Corel WordPerfect, and Adobe Acrobat PDF formats are supported.

Internet Explorer 7.0 or above, Firefox 3.0 or above, Safari 3.1.2 or above.

The site does not officially support Chrome or Opera, but both may work. If not, please switch to an approved browser.

Document Formats: The ePortal will accept filings in Microsoft Word, Word Perfect, or PDF formats. All scanned documents must be 300 dpi and in black and white. A single filing transaction is limited to 25 megabytes in size. When uploading a document to the ePortal you can check the size by looking at the Size column in your directory. This is an example of where you can find that in Word:

Organize ▾	New folder					
		Name	Date modified	Type	Size	
Microsoft Word						
Templates		Bayview v Giblin - homestead cannot be ...	4/29/2009 3:24 PM	Microsoft Word 9...	36 KB	
		Boren v Suntrust Bank - Efe estate not ho...	11/3/2010 3:51 PM	Microsoft Word 9...	36 KB	
Favorites		Chames v Demayo homestead cannot be...	1/9/2008 9:37 AM	Microsoft Word 9...	92 KB	
Desktop		DeMayo - city charging does not waive h...	3/15/2006 3:16 PM	Microsoft Word 9...	72 KB	
Downloads		DeMayo - client can waive homestead pr...	12/6/2005 1:10 PM	Microsoft Word 9...	93 KB	
Recent Places		Engelke - trust cannot be forced to sell h...	2/13/2006 10:44 AM	Microsoft Word 9...	33 KB	
		Harrell - Homestead cannot be sold.doc	11/7/2005 3:16 PM	Microsoft Word 9...	52 KB	
Libraries		Homestead - Exemption from forced sale...	3/17/2011 8:28 AM	Microsoft Word 9...	51 KB	
Documents		homestead in trust still homestead-direct...	12/20/2012 9:36 AM	Microsoft Word 9...	92 KB	
Music		In re Fling - debtor can re-establish hom...	6/24/2011 11:30 AM	Microsoft Word 9...	102 KB	
Pictures		WinklerSmith - homestead law cannot ha...	7/7/2011 1:12 PM	Microsoft Word 9...	130 KB	

Attachments to a motion, complaint or other filing have to be uploaded with the motion as one document. Under court rules, all filings associated with one pleading or paper are one document. Each document, upon acceptance, will be time stamped and added to the case progress docket. If a single document is too large to file in on filing session (more than 25mg) and it exhibits, you can separate out exhibits, but you will need to add a cover page to each exhibit so that the clerk's office has a document title for docketing and can tell what case it goes to.

Redaction: Florida Rule of Judicial Administration 2.516 requires redaction of certain personal identifying information in all documents, which also applies to eFiled documents.

Notices of Confidential Information must be filed as separate documents, separate from the document that the notice references. Such notices should only be needed if the information must be in the court file in spite of the duty to redact under Fla. R. Jud. Admin. 2.516.

Multiple documents can be filed in the same case in the same transaction. So, a filer may upload several lead documents for the same case number during the eFiling process, but the size of the entire transaction cannot exceed 25 MB.

Multiple cases - The ePortal only allows for filing in one case at a time. If a filing applies to more than one case, unless it is officially consolidated by court order with another case, it must be separately filed in each case. If a case is consolidated with others by court order, then a document can be filed in the lead case. The pleading must indicate that it is a consolidated case and include the consolidated case number.

To view your eFiled document, click on the case number in "My Trial Court Filings" or access your account in the Alachua County Clerk's LINDAS system. There may be a time lag of approximately 24 hours to view the document. Remote, online access to images, per the Florida Supreme Court's Administrative Order, is limited to attorneys.

Summonses or other clerk-issued documents must be eFiled. You can retrieve your summons after it has been issued, which is a 48-hour process. If this is a document that needs to be served, you will need to print the issued document and deliver it to the entity serving the process. To retrieve your issued summons go to the Clerk's Summons Delivery System by going to www.alachuaclerk.org, selecting **Public Records, Court Records & Recording**, then **Court Records**, then **Begin your Court Records Search** and click on the CLICK HERE TO SEARCH button. That takes you this page:

General

- [General Index Search](#)
- [Docket Schedule](#)
- [Case Name Information](#)
- [Clerk Summons Delivery System](#)

From here, click on Clerk Summons Delivery System.

Enter your case number where indicated. DO NOT include any trailing X's. You will need to enter a valid email address and type the text in the "Captcha" box where indicated.

The delivery system provides access to other clerk-issued documents such as writs and defaults.

Proposed orders and judgments cannot be accepted on the ePortal, but must sent to the judge's office. Attorneys should confer with the judge's office to determine how the judge prefers to handle proposed orders.

Division assignments on a case can be found on the Clerk's website at www.alachuaclerk.org by searching the case number on the Court Records option under Public Records, Court Records and Recordings. To find the judge assigned to that division, visit www.circuit8.org and select Judicial Assignments under the Judges tab.

Case number information for your e-filing will be included on the e-mail confirming your e-filing has been accepted. This information is also included on the filings listed in your "My Trial Court Filings" on the ePortal.

The Florida Bar also has an [E-Filing Resources for Florida Lawyers](#) page on its web page.

More information can be found at

- [E-Filer Documentation](#)

-  [Florida Courts E-Filing Authority Board](#)
- [Florida Courts eFiling Portal Promo](#)
-  [Florida State Court's website](#)

For technical support, including password resets, contact the Florida Association of Court Clerks' Services Group at 1-850-577-4609 or email support@myflcourtagency.com. For assistance with a filing, such as an inquiry regarding a filing or a case, please use the [Clerk's Office & Phone Directory](#) at www.AlachuaClerk.org to contact the appropriate court division.

[Home](#) | [Citizen Services](#) | [Residents](#) | [Business](#) | [Visitors](#) | [Emergency Services](#) | [County Offices](#) | [Employment](#) | [Contact Us](#)

This website is a public service. Please read the [Legal Disclaimer](#). Website designed and engineered by Alachua County [ITS Applications Division](#) Version 2010 (v1.0)

Under Florida law (*Statute 119.011*), all information, including e-mail, written letters, documents and phone messages, sent to the Alachua County Board of County Commissioners is subject to Public Records law. This includes the sender's e-mail address, home address or phone number if shown in the message, the content of the message and any associated attachments to the mail. Also please be aware that electronic correspondence (e-mail) is made available on the Commission's public archive site immediately upon being sent. Instead, [contact Alachua County Offices](#) by phone or in writing.

THE EIGHTH JUDICIAL CIRCUIT OF FLORIDA
ADMINISTRATIVE ORDER NO. 1.20

E-FILING FOR ATTORNEYS IN CIVIL CASES

In order to address the orderly transition to mandatory e-filing in the Civil, Probate, Small Claims, and Family divisions in the Eighth Judicial Circuit as mandated by the Florida Supreme Court,

IT IS ORDERED:

PROPOSED ORDERS

1. Proposed orders, proposed judgments and other documents to be entered by the Court shall be submitted to the Court pursuant to that division's procedures as established on the Circuit's website, www.circuit8.org. If proposed orders, proposed judgments and other documents intended for entry by the Court are erroneously submitted through the e-Portal, the Clerk is directed to place the filing that contains those documents in the e-Portal Pending Queue and advise the filer, pursuant to this order, to remove the proposed order or judgment and resubmit the filing.

ENVELOPES

2. Envelopes for service of orders and other documents shall be provided as follows:
- a. **Envelopes for Service by the Court** - When mail service is required, envelopes for service of orders shall be provided directly to the Court with paper copies of the order to be conformed, per Administrative Order 1.07, E-Mail Authorization and Envelopes. The case number shall be indicated on the outside of each envelope.

- b. **Envelopes for Service by the Clerk** - Envelopes for service of documents by the Clerk of Court, whether those documents are e-filed or filed in paper form, shall be provided by mail or hand delivery to the Clerk's Office. The case number shall be indicated on the outside of each envelope.

DOCUMENT SUBMISSION STANDARDS

3. The Clerk of Court shall place nonconforming e-filing transactions in the e-Portal Pending Queue, which must be corrected by the filer within five (5) days.

- a. **Contents of E-filing Transactions** - A single e-filing transaction may include multiple documents for filing in the same case. However, a single e-filing transaction shall not include documents for filing in different cases. Documents to be e-filed in different cases must be submitted in different e-filing transactions. Additionally, if a single document is to be filed in two or more cases, the document must be submitted in a separate e-filing transaction for each case.
- b. **Formatting of E-filed Documents** - E-filing of combined documents (two or more documents scanned as a single item) is not permitted. Each e-filed document must be submitted as a distinct item.
- c. **E-filing Payments** - Any payment required for an e-filing transaction must be made through the e-Portal. Payment for an e-filing transaction shall not be mailed or delivered to the Clerk's Office.

CIVIL COVER SHEET

4. A civil or family cover sheet must be e-filed as an individual document with each e-filed complaint or petition that initiates a new case. Florida Rule of Civil Procedure 1.100(c)(2) requires that a case be abated until the cover sheet is filed.

CONFIDENTIAL INFORMATION

5. The Notice of Confidential Information must be filed in the same transaction as the document containing confidential information, but must be filed as a separate document.

EXEMPTIONS FROM E-FILING

6. If an attorney who is not exempt from e-filing improperly submits a court document in paper form to the Clerk for filing, the Clerk's Office shall advise the Court by noting the improper submission on the case docket.

PERMITTED SUBMISSION OF PAPER DOCUMENTS


7. There is no need to file the paper document once the same document is e-filed, unless the Clerk's Office is required to retain the document in paper form. The Clerk's Office shall retain all documents in paper form as required by statute or rule for the time period specified by rule or statute.

TECHNICAL FAILURE

8. Pursuant to Rule 2.525(e), Florida Rules of Judicial Administration, 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. See Florida Supreme Court Standards for Electronic Access to the Courts, Version 7.0, Section 3.2 (modifications adopted February 2012.)

9. This Order replaces Administrative Order 1.20 (v1), "E-Filing for Attorneys in Civil Cases," dated March 28, 2013.

ORDERED on this 29th day of April, 2013.



Robert E. Roundtree, Jr., Chief Judge

THE EIGHTH JUDICIAL CIRCUIT OF FLORIDA
ADMINISTRATIVE ORDER NO. 1.07

E-MAIL AUTHORIZATION AND ENVELOPES

In order to consolidate the procedures for distribution of orders, judgments, and other documents by the court via electronic transmission and for distribution of printed orders, judgments, and documents by the court as an alternative to electronic transmission,

IT IS ORDERED:

E-MAIL AUTHORIZATION

1. Attorneys and "parties representing themselves" who are to receive or be served with notices, court orders, judgments and other court documents pursuant to the Florida Rules of Court may elect to receive their respective copies of notices, court orders, judgments, and other court documents by e-mail service rather than US Mail. Attorneys and parties representing themselves who wish to make this election shall complete the Eighth Judicial Circuit approved form for e-mail consent with a current e-mail address for this service and file the form with the clerk of court.

2. The clerk of court shall maintain the consent and e-mail addresses of the attorneys and "parties representing themselves" as follows:

(a) In Alachua County attorneys may provide authorization and consent for e-mail service of court-related documents by updating/initiating their LINDAS account with the clerk of court, or by filing an individual consent form in each case they are attorney of record.

(b) In the Regional Counties attorneys may provide the authorization and consent for e-mail service of court related documents by completing the approved Eighth Judicial Circuit form and submitting it to the clerk of court for filing in each case they are attorney of record for a party.

(c) In all counties “parties representing themselves” may provide the authorization and consent for e-mail service of court related documents by completing the approved Eighth Judicial Circuit form and filing this with the clerk of court in each case they are a party.

3. Attorneys or “parties representing themselves” shall ensure that the information contained in the form is current and accurate. Attorneys or “parties representing themselves” further agree to notify the respective clerk of court in writing of any changes to the information and or electronic address(s) on file.

4. The “E-mail Authorization” section of this administrative order is limited to court and/or clerk of court e-mail to attorneys or to the parties.

ENVELOPES

5. Members of the Bar shall furnish pre-addressed,* stamped envelopes which are without return address, with all pleadings, judgments, orders, or other documents which are prepared by members of the Bar and intended for distribution by the Court, together with the correct number of copies and envelopes for conforming.

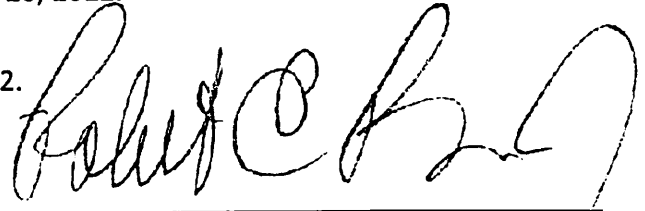
6. If a member of bar provides the court with metered envelopes, the metered envelopes must be in compliance with all applicable postal laws and regulations. *See, e.g.,* Mailing Standards of the United States Postal Service, Domestic Mail Manual 604.4.4.2. and Quick Service Guide 507c.

7. Parties who do not provide the court with the correct number of copies and corresponding pre-addressed, stamped envelopes shall not receive conformed copies from the court by mail. Parties may elect to receive conformed copies by electronic delivery or by inter-office mail in lieu of providing envelopes.

* Pre-addressed for all counsel or *pro se* litigants listed in the certificate of service.

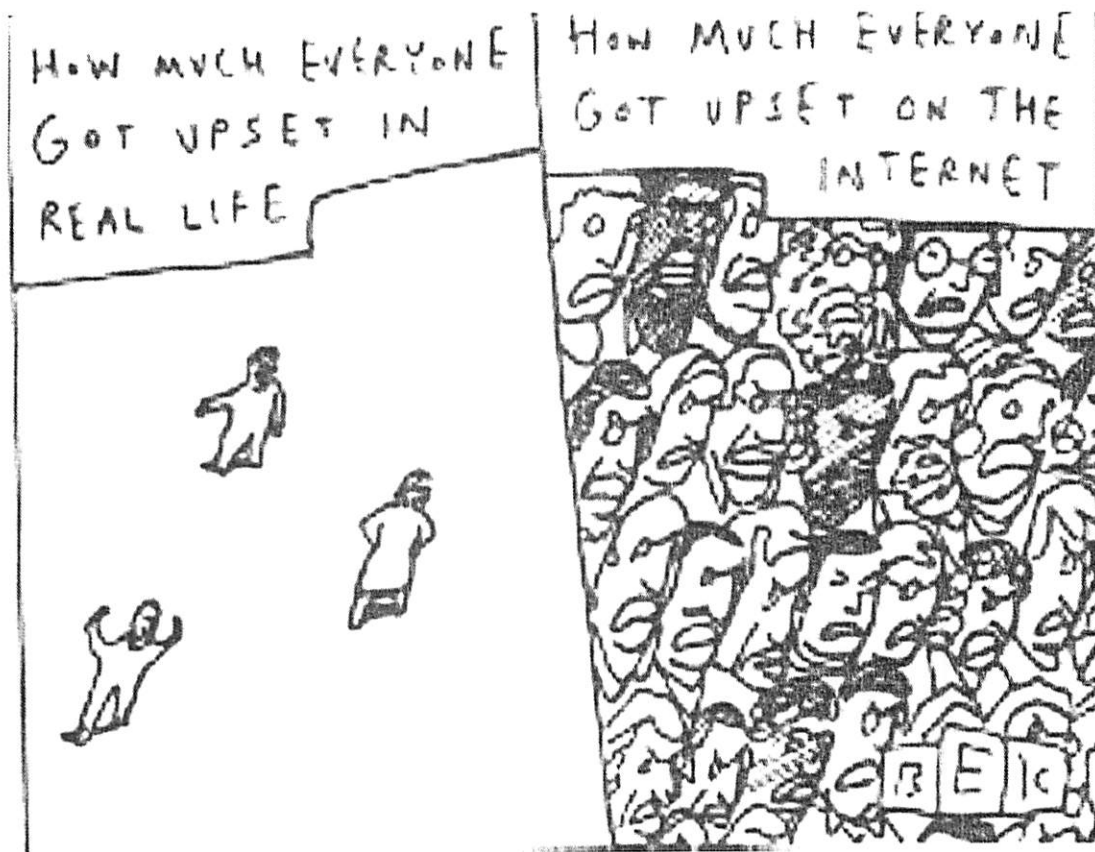
This administrative order consolidates and supersedes prior Administrative Orders 1.590(A), entitled "Envelopes for Distribution of Conformed Copies and Other Documents Provided by the Court" dated May 28, 2010, and 1.593, entitled "E-mail Authorization and Consent of Court Related Documents" dated July 26, 2011.

ORDERED ON this 5th day of October, 2012.

A handwritten signature in black ink, appearing to read "Robert E. Roundtree, Jr.", written in a cursive style. The signature is positioned above a horizontal line.

Robert E. Roundtree, Jr., Chief Judge

INNS OF COURT, Group 8, February 20, 2014



Inns of Court Group 8 Research: Electronics and Ethics

There is a world of material on electronics, ethics, professionalism; here's a start:

1. E-mail/Internet Use

Thomas E. Spahn, *The Ethics of E-Mail*, 15 Rich. J.L. & Tech. 12, 15 (2009)

Discusses the growing use of e-mail, its effect on attorney-client privilege and examples of rules implanted to deal with the issue of unsolicited e-mails and whether they are subject to ACP and conflict of interest rules, inadvertent transmission of communications, and "metadata."

ABA Model Rules

<http://www.insidecounsel.com/2013/03/28/new-changes-to-model-rules-a-wake-up-call-for-tech>

The Florida Bar v. Norkin, SC11-1356, 2013 WL 5878901 (Fla. Oct. 31, 2013)

Attorney found to have violated Rules Regulation the Florida Bar 4-8.4(d) (a lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice, including to knowingly, or through callous indifference, disparage or humiliate other lawyers on any basis) where attorney's e-mails, letters, and public comments humiliated and disparaged opposing counsel.

In re Downey, 937 So. 2d 643 (Fla. 2006)

Judge's use of internet to view pornography as well as inappropriate contact and communication with female attorneys warranted public reprimand.

2. E-discovery/E-filing

Florida Bar Journal, Dec. 2007 *Metadata: The Future Impact of Invisible Data on E-discovery in Florida*;

http://www.floridabar.org/DIVCOM/JN/JNJournal01.nsf/c0d731e03de9828d852574580042ae7a/29f99f1e8be8e8858525739f004b84be!OpenDocument&Highlight=0.ethics.electronic*

Discusses metadata, or "data about data" and discovery in Florida. Cites Florida Ethics Opinion 06-2, which outlines the ethical duties of lawyers when they send and receive electronic documents in the course of representing their clients.

The Florida Bar Journal, June 2013 *E-filing from the Local Coffee Shop: A Practical Look into Confidentiality, Technology, and the Practice of Law*;
https://www.floridabar.org/DIVCOM/JN/JNJournal01.nsf/c0d731e03de9828d852574580042ae7a/9783b5e97bf2d5f085257b7a004d3237!OpenDocument&Highlight=0,*

Notes that while technology is changing, the Rules of Professional Conduct still apply. Sees potential risk areas as e-filing, e-service, and email. Recommends clients use only a personal email address to ensure confidentiality. Discusses the potential risks of public Wi-Fi and cloud computing.

Florida Opinion 12-3, January 25, 2013;
<http://www.floridabar.org/tfb/tfbetopin.nsf/SearchView/ETHICS,+OPINION+12-3?opendocument>

Lawyers may use cloud computing if they take reasonable precautions to ensure that confidentiality of client information is maintained, that the service provider maintains adequate security, and that the lawyer has adequate access to the information stored remotely.

3. Professionalism Guidelines

Guidelines for Professional Conduct;
<http://www.floridabar.org/tfb/TFBProfess.nsf/5d2a29f983dc81ef85256709006a486a/2f2668cdfd7b99e085256b2f006ccd15?OpenDocument>

Professionalism Panel

Pursuant to Administrative Order 10.02 and the Florida Supreme Court's Opinion No. SC13-688 entitled *In Re: Code for Resolving Professionalism Complaints*, which adopted the Code for Resolving Professionalism Complaints and directed the Chief Judge of each circuit in Florida to create a local professionalism panel to receive, screen and act upon complaints of unprofessional conduct, and to resolve those complaints informally, if possible.

The Eighth Judicial Circuit's Local Professionalism Panel's membership includes:

Raymond F. Brady, Esq. (Chair) – Perry, Vloedman & Brady

Honorable Tony S. Monaco, Circuit Judge, Eighth Judicial Circuit

Honorable Walter M. Green, Alachua County Judge, Eighth Judicial Circuit

Honorable Sheree H. Lancaster, Gilchrist County Judge, Eighth Judicial Circuit

Phil C. Beverly, Jr., Esq. – Law Office of Phil C. Beverly, Jr.

Alan Chipperfield, Esq. – Assistant Public Defender, Office of the Public Defender,
Eighth Judicial Circuit

Philip N. Kabler, Esq. – Kabler, Moreno & Cason, LLP

Amy R. Mashburn, Professor – University of Florida Levin College of Law

Meshon T. Rawls, Esq. – Gator TeamChild

Jeanne M. Singer, Esq. – Chief Assistant State Attorney, Office of the State Attorney,
Eighth Judicial Circuit

Carl B. Schwait, Esq. – Dell Graham, P.A.

New Florida Rules of Civil Procedure on e-Discovery

Excerpts compiled by
Ralph C. Losey
Jackson Lewis, LLP

Summary of the Florida Rules of Civil Procedure amended in 2012 to address e-discovery issues with references to the Federal Rules of Civil Procedure from which the new rules were generally derived.

RULE 1.200. PRETRIAL PROCEDURE (FRCP Rules 16 and 26f)
(a) Case Management Conference.

RULE 1.201. COMPLEX LITIGATION (Rules 6 and 26f)
(b) Initial Case Management Report and Conference.

RULE 1.280. GENERAL PROVISIONS GOVERNING DISCOVERY (Rule 26)
(b) Scope of Discovery.
(d) Limitations on Discovery of Electronically Stored Information. (Rules 26b2B and 26b2C)

RULE 1.340. INTERROGATORIES TO PARTIES (Rule 33)
(c) Option to Produce Records.

RULE 1.350. PRODUCTION OF DOCUMENTS AND THINGS AND ENTRY UPON LAND FOR INSPECTION AND OTHER PURPOSES (Rule 34)
(a) Request; Scope.
(b) Procedure.

RULE 1.380. FAILURE TO MAKE DISCOVERY; SANCTIONS (Rule 37e (exact))
(e) *Electronically Stored Information; Sanctions for Failure to Preserve*

RULE 1.410. SUBPOENA (Rule 45)
(c) For Production of Documentary Evidence.

Ralph C. Losey is a partner of Jackson Lewis, LLP, Orlando office, where he leads the firm's electronic discovery practice group with 49 offices around the country. Ralph was closely involved with the wording and adoption of the new Florida rules. He is the author of four books on electronic discovery and the popular weekly blog *e-DiscoveryTeam.com*. Ralph is available to serve as a special master on complex e-discovery related issues.

Full Text of New Rules.

The *italicized portions* of the Florida Rule excerpts below represent the 2012 Amendments for e-discovery in their entirety.

RULE 1.200. PRETRIAL PROCEDURE

(a) **Case Management Conference.** At any time after responsive pleadings or motions are due, the court may order, or a party by serving a notice may convene, a case management conference. The matter to be considered shall be specified in the order or notice setting the conference. At such a conference the court may:

(5) consider the possibility of obtaining admissions of fact and voluntary exchange of documents *and electronically stored information*, and stipulations regarding authenticity of documents *and electronically stored information*;

(6) consider the need for advance rulings from the court on the admissibility of documents *and electronically stored information*;

(7) *discuss as to electronically stored information, the possibility of agreements from the parties regarding the extent to which such evidence should be preserved, the form in which such evidence should be produced, and whether discovery of such information should be conducted in phases or limited to particular individuals, time periods, or sources;*

RULE 1.201. COMPLEX LITIGATION

(b) **Initial Case Management Report and Conference.** The court shall hold an initial case management conference within 60 days from the date of the order declaring the action complex.

(1) At least 20 days prior to the date of the initial case management conference, attorneys for the parties as well as any parties appearing pro se shall confer and prepare a joint statement, which shall be filed with the clerk of the court no later than 14 days before the conference, outlining a discovery plan and stating:

(1) the possibility of obtaining agreements among the parties regarding the extent to which such electronically stored information should be preserved, the form in which such information should be produced, and whether discovery of such information should be conducted in phases or limited to particular individuals, time periods, or sources;

RULE 1.280. GENERAL PROVISIONS GOVERNING DISCOVERY

(b) **Scope of Discovery.** Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(3) Electronically Stored Information. A party may obtain discovery of electronically stored information in accordance with these rules.

(d) Limitations on Discovery of Electronically Stored Information.

(1) A person may object to discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of burden or cost. On motion to compel discovery or for a protective order, the person from whom discovery is sought must show that the information sought or the format requested is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order the discovery from such sources or in such formats if the requesting party shows good cause. The court may specify conditions of the discovery, including ordering that some or all of the expenses incurred by the person from whom discovery is sought be paid by the party seeking the discovery.

(2) In determining any motion involving discovery of electronically stored information, the court must limit the frequency or extent of discovery otherwise allowed by these rules if it determines that

(i) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from another source or in another manner that is more convenient, less burdensome, or less expensive; or

(ii) the burden or expense of the discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues.

Committee Notes

2012 Amendment. Subdivisions (b)(3) and (d) are added to address discovery of electronically stored information.

The parties should consider conferring with one another at the earliest practical opportunity to discuss the reasonable scope of preservation and production of electronically stored information. These issues may also be addressed by means of a rule 1.200 or rule 1.201 case management conference.

Under the good cause test in subdivision (d)(1), the court should balance the costs and burden of the requested discovery, including the potential for disruption of operations or corruption of the electronic devices or systems from which discovery is sought, against the relevance of the information and the requesting party's need for that information. Under the proportionality and reasonableness factors set out in subdivision (d)(2), the court must limit the frequency or extent of discovery if it determines that the discovery sought is excessive in relation to the factors listed.

In evaluating the good cause or proportionality tests, the court may find its task complicated if the parties know little about what information the sources at issue

contain, whether the information sought is relevant, or how valuable it may be to the litigation. If appropriate, the court may direct the parties to develop the record further by engaging in focused discovery, including sampling of the sources, to learn more about what electronically stored information may be contained in those sources, what costs and burdens are involved in retrieving, reviewing, and producing the information, and how valuable the information sought may be to the litigation in light of the availability of information from other sources or methods of discovery, and in light of the parties' resources and the issues at stake in the litigation.

RULE 1.340. INTERROGATORIES TO PARTIES

(c) Option to Produce Records. When the answer to an interrogatory may be derived or ascertained from the records (*including electronically stored information*) ... *If the records to be produced consist of electronically stored information, the records shall be produced in a form or forms in which they are ordinarily maintained or in a reasonably usable form or forms.*

RULE 1.350. PRODUCTION OF DOCUMENTS AND THINGS AND ENTRY UPON LAND FOR INSPECTION AND OTHER PURPOSES

(a) Request; Scope. Any party may request any other party (1) to produce and permit the party making the request, or someone acting in the requesting party's behalf, to inspect and copy any designated documents, *including electronically stored information*, writings, drawings, graphs, charts, photographs, phono-records, and other data compilations from which information can be obtained, translated, if necessary, by the party to whom the request is directed through detection devices into reasonably usable form, that constitute or contain matters within the scope of rule 1.280(b) and that are in the possession, custody, or control of the party to whom the request is directed; (2) to inspect and copy, test, or sample any tangible things that constitute or contain matters within the scope of rule 1.280(b) and that are in the possession, custody, or control of the party to whom the request is directed; or (3) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation on it within the scope of rule 1.280(b).

(b) Procedure. ...

... A request for electronically stored information may specify the form or forms in which electronically stored information is to be produced. If the responding party objects to a requested form, or if no form is specified in the request, the responding

party must state the form or forms it intends to use. If a request for electronically stored information does not specify the form of production, the producing party must produce the information in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms. The party submitting the request may move for an order under rule 1.380 concerning any objection, failure to respond to the request, or any part of it, or failure to permit the inspection as requested.

RULE 1.380. FAILURE TO MAKE DISCOVERY; SANCTIONS

(e) Electronically Stored Information; Sanctions for Failure to Preserve. *Absent exceptional circumstances, a court may not impose sanctions under these rules on a party for failing to provide electronically stored information lost as a result of the routine, good faith operation of an electronic information system.*

Committee Notes

2012 Amendment. *Subdivision (e) is added to make clear that a party should not be sanctioned for the loss of electronic evidence due to the good-faith operation of an electronic information system; the language mirrors that of Federal Rule of Civil Procedure 37(e). Nevertheless, the good-faith requirement contained in subdivision (e) should prevent a party from exploiting the routine operation of an information system to thwart discovery obligations by allowing that operation to destroy information that party is required to preserve or produce. In determining good faith, the court may consider any steps taken by the party to comply with court orders, party agreements, or requests to preserve such information.*

RULE 1.410. SUBPOENA

(c) For Production of Documentary Evidence. *A subpoena may also command the person to whom it is directed to produce the books, papers, documents (including electronically stored information), ...*

If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms. A person responding to a subpoena may object to discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue costs or burden. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought or the form requested is not reasonably accessible because of undue costs or burden. If that showing is made, the court may nonetheless order discovery from such sources or in such forms if the requesting party shows good cause, considering the limitations set out in rule 1.280(d)(2). The court

may specify conditions of the discovery, including ordering that some or all of the expenses of the discovery be paid by the party seeking the discovery.

Committee Notes

2012 Amendment. *Subdivision (c) is amended to address the production of electronically stored information pursuant to a subpoena. The procedures for dealing with disputes concerning the accessibility of the information sought or the form for its production are intended to correspond to those set out in Rule 1.280(d).*