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
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COMMENT FROM THE FLORIDA PUBLIC DEFENDER ASSOCIATION REGARDING THE SUPPLEMENTAL COMMENT FILED BY THE FLORIDA COURTS TECHNOLOGY COMMISSION

The Florida Public Defender Association ("FPDA"), by and through its designated representative, 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.

During the 2010-2011 fiscal year, the Public Defenders were appointed to over 700,000 trial cases. If each case has, on average, four criminal filings by an assistant public defender, the Public Defenders will be electronically filing approximately 2.8 million documents. From early reviews of the civil FACC E-Portal, it will take, on average, one minute per document to electronically file through the E-Portal. The e-filing requirement will create at least 4,667 hours of additional work added to an already overburdened indigent defense system. The FPDA believes it is imperative for this Court and the legislature to understand that,

at least initially, a mandatory e-filing requirement will increase the Public Defender's workload, and additional funds and positions will be required to comply.

Within this context, the FPDA fully supports moving to a **complete** electronic version of the criminal court file. Several counties are already testing electronic access to a **complete** electronic version of the criminal court file. In those counties, it is evident that electronic access to the police reports, probation affidavits, and other components of a criminal file lead to more timely investigations, increased public safety through better decision making, earlier release of falsely arrested defendants, preservation of evidence that is often lost due to delays, and cost savings on the retention of an electronic version of the Public Defender file.

The FPDA 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 in their comments[1], 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

[1] Undersigned counsel was the FPDA representative on the committee created by the FCTC to develop the comments filed on behalf of the FCTC. The committee met twice, and at their second meeting, there was complete agreement that the FCTC needed to seek additional time for comments due to the unique nature of a criminal case file. The committee representatives were nearly unanimous that unless an entire electronic file was made available, there would be no cost savings to the State of Florida. Additionally, there was consensus that the need to "batch" file was extremely important, due to the increased workload that would be created by mandatory e-fililng. There was also consensus that there has been little to no discussion on how an electronic file would actually be utilized by the judiciary, the State Attorney, and the Public Defender, and that these issues needed to be addressed in the comments. Shortly after the second committee meeting, the FCTC met and voted to not request additional time and to go forward with filing the requested comments.

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 direct 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. The types of documents in the criminal court file that will not be mandated to be made electronically available would include:

The arrest report;

Pretrial release information, including criminal histories;

Supplemental police reports, witness statements, evidence receipts;

Laboratory reports;

Court-ordered evaluations;

Pre-sentence investigative reports;

Juvenile commitment packages;

Probation reports and affidavits of violation of probation;

Court action forms;

Returned subpoenas;

Judgment and Sentences; and

Court orders.

Because a party to the case does not file the above documents, the current framework will create an E-Fax system, where each party, and the clerk, will have to print out the documents "electronically" filed by the parties. This will create more work for the State Attorney, the Public Defender, and the Clerk of Courts, and none will realize any cost savings from this incomplete E-Fax system.

Attachment A is representative of the documents "filed" by a party in a criminal case. It does not include those documents that are commonly seen in a criminal file but are not filed by either party to the case. Attachment B contains those documents in the same case that aren't filed by either party. As should be readily apparent from a comparison of the two attachments, the documents in Attachment A tell very little of the case. The information the court needs to make

informed decisions is missing. The information that the court and the parties need is contained in Attachment B, and under the current statutory and rules framework, there is no provision to require that these imp ortant documents be made electronically available.

The FPDA believes this oversight must be corrected with a judicial rule either enlarging the requirement that anyone who "files" a document in a criminal court file must do so electronically, or requiring that the Clerk of Court make all documents received in a criminal court file electronically available. If this is not done, then the judiciary, the State Attorneys, and the Public Defenders will never realize the anticipated cost-savings and benefits from a mandate that they file all documents electronically.

Respectfully submitted,

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John A. Tomasino, Esquire
Administrative Director
Public Defender, 2nd Judicial Circuit

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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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).

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