O.A. 5-31-96 007

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

FILED
SID J. WHITE
MAY 28 1996
CLERK, SUPREME COURT
By _____
Chief Deputy Clerk

IN RE: ELECTRONIC TRANSMISSION
AND FILING OF DOCUMENTS

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. Because of the timing of the comments which have been submitted to this Court and of the oral argument presently scheduled in this matter, no meeting of the Rules of Judicial Administration Committee has been held with respect to the various comments already filed with this Court. Consequently, these supplemental comments are the comments only of the signatories to this document, individually, and should not in any sense be construed as being the official (or unofficial) comments of the Rules of Judicial Administration Committee.

It appears from at least two of the comments already filed (by Peter J. Snyder and Dorothy H. Wilken, Clerk of the Circuit Court of the 15th Judicial Circuit) that the issue of electronic

signatures may not have been adequately addressed in the proposed rule.

It was the intent of this package of rules, as drafted, to be procedural rules and not technical rules dealing with current or future technology. It was also the intent of these rules, however, that they be written sufficiently broadly so as to encompass developing and new technologies without the need for frequent amendments.

The undersigned have recently learned that the Electronic Signature Act of 1996 has been passed by the Legislature of the State of Florida (Senate Bill 942) and may, by the date of this filing, have become law. If for any reason that Act has not become law, it appears quite likely that that Act or one like it will shortly become the law in the State of Florida.

While it continues to be the opinion, at least of the undersigned, that court filings do not require the security levels attainable through the use of electronic signatures, nevertheless, a3 electronic commerce becomes more and more prevalent in Florida, it is anticipated that significant numbers of attorneys and parties may be in a position where they can file documents electronically from their computers directly to computers in certain clerks' offices that are equipped for that purpose.

When that day comes -- and it may not be far away -- it is believed that the two signature alternatives proposed in Rule 2.060(f) may be inadequate with respect to that type of "pure"

electronic filing. In other words, a lawyer will soon be able to file a pleading without ever creating an "original" document which has an original signature. Additionally, certain computer systems may not be readily capable of reproducing a handwritten signature by electronic means.

Accordingly, attached to this document as Exhibit A is a further revision of proposed Rule 2.060 (f) which purports to do two things. First of all, in subsection (1), it adds a third alternative form of signature which would encompass any other signature format once authorized by the General Law in the State of Florida. Since the principal electronic filing rule (Rule 2.090) does not require a clerk to accept documents electronically, the proposed new amendment to 2.060(f)(1) requires that before any new signature format can be used on a document, the clerk must have agreed to accept and have the capability of receiving pleadings and papers with that new signature format.

Similarly, subsection (2) of Rule 2.060(f) has been modified as well. As originally presented to this Court, it required an attorney who electronically filed a document to retain an originally physically signed document. Since, with modem to modem transmission being currently (or in the very near future) possible, and since that would allow attorneys to create and retain their own files without any paper, 2.060(f)(2) has been further amended to reflect that a hard copy, originally-signed document need only be retained if it has first been created.

As noted above, the revisions to proposed Rule 2.060(f), as reflected on Exhibit A, have not been reviewed by, let alone endorsed by, either the Rules of Judicial Administration Committee or The Florida Bar. In the interests of time, however, it was felt by the undersigned that this issue, if not the revision attached hereto as Exhibit A, has sufficient merit to warrant immediate presentation to this Court, prior to oral argument, so as to allow a broader circulation of comments.

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 subdivisiions (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.

Exhibit A