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May 2, 2011

The Honorable Charles T. Canady
Chief Justice, The Florida Supreme Court
500 South Duval Street
Tallahassee, Florida 32399

Re: Proposed Rule Amendments to Implement Electronic Filing of Documents

Dear Chief Justice Canady:

Thank you for providing the Florida Association of Court Clerks (FACC) with the opportunity to provide comments to SC11-399, the proposed amendments to the Rules of Judicial Administration, specifically those made by the Criminal Rules Committee.

Florida's Clerks of Court strongly support those actions aimed at assisting in the overall implementation of electronic filing of documents with Florida's Courts. Section 28.22205, Florida Statutes, requires each Clerk of Court to implement an electronic filing process, with the expressed purpose "to reduce judicial costs in the office of the clerk and the judiciary, increase timelines in the processing of cases, and provide the judiciary with case-related information to allow for improved judicial case management."

To meet the requirements of that statute, in conjunction with the Florida Supreme Court, Florida's Clerks of Courts developed the Florida Courts E-Filing Portal, governed by the Florida Courts E-Filing Authority Board, which consists of eight Circuit Court Clerks and the Clerk of the Florida Supreme Court.

Of the state's 67 counties, 57 are approved by the Florida Supreme Court to accept electronic filings in all court divisions. Nine other counties are approved to accept Probate documents electronically. Currently, a number of Florida's counties are accepting electronic filings in various case types through their local electronic filing systems, and 12 counties are receiving electronic filings by way of the E-Filing Portal. Sixteen more counties are scheduled to accept electronic filings through the portal in the coming months.

Based on these statutory requirements, FACC, on behalf of Florida's 67 Clerks of Court, would like to respond specifically to those proposed changes to the Florida Rules of Criminal Procedure made by the Criminal Rules Committee. Their proposed rule change to Rule 3.030(c) states in part:

(c) Submitting Originals. Originals which **must** be filed in paper format with the clerk include: charging documents, indictments, informations, petitions, affidavits, plea agreements, documents filed under seal, ex parte documents, and any documents which are required to be sworn or notarized. Original charging documents must be kept by the clerk in accordance with the Florida Rules of Judicial Administration. **All other original documents filed in paper format must be scanned by the clerk and provided to the prosecuting authority to determine whether or not the original is kept.** If permitted by approved statewide or local ECF procedures, original documents may be submitted electronically for purposes of a filing date; however, the original document must also be filed in paper format in accordance with this rule. All original documents under this rule must certify that they were filed in paper format to the clerk.

SC11-399 contains amendments that establish mandatory electronic filing, which will be extremely beneficial to both Clerks and Courts. However, the proposed change to the Criminal Rules, which requires that the originals of certain documents continue to be filed in paper format, seems to be inconsistent with the spirit of electronic filing. Indeed, this change would place the burden on the Clerks of Court to maintain two systems. In effect, the Clerk must keep the multiple paper and electronic formats of these documents in sync to assure that there are no discrepancies. Such a process is both costly and inefficient.

The filing of paper documents, when electronic alternatives exist, is not only costly to the Clerks of Court and other judicial partners, but is a burden on the taxpayers of Florida, too. One county estimates that electronic case files result in a 30 percent increase in efficiency over handling paper files. Such a benefit to all Floridians would be lost for criminal and misdemeanor cases.

Additionally, the proposal that all other original documents filed by paper be scanned and submitted to the prosecuting authority for review to determine whether the original is to be kept in paper format would be a cumbersome process for both the State Attorney's office and the office of the Clerk.

Given the burden that maintaining both paper and electronic documents will have on the offices of Florida's Clerks of Court, as well as the loss of the cost-saving efficiencies that electronic filing of court documents brings, FACC would ask that the

Rules Committee reconsider these proposed changes to Rule 3.030, Florida Rules of Criminal Procedure.

Sincerely,

Kenneth A. Kent

Kenneth A. Kent
Executive Director

Cc: Robert M. Eschenfelder, Chair, Code and Rules of Evidence Committee
John Granville Crabtree, Chair, Appellate Court Rules Committee
Robert T. Strain, Chair, Criminal Procedure Rules Committee
Donald E. Christopher, Chair, Civil Procedure Rules Committee
Steven P. Combs, Chair, Family Law Rules Committee
William W. Booth, Chair, Juvenile Court Rules Committee
Michele A. Cavallaro, Chair, Small Claims Rules Committee
Jeffrey S. Goethe, Chair, Probate Rules Committee
John J. Anastasio, Chair, Traffic Court Rules Committee
Katherine E. Giddings, Chair, Rules of Judicial Administration Committee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the forgoing has been furnished via U.S. Mail to:

Robert M. Eschenfelder, Chair
Code and Rules of Evidence Committee
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John Granville Crabtree, Chair
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West Palm Beach, Florida 33401-5839

CERTIFICATION AS TO ELECTRONIC SUBMISSION

I HEREBY FURTHER CERTIFY that this comment was submitted electronically in accordance with this Court's administrative order In re: Mandatory Submission of Electronic Copies of Documents, Fla. Admin. Order No. A0SC04-84 (Sept. 13, 2004).

CERTIFICATION AS TO FONT COMPLIANCE

I HEREBY FURTHER CERTIFY that this comment was prepared in MS Word using 14 point, Times New Roman font.

Kenneth A. Kent

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Kenneth A. Kent
Executive Director