

D.A. 5-31-96

087

IN THE SUPREME COURT OF FLORIDA

CASE NO. 81,638

FILED

SID J. WHITE

MAY 29 1996

CLERK, SUPREME COURT

By \_\_\_\_\_  
Chief Deputy Clerk

IN RE: ELECTRONIC TRANSMISSION  
AND FILING OF DOCUMENTS

**SARASOTA COUNTY CLERK OF THE CIRCUIT COURT COMMENTS TO THE  
EMERGENCY PETITION TO AMEND RULES 2.090, 2.075, AND 2.060 WITH  
RESPECT TO THE ELECTRONIC TRANSMISSION AND FILING OF DOCUMENTS**

Please accept for consideration, the following comments which are respectfully submitted in response to the Florida Bar's Emergency Petition to amend Florida Rules of Judicial Administration 2.090, 2.075 and 2.060 relating to the electronic transmission and filing of documents.

Although the use of electronic signatures is not presently precluded by law, some may be reluctant to accept their use until the law gives them the same force and effect as manual signatures. The state's interest in economic development and in creating a more efficient and effective court system by encouraging the transition to electronic filing requires that the legal basis for the use of electronically affixed signatures, including digital signatures, be explicitly established. Specifically, it is recommended that the committee clarify further the procedural handling of electronically transmitted documents containing a signature which has been electronically affixed. The proposed amendments to Rule 2.090 and Rule 2.060 are intended to address several considerations. The proposed amendment to Rule

2.090(d)(2) is intended to create a consistency with Florida Statute 528.30 which provides that any electronically recorded document will be treated for all purposes as an original. In order to effectuate this proposal, an amendment to Rule 2.060 authorizes the use of original signatures that have been reproduced by electronic means, such as on electronically transmitted documents. However, the proposed amendment to Rule 2.090(d)(3) states that an attorney, party, or other person who files a document by electronic transmission represents that the original physically signed document will be retained for the duration of that proceeding and of any subsequent appeal or subsequent proceeding in the cause. Additionally, this provision appears to create an inconsistency with the definition of "original document". The proposed amendment to Rule 2.090(d)(2) states that any electronically transmitted document, when received and filed by a court or clerk of the court, will for all purposes be treated as an originally filed document. Yet, the proposed amendment to Rule 2.090(d)(3) requires the party filing by electronic transmission to retain the original physically signed document as a precaution in case there is a problem with the electronic record keeping system or if there is a question concerning the validity of the signature. The two subsections can be construed as providing a differentiation within the definition of "original document" and possibly exclude the use of electronically affixed signatures. It would appear that the provision in the proposed amendment to Rule 2.090(d)(3) requiring the retention of an original physically signed document is intended to refer to a document transmitted by facsimile rather than an electronically transmitted document containing an electronically affixed signature. Therefore, it is suggested that the

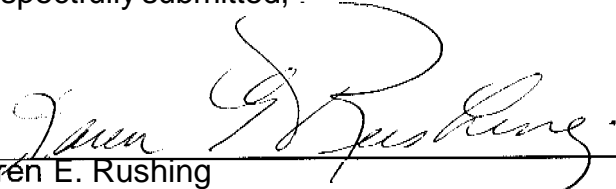
amendment to Rule 2.090(d)(3) be amended to require only parties filing by facsimile transmission retain the physically signed document for the duration of the proceeding. It is believed that the recommended modification to Rule 2.090(d)(3) will provide a critical distinction between documents filed electronically and documents transmitted by facsimile. Additionally, the recommended language will ensure consistency with the proposed amendment to Rule 2.090(d)(2) providing that electronically transmitted documents will be treated **as** originals, and, will further establish a coherent legal basis for electronically affixed signatures by requiring a physical signature only on documents transmitted by facsimile.

Finally, various types of documents which are usually signed to show authenticity are termed "writings" for legal purposes. However, the present definition of the term "writings" in Florida Evidence Code 590.951 is unclear as to whether documents in a digital or electronic medium are "writings" for the purposes of the law. Therefore, it is recommended that the definition of the term "writings" in Florida Evidence Code 590.951 be amended to include information which is created or stored in any electronic medium and which is retrievable in perceivable form.

The overall intent of the proposed amendments to Rules 2.090, 2.075, and 2.060 is to facilitate the efficient delivery of court services through electronic filing. In order to achieve this purpose, electronically transmitted documents need to be reliable and the public needs to have confidence in the use of electronic signatures which, in effect, substitute for manually written signatures. A functioning electronic court system requires a framework that can support secure electronic transactions. While there

undoubtedly will be some administrative problems in coordinating the receipt of electronically transmitted documents, it is believed that once the definition of "original document" is further clarified and a legal basis for electronic signatures is established, the proposed amendments to Rules 2.090, 2.075 and 2.060 will simplify the accessibility of filed documents and position the courts to function more effectively in the future.

Respectfully submitted, .



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