

D.A. 5-31-96

047

IN THE SUPREME COURT OF FLORIDA

CASE NUMBER 81,638

FILED

AUG 26 1996

CLERK SUPREME COURT

IN RE: Electronic Transmission  
and Filing of Documents

---

COMMENTS OF THE FLORIDA BAR CRIMINAL PROCEDURE RULES COMMITTEE

The Florida Bar Criminal Procedure Rules Committee respectfully files this comment to proposed Rule 2.090, Florida Rules of Judicial Administration, regarding the electronic transmission and filing of documents, and states:

1. The Florida ~~Bar~~ Criminal Procedure Rules Committee has closely followed the discussion and debates surrounding the proposal before the Court. On July 1, 1995, a special subcommittee **was** formed to review the impact of such a proposal on the procedures in criminal court. The subcommittee worked for the entire year reviewing all Rules of Criminal Procedure and the impact ~~of~~ permitting electronic transmission of documents with respect to each of those Rules,

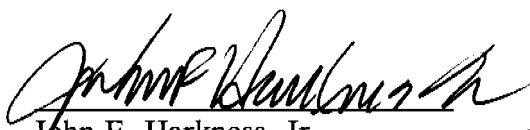
2. The special subcommittee was composed of two judges, two prosecutors, and three defense attorneys. The special subcommittee recommended that the existing Rules of Criminal Procedure be amended to facilitate electronic filing and electronic service of documents, which amendments would only be necessary if this Court adopts the proposed Rule of Judicial Administration on electronic filing. A copy of the report of the subcommittee is attached.

3. On June 21, 1996, the Criminal Procedure Rules Committee adopted the recommendation of the subcommittee, (by a vote of 18 to 6,) and proposed a committee note regarding abuse of electronic process.

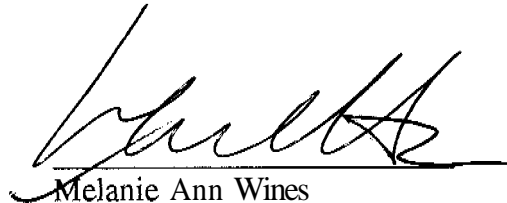
The proposed amendments of Rule 3.030, Florida Rules of Criminal Procedure are attached.

WHEREFORE, the Florida ~~Bar~~ Criminal Procedure Rules Committee respectfully requests that this Court consider it's comments with respect to electronic filing and, to incorporate the proposed amendment to the Rules of Criminal Procedure in any ruling in the instant case.

Respectfully submitted this 26th day of August, 1996.



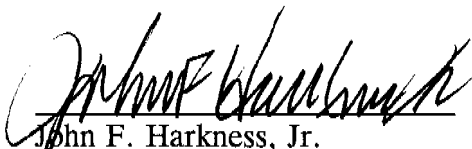
John F. Harkness, Jr.  
Executive Director  
The Florida Bar  
650 Apalachee Parkway  
Tallahassee, FL 32399-2300  
904-561-5600  
Florida ~~Bar~~ No. 123390



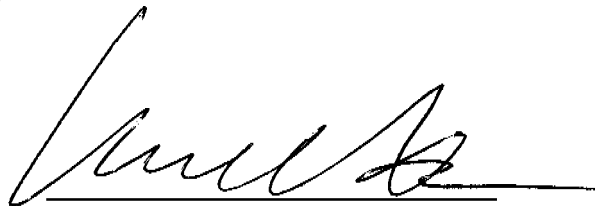
Melanie Ann Wines  
Statewide Prosecutor  
Former Committee Chair  
(submitted with approval  
of current Chair)  
2020 Capital Circle, S.E.  
Ervin Building, Suite 300  
Tallahassee, FL 32301  
904-487-2807  
Florida Bar No. 279250

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Paul Regensdorf, Esquire, Fleming O'Bryan and Fleming, P.A., 500 East Broward Boulevard, 17th Floor, Ft. Lauderdale, FL, 33394-3071; Mignon Beranek, Chair of the Rules of Judicial Administration Committee, 500 S. Duval Street, Tallahassee, FL, 32302; and Anthony Musto, Chair of the Criminal Law Section, Office of the County Attorney, 15 South Andrews Avenue, Suite 423, Ft. Lauderdale, FL, 33301.



John F. Harkness, Jr.  
Executive Director  
The Florida Bar  
650 Apalachee Parkway  
Tallahassee, FL 32399-2300  
904-561-5600  
Florida Bar No. 123390



Melanie Ann Hines  
Statewide Prosecutor  
Former Committee Chair  
(submitted with approval  
of current Chair)  
2020 Capital Circle, S.E.  
Ervin Building, Suite 300  
Tallahassee, FL 32301  
904-487-2807  
Florida Bar No. 279250

**RULE 3.030. SERVICE OF PLEADINGS AND PAPERS**

(a) **Service; When Required.** Every pleading subsequent to the initial indictment or information on which a defendant is to be tried unless the court otherwise orders, and every order not entered in open court, every written motion unless it is one as to which a hearing ex parte is authorized, and every written notice, demand, and similar paper **shall** be served on each party; however, nothing herein shall be construed to require that a plea of not guilty shall be in writing.

(b) **Same; How Made.** When under these rules service is required or permitted to be made on a party represented by an attorney the service shall be made on the attorney unless service on the party is ordered by the court. Service on the attorney or on a party shall be made **by** delivering a copy to the party or by mailing it to the party's last known address, or, if no address is known, by leaving it with the clerk of the court who shall place it in the court file. Delivery of a copy within this rule shall mean:

(1) handing it to the attorney or to the party; or

(2) leaving it at the attorney's office with the secretary or other person in charge; or

(3) if there is no one in charge, leaving it in a conspicuous place therein; or

(4) if the office is closed or the person to be served has no office, leaving it at **the** person's usual place of abode with a family member above 15 years of age and informing that person of the contents. Service by mail shall be deemed complete upon mailing.

(5) transmitting it electronically to each party with a cover sheet indicating the sender's name, bar number, firm, address, telephone number, facsimile or modem number, and the number of pages transmitted. Electronic service occurs when transmission of the last page is complete. Service by delivery or electronic transmission after 5:00 p.m. shall be deemed to have been made on the next day that is not a Saturday, Sunday, or legal holiday.

(c) **Filing.** All original papers, copies of which are required to be served on parties, must be filed with the court either before service or immediately thereafter.

(d) **Filing with the Court Defined.** The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with him or her, in which event the judge shall note thereon the filing date and transmit them to the office of the clerk. Unless any rule expressly provides to the contrary, filing of pleadings and other papers with the court may be made by electronic transmission provided for and in accordance with the Florida Rules of Judicial Administration.

(e) **Certificate of Service.** When any attorney shall in substance certify:

I do certify that a copy (copies) hereof (has) (have) been furnished to (here insert name or names) by (delivery) (mail) this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

\_\_\_\_\_  
Attorney

the certificate shall be taken as **prima facie** proof of service in compliance with all rules of court and law.

#### Committee Notes

**1968 Adoption.** Taken from the Florida Rules of Civil Procedure.

**1972 Amendment.** Same as prior rule; (a) amended by deleting reference to trial on affidavit.

**1996 Amendment.** Subdivisions (b) and (d) amended to conform to Florida Rules of Judicial Administration 2.090, 2.075, and 2.060. Subdivision (b) conforms to language contained in Florida Rule of Civil Procedure 1.080(b). Fraudulent manipulation of electronic transmission service should be deemed contemptuous and dealt with by appropriate court sanctions.