

**IN THE SUPREME COURT OF FLORIDA**

**IN RE: AMENDMENTS TO THE FLORIDA RULES  
OF JUDICIAL ADMINISTRATION AND OTHER  
RULES OF PROCEDURE REGARDING  
COMPUTATION OF TIME**

**CASE NO.: SC10-2299**

**JOINT COMMITTEE RESPONSE  
TO COMMENT OF PATRICK SCOTT**

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 Joint Committee Response to Comment of Patrick Scott.

One comment has been submitted to this Court, filed by Patrick Scott, Attorney at Law, which suggests that electronic mail service time should be calculated the same as hand delivery. In other words, email delivery should not have mailing time credit. For the following reasons, the committees disagree with Mr. Scott’s reasoning:

The use of electronic service is new and not all lawyers or parties may be accustomed or equipped at first to use it. Eliminating the grace period for mail delivery could well add to their discomfort. Having the additional “mailing time” remain in this rule will allow Bar members and parties a greater opportunity to ensure all their equipment and office procedures have been adequately adjusted to accommodate this new type of service. Moreover, pending case no. SC10-2101, Email Service Rule, involves a proposal to create Rule 2.516 which would require service by email. That proposed rule contemplates retaining the five extra mailing days and this uniform time rule should be consistent.

All committee members recognize that electronic mail is, in theory, instant delivery. However, in current practice, with the many varying types of email technology, not all emails are certain to be received instantly. Delays or failures in the delivery of an email can occur for various reasons, such as system errors, overloads, or service shutdowns. The federal courts have continued to add three days to service by email just as to service by regular mail. Rule 6(d), Fed.R.Civ.P. Continuing to provide the additional five mail days in Florida will allow time for the serving party to re-serve in instances of delays or misdeliveries, including providing a copy by alternate means of service if requested by the receiving party.

The effect of removing mailing days will be to significantly shorten most response times. The committees believe that shortening the accustomed times will undesirably serve to further hasten the pace at which law is being practiced. The respondents will have less time for reflection and will perhaps not be able to devote as much attention to critical details. The shorter times may increase oversights and errors by lawyers and parties as they are pressured to respond to matters more quickly.

The Committee Chairs have given Katherine E. Giddings, Chair, Rules of Judicial Administration Committee authority to sign on their behalf.

Respectfully submitted on this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

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## **CERTIFICATE OF SERVICE**

I certify that this Joint Committee Response to the Filed Comment has been sent, via U.S. Mail, to Patrick Scott, Attorney at Law, at Gray Robinson, Attorneys at Law, P.O. Box 2328, Fort Lauderdale, Florida 33303-9998 on this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

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