Supreme Court of Florida

No. AOSC07-22

IN RE: ELECTRONIC TRANSMISSION AND FILING OF DOCUMENTS UNDER FLORIDA RULE OF JUDICIAL ADMINISTRATION 2.525 FOR ORANGE COUNTY

ADMINISTRATIVE ORDER

Pursuant to rule 2.525, Florida Rules of Judicial Administration, "[a]ny court or clerk of court may accept electronic transmission of documents for filing after the clerk, with input from the chief judge of the circuit, has obtained approval of the procedures and program for doing so from the Supreme Court of Florida."

Pursuant to Supreme Court Administrative Order AOSC05-2, the Orange County Clerk's Office was approved to accept the electronic transmission of documents for filing in Complex Business Litigation Division cases, with follow-up filings in paper form, as required by the Rules of Judicial Administration.

The Orange County Clerk of Court has submitted a request to discontinue the follow-up filing requirements in Complex Business Litigation Division cases. The Electronic Filing Committee of the Florida Court Technology Commission pursuant to the procedure established by the Supreme Court has reviewed the

request and recommended that the Supreme Court of Florida approve the request from Orange County. The Florida Courts Technology Commission concurred with the recommendation of the Electronic Filing Committee.

This approval was recommended subject to compliance with the following: 1) adherence to the privacy requirements as outlined in Administrative Order AOSC04-4; 2) ensuring that procedures for data backup requirements are met; and, 3) the specific cautionary language as set forth in Chief Justice R. Fred Lewis' letter of July 13, 2006, regarding future technology advancements and requirements.

Accordingly, the Orange County Clerk of Court's request is hereby approved subject to the following terms and conditions:

a. The Orange County Clerk of Court has been authorized to accept electronic filings in accordance with the approved plan; see AOSC05-2 dated February 2, 2005. No fees other than statutorily required fees can be assessed or collected by the Clerk or vendor for filing court documents electronically.

b. The Orange County Clerk of Court shall continue to accept paper filings at no charge, other than statutorily required fees.

c. The Orange County Clerk of Court shall ensure that there is no possibility for vendors to release or distribute court data to third

parties and that the Clerk of Court retains the designation as custodian of the court records.

d. The Orange County Clerk of Court shall ensure that contract provisions prohibit any vendor from extracting, or data mining (or any similar activities) any information from original court filings and other court records or any associated databases containing court records in the circuit for commercial or other non-court related uses.

e. The Orange County Clerk of Court has successfully completed the test period required by rule 2.525(c)(2)(A), Rules of Judicial Administration, and is hereby authorized to discontinue follow-up paper filings for Complex Business Litigation Division cases in the Orange County Court and the Ninth Judicial Circuit Court in and for Orange County, Florida, effective by date of this Administrative Order.

f. The Orange County Clerk of Court shall perform, at a minimum, daily backups of all electronically submitted, or maintained, court filings to ensure the availability and integrity of the court record.

g. The Orange County Clerk of Court shall ensure that remote data backups will be stored in a protected environment a minimum of 50 miles from the primary production location of the court record, and

that the Orange County Clerk of Court will comply with established data backup standards as they are revised and updated.

h. The Orange County Clerk of Court shall abide by Administrative Order AOSC04-4, Committee on Privacy and Court Records, a copy of which is attached hereto.

i. The Supreme Court expects to approve a state wide e-filing "portal" to ensure equal access to electronic filing across the state and has directed that the Florida Courts Technology Commission make implementation of such a system a priority of the judicial branch. All local electronic filing systems must be compatible with any state wide electronic filing portal and approval of Orange County's request is contingent on its system being compatible with the state wide portal as later approved.

j. At the present time, the Court is considering enhancements to current electronic filing practices throughout the State. There is a possibility that these enhancements may include the development and application of new business practices and technology standardization. Because these enhancements may occur in the near future, it will be the responsibility of the Clerk to ensure that this system, as proposed, will

also be made compliant with these new technological enhancements. A copy of Chief Justice Lewis' letter dated July 13, 2006, is attached.

k. This approval does not constitute an approval of any electronic forms that may be used in this process.

DONE AND ORDERED at Tallahassee, Florida, on April 23, 2007.

Chief Justice R. Fred Lewis

ATTEST:

Thomas D. Hall, Clerk of Court

Supreme Court of Florida

No. AOSC04-4

IN RE: COMMITTEE ON PRIVACY AND COURT RECORDS

AMENDED
ADMINISTRATIVE ORDER

Administrative Order AOSC03-49 issued on November 25, 2003, is hereby withdrawn and this order is substituted in it place, nunc pro tunc to November 25, 2003.[1]

In recent years, government agencies across the nation have increasingly faced concerns over an unexpected byproduct of the Information Age—the broad release of sensitive or confidential information through electronic media. Responding to these concerns, this Court directed the Judicial Management Council of Florida to study the issue as it affects Florida courts and information contained in court records.

Subsequently, the Council produced and submitted a report to the Court "Report and Recommendations of the Judicial Management Council of Florida on

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[1]Apart from stylistic changes, the most significant areas affected by this amendment concern the effective date for compliance and exception (d) of the limited moratorium.

recognized that emerging technologies hold great promise for advances in the efficiency, effectiveness, and the openness of the courts. However, it concluded that current regulation of access to court information is minimal, and may be inadequate in some instances to protect the privacy interests of the public and those directly or indirectly involved in court proceedings, while assuring continuing public access. The report concluded that the Supreme Court should take steps to keep confidential and sensitive information secure from inappropriate disclosure, while continuing to assure public access to court information, through the implementation of a carefully considered and uniform scheme of regulation.

The Council recommended that a select committee be charged with the development of comprehensive policies and a scheme to be adopted by the Court to guide and provide electronic access to court records in the future. The Council also recommended that until such policies can be developed and implemented all court records should not be generally available electronically. The Council recognized that policy development and implementation in this area must allow sufficient time for all concerned to carefully address the complexities of any confidentiality requirements currently imposed by statutes and court rules, as well as the current absence of statewide regulation and uniformity in policies and rules governing the electronic access to court records.

In our opinion, *In Re Report and Recommendations of the Judicial Management Council of Florida on Privacy and Electronic Access to Court Records*, 832 So. 2d 712 (Fla. 2002), this Court indicated substantial agreement with the recommendations of the Judicial Management Council, but deferred action on the Council's recommendations pending completion of work by the Study Committee on Public Records created by the Legislature. During the 2002 session the Legislature created the Study Committee on Public Records and charged it with studying similar issues of privacy in the electronic release of court records as well as other public records. The Study Committee completed its work and issued its report in February of 2003.

The recommendations of the Study Committee on Public Records are largely consistent with the recommendations of the Judicial Management Council, in that each call for development of comprehensive statewide policies on access, and a limited moratorium until these policies are in place. The Study Committee joined the Judicial Management Council in recommending this Court adopt explicit policy and rules that set forth appropriate procedures regulating electronic access to information contained in court records. The Study Committee also urged that, until such time as the electronic access to such information could be properly regulated, some temporary restrictions on electronic access to court records be

imposed, whether the access is via internet, bulk electronic release, or other means.

To effectuate these recommendations, the Chief Justice directed the Judicial Management Council Ad Hoc Workgroup on electronic access to court records to provide specific guidance to him on the formation and charge to the recommended policy committee, and on the reach and scope of any interim moratorium. Subsequently, the Ad Hoc Workgroup drafted a proposal, which it circulated to interested parties with a request for public comment. Comments were received from some fifteen different parties, and the Ad Hoc Workgroup considered those comments before finalizing its recommendations to the Chief Justice. Based on the pending recommendations of the Ad Hoc Workgroup, the Court and the Chief Justice have determined that the Chief Justice should establish a Committee on Privacy and Court Records.

The Committee on Privacy and Court Records is now created by this Order, and the Committee is directed to undertake the following tasks:

1. Study, determine and recommend to the Florida Supreme Court comprehensive policies and rules governing electronic access to court records and information contained therein. The Committee should recommend a plan that includes, at a minimum: rules of court that

identify requirements that must be met as a condition of authorization to release court records electronically; a process under court rules through which a clerk of court may request and gain approval to electronically release court records; categories of court records that may or may not be authorized for electronic release; and procedures for ensuring that any electronic access system comply with other applicable laws, court rules and court orders.

2. Study, determine and recommend to the Court appropriate strategies to reduce the amount of personal and sensitive information that may unnecessarily become a part of a court record. In this regard, the Committee should examine existing court rules and practices, including but not limited to rules such as Family Law Rule of Procedure 12.285, that may currently result in the unnecessary inclusion of personal and sensitive information in court records; develop and recommend strategies to educate lawyers, judges, and the public, regarding the privacy implications of inclusion of personal and sensitive information in court records and official records; and develop policies regarding public education on public access to court records.

3. Study and develop recommendations to the Court regarding categories of information that may be routinely included in court records that should be submitted to the Florida Legislature for consideration as possible legal exemptions from the right of access as provided in section 24 of Article I of the Florida Constitution.

Limited Moratorium

In order to address the concerns for some limited moratorium on access while these important issues are being addressed, it is further ordered that, effective immediately and until further order of this Court, no court record as defined by Rule of Judicial Administration 2.051(b)(1)(a) shall be released in any electronic form[2] by any Florida clerk of court except as further provided herein.

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[2]For purposes of this Administrative Order, "electronic form" is defined by Section 3.40 of the Guidelines for Public Access to Court Records developed by the Conference of Chief Justices and the Conference of State Court Administrators. A document transmitted via traditional fax, received on paper and not captured as a digital file, is not contemplated to be within the meaning of "electronic form." Section 3.40 provides:

> Section 3.40 – Definition Of In Electronic Form.
> Information in a court record "in electronic form" includes information that exists as:
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> (a) electronic representations of text or graphic documents;
> (b) an electronic image, including a video image, of a document, exhibit or other thing;
> (c) data in the fields or files of an electronic database; or

The following court records are excepted from this restriction and may be provided in electronic form as provided herein, except as otherwise controlled by express statutory or rule restrictions:

a. a court record which has become an "official record" as defined by Florida law;

b. a court record in a case may be transmitted to a party or an attorney of record in that case;

c. a court record may be transmitted to a governmental agency or agent authorized by law, court rule, or court order to have access to that record;

d. a court record which has been solitarily and individually requested may be provided to the requestor via electronic mail, provided it has been manually inspected by the clerk of court or deputy clerk of court and no information which is confidential or exempt is released;[3]

(d) an audio or video recording, analog or digital, of an event or notes in an electronic file from which a transcript of an event can be prepared.

[3]This provision permits a clerk of court to respond via electronic mail to an individual and specific request for a record and is designed to facilitate access to a document by persons interested in specific litigation. Because this provision requires that each document be manually inspected by a qualified person employed by the clerk of court to assure that no information which is confidential

e. a court record in a case which the chief judge of the jurisdiction has designated to be of significant public interest, provided it has been manually inspected by the clerk of court or deputy clerk of court and no information which is confidential or exempt is released;

f. progress dockets limited to: case numbers and case type identification; party names, addresses and dates of birth; names and addresses of counsel; lists or indices of any judgments, orders, pleadings, motions, notices or other documents in the court file; court events, clerk actions and case dispositions, provided no confidential or exempt information is released;

g. schedules and court calendars;

h. court records regarding traffic cases;

i. appellate court briefs, orders and opinions; and

j. court records which have been inspected by the clerk of court or deputy clerk of court may be viewed via a public view terminal within

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or exempt is released, the use of automated programs in lieu of manual inspection is not permitted. The exception does not permit electronic transmittal of documents requested in large quantity, or permit the requested record to be supplied to anyone other than the requestor.

an office of a clerk of court, provided no confidential or exempt information may be viewed.

Any existing internet or dial-up access systems, including existing subscription access agreements, must be in compliance with the terms of this Administrative Order as soon as practicable, or in any event by March 1, 2004. Nothing in this Administrative Order shall affect statutory restrictions on the placement of certain court records on a publicly available internet website or the status of any information that is otherwise made confidential or exempt from the right of access by a separate provision of Florida law or rule of court.

The following individuals are appointed to serve on the Committee until the work of the Committee is completed and they are discharged by the Court:

Mr. Jon Mills, Chair
Professor of Law and Director, Center for Governmental Responsibility
University of Florida Levin College of Law
Box 117625
Gainesville, Florida 32611

Ms. Kristin Adamson
Novey, Mendelson, and Adamson
851 East Park Avenue
Tallahassee, Florida 32301

Mr. Andrew Z. Adkins
Director, Legal Technology Institute
University of Florida Levin College of Law
P.O. Box 117644
Gainesville, Florida 32611-7644

The Honorable Edward H. Fine
Chief Judge, Fifteenth Judicial Circuit
Palm Beach County Courthouse
Room 52500
205 North Dixie Highway
West Palm Beach, Florida 33401

Mr. A. Michael Froomkin
Professor of Law
University of Miami School of Law
1311 Miller Drive
Coral Gables, Florida 33146

The Honorable Lydia Gardner
Clerk of the Court, Orange County
425 North Orange Avenue
P.O. Box 4994
Orlando, Florida 32801

The Honorable Jacqueline R. Griffin
Judge, Fifth District Court of Appeal
300 South Beach Street
Daytona Beach, Florida 32014

Mr. Thomas D. Hall
Clerk of Court, Florida Supreme Court
500 South Duval Street
Tallahassee, Florida 32399

Mr. Jon Kaney, Jr.
Cobb & Cole
150 Magnolia Avenue
Daytona Beach, Florida 32114

The Honorable Judith L. Kreeger
Judge, Eleventh Judicial Circuit
175 NW 1st Avenue
Miami, Florida 33189

The Honorable Barbara T. Scott
Clerk of the Court, Charlotte County
350 East Marion Avenue
P.O. Box 511687
Punta Gorda, Florida 33951-1687

The Honorable Kim A. Skievaski
Chief Judge, First Judicial Circuit
M.C. Blanchard Building
190 Governmental Center, Fifth Floor
Pensacola, Florida 32501

The Honorable Elijah Smiley
Judge, Bay County
Bay County Courthouse
P.O. Box 2269
Panama City, Florida 32402

Mr. Walt Smith
Court Administrator, Twelfth Judicial Circuit
P.O. Box 48297
Sarasota, Florida 34230

The Honorable Larry Turner
Judge, Eighth Judicial Circuit
Alachua County Courthouse, Room 415
201 East University Avenue
Gainesville, Florida 32601

Justice R. Fred Lewis will serve as the Supreme Court's liaison to the committee. Staff support will be provided by the Office of the State Courts Administrator.

The work of the Committee should be completed as expeditiously as possible in keeping with the importance of its mission, but in no event shall the report of the Committee be submitted later than July 1, 2005.

DONE AND ORDERED at Tallahassee, Florida, on February 12, 2004.

Chief Justice Harry Lee Anstead

ATTEST:

Thomas D. Hall, Clerk

Supreme Court of Florida

500 South Duval Street
Tallahassee, Florida 32399-1925

R. FRED LEWIS
CHIEF JUSTICE
CHARLES T. WELLS
HARRY LEE ANSTEAD
BARBARA J. PARIENTE
PEGGY A. QUINCE
RAOUL G. CANTERO, III
KENNETH B. BELL
JUSTICES

July 13, 2006

THOMAS D. HALL
CLERK OF COURT

The Honorable Manuel Menendez, Jr.
Chief Judge, Thirteenth Judicial Circuit
800 E. Twiggs Street, Room 602
Tampa, Florida 33602

Dear Chief Judge Menendez:

Your letter to Justice Pariente, dated April 12, 2006, concerning the Electronic Filing Committee's review of Pasco County's e-filing request has been presented to me for response. I am in agreement with your assessment that there is much concern about the need to ensure safety and adequate protection of the court record, in addition to establishing appropriate policy to ensure uniformity of digital signatures, paper document scanning, notification of service and case management standards compatibility.

We understand the Committee desires an extension of time to perform comprehensive reviews of the current submissions from Pasco and Manatee County and other approved electronic filing systems in operation. Because of this need, we expect the Committee to continue its work with this review and hereby provide an extension of time for all necessary policy recommendations regarding electronic delivery of filing submissions. We hope the six month period indicated in your request will afford the time needed to prepare your recommendations.

As to your request of a short delay to enhance technology standards, the Court is aware of the increasing momentum in support of electronic filing submissions.

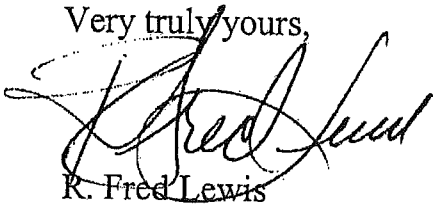
Because of this, we expect electronic filing system requests will increase and believe we should accommodate the review of new technological standards without delay.

Therefore, to help reduce any further delay of progress, we are directing the Electronic Filing Committee to continue to review any plans submitted with consideration of future technology advancements. During this review period, in response to those requests received by the Court, the following cautionary language must be included in any new approvals:

> "At the present time, the Court is considering enhancements to current electronic filing practices throughout the State. There is a possibility that these enhancements may include the development and application of new business practices and technology standardization. Because these enhancements may occur in the near future, it will be the responsibility of the clerk to ensure that this system, as proposed, will also be made compliant with these new technological enhancements."

Thank you for your continued leadership and guidance in addressing the Court's concerns involving the electronic court records issues in the State. With kind personal regards, I am

Very truly yours,



R. Fred Lewis

RFL/mfg

cc: Elisabeth H. Goodner
Chief Judge Charles Francis
John Cook