

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC11-399

**IN RE: AMENDMENTS TO THE FLORIDA
RULES OF CIVIL PROCEDURE,
FLORIDA RULES OF JUDICIAL ADMINISTRATION,
FLORIDA RULES OF CRIMINAL PROCEDURE,
FLORIDA PROBATE RULES,
FLORIDA SMALL CLAIMS RULES,
FLORIDA RULES OF JUVENILE PROCEDURE,
FLORIDA RULES OF APPELLATE PROCEDURE,
FLORIDA FAMILY LAW RULES OF PROCEDURE.**

**COMMENT FROM THE FLORIDA PROSECUTING ATTORNEYS
ASSOCIATION, INC. REGARDING THE SUPPLEMENTAL COMMENT
FILED BY THE FLORIDA COURTS TECHNOLOGY COMMISSION**

The Florida Prosecuting Attorneys Association, Inc. (“FPAA”), by and through its undersigned general counsel, files this supplemental comment on the implementation of mandatory e-filing by attorneys in accordance with this Court’s Order dated August 8, 2011, as extended by the Court’s Order dated August 18, 2011.

Implementation of the rule will require an increase in workload for the State Attorney’s offices as well as the creation of additional positions to effect compliance, both of which, will present a significant strain on the State Attorney’s offices.

While in the future we will probably desire for everything received from law enforcement and everything delivered to the defense to be done in a paperless

form, we don't believe that all of the State Attorneys offices across the state are ready to have this mandated as part of SC11-399. Criminal histories, agency reports, witness statements, and evidence are not part of the court file. Many State Attorney's Offices have not adopted an electronic filing system and to require all discoverable items to be received in an electronic form and delivered to the defense in an electronic form could be very burdensome to their operation.

The FPAA is in agreement with the comments filed by the FCTC that because of the differences related to criminal cases, additional time is needed before e-filing in criminal cases becomes mandatory. As discussed by the FCTC, there are resource issues that need to be addressed, as well as statutes and rules that must be amended to clarify that electronic documents inherit all rights, responsibilities, and customs associated with their paper-based counterparts.

In this Court's order soliciting comments, this Court specifically requested input on how a criminal court file is different from a civil court file. The main difference between the two types of files is that in a civil court file, the filings of the parties to that case create the vast majority of the file, if not the complete file. In comparison, in a criminal court file, the most important document is usually the arresting officer's report, and this document is not "filed" in the traditional sense by either the defense or the State. Additionally, the documents relied upon by the court, the defense, and the State to make informed decisions regarding a

defendant's conditions of pretrial release at first appearance are not "filed" by the defense or the State. The first filing by a party in a criminal court file is usually the Information, filed by the State, which does not contain a probable cause narrative. A Notice of Discovery and a Written Plea of Not Guilty, filed by the defense, usually follow that document. If those pleadings are the only portion of the criminal court file made electronically available, then all parties relying on that electronic version will have to supplement the electronic version with their own copies (paper or electronic) of the arrest reports, pretrial release reports, supplemental reports, witnesses statements, etc.

Florida Statutes 27.341 and 27.5112 directs that all filings by the State Attorney and by the Public Defender shall be electronic. The language of both sections states that the purpose of mandatory e-filing is to facilitate expeditious processing of cases, sharing information, and working more efficiently. From this Court's request for comments on a phased-in mandatory filing requirement for the parties to a criminal case, it is apparent this Court is planning on requiring the State Attorney and Public Defender to electronically file all documents in a criminal case. However, even when the State and the defense begin electronic filing all of their documents, unless there are additional statutory or rule changes, there will be no mandate that the remainder of a criminal court file shall be made available to the parties in an electronic format. Consideration must be given to the fact that the

State Attorneys, unlike the Public Defenders, have to interact with regional conflict counsel and the private criminal bar throughout the state. What will happen with that involvement needs to be determined.

Respectfully submitted,

Jacobs Scholz & Associates, LLC

/s/ Yvonne R. Mizeras

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and nine copies of the foregoing have been filed with the Clerk of the Florida Supreme Court; and that a true and correct copy of the foregoing has been furnished to those listed below, this 17th day of October 2011, by U.S. Mail:

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/s/ Yvonne R. Mizeras

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CERTIFICATE OF COMPLIANCE

I certify that the foregoing has been submitted in compliance with the requirements of Fla. R. App. P. 9.210(a)(2).

Jacobs Scholz & Associates, LLC

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