

IN THE SUPREME COURT OF FLORIDA

**IN RE: AMENDMENTS TO THE
FLORIDA RULES OF JUDICIAL
ADMINISTRATION, THE FLORIDA
RULES OF CIVIL PROCEDURE, THE
FLORIDA RULES OF CRIMINAL
PROCEDURE, THE FLORIDA
PROBATE RULES, THE FLORIDA
RULES OF TRAFFIC COURT, THE
FLORIDA SMALL CLAIMS RULES,
THE FLORIDA RULES OF JUVENILE
PROCEDURE, AND THE FLORIDA
RULES OF APPELLATE PROCEDURE
— EMAIL SERVICE RULE**

CASE NO.: SC10-2101

JOINT COMMITTEE RESPONSE TO COMMENTS

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, Paul R. Regensdorf, Chair of Joint E-Service Committee, and John F. Harkness, Jr.,

Executive Director, The Florida Bar, file this Joint Response to Comments.¹

A number of comments have been submitted to this Court addressed to this significant proposal for a change in how lawyers will practice in Florida. Some of the comments raise legitimate concerns. The committees believe none of those concerns, when viewed in perspective after the two years of intensive work invested in developing this proposed rule, provides a basis to vary from the rules as proposed. The package of proposals previously forwarded to this Court ought to be implemented with as little delay as possible.

To assist the Court in evaluating the various comments, the committees jointly submit these responses to each of the comments made concerning the email service rule.

Comments of Charles E. Ray

Mr. Ray's comment essentially states that paper filing has worked to date and, therefore, electronic service is not necessary. The committees respectfully disagree and emphasize the importance that email service will play in transitioning the courts toward greater use of electronic filing. This is the direction in which the judicial system should be moving.

¹ John J. Anastasio, Chair, Traffic Court Rules Committee, did not participate in the preparation of this response.

Comments of Lynn W. Rhodes

Ms. Rhodes' comment focuses on cost issues that she fears may arise in her practice as a result of her need to be reimbursed as a court-appointed attorney. The committees believe this comment may raise valid concerns, but these concerns involve cost shifting and law practice economics that are beyond the scope of this rule.

Comments of Kurt Lee

Mr. Lee's concerns about possible electronic glitches, spam filters, and other potential technical problems involve issues that were recognized quite early by the joint committee. None were found to disqualify email as a safe and reliable form of communication. Use of non-encrypted email by attorneys to communicate has become quite commonplace today, and commercial email use fully satisfies the duty of care necessary for transmitting sensitive information.

The federal system with which many lawyers have become familiar relies on only email service to distribute links to serve copies of all filings. Most lawyers would welcome that system in Florida. It does use an uplink process for the filing itself, as well as automated non-encrypted email over commercial networks to deliver to the litigants access to electronic copies of the filed documents. If lawyers want or need a hard copy of a document that

has been filed in federal court today, they must bear the expense of printing it. The committees are not aware of any problems arising from the use of email that have been experienced with the federal system. This type of system is where Florida appears to be moving, and the proposed email service rule will be fully compatible with it.

Comments of Family Law Rules Committee

Rule 1.080, Florida Rules of Civil Procedure, is the basic rule prescribing the means for service of pleadings found in the civil rules. That rule serves as the foundation and has been mirrored in almost every other rule set. Rule 1.080 was the starting point in drafting Rule 2.516, Florida Rules of Judicial Administration. The joint committee placed into Rule 2.516 as much of Rule 1.080, unchanged, as was possible when drafting the new email service rule. Only those portions of the text of existing Rule 1.080 have been changed that may be necessary to implement a shift to email service. The Family Law Rules Committee's concerns with Rule 2.516(b) are therefore actually concerns with existing language that has been taken virtually verbatim from Rule 1.080, and not concerns with the actual shift to email service itself. Any consideration of those issues is outside the scope of this proposed rule, and whatever issues peculiar to family law that may still exist ought to be addressed separately.

Comments of Family Law Section

The Family Law Section raised a concern that this rule is an interim rule. The joint committee disagrees with this characterization. Many technical advances will likely occur in the future. Practitioners are currently using email for routine communication and document sharing, however, and this use has become widespread. No clearly defined timeline is foreseeable as to when a court based computer-filing network, like the federal system, may be fully operational throughout Florida. Even with the implementation of a clerk-controlled service system for filed documents, the need will remain for attorneys to serve the many documents not required to be filed.

The security issue has been addressed above in the response to Mr. Lee's comment. While email is not foolproof, it has already demonstrated itself to be a reliable and secure means of communication.

The Family Law Section has also proposed significant drafting changes, which it characterizes as simply improving the language of proposed Rule 2.516. During the lengthy process of considering and drafting Rule 2.516, the Probate Rules Committee pointed out to the other committees a critical distinction between service of most pleadings and service of "formal notice" and "service in the manner provided for service of formal notice." The text in subdivision (a) of the rule that has been proposed

thus resulted from a careful analysis of these clauses, their use within the Florida Probate Code and the Florida Probate Rules, and the need to specify both as an exception to email service. The language as presented has survived considerable scrutiny and has been thoroughly revised as a result of innumerable drafting challenges over the past year. The Family Law Section's proposed redraft fails to account for this need to accommodate probate practice.

Comments of the Florida Public Defender Association

The Florida Public Defender Association's comment raises concerns about the cost and efficacy of requiring email service in criminal cases. The public defenders suggest that electronic service should be permissive rather than mandatory in criminal cases. Alternatively, if mandated, they request that email service should first be instituted as a pilot project or otherwise be phased in.

The comments by the Florida Public Defender Association do not directly question the propriety of email service, however, or quarrel with any particular provision of the proposed rule. Instead, the public defenders suggest that they, as well as the state attorneys and regional counsel, are economically constrained from converting to an email service system. They argue that any compulsory move toward electronic documents and away

from their dependence on paper cannot be accomplished without significant disruptive costs. The public defenders claim they lack a funding source to cover these costs.

The public defenders' comments, in fact, mirror many of the concerns presented in the petition at pages 27–30 by the Criminal Procedure Rules Committee. The committees are certainly aware of current funding concerns throughout all levels and branches of government. The savings necessarily inherent in a switch to email service may or may not be sufficient to allow the public defenders to function in an electronic environment. It is nevertheless beyond the purview of these committees to determine which may be true.

Comments of the Judicial Technology Committee of Palm Beach

The committees agree that it is a good idea for judges to have email addresses. The RJA is concerned that such a requirement may be beyond the scope of Rule 2.516. If this Court wishes to mandate email addresses for the judiciary, the committees concur that it is appropriate to do so.

For all the reasons set forth in the original out-of-cycle report and this response, and such additional reasons as may be presented at any oral argument the Court may schedule, the committees together respectfully urge this Court to adopt and approve the email service package of rules and to

implement them on a mandatory basis for all lawyers in the State of Florida without further undue delay.

Each of the committee chairs listed below has authorized the Chair of the Rules of Judicial Administration Committee to sign and submit this response on his or her behalf.

Respectfully submitted on this _____ day of February, 2011, by

John F. Harkness, Jr.
Executive Director
The Florida Bar
651 E. Jefferson Street
Tallahassee, FL 32399-2300
850/561-5600
Florida Bar No.: 123390

Katherine E. Giddings, Chair
Rules of Judicial Administration
Committee
106 E. College Avenue, Suite 1200
Tallahassee, FL 32301-7741
850/425-1626
Florida Bar No.: 949396

John Granville Crabtree, Chair
Appellate Court Rules Committee
240 Crandon Blvd., Suite 234
Key Biscayne, FL 33149-1624
305/361-3770
Florida Bar No.: 886270

Donald E. Christopher, Chair
Civil Procedure Rules Committee
P.O. Box 1549
Orlando, FL 32802-1549
407/422-6600
Florida Bar No.: 250831

William W. Booth, Chair
Juvenile Court Rules Committee
423 Fern Street, Suite 200
West Palm Beach, FL 33401-5839
561/822-9747
Florida Bar No.: 948519

Robert T. Strain, Chair
Criminal Procedure Rules
Committee
3801 Corporex Park Dr., Suite 210
Tampa, FL 33619-1136
813/740-3544
Florida Bar No.: 325961

Steven P. Combs, Chair
Family Law Rules Committee
3217 Atlantic Blvd.
Jacksonville, FL 32207-8901
904/359-5505
Florida Bar No.: 979449

Michele A. Cavallaro, Chair
Small Claims Rules Committee
6600 N. Andrews Ave., Suite 300
Ft. Lauderdale, FL 33309-2189
954/414-2100
Florida Bar No.: 910309

Jeffrey S. Goethe, Chair
Florida Probate Rules Committee
3119 Manatee Ave. W.
Bradenton, FL 34205-3350
941/741-8224
Florida Bar No.: 861420

Robert Eschenfelder
Manatee County Attorney's Office
1112 Manatee Ave. W., Suite 969
Bradenton, FL 34205-7804
941/745-3750
Florida Bar No.: 0008435

Paul R. Regensdorf, Chair
Ad Hoc Joint Rules Committee
200 E. Las Olas Blvd., Suite 2100
Fort Lauderdale, Florida 33301-2274
954/462-9500
Florida Bar No.: 152395

CERTIFICATE OF SERVICE

I certify that this Joint Committee Response to Comments has been sent, via U.S. Mail, to Charles E. Ray, Esq., 887 E. Prima Vista Blvd. Port Saint Lucie, Florida 34952-2342; Lynn W. Rhodes, Lynn W. Rhodes, P.A., 195 E. Stanford Street, Bartow, Florida 33830; Kurt E. Lee, Kirk Pinkerton, P.A., Post Office Box 3798, Sarasota, Florida 34230; Steven P. Combs, Chair, Family Law Rules Committee, 3217 Atlantic Boulevard, Jacksonville, FL 32207-8901; Nancy Daniels, Florida Public Defender Association, Inc., Public Defender's Office, 301 S. Monroe Street, Suite

401, Tallahassee, Florida 32301-1803; Walter C. Jones, IV, Chair, Judicial Technology Committee of the Palm Beach County Bar Association, Freeman & Jones, L.L.C., 3555 Northlake Boulevard, Suite C, Palm Beach Gardens, Florida 33403; and Diane M. Kirigin, Chair, Family Law Section of The Florida Bar, South County Judicial Complex, 200 West Atlantic Avenue, #2W-141, Delray Beach, Florida 33444, on this ____ day of February, 2011.

CERTIFICATION OF COMPLIANCE

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

Jodi Jennings, Liaison
Rules of Judicial Administration Committee
The Florida Bar
651 E. Jefferson St.
Tallahassee, FL 32399
850/561-5706
Florida Bar No.: 930880