

**IN THE SUPREME COURT OF FLORIDA**

**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**

**CASE NO. SC11-**

**JOINT OUT-OF-CYCLE REPORT OF THE  
RULES OF CIVIL PROCEDURE COMMITTEE,  
RULES OF JUDICIAL ADMINISTRATION COMMITTEE,  
RULES OF CRIMINAL PROCEDURE COMMITTEE, PROBATE RULES  
COMMITTEE, SMALL CLAIMS RULES COMMITTEE, TRAFFIC  
COURT RULES COMMITTEE, JUVENILE COURT RULES  
COMMITTEE, APPELLATE COURT RULES COMMITTEE, FAMILY  
LAW RULES COMMITTEE, AND CODE AND RULES OF EVIDENCE  
COMMITTEE ON ELECTRONIC FILING**

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, 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, pursuant to Fla. R. Jud. Admin. 2.140(f), file this Joint Out-Of-Cycle Report on electronic filing and respectfully request that this Court approve the attached proposed rules.

These proposals were approved by the Executive Committee of The Board of Governors whose vote, along with those of the committees on their various proposals, are shown in Appendix A.

The following appendixes are attached to this report:

Appendix A:	Table of Contents
Appendix B:	Rules in legislative format
Appendix C:	Rules in two-column format
Appendix D:	Referral letter from the court

Due to time constraints, these proposals have not been published for comment.

This matter was referred to the ten court rules committees by letter dated August 4, 2010, from Thomas D. Hall. *See* Appendix D. The referral requested that the committees “propose rule amendments necessary to implement recent recommendations of the Appellate Court Technology Committee (ACTC) concerning electronic appellate court records and filings and further to accommodate the advent of electronic court records and filings in Florida courts.” The referral further requested that this matter be considered under the committees’ fast-track procedures and submitted as a comprehensive report coordinated by the Rules of Judicial Administration Committee (RJA). The comprehensive report was to be filed with Mr. Hall’s office by January 2, 2011. Based on a joint motion for extension of time filed by the committees, that deadline was extended to March 1, 2011, by letter from Thomas D. Hall dated December 9, 2010.

Summaries of the proposals follow.

### **Rules of Civil Procedure Committee**

Fla. R. Civ P. 1.030, Nonverification of Pleadings, has been amended to delete the word “written” and change the word “paper” to “document.” Both changes reflect new procedures under e-filing.

Rule 1.080, Service and Filing of Pleadings, and Papers Orders, and Documents, has also been amended to define “writing” and “written” to conform to new procedures under e-filing. Amendments to this rule are also pending before the Court in the e-service case. *See 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 number SC10-2101. The amendments proposed in this case are shown in the attached rule by single strike-throughs and underlines. The additions proposed for e-filing are shown by double underlines.

## **Rules of Judicial Administration Committee**

### **Overview**

The RJA proposals were developed before the proposals of the other committees so that the other committees could make proposals consistent with those of the RJA. The RJA proposals were developed by a subcommittee chaired by Judge Jon Morgan.

Prior to the August 2010 referral of this matter, the RJA was already reviewing the rules of judicial administration for any changes necessary to implement AOSC09-30 and the *Florida Supreme Court Standards for Electronic Access to the Courts June 2009*, and at its June 24, 2010, meeting, the RJA voted to approve amendments to Rule 2.525. The RJA subcommittee used these amendments as a starting point for further amendments. The RJA subcommittee met on August 19th, August 26th, September 2nd, and September 16th in advance of the September 23rd meeting of the full RJA committee to prepare a submission to the full committee. At the September 23rd meeting of the RJA, the subcommittee presented its proposed amendments to the RJA, which were approved in concept with some suggested additions and modifications. Thereafter, the subcommittee met on October 13th and December 3rd prior to the RJA meeting on January 20, 2011.

In order to facilitate the submission of a comprehensive report of all proposed rule amendments “across the board,” an ad hoc committee of representatives of all rules committee was formed and met on several occasions, including September 7 and October 28. Interim drafts of the RJA subcommittee’s proposed changes to the rules of judicial administration were circulated to the ad hoc committee members for comment during the process.

In addition to input from members of the subcommittee, the full RJA, and the ad hoc committee, the subcommittee received input from the Manatee Clerk of Court and reviewed the decision of the District Court of Appeal, Second District, in *State v. Hon. R.B. “Chips” Shore, Clerk, Manatee County*, 41 So. 3d 966 (Fla. 2d DCA 2010), as well as the e-filing standards proposed by the Florida Courts Technology Commission (FCTC).

Several of the rules committees participating in the ad hoc committee were waiting to see the final RJA revisions before determining what amendments would

be required within their sections of the rules. As a result, an extension of the January 2nd deadline was requested and approved by the Court.

### **Proposed amendments to the Rules of Judicial Administration**

The subcommittee ultimately proposed the following amendments to the rules of judicial administration:

#### **Rule 2.430(b)**

(1) Court records, except exhibits, that have been permanently recorded may be destroyed or otherwise disposed of by the clerk at any time after a judgment has become final.

(2) Any physical media submitted to the clerk for the purpose of filing information contained in the media may be destroyed, retained, or otherwise disposed of by the clerk once the contents of the media have been made part of the court record.

Subdivision (2) was included at the suggestion of clerk's representatives and Tom Hall, who asked that it be made clear that clerks are not responsible for returning or maintaining media (such as CD's, flash drives, etc.) submitted to them for the purpose of filing any information contained within the media.

#### **Rule 2.510 (form)**

I HEREBY CERTIFY that a true and correct copy of the foregoing motion was ~~furnished by U.S. mail~~ served on (insert the name or names and addresses used for service) by (email) (delivery) (mail) (fax) to PHV Admissions, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2333 accompanied by payment of the \$250.00 filing fee made payable to The Florida Bar and to \_\_\_\_\_.

The proposed amendment is to the certificate of service. The inserted language was proposed to reflect electronic, versus mail, service. At the September 23rd RJA meeting, it was suggested that the word "served" be substituted for the word "furnished" to make the form more consistent with rule 2.516. Other technical amendments are made throughout the form.

#### **Rule 2.520**

#### **PAPERDOCUMENTS**

**(a) ~~Type and Size~~Electronic Filing Mandatory.** All pleadings, motions, petitions, briefs, notices, orders, judgments, decrees, opinions, and other papers and official documents filed in any court shall be filed by electronic transmission in accordance with rule 2.525. “Documents” means pleadings, motions, petitions, memoranda, briefs, notices, exhibits, declarations, affidavits, orders, judgments, decrees, writs, opinions, and any other paper or writing submitted to a court.

**(b) Type and Size.** Documents subject to the exceptions set forth in Rule 2.525(d) shall be filed on recycled paper measuring 8 1/2 by 11 inches. For purposes of this rule, paper is recycled if it contains a minimum content of 50 percent waste paper. Xerographic reduction of legal-size (8 1/2 by 14 inches) documents to letter size (8 1/2 by 11 inches) is prohibited. All other documents filed by electronic transmission shall be filed in a format capable of being printed in a format consistent with the provisions of this rule.

This amendment clarifies that all documents are to be electronically filed unless they fall within an exception to the electronic filing requirements set forth in Rule 2.525. The subcommittee, at the suggestion of Judge Richard Nielsen of the Civil Procedure Rules Committee, decided it would be best to define “documents” and substitute the word “documents” in the title while maintaining the provisions regulating the manual (paper) filing of documents falling within an exception to 2.525. Additional technical changes to the rule are proposed as shown in Appendix B and Appendix C.

**Rule 2.525(a)**

**(a) Definition.** “Electronic transmission of documents” means the transmission by electronic signals, to or from a court or clerk ~~of the court~~, of information which when received can be transformed and stored or ~~reproduced~~transmitted on paper, microfilm, magnetic storage device, optical imaging system, CD ROM, flash drive, other electronic data storage system, server, case maintenance system (“CM”), electronic court filing (“ECF”) system, statewide or local electronic portal (“E-Portal”), or other electronic record keeping system authorized by the Ssupreme Ccourt of Florida in a format sufficient to communicate the information on the original document in a readable format. Electronic transmission of documents includes electronic mail (“email”) and any internet-based transmission procedure, and may include procedures allowing for documents to be signed or verified by electronic means.

The rule was amended to clarify that electronic documents can be stored and subsequently transmitted by the clerk in electronic format. Additional language was inserted to suggest, but not limit, the types of electronic storage and transmission that may be used. “Case maintenance system” was substituted for “case management system” at the suggestion of RJA members who pointed out the clerks are not permitted to have “case management systems.”

**Rule 2.525(b)**

**(b) Application.** Any court or clerk ~~of the court~~ may accept the electronic transmission of documents for filing and may send documents by electronic transmission after the clerk, together with input from the chief judge of the circuit, has obtained approval of ~~the procedures, and programs,~~ and standards for electronic filing for doing so from the ~~S~~supreme ~~C~~court of Florida (“ECF Procedures”). All ECF Procedures must comply with the then-current E-Filing standards, as promulgated by the supreme court in Administrative Order No. AOSC09-30, or subsequent administrative order.

The Clerk of Court for Manatee County suggested the language “and may send documents by electronic transmission” be added to clarify that the clerk is allowed to send documents electronically. A recent court opinion, relying on prior rule language, held that the clerk could not provide CD’s or electronic copies of transcripts to the offices of the attorney general and public defender’s in appeals, but had to provide paper transcripts. *State v. Hon. R.B. “Chips” Shore, Clerk, Manatee County*, 41 So. 3d 966 (Fla. 2d DCA 2010). The subcommittee agreed that the previous rule language compelled the conclusion reached by the court, and the language suggested by the Clerk would be more consistent with the direction of the Supreme Court to transition to a paperless court system. The last sentence is intended to insure standardized ECF procedures until the statewide portal becomes fully operational.

**Rule 2.525(c)**

This subdivision contains technical corrections as shown in Appendix B and Appendix C to conform to changes in the other subdivisions of the rule.

**Rule 2.525(d)**

**(d) ~~Service~~Exceptions.** Paper documents or other submissions may be manually submitted to the clerk for filing:

(1) Electronic transmission may be used by a court for the service of all orders of whatever nature provided the clerk, together with input from the chief judge of the circuit, has obtained approval from the Supreme Court of Florida of the specific procedures and program to be used in transmitting the orders. All other requirements for the service of such an order shall be met when the clerk does not have the ability to accept and retain documents by electronic filing or has not had ECF Procedures approved by the supreme court;

(2) Any document electronically transmitted to a court or clerk of the court shall also be served on all parties and interested persons in accordance with the applicable rules of court by self-represented litigants, third parties, or non-litigants, unless specific ECF Procedures provide a means for such self-represented litigants, third parties, or non-litigants to file documents electronically;

(3) by attorneys excused from email service in accordance with rule 2.516(b)(2);

(4) when the filing involves non-electronic documents or exhibits, such as trial or hearing exhibits, court approved forms, executed wills, non-documentary items such as cassettes, video tapes, DVDs, weapons, drugs, original exhibits or other original attachments to filings, etc.;

(5) when the filing involves documents in excess of 25 megabytes (25MB) in size. For such filings, documents may be transmitted using an electronic storage device or system that the clerk has the ability to accept, which may include a CD-ROM, flash drive, or similar storage system;

(6) when filed in open court, as permitted by the court;

(7) when the document is required by any statute or other rule of procedure to be an original document, including surety bonds, criminal plea agreements, documents required to be notarized, etc;

(8) when paper filing is permitted by any approved statewide or local ECF procedures; and

(9) if any court determines that justice so requires.

Rule 2.525(d) is the section that generated the most discussion and suggested changes from the ad hoc committee members. After much discussion, the subcommittee unanimously felt the above language best walked the fine line between being overly inclusive and overly specific as to which documents are excluded from the electronic filing requirement. The majority of the ad hoc committee members also favored the language suggested above. There was a suggestion that it be provided that documents in excess of 25 MB could be submitted piecemeal, each part being less than 25 MB, but the subcommittee members unanimously agreed that the issue was too technical to be included within the rule and would be better addressed in the local ECF procedures and, ultimately, the statewide portal procedures.

**Rule 2.525(e)**

~~(e) **Transmission Difficulties** Service. Any attorney, party, or other person who elects to file any document by electronic transmission shall be responsible for any delay, disruption, interruption of the electronic signals, and readability of the document, and accepts the full risk that the document may not be properly filed with the clerk as a result.~~

(1) Electronic transmission may be used by a court or clerk for the service of all orders of whatever nature, pursuant to rule 2.516(h), and for the service of any documents pursuant to any ECF Procedures, provided the clerk, together with input from the chief judge of the circuit, has obtained approval from the supreme court of ECF Procedures containing the specific procedures and program to be used in transmitting the orders and documents. All other requirements for the service of such orders must be met.

(2) Any document electronically transmitted to a court or clerk must also be served on all parties and interested persons in accordance with the applicable rules of court.

This proposed amendment deletes the language relating to responsibility for problems in transmission by persons “electing” to file electronically as electronic filing will no longer be elective. This proposed amendment makes it clear that the clerk is permitted to transmit orders by electronic transmission and makes the subsection more consistent with references to “documents” throughout the rules.

**Rule 2.525(f)(1)(B) and (C)**



(B) accept electronic transmission of documents up to 25 megabytes (25MB) in size, or until E-Filing has been fully implemented, accept facsimile transmissions of documents up to 10 pages in length; and

(C) accept filings in excess of 25 megabytes (25MB) in size by electronic storage device or system, which may include a CD-ROM, flash drive, or similar storage system.

Subdivision (C) was added to allow submission of documents in excess of 25 MB when provided by an electronic storage system that would not be subject to size limitations inherent in some e-mail systems.

Other technical corrections are proposed to subdivision (f) as shown in Appendix B and Appendix C.

**NOTE:** The proposed amendment to subdivision (g) of this rule that is shown in Appendix B and Appendix C is currently pending in case number SC11-52.

**Rule 2.535(a)(6)**

(6) “Official record” means the transcript which is the written or electronically stored record of court proceedings and depositions prepared in accordance with the requirements of subdivision (f).

The words “or electronically stored” were included to clarify that electronically stored documents constitute the official record and may be transmitted by the clerk in lieu of paper documents when the clerk is charged with transmitting the record to a court or party.

**Rule 2.535(f)**

**(f) Transcripts.** Transcripts of all judicial proceedings, including depositions, shall be uniform in and for all courts throughout the state and shall be stored in an electronic format sufficient to communicate the information contained in proceedings in a readable format, and capable of being transmitted electronically as set forth in rule 2.525. Any transcripts stored in electronic form must be capable of being printed in accordance with this rule. The form, size, spacing, and method of printing transcripts are as follows:

The proposed amendment clarifies that transcripts need not be maintained in paper form and may be stored and transmitted electronically.

The proposed amendments set out above were approved by the full Rules of Judicial Administration Committee by an e-mail vote of 25-2 in favor on December 29, 2010.

There was discussion among the subcommittee members with respect to whether a rule should be drafted to define “writing,” clarifying that “writing” includes an electronically stored or transmitted instrument. The consensus was that such a rule is unnecessary.

One subcommittee member expressed concerns regarding how a clerk is to handle the filing of certain *ex parte* filings. The concern being that, if a party is authorized to obtain relief without notice to the other party, the filing of a request for such *ex parte* relief might become accessible on the clerk’s public web site before an order can be obtained and served. The consensus of the subcommittee was that the issue did not fall within the purview of the referral, but is a matter that could be mentioned in the RJA’s written submission to the Court.

The subcommittee and the RJA, in proposing the amendments, recognize that the rules will continue to require attention and further amendment as the statewide portal comes into use. There will almost certainly be issues that have not been anticipated that will arise as we enter the implementation of electronic records and e-filing.

### **Criminal Procedure Rules Committee**

In order to accommodate e-filing, Fla. R. Crim. P. 3.030 needs to be rewritten. Previously, the full committee voted on changes to Rule 3.030 to accommodate e-service; that proposal is currently pending with the Supreme Court in case number SC10-2101. The pending changes to Rule 3.030 eliminated every paragraph after subdivision (a), and are shown in the Appendix B and Appendix C with single strikethrough. The proposed additional changes to Rule 3.030 in this report are shown in double underline and double strikethrough. Paragraph (b) of the proposed Rule 3.030 refers to the RJA Rule on e-filing and paragraph (c) defines an “original document.”

The proposed amendments are to make the rule consistent with the proposed amendments to Rule 2.525, which requires all court records to be e-filed, but then allows certain documents to be filed in paper form. While certain documents are allowed to be filed with the clerks in paper format, it is not mandatory. In

reviewing the federal criminal rules for the Middle and Southern Districts of Florida, it was determined that certain documents are required to be filed with the federal clerks in paper format and not electronically. The committee determined that the criminal rules should likewise require certain documents to be filed in the conventional format. Following the discretion that Rule 2.525 allows for filing “original documents,” the proposed amendments to Rule 3.030(c) defines “original documents” and requires them to be filed in paper format with the clerk.

Because e-filing has not been tested and challenged, and because original documents must be retained to defend against potential future challenges, such as authenticity, it seems prudent to require certain documents to be preserved in paper format. It is possible that this will no longer be necessary in the future. Charging documents should be retained by the clerks as they are a neutral party to any future challenges.

The proposed changes to Rule 3.070 add language to allow service by mail “when permitted.” A similar change to this is pending in case number SC 10-2101.

Additional technical corrections are made to Rules 3.070, 3.080, 3.090, 3.240, and 3.851.

### **Probate Rules Committee**

The Florida Probate Rules Committee has significant concerns about the procedures for handling certain documents in probate and guardianship proceedings. The most immediate concern is the handling of original wills and codicils. The members of the Probate Rules Committee respectfully submit that the draft of Rule 2.525 submitted with this joint report does not adequately address the unique aspects of many other original documents filed in probate and guardianship proceedings.

After the Rules of Judicial Administration Committee completed the difficult task of drafting and approving a final version of Rule 2.525, there was insufficient time for the Probate Rules Committee to follow its Internal Operating Procedures with regard to voting procedures. Although an emergency vote was conducted, a clear consensus could not be reached in such a short period of time, with many concerns unresolved.

**Initial Vote on a Broader Rule.** Votes to consider the matter on an emergency basis were 18 in favor and 0 against. The text of the broader rule submitted for vote was as follows:

**Rule 5.043. Filing of Original Documents**

Notwithstanding any general rule to the contrary, and unless the court orders otherwise, in all proceedings under these rules, the following original documents shall be filed with the court and shall be retained by the clerk as court records in accordance with Florida Rule of Judicial Administration 2.430:

- (a) executed wills and codicils;
- (b) executed trusts and amendments;
- (c) certified copies of birth certificates, death certificates, judgments of adoption, dissolutions of marriage, or any other vital records, whether from Florida or any other state;
- (d) certified or authenticated documents, such as authenticated documents from other jurisdictions for ancillary probate proceedings, transferred guardianships, and foreign guardianships where a Florida guardian of the property is required;
- (e) records from foreign countries such as birth records, marriage records, and death records together with their certified translations, seals, ribbons, and Apostilles;
- (f) original Powers of Attorney, including those executed in foreign jurisdictions, together with their certified translations and Apostilles;
- (g) commissions appointing commissioners to take the oath of a witness to a will or codicil;
- (h) oaths of guardians, personal representatives, administrators ad litem; conservators, curators, and guardians ad litem;
- (i) oaths of witnesses to wills and codicils; and
- (j) bonds;
- (k) any other paper documents or other submissions which are permitted to be manually filed with the court in accordance with Florida Rule of Judicial Administration 2.525(d).

The committee vote on this proposal was 15 in favor and 11 against.

**Second Emergency Vote on a Narrower Rule.** The Probate Rules Committee then considered a very limited rule within the Probate Rules, addressing only wills and codicils.

**Rule 5.043. Deposit of Wills and Codicils.**

Notwithstanding any rule to the contrary, and unless the court orders otherwise, any original executed will or codicil deposited with the court shall be retained by the clerk in its original form and may not be destroyed or disposed of by the clerk for 20 years after submission regardless of whether the will or codicil has been permanently recorded as defined by Rule 2.430, Florida Rules of Judicial Administration.

The proposal reflects the committee members' concern that an original will or codicil could be destroyed in accordance with the rules governing other filed documents. The committee vote to consider this proposal on an emergency basis was 10 in favor and 0 against. The committee voted on whether the narrower rule should be submitted instead of the broader rule. This passed by a vote of 9 to 5.

**Pending Rules of Judicial Administration.** The Rules of Judicial Administration Committee is considering amendments to Rule 2.430, which has an impact on the records retention rules for original wills and codicils. In addition, there are other rules within the Rules of Judicial Administration that impact the handling of certain original documents.

Under the present draft, Rule 2.430(b)(1) provides that “any court records, except exhibits, that have been permanently recorded may be destroyed or otherwise disposed of by the clerk at any time after a judgment has become final.” Further, subdivision (b)(2) of the rule provides that any “physical media” submitted to the clerk for the purpose of filing information contained in the media may be destroyed, retained, or otherwise disposed of by the clerk once the contents of the media have been made a part of the court record by scanning them into the electronic record keeping system. A record is “permanently recorded” when it has been “recorded onto an electronic record keeping system in accordance with the standards adopted by the Supreme Court of Florida.” Fla. R. Jud. Admin. 2.430(a)(3). Court records not permanently recorded in a probate, guardianship, or mental health proceeding, except exhibits, may not be destroyed for 10 years after the final judgment. Rule 2.430(c)(1)(D) provides that exhibits have to be maintained only until 90 days after the final judgment, after which the clerk may destroy or dispose of the exhibit after notice to the attorneys. Fla. R. Jud. Admin. 2.430(f)(2).

It appears that the proposed amendments allow the clerk to scan original documents that have been filed, store the scanned copies within the electronic record keeping system, and then destroy the originals. It is crucial, from an

evidentiary standpoint, that the original will or codicil be maintained as provided in Rule 2.430(e)(d) as a court record that is not permanently recorded.

**Deposit of Wills and Codicils.** Wills and codicils are “deposited,” rather than “filed.” § 732.901, Fla. Stat. However, the will or codicil is removed from safe keeping and then filed in the court file once a probate proceeding is initiated. Under the current system, the clerk’s retention of records is governed by Rule 2.430 and the General Records Schedules for all agencies, which are posted on the Department of State’s Division of Library Services website. The Clerk’s Schedule is GS-11 and provides in item #72 that a will deposited for safe keeping is added to the court file once a probate proceeding is initiated. The item also calls for the retention of the original will for 20 years. This procedure should continue and original wills should not be destroyed, even after they are added to the court file and scanned into the electronic record keeping system.

**Probate and Guardianship Rules and Statutes Involving Filing of Other Documents.** The following statutes and rules relate to the use of various documents that have evidentiary value in a probate or guardianship proceeding. Since these documents are often submitted *ex parte*, the evidentiary value of the actual document, which often includes authenticating features, is important and may be compromised by scanning a document and submitting a copy of the document in PDF format.

§ 731.103, Fla. Stat. Evidence as to death or status.

§ 731.201(1), Fla. Stat. General definitions. [Definition of “authenticated”]

§ 731.201(16), Fla. Stat. General definitions. [Definition of “file”]

§ 733.201, Fla. Stat. Proof of wills.

§ 733.205, Fla. Stat. Probate of notarial will.

§ 733.206, Fla. Stat. Probate of will of resident after foreign probate.

§ 734.101, Fla. Stat. Foreign personal representative.

§ 734.1025, Fla. Stat. Nonresident decedent’s testate estate with property not exceeding \$50,000 in this state; determination of claims.

§ 734.104, Fla. Stat. Foreign wills; admission to record; effect on title.

§ 734.201, Fla. Stat. Jurisdiction by act of foreign personal representative.

§ 744.306, Fla. Stat. Foreign guardians.

§ 744.307, Fla. Stat. Foreign guardian may manage the property of nonresident ward.

§ 744.308, Fla. Stat. Resident guardian of the property of nonresident ward.

§ 744.347, Fla. Stat. Oath of guardian.

§ 744.351, Fla. Stat. Bond of guardian.

Fl. Prob. R. 5.171 Evidence of death.  
Fl. Prob. R. 5.125 Authenticated copy of will.  
Fl. Prob. R. 5.205 Filing evidence of death.  
Fl. Prob. R. 5.210 Probate of wills without administration.  
Fl. Prob. R. 5.215 Authenticated copy of will.  
Fl. Prob. R. 5.216 Will written in foreign language.  
Fl. Prob. R. 5.230 Commission to prove will.  
Fl. Prob. R. 5.235 Issuance of letters; bond.  
Fl. Prob. R. 5.320 Oath of personal representative.  
Fl. Prob. R. 5.470 Ancillary administration.  
Fl. Prob. R. 5.475 Ancillary administration, short form.  
Fl. Prob. R. 5.647 Management of property of nonresident ward by foreign guardian.  
Fl. R. Jud. Admin. 2.430 Retention of court records.  
Fl. R. Jud. Admin. 2.525 Electronic filing.

By a vote of 9 to 2, the committee voted to include a general discussion of probate and guardianship documents filed with the court.

**Trusts and Amendments.** Because the authenticity of a trust instrument can depend upon the physical features of the original, executed document, the committee proposes that original trusts and amendments be filed in their original format. Several members of the Probate Rules Committee did not feel that the filing of the original trust and/or trust amendments with the court should be required. By a vote of 9 to 2, the committee voted to include concerns about the handling of original trusts and trust amendments filed with the court.

**Certified Copies.** Because certified copies have independent evidentiary value and copies of those documents lose the authenticating features that permit their use, many committee members felt that the certified copy should be filed within the court file. These documents include birth certificates, death certificates, judgments of adoption, judgments evidencing dissolutions of marriage, or any other vital records, whether from Florida or any other state. Certified copies from foreign jurisdictions raise additional concerns, as they contain additional features such as certified translations, seals, ribbons, and Apostilles. By a vote of 9 to 2, the committee voted to express the concern about the handling of certified copies filed with the court.

**Authenticated Copies.** Probate and guardianship proceedings, in some instances, rely upon court documents from other jurisdictions. Rather than relitigate issues,

such as the incapacity of the ward or the validity of a last will and testament, authenticated copies can be filed with the Florida court. The authenticated copies include seals in various forms, fasteners to prevent the separation of the documents, and other forms to insure the authenticity of the copies provided by the foreign jurisdiction. By a vote of 9 to 2, the committee voted to comment on the importance of authenticated copies filed with the court.

**Original Powers of Attorney.** Under some circumstances, an original power of attorney may be filed within a probate or guardianship proceeding. Because an original may later be required for purposes such as the conveyance of real property, the original should be filed with the court. In addition, there are instances in which the original is filed with the court to prevent the use of the power of attorney by the agent appointed in it. The committee voted 6 to 5 in favor of including concerns for powers of attorney within its report.

**Commissions.** When a will or codicil is not self-proving, and it is not possible or reasonably practical for the witness to appear before the court or the clerk to prove the will, the Florida Probate Code and the probate rules permit the administration of an oath by a commissioner appointed by the court. § 733.201(3), Fla. Stat.; Fla. Prob. R. 5.230. The attorney requesting the commission presents the original commission signed by the Florida court to the appointed commissioner, who then takes the witness's oath, returns the original commission and oath, and then files the original with the court. Under current practices, there is no independent record of the judge's signature on the commission that leaves the courthouse and is later returned to be filed with the court. The committee vote was 9 to 2 in favor of expressing concern for original commissions filed with the court.

**Oath of Witness to Will or Codicil.** The oath of a witness to a will and or codicil is evidentiary in nature and usually signed in the clerk's office, before a judge, or before a commissioner. Fla. Prob. R. 5.230; § 733.201, Fla. Stat. The oath may not be administered during a court proceeding, but still frequently occurs within the courthouse. The committee voted to include concerns about witness oaths by a vote of 6 to 5.

**Bonds.** When a bond is required in a probate or guardianship proceeding, an agent signs on behalf of the surety and ordinarily attaches a power of attorney to the bond as evidence of the agent's authority. The power of attorney often contains a crimp seal, a foil seal, or some other authenticating feature that would be lost if the signed bond were simply scanned and e-filed. The committee voted 9 to 2 to bring concerns regarding bonds to the court's attention.



The Probate Rules Committee respectfully requests that the Court adopt the narrower version of Rule 5.043 as included in Appendix B and Appendix C.

### **Traffic Court Rules Committee**

Criminal traffic cases are largely governed by the Florida Rules of Criminal Procedure, pursuant to Rule 6.160, Florida Rules of Traffic Court. Therefore, e-filing amendments proposed for the Rules of Criminal Procedure would apply to criminal traffic cases as well. The Traffic Court Rules Committee proposes no additional amendments to the criminal portion of the traffic rules.

Regarding civil traffic infraction cases, the Florida Traffic Court Rules contain no provisions related to filing or service of documents. Therefore, the civil portion of the rules will not be affected by e-filing and the committee proposes no amendments to the civil portion of the traffic rules at this time.

The committee recommends holding in abeyance further proposals for rule amendments related to e-filing, until the statewide e-filing portal comes into widespread use. The committee agrees that additional issues are likely to arise as the portal becomes fully functional and the courts proceed with implementation of electronic records and e-filing.

### **Small Claims Rules Committee**

The committee proposes technical amendments to Rule 7.080 to conform to the proposed changes to the Rules of Judicial Administration.

### **Juvenile Court Rules Committee**

The Juvenile Court Rules Committee proposes to create a new rule, placed at the beginning of the rules set, to govern e-filing and electronic service of orders. As with other joint rules projects, the Committee's preference is to place a rule in the Florida Rules of Juvenile Procedure, rather than rely on a cross-reference to a Rule of Judicial Administration. Proposed Fla. R. Juv. P. 8.004 is based on Fla. R. Jud. Admin. 2.525.

To accommodate creation of these two new rules of general application, a new Part I., Rules of General Application, has been created, and the remaining

parts of the rules renumbered accordingly. An amended table of contents reflecting these changes is provided.

In Rules 8.205, 8.217, and 8.230, “papers” has been changed to “documents” in accordance with the inception of e-filing.

In Rule 8.217, an additional change has been made in subdivision (a) to reflect that an attorney ad litem may be appointed after a child has been found dependent. *See, e.g.*, Rule 8.350. The rule has also been amended to state that the attorney must provide, as well as receive, service. *See, e.g.*, Rule 8.225(c)(4).

Rule 8.690 has been amended to correct the part designation.

### **Appellate Court Rules Committee**

The Appellate Court Rules Committee determined that its rules should make a general cross-reference to the Rules of Judicial Administration for all matters relating to e-filing and concluded that Rule 2.525 should control e-filing in appellate courts, unless otherwise provided in the Rules of Appellate Procedure. Proposed new subdivision (h) in Rule 9.020 implements this decision. The remaining subdivisions of that rule are renumbered accordingly. Other technical conforming changes to the appellate rules are as follows.

Rule 9.110 is amended to remove references to filing an “original and 1 copy of” or “original,” and several subdivisions are amended by adding the term “electronically” before “transmit.”

Rule 9.120(b) is amended to remove the reference to filing “2 copies of” and (e) is amended to add “electronically” before “transmit.”

Rule 9.125(g) is amended to add the term “electronically transmit.”

Rule 9.130(b) is amended to remove the reference to filing “2 copies of.”

Rule 9.140(b)(2)(B)(ii) and (d)(1)(E) are amended by adding the term “electronically” before “transmitted,” and subdivision (f)(2) is amended by adding references to the electronic mail service rule within the Florida Rules of Judicial Administration, removing references to copies or originals, and other technical changes.

Rule 9.141(a)(2)(A) and (b)(2) are amended by adding “electronically” before “transmit” and deleting “copies of” and “original” before “transcript.”

Rule 9.142(a)(1)(B) is amended by adding “electronically” before “transmit”; subdivision (a)(2) is amended to remove reference to paper copy submissions; and subdivision (c)(2) is amended to remove “2 copies of” and insert “electronically transmit.”

Rule 9.145(e) is amended to clarify the sealing of filed documents in juvenile delinquency cases.

Rule 9.146(f) is amended to clarify the sealing of filed documents in dependency and termination of parental rights cases, and subdivision (g)(2)(B) and (g)(2)(C) are amended to provide for electronic filing and to specify an exemption from the Florida Rules of Judicial Administration electronic mail service rule.

Rule 9.160(b) is amended to remove references to filing copies.

Rule 9.180(b)(3) is amended to remove the reference to filing “two copies of.”

Rule 9.200 is amended to add subdivision (a)(5) to define formats of acceptable electronic court records. Subdivision (b)(2) is amended to remove a sentence about paper copies and to rephrase the organization of transcripts; subdivision (b)(3) is amended to account for different methods of service and filing; subdivision (d)(1)(B) is amended to include “organized” and to add a sentence for defining the bindings of a paper record; subdivision (d)(1)(C) is added to define the requirements of a PDF file; subdivision (d)(3) is amended to remove the clause determining the procedure when an original record remains with the lower tribunal clerk.

Rules 9.210(a)(1), (a)(2), and (a)(3) are amended to provide specific requirements when a paper brief must be filed, and subdivision (g) is deleted as no longer necessary. Subdivisions (h) is renumbered to (g).

Rule 9.220(b) is amended to remove a sentence about dividers and tabs that is no longer necessary. Subdivision (c) is created to define the format of the computer appendix and brings down from original subdivision (b) the specifics of paper format appendixes.

Rule 9.360(a) is amended to remove the reference to filing “original and 1 copy.”

Rule 9.500(a) is amended to remove the reference to filing “original and 7 copies.”

Rule 9.510(a) is amended to remove the reference to filing “original and 7 copies.”

Rule 9.900(h) is amended by removing “an original and \_\_\_ copies of” and to include directions for an electronic service exemption.

### **Family Law Rules Committee**

The Family Law Rules Committee has adopted the following amendments to its rules to conform to e-filing by a vote of 17-0. New Fla. Fam. L. R. P. 12.025 has been created. Subdivision (a) incorporates by reference Fla. R. Jud. Admin. 2.525. Subdivision (b) creates an exception to e-filing for documents in cases under Chapter 63, Florida Statutes. It is the committee’s position that for documents such as consents for adoption and affidavits of nonpaternity, like wills, the original, with the original signatures, should be filed.

Other amendments have been made in Rules 12.010, 12.040, 12.080, and 12.200 to change “papers” to “documents” to conform to e-filing.

Proposed amendments to Rules 12.040 and 12.080 are pending in the e-service case, Case Number SC10-2101. Amendments pending in that case are shown by single underlines. Amendments in this case are shown with double underlines.

### **Code and Rules of Evidence Committee**

The committee does not propose any changes to the Code and Rules of evidence.

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 \_\_\_\_\_, 2011, by

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### **CERTIFICATE OF SERVICE**

I certify that a copy of this Joint Out-of-cycle Report has been sent, via U.S. Mail, to Justice Ricky Polston, Liaison for the Rules of Judicial Administration Committee, Justice Barbara J. Pariente, Liaison to the Appellate Court Technology Committee and Florida Courts Technology Commission, and Deborah Meyer, Director, Central Staff, at the Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399-1925, this \_\_\_\_ day of \_\_\_\_\_, 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)*.

I certify that these rules were read against *West's Florida Rules of Court* (2010 Revised Edition).

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