

Service by E-Mail and E-Filing

An update on Service by E-Mail and
E-Filing in Florida Courts, including
2012 Rule Changes

Why do you care?

Mandatory Rules

Opinions Issued
by
Florida Supreme Court
on
June 21, 2012

Service by E-Mail: [SC10-2101](#)

E-Filing: [SC11-399](#)

Effective Dates

Service by E-Mail:

- **Mandatory** as of September 1, 2012* for:
 - Trial court divisions:
 - Civil
 - Probate
 - Small Claims
 - Family
 - Appellate cases**

* The effective date announced by the court was July 1, 2012 in its opinion issued on June 21, 2012. A corrected opinion later changed July 1, 2012 to September 1, 2012 throughout the opinion.

** References to “appellate” includes the Supreme Court and the District Courts of Appeal, as well as the Circuit Court when sitting as an appellate court.

Effective Dates

Service by E-Mail:

- **Mandatory*** on October 1, 2013 for:
 - Trial court divisions
 - Criminal
 - Traffic
 - Juvenile

* Attorneys may voluntarily serve and receive documents by e-mail in these divisions for 13 months, from September 1, 2012 to October 1, 2013 if both attorneys agree.

Effective Dates

E-Filing:

- Except as provided by administrative order,* **mandatory** as of October 1, 2012 for:
 - Supreme Court
 - District Court of Appeal
- **Mandatory**** as of January 1, 2013
 - Clerks electronically transmit record on appeal

* An administrative order will likely be issued extending the date for mandatory e-filing in the Supreme Court and the District Courts of Appeal.

** This requirement is for the appellate clerks, not for counsel. Clerks are encouraged to transmit record electronically before January 1, 2013.

Effective Dates

E-Filing:

- **Mandatory** as of April 1, 2013 for:
 - Trial court divisions:
 - Civil
 - Probate
 - Small Claims
 - Family
 - Appeals to Circuit Courts for these types of cases

Effective Dates

E-Filing:

- **Mandatory** as of October 1, 2013 for:
 - Trial court divisions:
 - Criminal
 - Traffic
 - Juvenile*
 - Appeals to Circuit Courts for these types of cases

* Juvenile includes juvenile delinquency proceedings, dependency and termination of parental rights proceedings, and proceedings for families and children in need of services.

Effective Dates

Summary of **Mandatory** Dates

- September 1, 2012: **Service by e-mail** for non-criminal trial court and appellate cases
- October 1, 2012: **E-filing** for Supreme Court and District Court of Appeal (unless deferred by Administrative Order)
- January 1, 2013: Clerks must transmit record electronically
- April 1, 2013: **E-filing** for non-criminal trial court and non-criminal appeals to circuit court
- October 1, 2013: **Service by e-mail** for criminal trial court
- October 1, 2013: **E-filing** for criminal trial court and criminal appeals to circuit court

Service by E-Mail
versus
E-Filing

Service by E-Mail

The remainder of this presentation will review the requirements for service by e-mail

E-Filing

Stay tuned for additional educational opportunities

Service by E-Mail

New and Changed Rules

SC10-2101

Rules with Significant Changes

- 2.515* Signature of Attorneys and Parties
- 2.516** Service of Pleadings and Papers

Many rules with conforming and minor changes

* Changes to an existing rule

** New rule

Signature of Attorneys and Parties

Rule 2.515

An Overview

- Before these changes, all pleadings and other papers filed by a party represented by counsel required a signature of at least one attorney of record.
 - The rule also required the attorney's:
 - individual name
 - address
 - telephone number, including area code and
 - Florida Bar number
- Those requirements continue and the rule now also requires:
 - primary e-mail address and secondary e-mail addresses, if any,
- The rule now clarifies the address to be provided is to be the address on record with The Florida Bar. The addition of “current record Florida Bar” only modifies “address,” not the other required information.

Signature of Attorneys and Parties

Rule 2.515

The Rule Changes

(a) Attorney Signature. Every pleading and other paper of a party represented by an attorney shall be signed by at least 1 attorney of record in that attorney's individual name whose current record Florida Bar address, telephone number, including area code, primary e-mail address and secondary e-mail addresses, if any, and Florida Bar number shall be stated, and who shall be duly licensed to practice law in Florida or who shall have received permission to appear in the particular case as provided in rule 2.510. The attorney may be required by the court to give the address of, and to vouch for the attorney's authority to represent, the party. Except when otherwise specifically provided by an applicable rule or statute, pleadings need not be verified or accompanied by affidavit. The signature of an attorney shall constitute a certificate by the attorney that the attorney has read the pleading or other paper; that to the best of the attorney's knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. If a pleading is not signed or is signed with intent to defeat the purpose of this rule, it may be stricken and the action may proceed as though the pleading or other paper had not been served.

Signature of Attorneys and Parties

Rule 2.515

Considerations Regarding E-Mail Addresses

Primary and Secondary E-Mail Addresses

- Primary e-mail address:
 - Primary e-mail address of attorney under Rule 2.515 need not be same as the business e-mail address as part of official record*
 - Best practice will be to provide the attorney's official bar e-mail address as the primary Rule 2.515 e-mail address
- Secondary e-mail address(es):
 - Not required
 - Can vary from one case to another
 - Possible uses include:
 - Standardized address for law firm
 - Legal assistants, paralegals, Residents At Law, associates
 - Clients
- If more than one attorney appears in a proceeding, the rules regarding e-mail addresses described above apply to each attorney

* A business e-mail address is required to be provided as part of official bar record if the member has one.
Rule 1-3.3 of Rules Regulating The Florida Bar

Signature of Attorneys and Parties

Rule 2.515

Considerations Regarding Signatures

Format of the signature of the attorney

- Traditional format
 - Print a hard copy, sign with a pen and scan the signed document
- New formats
 - /s/
 - Type “/s/” followed by the attorney’s name, in place of the actual signature
 - Example: /s/ Laird A. Lile
 - Electronic version can be created without the need to print a hard copy
 - Referred to in Rule 2.516(b)(1)(E)(ii), authorized for document served by e-mail
 - s/ and /s alternatives
 - s/ was adopted for electronic signatures in Administrative Order 09-30
 - /s is referred to by Office of State Court Administrator as preferred format
- Practically, any of these formats should be sufficient

Service of Pleadings and Documents

Rule 2.516

An Overview

New Rule, modeled on former Rule of Civil Procedure 1.080

Structure

- (a) Service; When Required
- (b) Service; How Made
 - (1) Service by Electronic Mail (“e-mail”)
 - (A) Service on Attorneys
 - (B) Exception to E-mail Service on Attorneys
 - (C) Service on and by Parties Not Represented by an Attorney
 - (D) Time of Service
 - (E) Format of E-mail for Service
 - (2) Service by Other Means
- (c) Service; Numerous Defendants
- (d) Filing
- (e) Filing Defined
- (f) Certificate of Service
- (g) Service by Clerk
- (h) Service of Orders

Service of Pleadings and Documents

Rule 2.516

(a) Service; When Required

- Service* required in accordance with this new rule nearly all of the time
- Limited Exceptions:
 - Unless the court otherwise orders (same as in former Rule 1.080)
 - Unless a statute or supreme court administrative order specifies a different means of service
 - Not required for applications for witness subpoenas (same as in former Rule 1.080)
 - Not required for documents served by formal notice or required to be served in the manner provided for service of formal notice (a concept carried over from special probate rules)
 - No service need be made on parties against whom a default has been entered, except that pleadings asserting new or additional claims against them must be served in the manner provided for service of summons (same as in former Rule 1.080)

* This subsection only requires service, not necessarily e-mail. The manner in which service is made is addressed in subsection(b).

Service of Pleadings and Documents

Rule 2.516

(b) Service; How Made

(b)(1) Service by Electronic Mail (“e-mail”)

- Service to be made upon a party represented by an attorney must be made upon the attorney unless court orders otherwise. (same as in former Rule 1.080)
- Service by e-mail is mandated for all documents required or permitted to be served on another party, unless this rule otherwise provides.
- A document may, in addition to being served by e-mail, be served by another means provided for in this rule.
 - Any different time limits and other provisions applicable to that other means of service control over the time limits established by the service by e-mail.
 - The other means of services must be in addition to, not in place of, service by e-mail.

Service of Pleadings and Documents

Rule 2.516

(b)(1)(A) Service on Attorneys

- An attorney appearing in a proceeding must serve a designation of a primary e-mail address
 - Although not required, the best practice will be to utilize the attorney's official bar e-mail address as the designated primary e-mail address
- An attorney appearing in a proceeding may designate no more than two secondary e-mail addresses
 - These secondary e-mail addresses may vary from matter to matter. See discussion of Rule 2.515(a)

Service of Pleadings and Documents

Rule 2.516

(b)(1)(A) Service on Attorneys

- The rules do not specify any particular format for the designations.
 - In existing matters, the designation could be in a separate filing or incorporated in a filing prior to the relevant effective date
 - In new matters, the designation could be included in the initial filing by the attorney
- Changes in e-mail addresses should be handled in the same manner as changes in mailing addresses have been handled

Service of Pleadings and Documents

Rule 2.516

(b)(1)(A) Service on Attorneys

- All subsequent filings must include the primary and any secondary e-mail addresses of that attorney
- Failing to designate an e-mail address in a filing does not let the attorney avoid service by e-mail
 - Documents may be served on that attorney at the e-mail address on record with The Florida Bar
 - If an attorney in a proceeding fails to make an e-mail address available (i.e., none designated and none in record with The Florida Bar), a telephone call to the attorney with reference to these new rules should suffice. Hopefully court intervention will not be necessary.

Service of Pleadings and Documents

Rule 2.516

(b)(1)(B) Exception to E-Mail Service on Attorneys

- Can an attorney avoid the new mandatory service by e-mail rules?
 - Yes, but only by court order.
- The court may excuse an attorney from service by e-mail rules, if the attorney demonstrates that:
 - The attorney has no e-mail account; and
 - The attorney lacks access to internet at the attorneys office
- If an exception is granted, then the attorney will neither be required to serve by e-mail nor receive service by e-mail
- The other service rules (see 2.516(b)(2)) will then apply.

Service of Pleadings and Documents

Rule 2.516

(b)(1)(B) Exception to E-Mail Service on Attorneys

- For an attorney attempting to avoid the mandatory service by e-mail rules, a motion will be required for each proceeding
- The requirement is in the conjunctive – both parts must be met.
 - An attorney with any e-mail address, even a personal one, will not be permitted to avoid the new rules
 - An attorney with any access to internet at the attorney's office, even if only used sporadically, will not be permitted to avoid the new rules
- The court is permitted, but not required, to excuse the attorney from service by e-mail rules
- Of the 90,000+ members of The Florida Bar, very, very few are expected to qualify to seek this exception

Service of Pleadings and Documents

Rule 2.516

(b)(1)(C) Service on and by Parties Not Represented by Attorneys

- A party not represented by an attorney (“unrepresented party”) may, at the party’s election, participate in service by e-mail
 - Optional, not mandatory
- To participate in service by e-mail, an unrepresented party must serve a designation of a primary e-mail address
 - The designation may include up to two secondary e-mail addresses
- If an unrepresented party does not chose to participate in service by e-mail, then service must be made by means other than e-mail (see subdivision (b)(2))

Service of Pleadings and Documents

Rule 2.516

(b)(1)(D) Time of Service

- Service by e-mail is complete when the e-mail is sent.
 - “Sent” is not specifically defined in the rules.
 - From the sender’s viewpoint, the clicking of “Send” will likely be treated as when the e-mail is “sent.”
 - Depending upon the sender’s computer system, clicking “Send” may or may not cause the e-mail to be transmitted to the internet for delivery to the recipient
 - Some systems include internal e-mail servers that may require internal processing before releasing the e-mail to the internet for delivery to the recipient

Service of Pleadings and Documents

Rule 2.516

(b)(1)(D) Time of Service

- Sometimes the sender of an e-mail is notified* of a issue that has precluded the e-mail from reaching the sender.
- If that occurs, the sender of the e-mail is required to immediately send another copy:
 - by e-mail or
 - by a means other than e-mail as authorized in this rule at subdivision (b)(2)
- Service by e-mail is treated as service by regular mail for purposes of computing time
 - Including for purposes of allowing an additional 5 days**

* Notice might be from the sender's system indicating a delay in delivery or a rejection notice from an internet service provider. The source of the notice is not relevant. If the sender is on notice of a delivery issue, the sender is required to take action.

** Court rules (i.e., Rule 1.090(e) and 5.042(d)) have traditionally allowed an additional 5 days for a party to act after being served by mail. The 5 additional days is, effective October 1, 2012, provided for in Rule 2.514. See SC10-2299

Service of Pleadings and Documents

Rule 2.516

(b)(1)(E) Format of E-Mail for Service

- The document being served must be attached in a “pdf” format.
 - PDF stands for “portable document format”
 - Universally recognized format
 - Originally proprietary format by Adobe Systems
 - Since at least 2001, free readers of PDF documents available from Adobe
 - Free writers now also available on the internet
 - Most word processors now include a print to PDF function
 - Most scanners default to creating a PDF format

Service of Pleadings and Documents

Rule 2.516

(b)(1)(E) Format of E-Mail for Service

- The e-mail by which the document is served must be sent to all addresses designated by the attorney or party
 - A single e-mail to all those being served is expected, instead of separate e-mails to each attorney or party
- The subject line of the e-mail must
 - begin with “SERVICE OF COURT DOCUMENT”
 - All capital letters are required
 - followed by the case number of the proceeding in which the document is being served
 - The format of the case number is not specified in the rule
 - A format utilized in local practice should be sufficient.
 - An alternative is the uniform case number (UCN). This number consists of 20 characters consisting of:
 - 2 digit numeric county designation (i.e., 01, 11, 67)
 - 4 digit numeric year in which case was opened (i.e., 2012)
 - 2 alpha code for court type (i.e., CA, CP, SC)
 - 6 digit sequential number assigned by the clerk
 - 6 characters available for use by clerks for internal management

Service of Pleadings and Documents

Rule 2.516

(b)(1)(E) Format of E-Mail for Service

- The body of the e-mail by which the document is served must identify:
 - The court in which the proceeding is pending
 - The case number
 - The name of the initial party on each side of the case
 - The title of each document served with that e-mail
 - More than one document may be serve in a single e-mail
 - The sender's name and telephone number

Service of Pleadings and Documents

Rule 2.516

(b)(1)(E) Format of E-Mail for Service

- The document being served may be signed using a /s/ format
 - However, the original document filed with the clerk must be signed “in accordance with the applicable rule of procedure.”
- An e-mail and attachment may not exceed 5 megabytes (5 MB)
 - If more than 5 MB is to be served, then attachments must be served by separate e-mails, none of which exceed 5 MB and all of which are numbered sequentially in the subject line
 - If the size is in doubt, the sender could first send the e-mail to the sender’s own e-mail address to determine the size

Service of Pleadings and Documents

Rule 2.516

(b)(1)(E) Format of E-Mail for Service

Summary of Format Requirements


- Each e-mail must be addressed to all e-mail addresses
- Only attach PDFs
- Subject line: SERVICE OF COURT DOCUMENT – followed by case number
- Body: court; case number; the name of the initial party on each side; title of each attached document; sender's name and telephone number.
- 5 MB Limit

Service of Pleadings and Documents

Rule 2.516

(b)(1)(E) Format of E-Mail for Service

Example

- To: GAYoung@CarltonFields.com; EKPetttis@haliczperpettis.com
- Attachment:  PDF icon showing the Adobe logo.
- Subject: SERVICE OF COURT DOCUMENT 112012CA000070xxxxxx
- Body: Hi, Gwynne and Gene. Attached is the Defendant's Motion to Dismiss that I have filed in Coleman v. Cohen, 112012CA000070xxxxxx in Circuit Court. You can reach me at my office number 239.649.7778.
Laird A. Lile

Service of Pleadings and Documents

Rule 2.516

(b)(2) Service by Other Means

- In addition to serving by e-mail, a document may also be served by other means
- Substance is from former Rule 1.080
- Service by other means will be utilized in two situations:
 - (i) When service by e-mail is not allowed:
 - Parties not represented by an attorney who have not designated an e-mail address
 - An attorney who has obtained an order exempting from service by e-mail
 - (ii) As an additional means of service

Service of Pleadings and Documents

Rule 2.516

Practical Considerations of Service by E-Mail

- Is the attorney who is serving the document required to personally send the e-mail by which service is effected?
 - Although not addressed in the rule, the answer should be no different than the answer to the question of whether the attorney must hand a document served by U.S. mail to the postperson

Service of Pleadings and Documents

Rule 2.516

(b)(2) Service by Other Means

- Service by one of these other means in addition to service by e-mail might be beneficial to:
 - Shorten a response period
 - For instance, service by hand of a document that commences a period within which a response is required will shorten the response period by 5 days
 - Eliminate dispute over receipt of the document by the intended recipient
 - An attorney may wish to also mail a document to an attorney who demonstrates a pattern of asserting documents served by e-mail are not received

Service of Pleadings and Documents

Rule 2.516

(c), (d), (e), (f), (g) and (h)

Subdivisions:

- (c) Service; Numerous Defendants
- (d) Filing.
- (e) Filing Defined

are unchanged from former Rule 1.080

- Subdivision (f) is similar to former Rule 1.080 and adds a reference to e-mail in the form Certificate of Service
- Subdivisions (g) and (h) allow clerks and judges, respectively, to serve by any method, including e-mail
 - Service by e-mail is permitted, but not required

Other Rules Changed

Service by E-Mail

Conforming changes and changes to cross-references

- Rule 1.080
- Rule 1.170
- Rule 1.351
- Rule 1.410
- Rule 1.440
- Rule 1.442
- Rule 1.510
- Rule 1.630
- Rule 3.030
- Rule 3.070
- Rule 3.852
- Rule 5.030
- Rule 5.040
- Rule 5.041
- Rule 5.060
- Rule 5.120
- Rule 5.200
- Rule 5.340
- Rule 5.342
- Rule 5.350
- Rule 5.355
- Rule 5.360
- Rule 5.370
- Rule 5.380
- Rule 5.385
- Rule 5.386
- Rule 5.400
- Rule 5.401
- Rule 5.402
- Rule 5.403
- Rule 5.405
- Rule 5.406
- Rule 5.407
- Rule 5.430
- Rule 5.440
- Rule 5.460
- Rule 5.470
- Rule 5.475
- Rule 5.496
- Rule 5.498
- Rule 5.499
- Rule 5.510
- Rule 5.530
- Rule 5.620
- Rule 5.630
- Rule 5.650
- Rule 5.670
- Rule 5.680
- Rule 5.690
- Rule 5.695
- Rule 5.696
- Rule 5.700
- Rule 6.370
- Rule 7.080
- Rule 7.050
- Rule 8.085
- Rule 8.225
- Rule 8.635
- Rule 9.420
- Rule 12.040
- Rule 12.080
- Rule 12.090
- Rule 12.170
- Rule 12.285
- Rule 12.351
- Rule 12.410
- Rule 12.440
- Rule 12.510
- Rule 12.611
- Rule 12.615
- Rule 12.630

E-Filing

New and Changed Rules

SC11-399

Rules with Significant Changes

- 2.520 Documents
- 2.525 Electronic Filing

Many rules with conforming and minor changes

Conclusion

Service by E-Mail becomes **mandatory** on September 1, 2012 for certain proceedings.

E-Filing becomes **mandatory** for non-appellate matters on April 1, 2013. Watch for additional educational opportunities.