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. SC11-399

COMMENT OF THE FLORIDA COURTS TECHNOLOGY COMMISSION AND OF THE ACCESS TO COURT RECORDS SUB-COMMITTEE

The Florida Courts Technology Commission (hereafter "FCTC") and the Access to Court Records Committee (currently a Subcommittee of the FCTC and hereinafter "Access Subcommittee"), by and through the Honorable Judith Kreeger, Chair of the FCTC, and Paul R. Regensdorf, member of the FCTC and Chair of the Access Subcommittee, on behalf of the full FCTC, file this Comment to the proposed rules and amended rules dealing with the implementation of electronic filing (efiling) in the State of Florida and would respectfully show the Court as follows:

Except for a single exception discussed below, the FCTC joins with the many proponents of efiling, and of this proposed rules package, in urging that this

Court promptly, expeditiously, uniformly, and on a mandatory basis implement efiling in all courts in this State.

I. The FCTC's Role in Florida's Judicial System

1. The FCTC and its predecessor, the Supreme Court's Court Technology User's Committee, since its inception has had as its primary motivating force the responsibility to recommend to the Supreme Court technology standards and relevant rules of procedure that would allow the Florida courts and users of the courts to fully utilize modern technology in all aspects of their professional work. Similarly, the Court charged the Access Subcommittee with helping to create the procedures and policies that would allow this Court and the courts' users to join the electronic age by receiving, maintaining, distributing, serving, and using court records electronically. The FCTC, through its Access Subcommittee, has continued that role.

2. The FCTC and the Access Subcommittee, although not a rules committee, have been actively involved in the rule-making process of a wide variety of rules of procedure necessary to effect the transition of Florida's courts using a paper system by and between all courts, clerks, and users, into a system which would utilize electronic documents for filing, service, and ultimately in the receipt, storage, and use once received at the courthouse.

3. As such, the FCTC has been a major proponent of the creation of a statewide or efiling system that would allow the transmission of court documents to and from the courts by means of the internet. The FCTC also advocates the creation and utilization of an email service system that would allow electronic transmission among the lawyers and other participants in the State of Florida of documents that are efiled with the courts.

II. The Principles that Have Guided the FCTC's Work on Electronic Filing

4. In helping to design, construct and regulate the systems that are a prerequisite to this vital electronic transformation of the court system, the FCTC has been guided by a series of simple propositions that bear directly on the efiling proposals presently before this Court in Case No. 11-399.

5. First, the FCTC believes that any efiling system must be uniform statewide and utilize the same or integrated technology and procedures (to the extent feasible) throughout the State. Second, the efiling system must be utilized in all courts, all counties, all circuits, all districts, and in this Court. Moreover, it must be used in all divisions of each court so attorneys and all others participating in the legal process in Florida can utilize a single electronic system for that purpose. Third, the system should be implemented as soon as reasonably

practicable across all Florida courts to achieve the anticipated efficiencies and cost savings. Finally, and most importantly to this Comment, the FCTC's position is that efiling must be made mandatory for all lawyers in the State of Florida, regardless of practice area, substantive field of law, or court in which they are practicing. [The FCTC has by Resolution previously forwarded this position to the Court.]

6. The FCTC's strong recommendation of uniform statewide mandatory efiling for all lawyers and all documents in all courts is not motivated by any desire for simplicity for simplicity's sake. Rather, for lawyers, clerks and the courts to realize the significant cost savings, efficiencies and other benefits that an efiling system and email service allow, implementation must be as widespread as possible. The Judicial Branch should operate in the very near future utilizing the 21st Century electronic system envisioned by this set of proposals so that thereafter electronic transmission is the default means of communicating with the court and with other lawyers[1], rather than depending on the historic paper-based system.

III. The FCTC's Opposition to Proposed Rule 3.030(c)

7. The FCTC acknowledges that in Florida there may be a very limited class of documents which have such great independent significance, on paper, that the clerk could be required to maintain them in that format. Those few discrete types of documents are, however, the distinct exception. This class of documents should not be broadened or expanded [absent compelling circumstances] to diminish or detract from the overall efficiency of the system that relies upon the uniformity of electronic filing and service.

8. In this context, the FCTC is seriously concerned about the proposed amendment by the Criminal Procedure Rules Committee to Rule 3.030, which in subsection (c) carves out a substantial number of types of documents which that Committee considers to be so important that they should be excepted from efiling and be filed in paper format. See pages 10 and 11 of the Joint Out-of-Cycle Report. Whatever the motivation for creating this broad list of documents to be filed on paper in proposed Rule 3.030(c), that Committee has given no valid rationale for those exceptions.. The large number of documents enumerated in this exception, **common to virtually every criminal case**, would require the clerk to virtually maintain a dual system of both paper and electronic documents. If there

is one type of system that would be even worse than the current paper-dominated system we labor under today, it would be one in which the clerk (and lawyers as well) would be required to maintain a dual system – both paper and electronic. Rather than creating economies and benefits for all participants in the judicial system, requiring a dual system of paper and electronic copies would only result in the unnecessary duplication of expenses in a time of limited resources, all for no compelling reason.

9. This Court is directed to the report of the Probate Rules Committee found on pages 11 to 17 of the Joint Out-of-Cycle Report on efiling for an instructive example of two different approaches to this same question. The Probate Rules Committee, in its original deliberations on this topic (found at page 12 of the Joint Out-of-Cycle Report), proposed that an extensive list of "original documents" be excepted from efiling, and that Committee originally proposed that they be kept as paper documents by the clerk of the court.

10. However, after further deliberations, the Committee reduced its list of "special" documents for which it requested the continuing use of paper to only wills and codicils as addressed in Florida Statutes §732.901 and §731.201(40). See pages 13 and 17 of the Joint Out-of-Cycle Report. Thus, as finally proposed to this Court, only the most basic of probate documents – wills and codicils – are in any way "excluded" or "exempted" from efiling. In fact, these two statutes simply

require that those documents be deposited with the clerk, as opposed to "filed" in a probate proceeding. Accordingly, the Probate Rules Committee's final proposed Rule 5.043 requires that all probate court case filings be efiled, even though the will and/or codicil will have been deposited with the clerk on paper.

11. Should there be some independent compelling reason and statutory obligation regarding any of the criminal procedure documents listed in proposed Rule 3.030(c), that would require them to be treated in the same way as wills and codicils, then the FCTC would be willing to consider agreeing that there is reason to exclude such document(s). Based on the materials presently available to the FCTC, however, it does not believe that any of the documents enumerated in Rule 3.030(c), have a sufficient independent significance, or statutory basis that would require its presence in the court file on paper. Therefore, the FCTC recommends that Rule 3.030(c), be deleted from the efiling package of rules as presented to this Court when approved and implemented.

12. With that action taken, then the remaining provisions of Rule 3.030 properly include criminal practitioners in those who will be required to both efile with the courts and email serve their documents upon opposing counsel.

13. Subject to this singular exception to the complex package of electronic filing rules presented to this Court, the FCTC urges their adoption by the

Court and their implementation as soon as reasonably practicable throughout Florida.

Respectfully submitted,

Judith L. Kreeger

Hon. Judith L. Kreeger, Chair
Florida Courts Technology Commission

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and nine copies of the foregoing have been furnished to the Clerk of the Supreme Court; and that a true and correct copy of the foregoing has been furnished to those listed below this 2nd day of May, 2011, by U.S. Mail and electronic filing:

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s/ Susan Dawson
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CERTIFICATE OF COMPLIANCE

I certify that these comments have been submitted in compliance with the requirements of *Fla. R. App. P*. 9.210(a)(2).

s/ Susan Dawson
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[1] This is not to say that individual law firms, lawyers, or legal organizations may choose, for their own reasons, to maintain a dual system whereby they utilize electronic transmission of pleadings between themselves and the court, and between themselves and other counsel, but also maintain a paper system within their own office. If that is the decision of any particular individual or group in the State of Florida, that is certainly acceptable but the cost of maintaining that dual system will then borne by that lawyer or group and will not be impressed upon the system at large.