IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO THE FLORIDA RULES OF JUDICIAL ADMINISTRATION | **CASE NO: 13-**

OUT-OF-CYCLE REPORT OF THE FLORIDA RULES OF JUDICIAL ADMINISTRATION COMMITTEE ON EMAIL SERVICE

Alexandra V. Rieman, Chair, Rules of Judicial Administration Committee ("RJA"), and John F. Harkness, Jr., Executive Director, The Florida Bar, file this Out-Of-Cycle Report of the RJA on Email Service, Fla. R. Jud. Admin. 2.516, and respectfully request that this Court approve the attached proposed rule amendments. The proposed amendments in legislative format are attached in Appendix A and in two-column format in Appendix B.

At its September 20, 2012, meeting, RJA voted 28-1 to approve the proposed amendments and voted 30-0 to file the report out of cycle. The Florida Bar Board of Governors approved the proposed amendments by a vote of 28-0. In an effort to expedite this matter, these amendments have not been published for comment.

INTRODUCTION

The Supreme Court on June 21, 2012, issued an opinion adopting Rule 2.516 with conforming rules changes for other practice areas. *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, The Florida Rules of Appellate Procedure, and The Florida Family Law Rules of Procedure — E-mail Service Rule*, 37 Fla. L. Weekly S643 (Fla. 2012). After the issuance of the opinion, motions for clarification and rehearing were filed with the Court that resulted in a revised opinion on October 18, 2012.

Commencing shortly after June 21, 2012, RJA, The Florida Bar, and the Clerk of Court for the Supreme Court began to receive inquiries as to the implementation and interpretation of Rule 2.516. While many inquires sought legal

opinions or merely additional information, there were areas of concern raised by members of the Bar or RJA that were not addressed in the revised opinion on October 18, 2012, and about which the RJA determined amendments are warranted. The areas are:

1. Rule 2.516 (b)(1) and (b)(1)(B), regarding the method of electronic service;
2. Rule 2.516 (b)(1)(A), regarding the designation of primary and/or secondary email addresses;
3. Rule 2.516 (b)(1)(D), clarifying when service is complete;
4. Rule 2.516 (b)(2), clarifying the computation of time if more than one method of service is employed to serve a document; and
5. miscellaneous style changes.

RJA assigned a subcommittee to review the many concerns that had been raised about the rule. As part of this process, the subcommittee formed an integrated workgroup representing various interests and areas of expertise and sought input from the following stakeholders: other members of RJA; members of The Florida Bar; members of the Florida Courts Technology Committee; staff of the Florida Court Clerks and Comptrollers; clerks; Information Technology personnel from judicial, clerk, State Attorney, and Public Defender offices; and vendors.

DISCUSSION OF PROPOSED CHANGES

A. Rule 2.516 (b)(1).

RJA proposes that service occur by email unless the parties otherwise stipulate. Given the ability of parties to stipulate to other forms of service in subdivision (b)(1), it is also necessary to strike the similar language in the first sentence of subdivision (b)(1)(B). The issue of allowing other forms of service arose because of concerns regarding the security of email service when serving sensitive information, including mandatory financial disclosure in family cases, and the 5 MB size limitation of an email with attachments.

RJA considered increasing the size limitation set forth in subdivision (b)(1)(E), but was concerned that some internet service providers may have a lower size limitation that would impair an attorney's or self-represented party's ability to receive service by email. As a compromise for the size limitation and to allow attorneys to stipulate to another delivery method, for example a cloud based system that allows parties to upload documents and allows access to all other parties, RJA

proposes allowing attorneys to stipulate to another method of service, electronic or otherwise. A stipulation is proposed to reduce any misunderstanding with regard to an alternative method of service. If there is no stipulation between the parties, email service is the default for service of documents.

As to concerns with the security of email service, RJA is not aware of any documents served by email that have been compromised. Although it is certainly possible that service by email could be intercepted or otherwise compromised, email service has proven to be as secure as other methods of service. Nonetheless, as a result of the perception that email service is not a safe and secure method of service, RJA concludes that the ability of parties to stipulate to another method of service will alleviate perceived security issues. This change will allow family practitioners and self-represented parties to stipulate to serve mandatory financial disclosure, and other discovery, by any method of service, electronic or otherwise, that the parties believe is more secure for transmitting sensitive information.

B. Rule 2.516(b)(1)(A).

The filing of a designation of primary and secondary email addresses or including the designation of email addresses in the document pursuant to Rule 2.515(a) was the subject of debate. The Court, through staff, and the Bar received questions as to whether a separate designation was necessary or could be included within a document filed with a court.

Those is favor of a separate designation thought that a document titled "designation of email address" is a best practice allowing litigants, clerks, and the judiciary to quickly locate an email address. Opponents of the separate designation thought it generated unnecessary documents, docketing, and filing by the clerks, and pointed out that a designation can be placed on any document, just like an address or telephone number. Initially, the specific designation notification was deemed necessary both as to notice and as part of the educational process for members of the Bar. However, RJA determined that members of the Bar have become well-acquainted with the email address requirements and the email designation can now be treated similarly to other required contact information.

A second issue with regard to email addresses was the perceived inability of some entities, for example clerks, state attorneys, or public defenders, to adjust email service addresses on a case-by-case basis. It was also determined that some entities had systems that were restricted to being able to handle only one email address for each attorney or self-represented party. The use of three different email

addresses per attorney per case for service was in the rule as initially submitted to the Court, but no comments were received expressing concern as the rule was initially proposed, and it was not until implementation that the perceived problem was made known. The RJA subcommittee spent considerable time listening to the various entities' concerns, but concluded that little, if any, significant effort had been made by the entities to explore "fixes" to software programs. Many clerks' offices were able to comply with the email address requirements of the rule, and the economic benefits of being able to replace mail service with email service will eventually cause the other clerks to modify their systems. The full committee approved the subcommittee recommendation not to amend Rule 2.516(b)(1)(A) to allow only static email addresses for email service. RJA recognizes and appreciates the perceived problems for some entities, in particular state attorney and public defender offices who have until October 2013 to comply with the email address requirement. But until an entity can provide more information and the issues have been fully vetted by information technology staff and/or vendors, the email address requirements of the rule should remain unchanged based upon the electronic work flow requirements of many law firms.

C. Rule 2.516(b)(1)(D).

There were concerns raised with regard to when email service is complete; the current language in the rule causes potential confusion and ambiguity when the date of the email is different from the certification date in the document attached to the email, which could result in unnecessary litigation. The proposed amendment will resolve any perceived confusion and ambiguity with the certification date controlling rather than the date stamped by an internet service provider. The result is the same as the paper world.

D. Rule 2.516(b)(2).

The proposed amendment moves the provision from Rule 2.516(b)(1) to a more appropriate location in the rule and clarifies how to compute time for a reply. The proposed amendment does not change the concept of calculating the time for a response and merely clarifies that the shortest time for a response controls.

E. Style changes.

E-mail versus email: RJA recommends that all references throughout the rule to "e-mail" be changed to "email." The reason for this proposed change is that at the time Rule 2.516 was first proposed, e-mail was the commonly accepted spelling, but with time and usage, the hyphen has been dropped. See, *e.g.*, 2012 AP

Stylebook; www.apstylebook.com; http://styleguide.yahoo.com/editing/punctuate-proficiently/hyphens.

Original document versus document: Given electronic filing, the word "original" has lost significance and is confusing. As efiled documents will be the court record, RJA recommends that if a law or rule requires an original paper document, the original should be deposited with the clerk.

The Rules of Judicial Administration Committee respectfully requests that the Court amend Rule 2.516 as set forth in this report.

Respectfully submitted on ____.

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CERTIFICATION OF COMPLIANCE

I certify that these rules were read against *West's Florida Rules of Court – State* (2012 Revised Edition), and the October 18, 2012, opinions in SC10-2101 and SC11-399. Please note that the text of the following rule subdivisions, which are shown in this report as stated in the October 18, 2012, opinions, differ from those in *West's Florida Rules of Court*: 2.516(b)(1)(E); 2.516(b)(1)(E)(i); 2.516(b)(1)(E)(iii); 2.516(b)(2)(F); and 2.516(g).

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

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