IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO THE FLORIDA RULES OF JUDICIAL ADMINISTRATION **CASE NO. SC10-**

OUT-OF-CYCLE REPORT OF THE FLORIDA RULES OF JUDICIAL ADMINISTRATION COMMITTEE ON EMAIL SERVICE AND CONFORMING CHANGES IN THE OTHER COURT RULES OF PROCEDURE

John G. Crabtree, Chair, Appellate Court Rules Committee, Donald E. Christopher, Chair, Civil Procedure Rules Committee, Robert Eschenfelder, Chair, Code and Rules of Evidence Committee, Robert T. Strain, Chair, Criminal Procedure Rules Committee, Steven P. Combs, Chair, Family Law Rules Committee, William W. Booth, Chair, Juvenile Court Rules Committee, Jeffrey S. Goethe, Chair, Probate Rules Committee, Katherine E. Giddings, Chair, Rules of Judicial Administration Committee ("RJA"), Michele A. Cavallaro, Chair, Small Claims Rules Committee, John J. Anastasio, Chair, Traffic Court Rules Committee, and John F. Harkness, Jr., Executive Director, The Florida Bar, file this Out-Of-Cycle Report of the RJA on Email Service, proposed Fla. R. Jud. Admin. 2.516, and conforming changes to other rules of procedure, and respectfully request that this Court approve the attached proposed rules with respect to email service. In addition, the Criminal Procedure Rules Committee and Code and Rules of Evidence Committee file comments.

INTRODUCTION

For over one hundred years, lawyers practicing in Florida courts have communicated with each other in essentially two ways: by telephone and, when pleadings and court papers had to be served, by U.S. Mail. Paper is inserted into a machine; ink is mechanically applied to the paper; the paper is removed, signed by hand, folded, and stuffed in an envelope; postage is glued onto an envelope that is addressed in the same manner; the envelope is sealed, and the mail is taken to a post office. Reliably, one to four days later, the vast majority of that mail is delivered, and the cycle repeats itself as the receiving lawyer prepares his or her response to the pleading.

Although electronic mail (or email) has been added to virtually every lawyer's available options as a means of informal communication with other lawyers, the means by which pleadings and other documents are formally exchanged between counsel, and among counsel and Florida's courts and clerks, has changed little. The use of paper delivered by U.S. Mail predominates in Florida courts today, with few exceptions.

For the reasons delineated in this report, Florida lawyers on the RJA, joined by all of The Florida Bar rules committees, present to this Court a series of proposals which, if accepted by this Court, will be the first significant comprehensive change in the manner in which law is practiced in Florida in well

over a century. The changes contained herein will require a conversion to email as the predominant means of service of pleadings between lawyers and will accelerate the process of converting Florida's legal system from a paper-based system to a digital system so that lawyers, the courts, and the public they serve in Florida can obtain the many benefits of an efficient and practical electronic court system.

OVERVIEW OF PROPOSED RULE 2.516

In the mid 1990s, the RJA took the first step toward moving the practice of law and the court system in Florida into the electronic age by amending Rule 2.090 in anticipation of the day when lawyers would be able to file documents in court electronically. *Amd. to the Rules of Jud. Admin. — Rule 2.090 —Electronic Transmission and Filing of Documents,* 681 So. 2d 698 (Fla. 1996).

For the next 12 to 14 years, although the court system worked steadily toward grooming the system for the day when there would actually be electronic access to court files, the progress was measured at best, and lawyers, by and large, continued to practice as they had for the preceding 100 years.

In the year and a half before June 2009, at least three different rules committees (the Rules of Civil Procedure, the Rules of Appellate Procedure and the RJA), considered the possibility that there was some way to allow attorneys to at least deliver copies of pleadings to each other by email or some other electronic means, so as to make the system more efficient and less expensive. This was in

part because there appeared to be no comprehensive e-filing/e-court system on the horizon. Those efforts were not coordinated and did not yield any final proposal. Because of this interest by the Bar, the chairs of each of The Florida Bar's rules committees were asked in June of 2009 to designate at least one member of their committees to serve on a joint committee to explore the possibility of a comprehensive proposal for email service. This ad hoc committee, chaired by Paul Regensdorf, became known as the Joint Email Service Committee and began its work in July of 2009.

From that date until the date of this filing, it can fairly be reported to this Court that the representatives of each of the ten rules committees, unanimously, and later, in January 2010, each of the ten rules committees acting as full committees, unanimously, endorsed the concept of developing a new method of electronic service in Florida. In the summer of 2010, each committee acted to approve Rule 2.516 in concept and to create the necessary conforming changes to its own set of rules to implement email service. The Florida Bar rules committees present these proposals to implement email service for all lawyers in Florida.

FACTORS DRIVING EMAIL SERVICE PROPOSAL

Because Florida will in the near future have an operational e-filing system comparable to that already in existence in the federal court system, and because that e-filing system will eventually have an electronic service component, the

implementation of email service is an important bridge between the paper-based world of the past and the electronic-based court of the future. Because this pure email service system will only exist for the majority of lawyers until the fully integrated e-filing portal is operational in all divisions of all courts in all counties, the sooner it can be implemented, the sooner lawyers will begin to practice those skills and establish those procedures that will be necessary for the electronic court of tomorrow.

When the Joint Committee first met, there was a determined belief among each of the representatives of the various rules committees that four principles, which are discussed below, should guide the development and ultimate implementation of the rule. The Joint Committee further believed that its work and the work of the ten separate rules committees that were represented on the Joint Committee should be completed as quickly as possible. The conversion of the legal system to an electronic procedure for service is an important and significant first step toward establishing an e-courts system in Florida.

A. The Timing Consideration

The Joint Committee determined it is essential that any email service rule be approved and implemented without delay; the adoption of an email system for the service of pleadings can be accomplished with practically no cost to the Bar and the courts. Working on both a draft email service rule and the complex task of

presenting to the court a package of rules for all rules committees to implement email service, the process has gone from the genesis of an idea to a complete package for this Court in just over 14 months.

B. The Four Core Concepts Behind Email Service.

When the Joint Committee first met, its representatives from each of the rules committees, after discussing the concerns about antiquated regular mail service in Florida, unanimously recognized that an alternative means of electronic service needed to be established and identified four basic core concepts that any system of electronic service (or email service) should adhere to. Those concepts are: (1) the system would have to be mandatory for all lawyers across all courts throughout the State of Florida, with very limited exceptions;, (2) the procedure should be uniform across the State of Florida, in whatever court or division or level of court the service would be accomplished; (3) the changes in the means of service should be as simple as possible so as to ease the approximately 88,000 members of The Florida Bar into the digital age; and (4) the new email service rule should be located in only one place, the Rules of Judicial Administration, and should not be repeated in other rules of procedure.

These four core concepts, established in July 2009, continue to be the controlling concepts behind Rule 2.516 and the various other conforming rules.

1. Email Service Needs to be Mandatory for All Lawyers.

The RJA recognizes it is human nature for people to resist change and, when change is proposed, the inclination to resist that change may be substantial. However, it was the strong and unanimous belief of the joint committee that email service needs to be made mandatory for all lawyers and that the time to transform the method of service used by lawyers in Florida is now. The reasons are largely self-evident.

In order to get the maximum benefit available to a change from mail service to email service, the system must be established in a way that requires all lawyers at the same time to convert from regular mail service to an email service format. The court system has for 15 years technically had an e-filing system that essentially required the utilization of paper as a backup. One result of that decision was, in many situations, the required maintenance of two systems, paper and electronic, which may have actually impeded the modernization of the legal system. To allow the continuance of both paper and electronic formats would defeat the purpose of the change and doom Florida lawyers to an unnecessary period of wasted time, energy, and expense.

However, nothing in this proposal requires that lawyers or law firms abandon paper altogether; if lawyers wish to maintain a paper system and duplicate the electronic system that would be created as a result of this means of service,

they are free to do so. The cost and expense of that duplication, however, would be borne by those lawyers who choose not to modernize. But to force that unnecessary expense on lawyers as a whole would be unreasonable and would delay the improvement of the court system.

As discussed below, there is one limited circumstance in which lawyers should not be required to utilize email service, but that exception deals with the impossibility of using it as a delivery technique, and not a voluntary choice to use regular mail service.

2. The system should be uniform across Florida.

While this set of rules was developing through the Bar's committee structure, many other lawyers, judges, and clerks throughout the state have been working to implement the beginnings of the statewide portal for electronic filing of documents. Just as that system anticipates a single uniform delivery point for pleadings to be sent for all divisions of all courts in all counties and all circuits, so too should lawyers serving documents on opposing parties and counsel be entitled to expect that a single uniform statewide system is available for that purpose. While this package of rules does make appropriate allowance for *pro se* individuals who may not be able to (or who choose not to) use email, it is the expectation of the RJA and all of the other committees that email service should be applicable under each set of rules and in every type of court proceeding in Florida.

3. The proposed email service system should be kept simple.

The third core concept in Rule 2.516 and the conforming changes in the other rules sets is that the system called for in these rules should be as simple as possible, thereby easing the transition for lawyers from mail service to email service as much.

To accomplish this, the Joint Committee selected Rule 1.080 of the Florida Rules of Civil Procedure as its base rule so as to use as the platform for email service a format and procedure that is generally familiar to most Florida lawyers. Also, because there will be limited circumstances in which pleadings and documents may need to be served outside of email service, the basic Rule 1.080 provisions have been largely incorporated into Rule 2.516. The actual method to accomplish email service is no more complicated than sending a regular email with a document attached. No significant training is needed and no technical or expensive equipment is required.

4. The email service rule should be placed in the Rules of Judicial Administration.

Over the years, the rules governing lawyers in their practices in different courts and different types of proceedings have expanded to the point that there are multiple different sets of rules to which a lawyer must look for guidance. As the number of rules sets expanded, many similar concepts, such as service, filing, and discovery, were repeated and reiterated in each of the rules sets. However, as those

concepts spread into the different sets of rules, the concepts blurred and changed over time and there was no longer a single consistent meaning or definition for many of the concepts in the various rules sets.

Accordingly, when the Joint Committee first met, and when the issues were first presented to all of the rules committees in January 2010, the concept of consolidating the procedures for email service in one place was universally accepted.

This is not a new concept; over the years and with increasing frequency, procedures that have common application in all courts have more and more been placed in the Rules of Judicial Administration. The procedures for e-filing, public access to records, computation of time, disqualification of judges, size and type of paper, *pro hac vice* motions, and numerous other concepts are now centrally located in the Rules of Judicial Administration.

Consistent with this trend and for the laudable reason of ensuring that any necessary changes in the email service rule can be made quickly and efficiently through one rules committee, it was the unanimous conclusion of the Bar and its committees that the place for the email service rule would be in the Rules of Judicial Administration. However, as discussed below in the section on conforming changes to the juvenile rules, it should be noted that the Juvenile

Procedure Rules Committee determined that the email service rule should also be included in its entirety in three juvenile rules.

BENEFITS OF EMAIL SERVICE

A. Generally.

It is respectfully suggested to this Court that the benefits of converting from the paper system using regular mail to an electronic system for the delivery of documents can hardly be debated. Most businesses and professions have long since converted their record-keeping systems to some data management service that utilizes digitalized data rather than archived paper records. Unfortunately, for various reasons, the courts and many lawyers have not yet been able to make that change.

The benefits of a modern digitalized electronic record-keeping and document transmission system are believed to be well known to this Court and to The Florida Bar, but they will be reiterated briefly below.

B. Benefits to the Bar.

Florida's lawyers will be the principal beneficiaries of an email service rule that can be utilized by all lawyers until the court system finally implements a complete e-filing portal with an electronic service component for each and every court and division of court in Florida. Each year in Florida, the number of pieces of paper filed in the court system in all divisions of all courts in all counties is not

precisely known, but is well in excess of 100,000,000 pages per year, and may easily exceed 200,000,000 pages. If those filed pieces of paper were served on only one other lawyer or party, the number of pages and documents served would obviously equal the number filed in all the courts in Florida. Just as obviously, in every case with multiple parties, the number of pieces of paper mailed out increases directly.

If these millions of pieces of paper were eliminated and transmitted as electronic documents, the savings in terms of paper, ink, toner, postage, envelopes, and labor is incalculable. The corresponding reduction in demands for paper and the destruction of trees is a secondary benefit that is of no small moment.

As substantial as these tangible benefits are, it is respectfully suggested to this Court that the principal benefit to the Bar will be in allowing the immediate transmittal and receipt of information in a verifiable format and in a manner that allows far more flexibility in the use of the digitalized data in subsequent pleadings, documents, or correspondence. The electronic court system has functioned remarkably well in the federal system for years, and if Florida had been able to overcome its political and financial constraints, it may have implemented a comparable system long before this proposal.

Again, the benefits of email service do not need to be accepted by lawyers in their own offices. If attorneys wish to continue using paper in their own internal

document managing systems, they can. But the costs for such duplication of files will be borne by them, and not by the vast bulk of attorneys who would be utilizing an electronic format.

The selection of the Internet as a means for the delivery of emails is also of tremendous benefit to virtually all lawyers in the State of Florida. While ten or fifteen years ago the prevalence of Internet access in law firms and the use of email for routine communications was not widespread, in today's world it is the rare and unusual lawyer or group of lawyers who do not have and regularly use the Internet. Because the Internet email system has proven to be a reliable system that virtually all lawyers already utilize, and because that system can be designated as Florida's email service vehicle without any substantial investment, its availability for use is a tremendous benefit.

C. Benefits to the Judiciary.

While the courts do not generate the same volume of paper as lawyers and parties, courts need to deliver to lawyers and parties pleadings, notices, judgments, orders, and other documents — all of which are prepared, typed, stamped, and served in the same way that most lawyers serve pleadings today. A secondary but not insubstantial benefit to the court system in these days of limited public funding is that the courts will also be able to use email service for required and necessary

communications with lawyers, and in certain circumstances, non-represented parties.

Just as with lawyers, the increased utilization of the email system for the delivery of documents from the court will also have the secondary advantage of educating judges and court personnel about digitalized record-keeping and will help the courts transition to a fully electronic court.

Finally, as with lawyers in general, it is believed that all courts have at least basic Internet access through adequate computers so that the court system will be able to use email service immediately, with a great savings in terms of paper costs and virtually no outlay of additional expense.

D. Benefits to the Clerks.

The benefits to the clerks of court are directly comparable to the benefits to the courts themselves. As with courts, clerks from time to time are required to serve orders, opinions, notices, and other documents to parties and attorneys and are usually required to do so using paper, ink, toner, envelopes, postage, and the United States mail.

With the adoption of Rule 2.516 and the conforming changes, clerks will be specifically authorized to serve all such documents by email upon lawyers and individuals who are a part of the email system. Also, as with judges and lawyers, clerks too have computer access to the Internet universally available to them and

can participate in this process without any additional increase in capital expenditures or operating costs.

E. Benefits to the Public.

Last, but certainly not least, the public will benefit substantially by the implementation of this rules package. The legal system, which exists to do the public's work, will work more efficiently and at a lower cost, thereby delivering justice in a more efficient and appropriate way. If attorneys can do their jobs more efficiently and at lower cost, the benefits of necessity will flow to the public. And if judges and clerks are also able to more effectively and efficiently deliver justice in all divisions of our courts, the public is a substantial, if not primary, beneficiary of this benefit as well.

The RJA did not feel it could impose email service on individuals who represent themselves in the court system, but as discussed below, they are authorized by this rule to participate in email service if they are able and willing to do so.

DISCUSSION OF SPECIFIC SUBDIVISIONS OF PROPOSED RULE 2.516

The Title.

The title of this Rule, while taken generally from Rule 1.080, changes the word "papers" to the word "documents" to make the terminology consistent with electronic files.

Subdivision (a).

This subdivision is taken almost directly from Rule 1.080. The first sentence is slightly rewritten to anticipate the gradual shift from paper filing to electronic transmission of documents, and eventually to filing through the e-portal. Nevertheless, until that day comes, or until the Supreme Court otherwise orders, service in all courts would be required to comply with this rule.

Specific language in this subdivision addresses concerns raised by probate practitioners. "Documents served by formal notice or required to be served in the manner provided for service of formal notice" are excepted from email service to allow for probate pleadings that must be "served" consistent with Florida Statutes and the probate rules. Such documents are more in the nature of original complaints or petitions than they are in the nature of documents exchanged between counsel who have already noted their appearance in the case.

Subdivision (b).

This small subdivision has not materially changed in the email service rule.

Subdivision (b)(1).

This subdivision establishes the mandatory nature of electronic mail service. It explicitly states that parties who are required or permitted to serve another party must do so email "unless this rule otherwise provides." In short, if this rule

becomes effective, lawyers will not be able to opt for "traditional" mail service of paper pleadings.

Notwithstanding the efficiencies and benefits of email service, there will still be circumstances in which a litigant will want to deliver a particular document or pleading to the opposing attorney by hand or by facsimile. The second sentence of subdivision (b)(1) allows this by providing that if a sender wishes to use another means of service authorized by this rule (such as hand-delivery), any time limits established by other provisions governing that means of service control. As discussed below, service by email is still intended to give the recipient an additional five days from the date of service to respond, as though the document had been delivered by regular mail. This is consistent with the federal court rules, which likewise provide for additional days from the date of service for documents served electronically. However, if a litigant wishes to speed up that process, the document can still be delivered by hand delivery, and the additional time for mailing will be eliminated.

Subdivision (b)(1)(A).

This subdivision establishes the procedure for the exchange of email addresses to be used in any proceeding. At the time an attorney first appears in a case, that attorney must serve a designation of a "primary" email address and may designate up to two additional or secondary email addresses. The primary address

is intended to be the address of the person who would most regularly review incoming emails to determine the service of pleadings and could easily be designated as the individual in a law office whose job it is to receive pleadings. The secondary email addresses could be designated for partners and associates working on the case, or even a client, if the lawyer wished the client to receive documents immediately. Once the attorney serves the designation of email addresses, those addresses shall be listed on each subsequent document filed in that case.

If, for any reason, an attorney fails or refuses to designate an email address for service, all documents in a particular case or proceeding may be served on that attorney by the sending-attorney at the email address on record with The Florida Bar. Nothing in this rule is intended to prevent an opposing attorney from filing an appropriate motion with the court to compel the designation of an email address for service.

Subdivision (b)(1)(B).

This subdivision establishes the only exception to mandatory email service on and by attorneys. If an attorney demonstrates that the attorney has no email account and lacks access to the Internet at the attorney's office, then the court, upon motion, may excuse that attorney from the requirements of email service.

Once excused, service on and by that attorney thereafter will be by the traditional means found originally in Rule 1.080, but now incorporated in subdivision (b)(2).

No other exceptions were thought worthy of inclusion in the rule. Again, should extraordinary circumstances present themselves, nothing in this rule prevents an attorney from seeking relief from this rule from the court.

Subdivision (b)(1)(C).

This subdivision provides that parties not represented by an attorney are not required to use email service, but they may use email service if they wish. If such parties choose to use email service, they are required to serve a designation of a primary email address and up to two secondary email addresses just as attorneys must do. If they do not designate an email address for service, however, then service by and upon them will have to be made in accordance with subdivision (b)(2).

Subdivision (b)(1)(D).

This subdivision deals with time of service. It is almost completely analogous to the concept of service by mail. Just as service by mail is complete upon mailing (even though there may be no attendant external evidence generated of that mailing), so too is an email deemed served "on the date it is sent." Some individuals anticipate chicanery by members of the Bar with respect to the date pleadings and other documents are "sent." It is respectfully suggested to this Court

that virtually every email system generates a record of the date and time, down to the minute, that an email is sent, and it is believed that such evidence of service is a vast improvement over United States mail delivery; there is no record of when a piece of mail is delivered to the post office unless a certified mail fee is paid.

The second portion of this subdivision addresses the problem of non-delivery. The RJA proposes that the delivery of email is as successful, and probably significantly more successful, than the use of United States mail. Nevertheless, some lawyers have expressed concern that email might not be received even though it is sent (just as United States mail is sometimes not received even though it is mailed). The current Florida Rules of Civil Procedure make no provision for what happens when regular mail is not delivered, but a series of common sense procedures have been established by the case law should that fact become known to the mailer.

Similarly, the second portion of this subdivision specifically provides that if a sender learns an email did not reach the address of the person to be served, the sender must immediately resend the email or deliver the document or pleading by any of the other means authorized by subdivision (b)(2). While all email systems do not presently give the sender a return receipt option, many do, and if a sender's system provides for such an option and no receipt is received, then the sender will be charged with knowing the email did not get delivered. Similarly, as is the case

with paper service, the sending attorney may learn an email does not get through any one of a hundred different normal communications that may occur between the sending attorney and the receiving attorney. Any of those sources of information will be sufficient to trigger the obligation to resend an email, just as they trigger it now with the obligation to resend a paper document.

Subdivision(b)(1)(D)(iii) provides that "email service is treated as service by mail for the computation of time." While it may seem counterintuitive to the Court that a communication by email that is virtually instantaneous should entitle the recipient to five extra days to respond (as though it had been sent by regular mail), the provision was deliberately selected. After a great deal of thought, the Joint Committee initially, and all of the rules committees of The Bar subsequently, have approved the concept that email service should be treated exactly like service by mail for the computation of time. In other words, despite the fact that email is delivered immediately, 24 hours a day, and that it will be deemed served on the date that it was sent, the recipient will still have the additional days currently provided for by the rules as though the document had been served by mail rather than by email. In civil practice, that would be five additional days, and in criminal practice, that would be three additional days.

The primary reason for this additional time was because there is no good reason to further accelerate the pace of the practice of law and it is consistent with

the system currently in place in the federal rules. Over the last 10 or 20 years, a lawyer's day to day practice has significantly speeded up as modern technology causes things to happen faster and requires responses more quickly. Because there has been no outcry from the Bar that the delivery of responses to various pleadings needs to happen even more quickly, it was the opinion of the Joint Committee, and later the RJA and the other committees, that the recipient of email service would still benefit from the additional delivery time afforded to routine delivery by mail.

In addition to not desiring to speed up the process of professional life still further, there was another concern that, despite the fact that an email might be delivered immediately, it may not be observed or seen by the lawyer or his office staff immediately. The additional days for responses to emailed documents would provide ample opportunity for any office to establish procedures to insure that an email had been reviewed and evaluated.

Subdivision (b)(1)(E).

The mechanics of email service are designed to be simple. A document is served by email when it is attached to an email itself in .pdf format and sent to those lawyers and parties who have designated email addresses. The .pdf format was selected because it is universally available at no cost to lawyers and non-lawyers alike and because it is the currently widely accepted format for the transmission of documents. Furthermore, it provides an acceptable level of

security for documents as compared to documents delivered in other formats, such as Microsoft Word, which can be edited and changed. It is also the format approved by this Court for transmission of documents and is in use throughout the United States in comparable systems.

The first portion of this subdivision directs that the subject line of an email that has documents attached to it shall start with the words "SERVICE OF COURT DOCUMENT" so that the recipient will be aware that there is an email of particular importance. Some concern has been expressed that the selection of three required words in the subject line may attract the unhealthy attention of spammers. It is acknowledged this could happen, but at this time the RJA believes this concern does not warrant any change to the current proposal. The RJA notes that of the hundreds of lawyers using email service voluntarily at this time, none have reported any such problem. In addition, the District Court of Appeal, First District, which has recently implemented electronic filing and service, and which currently has 2400 registered users, has reported learning of no such spamming problem. That is not to say it could not conceivably happen, but there is simply no evidence that it will, or that it cannot be easily corrected if it does.

The second portion of this subdivision requires that the sender give additional information about the document, beyond that placed in the subject line,

in the body of the email itself to allow the recipient to correctly identify the attached document.

The third portion of this subdivision carries forward the "/s" signature format previously approved by this Court in other contexts. This is allowed on the emailed document to avoid printing and scanning the document, so long as the filed original of any such document or pleading has an original signature as required by the applicable rules of procedure.

Finally, the last portion of this rule limits the size of any email (with its attached documents) to a total of five megabytes (5MB). If an attached document or series of documents to be served, along with the covering email, are larger than that, then they need to be broken down into separate emails and sent separately, to ensure that no one email, along with all of the attachments thereto, exceeds five megabytes in size. This provision was placed in the rule because of concerns there are email systems in Florida that may have size restrictions on incoming emails. The five megabyte limitation is the same size limitation utilized in most other courts using similar systems and was thought to be sufficiently small to escape the arbitrary settings of most size filters.

Subdivision (b)(2).

This subdivision essentially incorporates, verbatim, the original language of Rule 1.080 allowing service of pleadings and other documents by a variety of

means. Because email service will be the mandatory means for virtually all pleadings by lawyers, this provision of the original Rule 1.080 will be used primarily by *pro se* individuals and by those few lawyers who are excused from email service.

The first sentence of this subdivision has been added to work in conjunction with the second sentence of subdivision (b)(1), which is designed to ensure an attorney may select a means of service from subdivision (b)(2), along with email service, and still get the benefit of the immediate delivery time or other characteristic of service by non-email means.

Subdivision (c),(d) and (e).

These subdivisions are incorporated from Rule 1.080 unchanged.

Subdivision (f).

This subdivision has been changed to reflect that email service is the first means of delivering pleadings and other documents for service.

Subdivision (g).

This subdivision is modified very slightly from Rule 1.080 to allow, but not require, clerks to serve notices and other documents by any means allowed in subdivision (b). Although attorneys are required to use email, clerks are simply allowed to use email if they are equipped to do so. Because clerks may not have

ready access to an attorney's designation of his or her email address, it may be more difficult for clerks to email notices than it is for lawyers or judges.

Subdivision (h).

This subdivision has been specifically amended to authorize, but not require, the Court to utilize email service for any order or judgment that is sent to an attorney who has not been excused for email service or to any person not represented by an attorney who has opted into email service.

Conforming Amendments to Other Court Rules of Procedure

The following rules amendments are proposed to conform with proposed new Rule 2.516. The comments on this proposal of the Criminal Procedure Rules Committee and Code and Rules of Evidence Committee are also included below.

Rules of Civil Procedure

Fla.R.Civ.P. 1.080 is deleted and a paragraph added that service must be made in accordance with Rule 2.516.

Rule 1.170(g) is amended to reflect relocation of the service rule to Rule 2.516.

Rule 1.351(b) is amended to include email service.

Rules 1.410(c), 1.440(c), 1.442(c)(2)(G), 1.510(d)(5), and 1.630(d)(5) are amended to reflect relocation of the service rule to Rule 2.516.

The Court should note there are amendments to Rules 1.080, 1.351. 1.410, and 1.510 that were submitted in the committee's cycle report and approved by the Court in case number SC10-148. These amendments will become effective January 1, 2011. In proposing Rule 2.516, the Rules of Judicial Administration Committee took account of the pending amendments to *Rule* 1.080.

Rules of Judicial Administration

Rule 2.515(a) is amended to require an attorney's current record Florida Bar address and primary and secondary email addresses, if any, on pleadings and other papers.

Rules of Criminal Procedure

Rule 3.030 is amended to conform to Rule 2.516.

Rule 3.070 is amended to include service by electronic mail.

Rule 3.852(c)(2) is amended to correct a cross-reference.

Committee Comment:

The Criminal Procedure Rules Committee recognizes the inevitability of electronic service and has proposed conforming amendments to its rules. However, many concerns have been identified by the committee about the implementation of a rule mandating electronic service. The following summarizes the concerns raised by the committee:

A. Proof of service and time of service: The committee is concerned that it is often difficult to insure that service actually occurred. Electronic messages can be transmitted without necessarily being received, particularly with large government offices that have spam filters or county servers where electronic messages can sit without the sender or recipient being aware that they are there. The date an electronic message is sent is also vague: is it when the sender clicks "send" or when the mail server actually transmits the message to the recipient's mail server? The additional time for service applicable to mail service does not solve this problem. Neither "Read Receipt" (confirmation that a recipient opened an email) nor "Delivery Receipt" (confirmation that the email was successfully transmitted to the recipient's email server) are universally supported options.

B. Discovery: Proposed Rule 2.516 applies to all documents served after the initial pleading, and does not exempt written discovery, which can be voluminous. Many small practitioners as well as large government offices are not set up for the volume of scanning and data storage necessary for emailing and retaining such volumes of material. It is also unclear whether documents to be served by email include photographs, which would either have very large file sizes or would require alteration of the original photograph resolution for emailing.

C. Format for email service: More specific formatting standards for the body of the email are needed in order to assist with future automation of routing,

printing, storing, etc. For example, the first line of the body of the email should identify the case number, the second line the date of service, the third line the court in which the proceeding is pending, the fourth line sender's name and telephone number, the fifth line the names of the initial parties, the sixth and subsequent lines the titles of documents served with the email, one document name per line.

D. Technical Issues: Proposed Rule 2.516 sets a 5MB size limit. This may not be realistic. It is questionable whether the rule creates a viable fix with breaking large attachments up into smaller parts. Format issues for attachments are not specified. The rule should require that .pdfs be attached individually in their native state, and not be compressed into zip files in order to facilitate automated printing and storing.

E. Cost: The full cost of moving to electronic service is unknown. Certainly, there are technology expenses (servers, scanners, etc.). However, there are also personnel and training expenses. Additional personnel would be needed simply to "man" the electronic mailboxes in big offices and to scan documents. Training of personnel on how to "serve" pleadings would likewise be required.

The CPRC believes a broad pilot program or phase-in period should predate the move to mandatory electronic service. This would provide an opportunity to address problems before implementation statewide. Justice and liberty interests in criminal proceedings are too valuable and important to risk by moving forward too

rapidly in these untested waters. Furthermore, state attorney and public defender offices are suffering from chronic underfunding. A mandate to move forward with electronic service may well present an insurmountable burden on already limited resources. A pilot project and/or phase-in period would allow agencies to determine the cost and best practices for technology upgrades, personnel, and training, in order to adequately address the requirements of electronic service. It also would insure that dollars are not used on efforts that are not successful. The private sector is likewise experiencing financial hardships. The additional technology necessary to implement this rule may be beyond the ability of the small practitioner.

Florida Probate Rules

Rules 5.030 and 5.040 Rule History and Rule Reference lists are updated.

Rule 5.041 is amended to cross-reference and provide for service in accordance with Rule 2.516. The Rule History and Rule Reference lists are also updated.

Rule 5.060 Rule History and Rule Reference lists are updated.

Rule 5.120 is updated with a general service provision and the Rule History and Rule Reference lists are updated.

Rule 5.200 Rule History and Rule Reference lists are updated.

Rules 5.340(d) and 5.342(c) are amended to remove the duplicative requirement of filing a proof of service for a document that includes a certificate of service as provided in Rule 2.516. If service of the inventory is by formal notice, then proof of service is filed in accordance with Rule 5.040(a)(5). The Rule History and Rule Reference lists are updated.

Rules 5.350, 5.360, 5.370, 5.380, 5.385, 5.386, 5.400, 5.401, 5.402, 5.403, 5.405, and 5.406 Rule History and Rule Reference lists are updated.

Rule 5.407 is amended to make the possessive pronoun gender neutral in compliance with AOSC06-14. The Rule History and Rule Reference lists are updated.

Rules 5.430, 5.440, 5.460, 5.470, 5.475, 5.496, 5.498, 5.499, 5.510, 5.530, 5.620, 5.630, 5.650, 5.660, 5.670, 5.680, 5.690, 5.695, 5.696, and 5.700 Rule History and Rule Reference lists are updated.

The Court should note there are amendments to Rules 5.030(b), (c) and Committee Notes, 5.040(d) and Committee Notes, 5.041 and 5.060 Rule History and Statutory References, 5.200 (e) and Rule History, 5.340(a), (d)-(h) and Rule History and Statutory References, 5.360 and 5.405 Rule History and Statutory References, 5.406(c) and Rule History, 5.440 Title and Rule History, 5.470 Rule History and Rule References, 5.496(b) and Rule History, and 5.696(b) and Rule History that were submitted in the committee's cycle report and approved by the

Court in case number SC10-171. These amendments will become effective January 1, 2011.

Rules of Traffic Court

Rule 6.370 is amended to substitute "document" for "paper" to allow for service of materials other than paper. The rule is also amended to broaden the types of service available. The title of the rule is amended to allow for all types of service, except hand delivery.

Florida Small Claims Rules

Rules 7.050(a) and (b) are amended to require attorneys to provide, and allow unrepresented parties to provide, an email address on a statement of claim.

Rules 7.080(b) and (e) are amended to require attorneys to serve each other as provided in the Rules of Judicial Administration and to include email service as an option on the certificate of service.

The Court should note that there is an amendment to Rule 7.050 that was submitted in the committee's cycle report and approved by the Court in case number SC10-144. This amendment will become effective January 1, 2011.

Rules of Juvenile Procedure

The Juvenile Court Rules Committee proposes to amend the service rules in each of the three parts of its rules, 8.085 (delinquency), 8.225 (dependency and termination of parental rights), and 8.635 (families and children in need of

services), rather than deleting existing language and adding a cross-reference to Rule 2.516, because the committee believes that it will be more efficient and convenient for practitioners to only have to refer to one set of rules, rather than two. The language in the rule amendments was taken from the final version of Rule 2.516.

Form 8.903, certificate of service, is amended to include email service.

Rules of Appellate Procedure

Rules 9.420(a), (c), and (d) are amended to incorporate reference to Rule 2.516 and remove conflicting provisions.

Family Law Rules of Procedure

Rules 12.040(c)–(e) are amended to require that a notice of limited appearance include email addresses and to provide that an unrepresented party may also designate email addresses.

Rules 12.080(a) and (c) are amended to require service in accordance with Rule 2.516. Subdivision (c) contains a grammatical correction.

Rule 12.090 is amended to provide that email service is treated as service by mail for the computation of time.

Rule 12.170 is amended to provide for service under Rule 2.516.

Rule 12.285(b)(1)(B) is amended to add service of documents produced under mandatory disclosure by email.

Rules 12.351 and 12.410 are amended to provide for service under Rule 2.516.

Rule 12.440(a) is amended to provide that service on parties in default must be in accordance with Rule 2.516.

Rules 12.510, 12.611(b)(3), 12.615(b), and 12.630 are amended to provide for service under Rule 2.516.

In Form 12.900(b), the certificate of service is amended to add email service and signature blocks are amended to add email addresses. The instructions are amended to advise users that service must be in accordance with Rule 2.516. ADA, grammatical, and style corrections have also been made throughout the forms.

In Form 12.900(c), the certificate of service is amended to add email service and signature blocks are amended to add email addresses. The instructions are amended to advise users that service must be in accordance with Rule 2.516.

In Form 12.900(d), the certificate of service is amended to add email service and signature blocks are amended to add email addresses. Instructions are amended to advise users that service must be in accordance with Rule 2.516..

In Form 12.900(e), the certificate of service is amended to add email service and signature blocks are amended to add email addresses. Instructions are amended to advise users that service must be in accordance with Rule 2.516. The title of the form is also corrected.

In Forms 12.900(f), 12.900(g), 12.900(h), and 12.902(b), the certificates of service are amended to add email service and signature blocks are amended to add email addresses. The instructions are amended to advise users that service must be in accordance with Rule 2.516. The title of the form is also corrected.

In Forms 12.902(c) and 12.902(e), the certificates of service are amended to add email service and signature blocks are amended to add email addresses. Instructions are amended to advise users that service must be in accordance with Rule 2.516. An error in *West's Rules of Court – 2010* is also corrected.

Form 12.915 is amended to allow parties to designate both a mailing and email address.

In Forms 12.920(a), (b), and (c) and 12.930(a), the certificates of service are amended to add email service and signature blocks are amended to add email addresses. Instructions are amended to advise users that service must be in accordance with Rule 2.516.

In Form 12.930(b), the certificate of service is amended to add email service and signature blocks are amended to add email addresses. The instructions are amended to advise users that service must be in accordance with Rule 2.516. The title of the form is also corrected. Two errors in *West's Rules of Court – 2010* are also corrected.

In Forms 12.930(c), 12.932, and 12.996(b) and (c), the certificates of service are amended to add email service and signature blocks are amended to add email addresses. Instructions are amended to advise users that service must be in accordance with Rule 2.516.

Code and Rules of Evidence

At its January 2010 meeting, the Code and Rules of Evidence Committee voted to approve proposed Fla. R. Jud. Admin. 2.516 in concept. The vote was 20-6. The committee does not believe that the proposed rule has any impact on the Code and Rules of Evidence.

The votes on the committees' proposals are shown in Appendix A. The proposed amendments to the rules and forms are found in Appendix B (full-page format) and Appendix C (two-column format). The Board of Governors of the Florida Bar approved this package of rules in September 2010 by a vote of 36-3**.**

The committees respectfully request that the Court amend the rules of procedure as outlined in this report.

CERTIFICATE OF COMPLIANCE

I certify that this report was prepared in accordance with the font requirements of *Fla. R. App. P.* 9.210(a)(2).

I certify that this rule was read against *West's Florida Rules of Court* (2010 Revised Edition).

Jodi Jennings, Liaison
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