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CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

Report

of

Clerks of the Circuit Court

on

Proposed Amendments

to

Rules of Judicial Administration

Rules 2.090 and 2.060

Electronic Transmission and Filing of Documents

Prepared by:

Florida Association of Court Clerks/Comptrollers
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File No. 1-CB1-004

Rule 2.090 and 2.060
Electronic Transmission and Filing of Documents

SUMMARY

In the following pages the Florida Association of **Court** Clerks/Comptrollers has made recommendations relative to each section of the proposed rule revisions based on issues identified by the Clerks who responded to the request for input. Additionally, the concerns and issues have been stated in summary form below.

ISSUES/CONCERNS:

- Concern that the Rule include both existing and emerging technologies for the electronic transmission of documents.
- Correlation with the Florida Department of State, Division of Archives to establish uniformity regarding electronic transmission, electronic record keeping and equipment specifications.
- Workload, cost and liability factors.
- Appropriate service charges to provide the service.
- Total responsibility for electronic transmission **of** documents and follow up filings be the responsibility of the person submitting the electronic transmission. Timely filing of documents relative to statutory and rule time frames be the total responsibility of the sender regardless of the problem of inoperable equipment.
- Definition **of** specific time frames excluding the term "immediately".
- Clear definition of filing date/time as being when the document is time clocked or otherwise noted as filed by the Clerk or the **Court**.
- Duplication of documents, i.e. copies/original documents within the court file and the resulting confusion and impact on the court, the clerk and the public in identifying the "original". document.
- Exception of documents not acceptable by electronic transmission.
- Important that the use of electronic transmission be **an** optional procedure at the discretion of the Clerk. ("may" language in the rule.)
- Concern about the **status** of "original documents" and the requirements relative to original signatures and the certification of documents.

RECOMMENDATION:

The proposed rules revision presents one of the **many** significant changes in which the courts and the clerks will be receiving and processing data in the technology age. With the many new and emerging systems for receiving, disseminating **and** storing court data, it is our recommendation that a committee or working group be appointed to explore this rather complex issue **before** the final rule **is** adopted. Such a group should include representatives **of** the court, a legislative representative, a clerk of the circuit court, a member of the Florida **Bar**, and a representative of the Department of State,(Records Management).

Proposed Rules 2.090 and 2.060 Electronic Transmission and Filing of Documents

Proposed Rule.

(a) **Definitions:** Electronic transmission of documents means the transmission **by** electronic **signals to or from** a court or **clerk of the court**, a **court** of information which when received can be transformed by electronic means and stored on paper, microfilm, magnetic storage device, optical disk or other medium.

RECOMMENDATION:

The definitions should be reviewed **by** technical experts to ensure that it is all inclusive of current and emerging technology for the transmission and recordkeeping requirement of Rules **2.055** and **2.075** Rules of Judicial Administration as well as the requirements of the Administrative Rules of the Department of State, Division of Library and Information Services, Chapter 1B-26, Records Management and s.119 Florida Statutes relative to public records access.

Proposed Rule.

(b) **Application.** Any court or **clerk of the court** may accept for filing the electronic transmission of documents provided that such documents are transformed onto a medium which can be preserved for periods consistent with the records requirements **of** Rule 2.075 of the Florida Rules **of** Judicial Administration. Every document electronically transmitted **to a court or clerk of the court** shall be transformed into a paper copy by the court recipient.

RECOMMENDATION:

Again, existing rules described in "(a) Definitions" should be reviewed relative to this section.

With emerging technologies for recordkeeping, it should **not** be mandated that documents electronically transmitted be transformed into a paper copy. This sentence should be deleted and language inserted that any transformation of the transmittal would be made only for the purposes determined to be necessary **by** the court, **for** public access and to be **in** compliance with the recordkeeping rules established by the Rules of Judicial Administration and the Administrative Rules of the Department of State.

Further, transformation into a paper copy would result in duplication of documents that would be cumbersome to the court, the clerk and the public in reviewing fdes and result in additional workload and filing space.

It is imperative that this rule continue to be an optional "may" for implementation by the clerk. Many of the smaller counties do not presently have resources to accommodate the electronic transmission of documents.

Proposed Rule.

(c) Documents Affected. All documents which are allowed to be filed with a court or clerk of the court may be sent by electronic transmission except:

- (1) original wills **or** codicils thereto;
- (2) original promissory notes, negotiable instruments, or other evidences **of** indebtedness;
- (3) original bonds;
- (4) **any** documents submitted in support of or related **to** an application for any warrant;
- (5) any other original document which **is** required by the substantive law of Florida to be filed with any court or clerk of the court.

RECOMMENDATION:

The following statements should be added to the above exceptions.

- (6) all documents required to be recorded in the official records of the County.
- (7) any documents fded **as** exhibits, evidence, or In any instance in which the cause of action or any part thereto relates to the contents of **a** written document.
- (8) Any court or clerk of the court may designate other documents which may not be filed **by** electronic transmission.

It shall be the responsibility of the sender to determine **if** the document meets the criteria for electronic transmission.

Proposed Rule.

(d) Original Documents.

(1) **Any** electronically transmitted document, when received by a court ~~or~~ clerk of the court, will **for** all purposes be treated as an originally filed document.

RECOMMENDATION:

Again, **if** the electronically transmitted document is to be treated as an "original document", will this meet the requirements of the Rules of Judicial Administration and the Rules of the Department of State relative to original documents. Is so, then the proposed rule revision should clearly state that the electronically transmitted document will be recognized **as** the original document for the purposes of providing certified copies. This is necessary for not only in-state courts and agencies, but for the requirements of out-of-state and foreign countries.

Proposed Rule.

(2) Whenever a rule of court requires that multiple copies of a document be filed, an electronically transmitted document may be filed to satisfy the initial service ~~or~~ filing requirements, **so** long as additional copies are **filed** immediately thereafter in sufficient numbers to equal the total number of copies which are required to be filed.

RECOMMENDATIONS:

Consideration should be given to emerging technologies for the duplication and transmittal of data (copies) from the court or the clerk to the various agencies which need document information or copies of documents. Multiple faxes or additionally **filed** paper would result **in** "matching" subsequent filed copies of documents with the "originally" filed documents. Given the volume of documents filed daily in some offices, this would be a cumbersome task

A time certain should be stated for **filing** additional copies, rather than using the term "immediately". There are many interpretations of immediately.

Proposed Rule.

(3) When a document that is verified or otherwise sworn to is electronically transmitted, the original of said document **shall** be filed immediately thereafter.

RECOMMENDATION:

This section defeats the intent of revising the rule to facilitate the use of electronic transmission and should be deleted or stated as follows:

A. A verified or otherwise sworn to document should be added to **as** an "exception" in "(c) Documents Affected".

or

B. The electronically transmitted document shall be considered **as** the "original" for all purposes. The court could require the filing of the "original" if it determines there is reasonable cause to do so.

(There are various electronic means available which would allow for the confirmation of verified or sworn documents. Again, a close look should be taken at available technologies.)

If the section is adopted **as** written in the proposed revision, then **a** time certain should be established for filing the original. Five **(5)** days has been suggested.

Proposed Rule.

(4) **An** attorney, **party** or other person who files a document by electronic transmission represents that the 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.

RECOMMENDATION:

A document filed by electronic transmission should include **a** statement of the status of the original document. Otherwise, the court file will not reflect whether the original document is required to be filed or has been filed.

Proposed Rule.

(e) Service of orders. Electronic transmission may be used by **a court for** the service **of** all **orders.** All other requirements for the service of such an order shall be met.

RECOMMENDATION:

The "may" language is essential for this section as various effective and efficient methods of service have been established by the clerks in cooperation With the service agencies.

Language should be included to more clearly define "orders" or to include language to incorporate all directives of the court, i.e. subpoenas, summonses, capiases, injunctions, etc.

Proposed Rule.

(f) Transmission difficulties. **Any** attorney, party or other person **who** elects to file any document by electronic transmission shall be responsible for any **delay, disruption or** interruption **of** the electronic signals.

RECOMMENDATION:

Language should **be** more definitive that the person who elects to file a document by electronic transmission is totally responsible for the timely submission of the document to meet all rules of court and statutory **time** frames and that the failure of the court's or clerk's equipment to be operable does not preclude the responsibility. Also, transmittal to the incorrect office will not be considered **as** being timely filed.

Proposed Rule.

(g) Administration,

(1) **Any clerk of the** court which accepts **for** filing the electronic transmissio **of** documents;

A. shall provide access to its equipment during regular business hours.

B. **shall** accept electronic transmission of documents up to 10 pages in length.

RECOMMENDATION:

To be added:

B. (to be added to proposed statement.) The clerk with the written approval of the court of jurisdiction, accept copies in excess of 10 pages.

C. electronically filed documents will be filed and processed in the same manner as filings delivered to the court or the clerk by mail or in person.

(Grammar correction) "(1) Any clerk of the court who (instead of which) accepts for filing...

Proposed Rule.

(2) All attorneys, parties or other persons using this rule to file documents are required to make arrangements with the court or clerk of the court for the payment of any charges prior to filing any document by electronic transmission.

RECOMMENDATION:

Currently the Rule provides for a service charge for electronic filings documents of "\$2.00 for the first page of any transmission and \$1.00 for each page thereafter, plus any long distance telephone charges". The service charge should remain in the rule with the language added **as** follows.

The service charges for electronically filing of documents shall be **\$2.00** for the first page of any transmission and **\$1.00** for each page thereafter, plus any long distance telephone charges or the service charges prescribed in Chapter **28 F.S.** for electronically filing documents with the Clerk of the Circuit Court. This service charge shall be in addition to any other service charge or filing fee prescribed by law.

Proposed Rule.

(3) The filing date for **an** electronically **transmitted** document shall be the date the last page thereof is received by the court or clerk of the court.

RECOMMENDATION:

The filing date and time for an electronically transmitted document shall be the date/time the document is time clocked or otherwise time noted as being filed by the court or the clerk. Documents transmitted other than during regular hours that the office is open to the public shall be time filed the next business day.

This language is necessary for several reasons.

In many of the smaller counties, electronic (FAX) equipment is shared by other offices and may not be located in the Clerk's office.

Also, time zone differences in which an electronic transmission may carry the time of the originating time zone and not the receiving time.

Will lead to discrimination against those people who do not have access to electronic transmission equipment.

Proposed Rule.

(4) **Any** court may, by local rule, extend the hours of **access** or increase the page limitations set forth in this section.

RECOMMENDATION:

Any court or clerk of the court may extend the hours of access for the purpose of receiving electronically transmitted documents beyond regular business hours, providing that the date/time of filing shall be the time clocked or written notation of filing by the court or the clerk on the next business day following receipt of the transmission.

Proposed Rule.

(h) Equipment. **No** court or clerk of the court may utilize any equipment to receive, store, or transmit documents electronically unless the equipment complies with the criteria published by the state court administrator's office for such equipment.

RECOMMENDATION:

(h) should be deleted. Many courts and clerks already have equipment and are receiving electronic transmission of documents. All equipment must meet the standards set forth in the Rules of the Department of State, Division of Library and Information Services, Chapter **1B-26**, Records Management, which prescribes rules for recordkeeping and ensures the integrity of the records. Therefore, additional criteria is not necessary.

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, The signatures required on pleadings and papers by subdivisions (d) and (e) of this rule may be either original signatures or original signatures that have been reproduced by electronic means, such as on electronically transmitted documents or photocopied documents. An **attorney** or party who files a document that does not contain the original signature of that attorney or party 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.

RECOMMENDATION:

Existing and emerging technologies should be evaluated relative to the issue of "original signatures" and that the proposed rule revision incorporate language to ensure that the court and the clerk can provide certified copies of the electronically transmitted documents to meet other statutory requirements.