

## **MEMORANDUM**

To: Florida Courts E-Filing Authority Board

From: Lynn Hoshihara and Tom Hall

Date: 4/15/2020

Re: Comments to Proposed Rule Changes

The Rules of Judicial Administration Committee (RJAC) of The Florida Bar and the Criminal Rules Committee (CRC) of The Florida Bar submitted a joint out-of-cycle report recommending changes with regard to electronic filing and other matters aimed at getting to the Florida Supreme Court's goal – announced in 2013 - to have the court system in Florida fully electronic. Many of these changes directly reference both the Board and the Florida Courts E-filing Portal. We discussed these changes briefly at the last meeting of the Board.

The Florida Supreme Court has published these proposed rules and asked for interested parties to file comments. Comments are due by April 30, 2020. We believe, as was discussed at the last Board meeting, that the Authority should file comments to some of the proposed rules.

This memorandum explains the proposed rules changes in greater detail and outlines some suggestions for comments. We recommend that the Board, on behalf of the Authority, approve these in concept and delegate to Chair Tim Smith the authority to approve the final comments before submission to the Court.

Attached to this memorandum is a copy of the proposed rule change petition and the summary chart of the changes also submitted by the committees to the court. The summary chart provides an excellent quick reference for what is being proposed but does not contain much detail.

## **PROPOSED RULE CHANGES AND COMMENTS**

Set forth below is a listing of all the proposed rules by number (with the title), which relate to the E-Filing Portal, and our suggestions about how the Board should respond.

### Rule 2.511 - FLORIDA COURTS E-FILING PORTAL

**COMMENT:** This is the major change related to the Portal and the Board. The Board should support this change and file a comment to that effect. We also recommend that the Board comment negatively on one specific sentence in the Petition (not actually part of the rule) that is contrary to the law but that reiterates a commonly held misconception about the relationship between the Authority and the Florida Court Technology Commission (FCTC), namely that the Authority reports to the FCTC. When the RJAC and CAC published the proposed rules for comment there was one comment filed that specifically asked the two committees to amend the proposal and make clear that the Authority reported to FCTC. That comment was rejected, but unfortunately Bar staff in drafting the petition included similar language in the explanation of the proposed changes. The Authority, in its comment, should make it clear the FCTC has no control over the Authority other than the FCTC, as authorized by the Florida Supreme Court, can establish technical standards for the Portal and the Authority is required to ensure that the Portal complies with those standards. We would not want the Court to pick up on that language and add it to the rule.

The proposed rule is brand new and is not replacing anything. It is long.

### RULE 2.511. FLORIDA COURTS E-FILING PORTAL

#### **The Rule, subdivision (a)**

(a) Electronic Filing Portal. The Florida Courts E-Filing Portal (“portal”), accessible on the Internet at <http://myflcourtaccess.com>, is the central electronic court filing facility that accepts court documents for filing in Florida courts, transmits them to the clerks, and can effect automated service via e-mail upon all registered lawyers and parties associated with a case. Use of the portal is required for filing by all participants in all Florida courts except:

- (1) when an order of the Chief Justice of the Florida Supreme Court designates a different facility for e-filing in a particular court, that facility must be used instead of the portal and the published requirements of that facility control over the contents of this rule; or
- (2) when rule 2.525(c) permits a person to submit a document in paper form for filing, the person may submit the document under that rule unless the person has elected to participate in the case electronically under rule 2.525(d).

**The Rule, subdivision (b)**

Credentials for Access to Portal. To use the portal, a person must become a “registered user” and obtain login credentials by registering with the portal according to its instructions. The following conditions apply:

(1) Information provided to obtain credentials must accurately identify the registered user by name, law firm or institution, if any, Florida Bar number, if applicable, and address, telephone number, and e-mail address at which the account holder will receive notices and service copies of documents.

(2) Access to nonpublic pages of the portal is permitted only if:

(A) a registered user obtains entry with the login credentials issued to the user;

(B) a person uses a registered user’s login credentials to obtain entry at the direction of the registered user; or

(C) otherwise expressly permitted by the Portal Authority.

(3) The registered user is responsible for protecting the security of the user’s login credentials. The registered user is a filer, and under rule 2.515 a signer, of any document submitted using the account’s credentials. Any act done using the credentials is the personal act of the credential holder for all purposes.

**The Rule, Subdivision (c)**

The Florida Courts E-Filing Authority created by an interlocal agreement between each of the trial court clerks of court and the clerk of supreme court operates the portal. The authority must cause the portal to perform the functions required by these rules. The authority may also make operational decisions that facilitate those functions, subject to applicable statutes, rules, administrative orders of the Florida Supreme Court, and the technical standards approved by the Florida Courts Technology Commission or the supreme court. The authority must give 45 days’ advance notice to the chair of the Florida Courts Technology Commission before implementing any change to the portal’s function or operation. The authority is authorized to publish instructions and instructional materials consistent with the portal’s functions. The authority is also authorized to enter into contracts for additional services with individuals and institutions, including without limitation exposure of Application Program Interfaces, Web Services, and batch filing.

**RULE 2.516. SERVICE**

There is only one part of this that involves the Portal, subdivision (b)(1).

That provides:

(b)(1) Portal Service. Service of a document filed through the Florida Courts E-Filing Portal (“Portal”) must be made by using the Portal’s E-service function

unless the parties have agreed on a different method. The filer must ensure the completeness and accuracy of the portal's list of designated recipients with e-mail addresses ("service list") for the case. The portal will transmit a copy of the document to each address on the service list, including the filer, either by e-mail attaching the document or containing a link to it, or by any other method established by agreement between the portal and the recipient. Service on each listed recipient is complete upon filing, but if the filer learns that the document did not reach a person to be served, individual e-mail service must immediately be made.

**COMMENT:** We believe it would be appropriate to file something supporting this and say that the Portal has been being used for this purpose for a number of years and the Authority is unaware of any problems that have occurred. It will create a standardized method of operation and will relieve litigants from having to also do service through other means.

## RULE 2.520. DOCUMENTS

Subdivision (b) of this provides:

(b) Electronic Documents. Electronic documents submitted for filing must be in PDF format and not be a scanned, printed document. Documents must also be text searchable and otherwise comply with the Florida Supreme Court Standards for Electronic Access to the Courts.

**COMMENT:** The Authority should support this change. Requiring electronically converted documents, not scans of printed documents will greatly reduce the amount of storage capacity required both for the Portal and individual clerks' offices. It will also assist judges because documents converted from their native format to PDF electronically will open much faster than a scanned document and allow judges to make better use of the documents in court. Making this change is a major step in moving forward to electronic courts