

D.A. 5/31/96

247

IN THE SUPREME COURT OF FLORIDA
CASE NO. 81,638

FILED

CLERK OF THE COURT
JUN 24 1996

IN RE: ELECTRONIC TRANSMISSION
AND FILING OF DOCUMENTS

SECOND SUPPLEMENTAL COMMENTS ON
EMERGENCY PETITION TO AMEND RULES 2.090, 2.075 AND 2.060
WITH RESPECT TO THE ELECTRONIC TRANSMISSION
AND FILING OF DOCUMENTS

The undersigned are two of the signatories to the Emergency Petition filed in the above matter and are the current and past Chairs of the Rules of Judicial Administration Committee. In their individual capacity, however, each has previously submitted to this Court supplemental comments in case No. 81,638 because of passage by the Florida legislature of the Electronic Signature Act of 1996 (which has now become law without the Governor's signature).

I. ORIGINAL COMMENTS

The purpose of the earlier supplemental comments was to suggest a further amendment to the **package** of proposed rules. Specifically it was to cover a situation in which an individual filing documents uses a computer modem to transfer the documents directly from his or her computer to the court's (clerk's) computer. The modification recommended in the earlier supplemental comments addressed two changes to new subpart (f) to **Rule 2.060**. The **first** of those proposed changes (**new** subsection 2.060(f)(1)(C)) added as an additional signature method any format authorized by general law (such as the Electronic Signature Act of 1996).

The second suggested modification was to proposed rule **2.060(f)(2)**. That subsection, before the suggested modification, appears to require that any attorney who does not file the original

"blue ink" signature document, retain the original physically signed document in his or her possession. With the advent of electronic signatures, however, the undersigned now realize that there could be situations in which an attorney never creates an originally signed document since it could be maintained in the attorney's office only as an electronically stored document.

Accordingly, the second modification to 2.060(f)(2) was to delete the word "the" in the fourth line and to insert the word "any" to reflect that an attorney only has to retain an originally signed document if it has been created. If the attorney's copy of the document exists only in electronic form, there seems to be no reason to require that lawyer to also create a "blue ink" signature original to keep. See Exhibit A for proposed modifications submitted with first supplemental comments.

II. SECOND SUPPLEMENTAL COMMENT

Since the passage of the Electronic Signature Act of 1996, however, it has come to the attention of the undersigned that to make the several rules included in this package consistent, a corresponding change would also need to be made to Rule 2.090 (d)(3). This subsection of Rule 2.090 is directly parallel to Rule 2.060(f)(2) and again appears to require that an attorney electronically filing a document maintain in his or her possession "an originally signed" document.

Since it is the belief of the undersigned that there may be situations in the near future in which documents are only created and filed electronically, it is the recommendation of the undersigned two individuals that Rule 2.090(d)(3) **also** be modified

by deleting, in the second line of that subsection, the word "the" and inserting the word "**any**" as a modifier of the types of documents that would have to be retained by an attorney. See Exhibit B for this additional proposed change. Thus, if no originally signed document is ever created, none would, by this rule, have to be created solely for the purpose of its retention by the filing attorney.

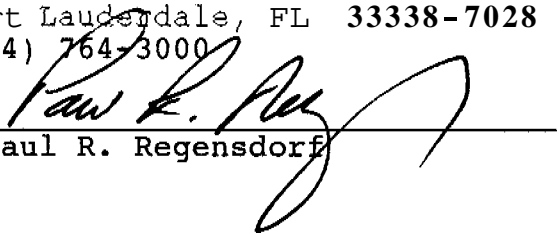
The undersigned apologize for the piecemeal nature of these related suggestions, but would note that the haste required to **place** this issue before the Supreme Court prior to oral argument simply resulted in the above-described oversight.

For the foregoing reasons, the undersigned respectfully suggest to this Court that if the package of rules submitted in this emergency petition are approved and adopted by this Court that the foregoing change be made to Rule 2.090(d)(3) as originally presented.

Respectfully submitted,

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PROPOSED RULE 2.060(f)

(TO BE ADDED BETWEEN EXISTING SUBDIVISION (e) AND (f), RELETTERING ALL SUBSEQUENT SUBDIVISIONS:

(f) Form of Signature of Attorney or Party.

(1) The signatures required on pleadings and papers by subdivisions (d) and (e) 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 court and clerk where the proceeding is pending have agreed to accept and have the capability of receiving pleadings and papers with that signature format.

(2) An attorney or party who files a document that does not contain the original signature of that attorney or party represents that ~~the~~ any original physically-signed document will be retained by that attorney (or successor attorney), party or other person for the duration of that proceeding, and of any subsequent appeals or subsequent proceedings in that cause.

SUGGESTED CHANGE TO PROPOSED RULE 2.090(d)(3)

RULE 2.090 ELECTRONIC TRANSMISSION AND FILING OF " [REDACTED]

* * *

(d) Original Documents.

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(3) An attorney, party or other person who files a document by electronic transmission represents that ~~the~~ any original physically-signed document will be retained by that attorney (or successor attorney), party or other person for the duration of that proceeding, and of any subsequent appeals or subsequent proceedings in that cause.

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