

047
CLERK OF THE CIRCUIT COURT

Alachua County Courthouse
Post Office Box 600
Gainesville, Florida 32602

FILED

SID J. WHITE

AUG 26 1993

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

TELEPHONE
(904) 374-3636

J. K. "BUDDY" IRBY
CLERK

August 18, 1993

Honorable Sid White
Clerk of the Florida Supreme Court
500 South Duval Street
Tallahassee, Florida 32399

Re: Proposed Amendments to Fla.R.Jud.Admin.

Dear Mr. White:

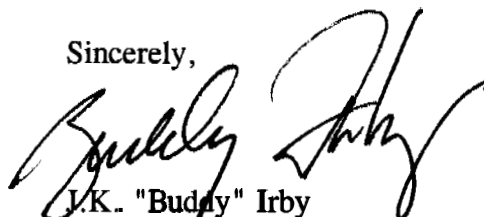
Enclosed please find a courtesy copy of a memorandum which I sent the Florida Association of Court Clerks regarding the proposed amendments to the Rules of Judicial Administration. This memorandum addresses only proposed Rule 2.060(f). However, I would also like to comment on the proposed changes to Rule 2.090.

For the most part, the revision of **Rule 2.090** is a major improvement from the rule as it currently exists. However, to assure efficient judicial recordkeeping, I recommend that Rule 2.090 speak to the act of time-clocking in any pleading or paper filed by fax transmission with the court or clerk of court. This is critical, especially in light of possible statute of limitations problems which could arise if such a requirement is not made an express part of Rule 2.090.

The following language is offered as a suggested revision to Rule 2.090(g)(3): "The document made at the receiving station shall be time-clocked in, or hand-filed with appropriate notation as to the date and time of receipt."

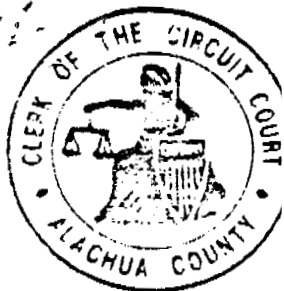
Thank you for the opportunity to comment on the proposed amendments to Rule 2.090 and Rule 2.060. Please do not hesitate to contact me for any follow-up inquiries.

Sincerely,


J.K. "Buddy" Irby
Clerk of the Circuit Court

JKI:als
Enclosure

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Gainesville, Florida 32602

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CLERK

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SID J. WHITE

AUG 26 1993

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

TELEPHONE
(904) 374-3636

To: Roger H. Alderman
Executive Director

From: J.K. "Buddy" Irby
Alachua County Clerk of the Circuit Court

Re: Proposed Amendments to
Rules of Judicial Administration

Date: August 9, 1993

MEMORANDUM

Critique of Proposed Rule 2,060(f), Rules of Judicial Administration: If subsection (f) is designed to deal with the fact that documents faxed to the Clerk will not contain an original signature, then it is overbroad. As it is written, subsection (f) will cause the judicial system much difficulty.

Currently, documents and pleadings filed with the Clerk or court are filed as originals. However, with the proposed subsection (f), attorneys and lay litigants will file photocopies of complaints, Petitions, motions, answers and other pleadings. The official court records will then be comprised of copies instead of true originals.

Once the Clerk becomes a records custodian of copies, and not original documents, then that Clerk cannot produce a certified copy of documents which are copies, The Clerk cannot attest that something is a true and correct copy of an original when, in fact, the Clerk is not in possession of, nor is the custodian of, the original. The Clerk will only be able to produce a true and correct copy of a copy.

This has far-reaching implications for persons needing certified copies of records to submit to other government agencies, for use in foreign countries, or for evidentiary purposes in court. Currently, under § 92.29, Fla. Stat. (1991), photographic reproductions of original records by the Clerk shall be received and admitted as evidence with like force and effect as the

original. Subsection (f) threatens to make the court files a repository of copies, not originals.

As this occurs, litigants will not be able to get certified copies of originals from the Clerk, and will not be able to invoke § 92.29 as a means of placing those in evidence. Likewise, a state Clerk will not be able to furnish a federal court with certified copies of documents which are not originals, Clerks subpoenaed as records custodians to testify as to the authenticity of documents in court files will only be able to attest to the fact that a certain copy was filed, but will not be able to attest to whether that copy is a true and correct copy of the original,

We need to maintain the integrity of a judicial system designed to operate on the filing, for the most part, of originals. To escape the problem of overbreadth created by subsection (f), tailor it narrowly to fax transmissions only. The following suggested language for a revised subsection (f) would accomplish this:

(f) Form of Signature of Attorney or Party. The signatures required on pleadings and papers by subdivisions (d) and (e) of this rule may be original signatures that have been reproduced electronically through a faxed transmission of that document for filing with the court or clerk of court. An attorney or party who files a document by means of fax transmission represents that the original physically-signed document will be retained by that attorney or party for the duration of that proceeding, and of any subsequent appeals or subsequent proceedings in that cause.