

IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO FLORIDA  
RULES OF CIVIL PROCEDURE, FLORIDA  
RULES OF GENERAL PRACTICE AND  
JUDICIAL ADMINISTRATION, FLORIDA  
RULES OF CRIMINAL PROCEDURE,  
FLORIDA RULES OF TRAFFIC COURT,  
FLORIDA SMALL CLAIMS RULES, AND  
FLORIDA RULES OF APPELLATE PROCEDURE

Case No. SC21-990

**COMMENTS OF THE FLORIDA CIVIL LEGAL AID ASSOCIATION**  
**Introduction**

The Florida Civil Legal Aid Association, by and through its President, hereby files the following comments in this matter.

The Florida Legal Aid Association (FCLAA) is a membership organization composed of the executive leadership of twenty-nine of Florida's civil legal aid programs. It represents the interests of the civil legal aid firms throughout Florida, and, by extension, the interests of the poor and at-risk Floridians served by civil legal aid. FCLAA's purpose is to promote collaboration within our community to achieve access to justice and equity in the law.

FCLAA's client community, like the State of Florida as a whole, is extremely diverse in race, ethnicity, national origin, gender, sexual orientation, gender identity, disability, as well as many socio-economic factors. As FCLAA has pointed out many times in the past,

our client community broadly includes the working poor in the tourism and hospitality industries that are so critical to Florida's economy.

In addition to providing extended legal services, where a legal aid lawyer is representing a litigant in court, civil legal aid firms throughout Florida also engage in advice and counsel work, where litigants who will remain pro se are provided advice on how to handle their case without the assistance of a lawyer. This type of assistance is both helpful to pro se litigants and necessary, particularly in this State, where roughly 500 legal aid lawyers are expected to serve an at-risk population of approximately 10 million Floridians.

Through this work, civil legal aid lawyers have gained insight into the struggles of pro se litigants as they navigate an often-byzantine court structure. Because of the issues present in Florida, 80-90% or more of those who use this State's justice system, depending on the case type, will not be represented by a lawyer.

Our Comment on this proposed rule change attempts to speak for those users, who not only lack representation in court but also do not have a voice in Florida's rule-making process. Accordingly, our

Comment focuses on the compelling reasons as to why this Amendment cannot pass as written.

**Pro Se Litigants Will be Detrimentially Impaired by the Amendment Because They Lack Internet Connectivity or Technical Understanding**

The proposed rule assumes (1) a connection to the internet, (2) a data plan allowing access to emailed documents and notices, and (3) the ability to understand and respond to those emailed documents and notices.

The FCLAA respectfully suggests that this assumption be verified for those most affected before the rule is put into place.

The proposed rule change will seriously impede the ability of those without internet or with limited access, from partaking in the legal system. It is unlikely that someone in those circumstances will be able to properly or timely receive notice or keep up with multiple court deadlines, as they will not receive emails on a consistent basis. Only 57% of those making under \$30,000 a year have home broadband, and 27% of that same income bracket primarily rely on

their phones for internet access.<sup>1</sup> A good portion of that 27% are wi-fi only users, and our experience indicates those users are not likely to be checking their emails constantly.<sup>2</sup>

Rural communities will be disproportionately harmed by the rule change. Those communities are less likely to have stable internet access and more likely to be poor. Large sections of rural counties still do not have reliable or affordable internet access. These counties are not alone. A recent Pew study found “that about one quarter of adults in rural areas report that ‘access to high-speed internet is a major problem in their local community.’”<sup>3</sup> Litigants in these regions

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<sup>1</sup> *Internet/Broadband Face Sheet, Who Has Home Broadband*, PEW RESEARCH CENTER (April 21, 2021), available at <https://www.pewresearch.org/internet/fact-sheet/internet-broadband/> (illustrating a graph of how the existence of home broadband in a particular household depends on the household’s income, showing that racial minorities and those with lower levels of education and income are less likely to have broadband service at home).

<sup>2</sup> *Id.*

<sup>3</sup> Monica Anderson, *About a quarter of rural Americans say access to high-speed internet is a major Problem*, PEW RESEARCH CENTER (Sept. 10, 2018), available at <https://www.pewresearch.org/fact-tank/2018/09/10/about-a-quarter-of-rural-americans-say-access-to-high-speed-internet-is-a-major-problem/> (the study continued to purport that roughly six-in-ten rural Americans (58%) believe access to high-speed internet is a problem in their area).

may face the prospect of missing important documents, dates, and deadlines as a result.

Requiring mandatory e-service, the creation of email addresses, and virtual appearances for hearings will drastically and detrimentally affect a vast number of pro se litigants in Florida. There are entire counties where over 30% of households do not have smartphones, and do not have internet. See Composite Exhibit “A.”<sup>4</sup> Such a requirement will disproportionately affect Black or African American people living in various counties in Florida, who are less likely to have home broadband. See Composite Exhibit “B.”<sup>5</sup> Moreover, many households do not have an affordable choice of home broadband, and thus, are left with no internet connection. See

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<sup>4</sup> *What is the relationship between households without internet or smartphones?* Urban Observatory Maps, available at <https://urbanobservatory.maps.arcgis.com/apps/mapviewer/index.html?webmap=ea7844dd4dc44393bbb95daab3676d5d> (last visited Sept. 3, 2021) (showing over 40% of households don’t have smartphones, and over 30% don’t have internet).

<sup>5</sup> *Where do Black and African Americans not have as internet subscription at home?* URBAN OBSERVATORY MAPS, available at <https://urbanobservatory.maps.arcgis.com/apps/mapviewer/index.html?webmap=4c9c91baad964253a68c68a6153796b7> (last visited September 3, 2021).

Composite Exhibit “C.”<sup>6</sup> Other households have only a cellular plan as their source of internet. See Composite Exhibit “D.”<sup>7</sup> Several counties have over 10% of households using a smartphone as their only computer device and could run out of data before seeing an important notice. See Composite Exhibit “E.”<sup>8</sup> Overall, there are about one million households in Florida without internet service.<sup>9</sup>

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<sup>6</sup> *Predominant Internet Type for Households with No Other Type of Internet*, available at <https://www.arcgis.com/apps/mapviewer/index.html?webmap=0d2380eae6b745c5891254485db4996b> (last visited Sept. 3, 2021) (showing over 36% of households in some Florida counties have no internet connection at all).

<sup>7</sup> *Households with cellular as their only internet subscription*, Urban Observatory Maps, available at <https://urbanobservatory.maps.arcgis.com/apps/mapviewer/index.html?webmap=ab8306ddc4624e4b8607a62ea01e36e3> (last visited Sept. 3, 2021) (the households with cellular data as their only internet subscription are roughly between 6% and 17% per county).

<sup>8</sup> *Where are households using a Smartphone as their only computing device?* URBAN OBSERVATORY MAPS, available at <https://urbanobservatory.maps.arcgis.com/apps/mapviewer/index.html?webmap=8cfa9159a67f43af8af5e08bbefec938> (last visited Sept. 3, 2021) (illustrating households in the State of Florida use a Smartphone as their only computing device).

<sup>9</sup> *Evaluating the Digital Divide in the US*, available at <https://www.arcgis.com/apps/dashboards/143a4696ae2e4151bafbc3b2c338bbcf> (last visited Sept. 3, 2021) (breaking down population throughout the country and in the State of Florida by education, employment, and income range).

Persons lacking proficiency in the English language, due to illiteracy or the use of English as a secondary language, will also struggle with the rule change. For example, Legal Services of North Florida has a client who is only fluent in Mandarin and must use the Clerk of Court in-person anytime he is accessing the courthouse. A different client is functionally illiterate, cannot use the internet, and only has a flip phone. Both clients understand just enough to be able to seek help but making the process even slightly more complicated would change that. Most importantly, these clients are users of the justice system whose right of access is guaranteed by the Constitution,<sup>10</sup> and the revision of this rule without review of these issues is counterintuitive.

The elderly population will struggle an inordinate amount with the proposed rule change. Reports indicate that a fourth of people over the age of 65 do not have internet at all, and only 64% of that population have home broadband.<sup>11</sup> In Florida, persons 65 years and

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<sup>10</sup> FLA. CONST. art. I, § 21.

<sup>11</sup> *Internet/Broadband Face Sheet*, PEW RESEARCH CENTER, (April 21, 2021), available at <https://www.pewresearch.org/internet/fact-sheet/internet-broadband/>.

older make up roughly a fifth of the population<sup>12</sup> and can be expected to be less familiar with technology. In various counties, including Miami-Dade, over 30% of seniors over 65 years old do not have internet subscriptions.<sup>13</sup> There are also many counties, such as Duval, Escambia, and Polk, where over 15% of seniors over 65 years old do not have computers. See Composite Exhibit “F”.<sup>14</sup> Legal Services have numerous senior citizen clients who have no access to technology and no email accounts. These seniors have no real way of participating in the legal system outside of receiving mail, going to the courthouse directly, and meeting in-person with legal aid. Thus, an increased dependence on technology can lead to more cases where the actual notice of trial is in dispute and affects the outcome. See *Fain v. Spivey*, No. 4D20-475, 2021 WL 2947731, at 1\* (Fla. 4th DCA 2021).

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<sup>12</sup> U.S. Census Bureau, *QuickFacts: Florida* (July 1, 2019), available at <https://www.census.gov/quickfacts/FL>

<sup>13</sup> Where are senior households that have no internet subscription or computer? Urban Observatory Maps, available at <https://urbanobservatory.maps.arcgis.com/apps/mapviewer/index.html?webmap=073ec89c20f84cd896fa8d3bac31d356> (last visited Sept. 3, 2021) (showing a great number of seniors don’t have access to internet or a computer at all and won’t be able to access e-servicing through the court system).

<sup>14</sup> *Id.*



During the COVID pandemic, legal aid programs significantly increased the role of technology in our own service provision. At the same time, we made significant accommodations to meet the needs of those clients with limited or no access or ability to use that technology, as reflected in the attached Exhibit G.

Court access ought to be equitable, as the right to that access is protected by the Florida Constitution,<sup>15</sup> but that goal may be limited depending on levels of technological advancement and knowledge. At a minimum, FCLAA strongly suggests these issues be studied and the differences in technological progress between different communities be considered before changing the rule. The United Way of Florida, a statewide association representing Florida's 28 United Ways, share this concern about limited access, as reflected in Exhibit H.

The FCLAA recognizes that the rule allows a litigant to bring these issues to the attention of the court to opt out of the email service requirement. Yet it asks those with the most barriers to accessing these systems to face another barrier as the rule *requires*

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<sup>15</sup> FLA. CONST., art. I, § 21.

*that pro se litigant file a motion seeking to do so.* Litigants will need additional support to know how to file a such a Motion as the rule, as written, does not provide a form or process.

### **The Proposed Amendment Has Increased Security and Privacy Risks**

The rule change may also result in an increased security and privacy risk resulting from the rule change. It is unclear what the ramifications of sending court notices, and potentially even important documents, through the internet will be. Cybersecurity is still a relatively new field, and the investigative process of prosecuting hacking or otherwise stealing secure information is still developing. Even lawyers fall victims to fraud and email scams.<sup>16</sup> A pro se litigant will be more likely to become a victim of such a scam, when they are going to be specifically looking for emails that look like official court documents.

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<sup>16</sup> *SCAM ALERT: FAKE EMAILS PURPORT TO BE FROM THE BAR'S LAWYER REGULATION STAFF*, THE FLORIDA BAR (July 26, 2021), available at <https://www.floridabar.org/the-florida-bar-news/scam-alert-fake-emails-purport-to-be-from-the-bars-lawyer-regulation-staff-2/>.

This risk represents an important difference from the risks of mail theft under the current system, which has an already established investigative process and enforcement procedures. A sort of two-factor authentication system may help make documents more secure but would also convolute the process further. The American Bar Association is skeptical. In their August 2020 Resolution, they stated that sharing documents through secondary platforms like Dropbox or court specific portals “adds a layer of technological complexity” and fails to “address access for the visually impaired or the public.”<sup>17</sup> They suggest, as does this comment, to give participants in the legal system “options regarding how to receive documents” and allow them “to select the options that work best for them.”<sup>18</sup>

The purpose of this comment is to highlight potential issues with implementing the proposed changes without further research and optionality. Court access needs to be easily accessible and widely

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<sup>17</sup> See American Bar Association, Proposed Resolution and Report No. 117 (adopted August 2020), *available* at [https://www.americanbar.org/news/reporter\\_resources/annual-meeting-2020/house-of-delegates-resolutions/117/](https://www.americanbar.org/news/reporter_resources/annual-meeting-2020/house-of-delegates-resolutions/117/) (last visited Sept. 8, 2021).

<sup>18</sup> *Id.*

understood. Additional prerequisites to court access will serve as a barrier to basic justice. Given that 54% of U.S. adults 16 through 74 years old, which is about 130 million people, cannot read past a 6<sup>th</sup> grade level,<sup>19</sup> the process of accessing court needs to be as simple as possible. Adding an internet and email requirement will make the process more elaborate.

### **Conclusion**

As stated above, the FCLAA respectfully requests these issues be studied, *from the vantage point of the majority of the users of the system*—self-represented litigants—before this rule is adopted. The Amendment to the above-listed rules should not stand as drafted.

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<sup>19</sup> Michael T. Nietzel, *Low Literacy Levels Among U.S. Adults Could Be Costing The Economy \$2.2 Trillion A Year*, Forbes (Sep, 9, 2020), available at <https://www.forbes.com/sites/michaelnietzel/2020/09/09/low-literacy-levels-among-us-adults-could-be-costing-the-economy-22-trillion-a-year/?sh=3d1c77c54c90>

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing notice was filed with the Clerk of Court on September 30, 2021, via the Florida Courts E-Filing Portal, which will serve a notice of electronic filing to all counsel of record.

/s/Monica Viques-Pitan