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
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CASE NO. SC11-399

SUPPLEMENTAL COMMENT OF THE FLORIDA COURTS TECHNOLOGY COMMISSION

The Florida Courts Technology Commission ("FCTC"), by and through its Chair, the Honorable Judith L. Kreeger, 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. As the Court directed, the FCTC consulted with the Board of Directors of the State Wide E-filing Authority and with the Florida Association of Court Clerks (FACC) in formulating a proposed plan for phased in implementation of mandatory efiling by attorneys.

PROCESS OF FORMULATING THE PLAN

Upon receipt of the Court's August 8, 2011 order, the Chair of the FCTC constituted a work group that was designed to represent significant groups of users of court technology. Members of the work group included the Clerk of the Supreme Court (Thomas D. Hall), two clerks of court designated by the FACC (Harvey Ruvin, Clerk of Miami-Dade County, representing densely populated urban counties and Tim Smith, Clerk of Putnam County, representing less populous counties), a representative of prosecuting attorneys (Chet Zerlin, assistant state attorney, 11th circuit), a representative of public defenders (John Tomasino, administrative director, 2nd circuit), regional conflict counsel (Jeffrey E. Lewis, executive director, 1st DCA region), private criminal defense counsel (George Tragos, Clearwater), a chief judge who chairs the FCTC E-Filing Committee (Judge Manuel Menendez, Jr., 13th circuit), the private civil bar (Paul Regensdorf, Jacksonville), and a trial court judge who chairs the TIMS Committee of the FCTC (Judge Scott Stephens, 13th circuit). The Chair also added a half day to the scheduled September meeting of the FCTC, to provide ample time on the agenda for the Commission to respond to the Court's directive.

Before the scheduled first meeting of the work group, the FCTC chair asked the FACC to canvas its members to ascertain the status of their technological readiness to commence receiving documents e-filed through the statewide portal.

At that time, all 67 counties had sought and received FCTC approval of their plans for e-filing in some or all divisions of their trial courts, and the clerks of sixteen counties had begun to receive some documents that were e-filed through the statewide portal. Forty-seven county clerks were not yet equipped to receive documents filed through the statewide portal. One-half of those clerks were in the process of performing testing procedures in preparation for e-filing readiness. The only District Court of Appeal that is presently accepting documents by electronic filing is the First District Court of Appeal.

On September 8, 2011, when the work group held its first meeting (by video conference), the clerks of twenty counties had connected to receive some filings through the statewide e-portal. In addition, the clerks of five counties were receiving documents electronically through their local portals, and were technologically capable of receiving documents through the statewide portal. The issues that challenge county clerks are primarily lack of resources and the requirements for system conversions, which vary from county to county. To implement e-filing in an orderly, secure manner, county clerks need between three to six months to pilot and test their systems, train their staff and users of the system, to build that portion of their websites, and to develop their business processes.

The chair called the work group's attention to the Court's direction to identify any unique issues regarding implementation of mandatory e-filing in the criminal divisions of the circuit court and for criminal appellate matters. The chair specifically asked those members of the work group from the criminal practice to identify resource issues that may impede their offices' ability to file their documents electronically, legal issues (whether by court rules or statutes) that may have to be resolved if they are to be required to file electronically, and challenges that would confront their attorneys working in the courtroom.

Recognizing that Florida courts are not the first to transition towards receiving, maintaining and distributing their records electronically, the Chair requested that the Office of State Courts Administrator's staff counsel for the FCTC, Susan Dawson, research how other states have confronted these challenges.

The research revealed that courts around the nation are at various stages of implementing e-filing requirements and necessary rules, mandatory or permissive. For example, the Alabama Supreme Court, by order dated April 20, 2011, authorized a pilot project that allows for electronic filing of pleadings and other documents in criminal cases in the district courts and the circuit courts. The Supreme Court of Hawaii allowed for the establishment of a pilot project for submitting criminal complaints in several district courts of that state by electronic mail. During the pilot project county prosecutors and the attorney general were

allowed to submit written criminal Adobe PDF complaints by email attachment. Texas is moving toward mandatory e-filing as well.

In Texas, the e-filing subcommittee of the Judicial Committee on Information Technology is exploring a timeline for implementing required e-filing and exploring an implementation process based on population beginning with the ten most populous counties. Texas is looking at a suggested initial implementation in December 31, 2012. Criminal case filings are in the scope for Texas' statewide e-filing plan. The e-filing rules for Travis County (Austin), Texas although pertaining to civil matters, require documents that must be notarized, acknowledged, sworn to, or made under oath to be filed only as a scanned image. Thus the document is required to be e-filed even though it has authenticity requirements.

The work group convened for its second video conference meeting on September 21, 2011, a few days before the FCTC was scheduled to meet and a few days after the Chair received a first draft of the FACC's approach for phased in implementation of statewide e-filing. The criminal practice members reported on their discussions with members of their statewide organizations, the clerks reported on their additional progress.

One of the issues that the present configuration of the statewide portal presents for prosecutors and public defenders is that documents must be

individually filed, by using a series of drop-down menus. In order to do their work efficiently, their offices need the ability to "batch file" similar documents in multiple cases. The Chair suggested that they contact a member of the portal authority to discuss the issue and seek a technological solution.

The FCTC meeting on September 27, 2011, opened with Thomas D. Hall, Clerk of the Florida Supreme Court, and Melvin Cox from the FACC reporting on behalf of the Board of Directors of the Florida Courts E-Filing Authority the status of use of the statewide portal for e-filing. They reported that since January 1, 2011, approximately 15,000 documents have been filed electronically through the statewide portal, primarily some filings in some civil divisions throughout the state. Considering the many millions of documents filed in Florida courts each year, this represents a very small proportion of filings. However, the e-filings are increasing at a more substantial pace as technical staff of county clerks offices program and configure their systems to accept them.

Directing his attention to some of the issues that confront prosecutors, Mr. Cox reported that he had started discussions with prosecutors and public defenders about configuring the portal system so that they could "batch file". Those discussions are productive and ongoing. Mr. Hall also reported that they are now testing appellate filings to the Supreme Court, and that process appears to be smooth.

Mr. Cox then reported to the FCTC that all county clerks of court will be ready to receive mandatory e-filing by all attorneys in all civil cases by July 1, 2012. Civil case types include circuit civil, county civil, probate, family, and juvenile dependency. All county clerks of court will be ready to receive mandatory e-filing by all attorneys in all other case types by December 31, 2012. Those case types include circuit criminal, county criminal, criminal traffic, civil traffic, and juvenile delinquency.

The FCTC then discussed additional aspects of the transition that should accompany e-filing. Recognizing that the economies and benefits of e-filing would only be achieved when court staff and judges can perform their responsibilities through the use of electronic technology, the FCTC considered the need for clerks and court administrators to purchase and develop programs and acquire hardware and be trained to use that technology to enable them to perform the various functions and aspects of their work effectively and efficiently.

The FCTC is, of course, aware that in August 2010 the Court directed the Commission on Trial Court Performance and Accountability (TCP&A) to "identify the information, by case type, that needs to be accessed and tracked by judges, case managers, and other court staff in order to move cases efficiently and effectively through the trial court process. Additionally, identify the key caseload and workload information needed at the circuit and statewide reporting levels essential

for performance monitoring and resource management." The Court directed the TCP&A to collaborate with the FCTC in its work, and to file its report with related recommendations by July 1, 2012.[1] The product of that work, and then the FCTC using that work to establish functional standards for case management systems, will better enable trial courts to measure their performance and accountability and to allocate their resources. However, since individual counties are already developing and/or acquiring technological means of electronically managing their cases and fulfilling reporting requirements, and since the chief judge of each county must approve proposed e-filing plans, the FCTC voted that implementation of mandatory e-filing should not await the establishment of those statewide standards.[2]

The FCTC directed its attention to the issues raised in the criminal practice area, and recognized that some rules and statutory changes may be necessary. For example, the Response of the Criminal Procedure Rules Committee to Comments of Interested Persons highlights the statutory elements of certain crimes of perjury which include definitions of "documents", requirements of "signing or execution", and the like, which suggest that paper format is a necessary element of the crime.

[1] AOSC 10-48.

[2] When TCP&A and the FCTC establish functional standards for case management systems, court technology will then be required to comply with those standards.

Similarly the best evidence rule[3] requires that the "original" of a document be offered in evidence in many instances, and prosecutors expressed concern that when a verified or notarized document is filed electronically, secure preservation of that document on paper then should be assured so that it would be available later in the event it became the basis for a prosecution for perjury. The language of the rule suggests that the rule requires that the "document" be in paper format. That Response discusses issues about how documents in paper format should be preserved and safeguarded, and the need for appropriate rules. For that reason, the FCTC recommends additional time for the implementation of mandatory e-filing in the criminal law practice areas.

The FCTC also considered newly enacted Fla. Stat. 27.341, which requires all Florida prosecutors to electronically file certain types of court documents and receive court documents from the clerk. Public defenders are likewise required to implement e-filing and receive court documents electronically, according to Fla. Stat. 27.5112. The effective date of this legislation was July 1, 2011, and it directs the Florida Prosecutors Association and the Florida Public Defenders Association to fully report to the legislature by March 1, 2012 their progress towards implementation. Interestingly, the Senate Bill Analysis and Impact Statement notes that the counties are required to fund information technology, and in the

[3] Fla. Stat. 90.953 and Fla. Stat. 90.954.

fiscal impact section, suggests that if any office is unable to implement e-filing because of the burden on county resources, it should include that information in its March 1, 2012 report.[4] No new funding has been made available yet for implementation of e-filing. It appears that when the legislature enacted this new legislation, it did not have the benefit of an economic analysis that would measure the cost of implementation. The Office of the State Courts Administrator recently learned that the State Justice Institute approved its application for grant funding to engage the services of a consultant who will perform a cost/benefit analysis for Florida courts to receive, maintain and distribute court records electronically, to process cases using electronic records, and to perform their accountability functions utilizing electronic data.

After considerable discussion, the FCTC unanimously passed a series of resolutions that constitute its plan for phased in mandatory e-filing by all attorneys in Florida courts. The FCTC was advised that the FACC and the Board of Directors of the Florida Courts E-Filing Authority support this plan.

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4 http://www.flsenate.gov/Session/Bill/2011/0170/Analyses/k/uHQWz2rQ2pk=PL=G5W7K1yd2=PL=KeE=%7C7/Public/Bills/0100-0199/0170/Analysis/2011s0170.pre.ju.PDF

THE FCTC PLAN FOR MANDATORY E-FILING BY ATTORNEYS

1. The FCTC accepts the statement of the FACC that on or before July 1, 2012 all clerks will be prepared to accept e-filings through the statewide e-portal, in the civil divisions (defined as circuit civil, county civil, probate, family, and juvenile dependency) and by December 31, 2012 for criminal divisions (defined as circuit criminal, county criminal, criminal traffic, civil traffic, and juvenile delinquency).

2. Based upon those dates, e-filing by attorneys in each division of the trial courts in each county shall be mandatory, effective no later than nine months from the date the clerk, with the approval of the chief judge, begins to accept e-filings for that division through the statewide e-Portal. **Thus mandatory e-filing would become effective no later than March 1, 2013 for all civil divisions of the trial courts and no later than September 30, 2013 for all criminal divisions of the trial courts**.

3. All appellate court clerks shall be ready to accept all filings electronically from attorneys by July 1, 2012. E-filing in appellate cases shall become mandatory for all attorneys by October 1, 2012.

4. No later than December 31, 2012, all clerks shall organize and transmit all records on appeal electronically, which shall be electronically indexed and searchable by the appellate court. This requirement applies to records on appeal at

any level in Florida courts (i.e., from the county court to the circuit court, from the circuit court to the district court of appeal, and from the district court of appeal to the Supreme Court.)

5. Nothing in these resolutions is intended to prevent any clerk of court from implementing electronic filing before the above deadlines.

6. A limited waiver process should be established for any attorney or clerk of court who cannot comply with mandatory e-filing for good cause shown.

The process for implementation of mandatory e-filing that is contemplated by these resolutions is for each clerk to prepare for mandatory e-filing in conjunction with the chief judge of that court. Readiness to implement mandatory e-filing must consider that when e-filing is implemented, judges of that court will be provided with adequate electronic data and processes to discharge their responsibilities for processing the cases assigned to them, and that judges who have administrative responsibilities will be provided with adequate data, processes and reports to discharge their oversight and reporting responsibilities.

Notwithstanding the dates provided in these resolutions, the FCTC continues to encourage the clerks of court to implement their plans for e-filing through the statewide portal and their electronic systems and processes to do their work and enable judges to perform their responsibilities at the earliest practicable time, and

to share with each other the knowledge and expertise that they are developing as they implement those systems.

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 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 7th 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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