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## Florida Rules of Court Procedure

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### Florida Rules of Procedure

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Florida Rules of Appellate Procedure ; updated August 29, 2019

Florida Civil Rules of Procedure ; updated August 29, 2019

Florida Rules of Criminal Procedure ; updated January 1, 2019

Historic Rules/Forms 3.988, 3.990, 3.991, and 3.992.

- 3.988
- 3.990
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Florida Family Law Rules of Procedure ; updated August 29, 2019

- Family law forms are available on The Florida State Court website

# Supreme Court of Florida

No. SC17-882

**IN RE: AMENDMENTS TO THE FLORIDA RULES OF CIVIL PROCEDURE, THE FLORIDA RULES OF JUDICIAL ADMINISTRATION, THE FLORIDA RULES OF CRIMINAL PROCEDURE, AND THE FLORIDA RULES OF APPELLATE PROCEDURE—ELECTRONIC SERVICE.**

October 25, 2018

PER CURIAM.

This matter is before the Court for consideration of proposed amendments to the Florida Rules of Judicial Administration, Rules of Civil Procedure, Rules of Criminal Procedure, and Rules of Appellate Procedure.[1]

**Background**

The Florida Bar's Rules of Judicial Administration Committee, the Civil Procedure Rules Committee, the Criminal Procedure Rules Committee, and the Appellate Court Rules Committee (Rules Committees) have filed a joint out-of-cycle report proposing a number of rule amendments addressing the computation

1. We have jurisdiction. *See* art. V, § 2(a), Fla. Const.

of time to respond to documents served by e-mail. The Rules Committees published the proposals for comment before filing them with the Court and made revisions to the proposals in response to the comments they received. The amendments before the Court were unanimously approved by the Board of Governors of The Florida Bar.

After the joint report was filed, the Court published the proposed amendments for comment. The Court received comments from Victoria Katz, a rules attorney for Aderant CompuLaw, as well as from several members of the original Joint Email Service Committee.[2] The Civil Procedure Rules Committee filed a response to the comments indicating its opposition to the proposed amendment to Rule of Judicial Administration 2.514(a)(1)(A), and suggesting additional amendments to the rule. The Rules of Judicial Administration

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2. The Joint Email Service Committee was established in 2009 to devise a system that would effectively move Florida courts away from a paper-dominated system into one utilizing e-mail as the principal means of service. In *In re Amendments to 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, and Florida Family Law Rules of Procedure—Electronic Filing*, 102 So. 3d 451 (Fla. 2012), the chair of The Florida Bar's Rules of Judicial Administration Committee, together with the committee chairs for several bodies of court rules, filed an out-of-cycle report proposing new Florida Rule of Judicial Administration 2.516 (Service of Pleadings and Documents), which implemented mandatory e-mail service for all cases in Florida. The Court adopted the amendments as proposed.

Committee, the Criminal Procedure Rules Committee, and the Appellate Court Rules Committee filed a joint response addressing the concerns raised in the comments and declining to make any further revisions to the proposed amendments.

After considering the proposed amendments, the comments filed, the Rules Committees' responses, and hearing oral argument, we adopt the amendments as proposed and set forth in the appendix to this opinion.

**Rules of Judicial Administration**

Subdivision (b) of Rule of Judicial Administration 2.514 (Computing and Extending Time) is amended to remove "or e-mail" so that service by mail and e-mail are no longer treated identically. We also amend subdivision (a)(1)(A) of that rule so that time frames are calculated beginning from the next day following the event that triggers the time frame that is not a weekend or legal holiday. Subdivision (b)(1)(D)(iii) (Service; How Made; Service by Electronic Mail ("e-mail"); Time of Service) of rule 2.516 is amended to no longer allow parties an additional five days to respond following service of a document by e-mail. This amendment is consistent with the amendment to subdivision (b) of rule 2.514. E-mail, unlike postal mail, is now nearly instantaneous and no additional time should be permitted for responses to documents served by e-mail.

## Rules of Civil Procedure

Rules of Civil Procedure 1.170 (Counterclaims and Crossclaims), 1.260 (Survivor; Substitution of Parties), 1.351 (Production of Documents and Things Without Deposition), 1.410 (Subpoena), 1.440 (Setting Action for Trial), 1.442 (Proposals for Settlement), and 1.510 (Summary Judgment) are amended to directly reference Rule of Judicial Administration 2.516 (Service of Pleadings and Documents) instead of referencing Rule of Civil Procedure 1.080 (Service and Filing of Pleadings, Orders, and Documents).

We further amend rule 1.351 to reduce the time frame for parties to serve by e-mail a notice of intent to serve a subpoena requesting production of documents and things from fifteen to ten days. Lastly, we also amend rule 1.510 in subdivision (c) (Motion and Proceedings Thereon) to treat summary judgment evidence submitted electronically or by e-mail the same as summary judgment evidence that is "delivered," providing that while service by mail must take place at least five days prior to the day of the hearing, service by delivery, e-filing, and e-mail must take place no later than two days prior to the day of the hearing.

## Rules of Criminal Procedure

Rule of Criminal Procedure 3.040 (Computation of Time) is amended to remove the reference to subdivision (a) of Florida Rule of Judicial Administration 2.514, to conform with the amendment to that rule. As amended, the rule provides

that computation of time shall be governed by Rule of Judicial Administration 2.514. Rule 3.070 (Additional Time After Service by Mail, When Permitted, or E-Mail) is deleted in its entirety. The rule provided its own time frames for service by mail and e-mail; specifically, it provided for an additional three days to be added to the deadline when a party had the right or was required to do some act or take some proceedings within a prescribed period after the service of a notice or other document on the party by mail or e-mail. Deleting rule 3.070 makes the Rules of Criminal Procedure consistent with the other amendments herein adopted. Computation of time in criminal proceedings is now governed by Florida Rule of Judicial Administration 2.514.

**Rules of Appellate Procedure**

The Rules Committees' proposed amendments to the Rules of Appellate Procedure all concern enlarging time frames. The Rules Committees' report indicates that in response to the proposed amendments to Florida Rule of Judicial Administration 2.514 removing the additional five days when service is made by e-mail, the Appellate Court Rules Committee originally proposed amending the Rules of Appellate Procedure to retain the additional five days for service by e-mail. The Board of Governors expressed concerns about the removal of the five days from the other bodies of rules when service is made by e-mail, while maintaining the five days for e-mail service in the Rules of Appellate Procedure.

The Board of Governors suggested that the Committees attempt to come to an agreement that would address its concerns and maintain one rule for computation of time. The amendments proposed here reflect a compromise among the Rules Committees to address the Appellate Court Rules Committee's concern about the loss of the five additional days to respond to service of a document by e-mail.

We amend rules 9.100 (Original Proceedings), 9.110 (Appeal Proceedings to Review Final Orders of Lower Tribunals and Orders Granting New Trial in Jury and Nonjury Cases), 9.120 (Discretionary Proceedings to Review Decisions of District Courts of Appeal), 9.125 (Review of Trial Court Orders and Judgments Certified by the District Courts of Appeal as Requiring Immediate Resolution by the Supreme Court of Florida), 9.130 (Proceedings to Review Nonfinal Orders and Specified Final Orders), 9.140 (Appeal Proceedings in Criminal Cases), 9.141 (Review Proceedings in Collateral or Postconviction Criminal Cases), 9.142 (Procedures for Review in Death Penalty Cases), 9.146 (Appeal Proceedings in Juvenile Dependency and Termination of Parental Rights Cases and Cases Involving Families and Children in Need of Services), 9.180 (Appeal Proceedings to Review Workers' Compensation Cases), 9.200 (The Record), 9.210 (Briefs), 9.300 (Motions), 9.320 (Oral Argument), 9.330 (Rehearing; Clarification; Certification; Written Opinion), 9.331 (Determination of Causes in a District Court

of Appeal En Banc), 9.350 (Dismissal of Causes), 9.360 (Parties), and 9.410 (Sanctions) to enlarge time frames as proposed.

We further adopt the Rules Committees' nonsubstantive editorial amendments to subdivisions (i) (Ineffective Assistance of Counsel for Parents Claims—Special Procedures and Time Limitations Applicable to Appeals of Orders in Termination of Parental Rights Proceedings Involving Ineffective Assistance of Counsel Claims), (i)(2) (Rendition), (i)(4)(A) (Ineffective Assistance of Counsel Motion Filed After Commencement of Appeal; Stay of Appellate Proceeding), and (i)(4)(C) (Ineffective Assistance of Counsel Motion Filed After Commencement of Appeal; Duties of the Clerk, Preparation and Transmittal of Supplemental Record) of rule 9.146, as proposed.

**Conclusion**

Accordingly, the Florida Rules of Judicial Administration, Rules of Civil Procedure, Rules of Criminal Procedure, and Rules of Appellate Procedure are hereby amended as reflected in the appendix to this opinion. New language is indicated by underscoring; deletions are indicated by struck-through type. The amendments shall become effective January 1, 2019, at 12:02 a.m.

It is so ordered.

CANADY, C.J., and PARIENTE, QUINCE, POLSTON, LABARGA, and LAWSON, JJ., concur.
LEWIS, J., dissents.

THE FILING OF A MOTION FOR REHEARING SHALL NOT ALTER THE EFFECTIVE DATE OF THESE AMENDMENTS.

Original Proceeding – Florida Rules of Civil Procedure, Florida Rules of Judicial Administration, Florida Rules of Criminal Procedure, Florida Rules of Appellate Procedure – Electronic Service

Scott Michael Dimond, Chair, Civil Procedure Rules Committee, Miami, Florida, Roger James Haughey, II, Past Chair, Tampa, Florida, Civil Procedure Rules Committee; Eduardo I. Sanchez, Chair, Rules of Judicial Administration Committee, Miami, Florida, Honorable Steven Scott Stephens, Past Chair, Rules of Judicial Administration Committee, Tampa, Florida; Sheila Ann Loizos, Chair, Criminal Procedure Rules Committee, Jacksonville, Florida, H. Scott Fingerhut, Past Chair, Criminal Procedure Rules Committee, Coral Gables, Florida; Courtney Rebecca Brewer, Chair, Appellate Court Rules Committee, Tallahassee, Florida, Kristin A. Norse, Past Chair, Appellate Court Rules Committee, Tampa, Florida; and Joshua E. Doyle, Executive Director, Mikalla Andies Davis, Krys Godwin, and Heather Savage Telfer, Staff Liaisons, The Florida Bar, Tallahassee, Florida,

for Petitioners

Victoria Katz of Aderant, Culver City, California; Paul R. Regensdorf, Palm City, Florida; Honorable Richard A. Nielsen, Circuit Judge, Thirteenth Judicial Circuit, Tampa, Florida; Donald E. Christopher of Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, Orlando, Florida; and Robert M. Eschenfelder, Bradenton, Florida,

Responding with Comments

## APPENDIX

## RULE 2.514. COMPUTING AND EXTENDING TIME

**(a) Computing Time.** The following rules apply in computing time periods specified in any rule of procedure, local rule, court order, or statute that does not specify a method of computing time.

**(1) Period Stated in Days or a Longer Unit.** When the period is stated in days or a longer unit of time:

(A) ~~exclude the day of the event that triggers the period~~begin counting from the next day that is not a Saturday, Sunday, or legal holiday;

(B) – (C) [No change]

**(2) – (6) [No change]**

**(b) Additional Time after Service by Mail ~~or E-mail~~.** When a party may or must act within a specified time after service and service is made by mail ~~or e-mail~~, 5 days are added after the period that would otherwise expire under subdivision (a).

## RULE 2.516. SERVICE OF PLEADINGS AND DOCUMENTS

**(a) [No change]**

**(b) Service; How Made.** When service is required or permitted to be made upon a party represented by an attorney, service must be made upon the attorney unless service upon the party is ordered by the court.

**(1) Service by Electronic Mail ("e-mail").** All documents required or permitted to be served on another party must be served by e-mail, unless the parties otherwise stipulate or this rule otherwise provides. A filer of an electronic document has complied with this subdivision if the Florida Courts e-filing Portal ("Portal") or other authorized electronic filing system with a supreme court approved electronic service system ("e-Service system") served the document by e-mail or provided a link by e-mail to the document on a website maintained by a clerk ("e-Service"). The filer of an electronic document must

verify that the Portal or other e-Service system uses the names and e-mail addresses provided by the parties pursuant to subdivision (b)(1)(A).

**(A) – (C) [No change]**

**(D) Time of Service.** Service by e-mail is complete on the date it is sent.

(i) – (ii) [No change]

~~(iii) E-mail service, including e-Service, is treated as service by mail for the computation of time.~~

**(E) [No change]**

**(2) [No change]**

(A) – (F) [No change]

**(c) – (h) [No change]**

## RULE 1.170. COUNTERCLAIMS AND CROSSCLAIMS

**(a) – (f) [No change]**

**(g) Crossclaim against Co-Party.** A pleading may state as a crossclaim any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter of either the original action or a counterclaim therein, or relating to any property that is the subject matter of the original action. The crossclaim may include a claim that the party against whom it is asserted is or may be liable to the crossclaimant for all or part of a claim asserted in the action against the crossclaimant. Service of a crossclaim on a party who has appeared in the action must be made pursuant to ~~rule 1.080~~Florida Rule of Judicial Administration 2.516. Service of a crossclaim against a party who has not appeared in the action must be made in the manner provided for service of summons.

**(h) – (j) [No change]**

**Committee Notes**

[No change]

## RULE 1.260. SURVIVOR; SUBSTITUTION OF PARTIES

**(a) Death.**

(1) If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party and, together with the notice of hearing, shall be served on all parties as provided in ~~rule 1.080~~Florida Rule of Judicial Administration 2.516 and upon persons not parties in the manner provided for the service of a summons. Unless the motion for substitution is made within 90 days after the death is suggested upon the record by service of a statement of the fact of the death in the manner provided for the service of the motion, the action shall be dismissed as to the deceased party.

(2) [No change]

**(b) – (d) [No change]**

## RULE 1.351. PRODUCTION OF DOCUMENTS AND THINGS WITHOUT DEPOSITION

**(a) [No change]**

**(b) Procedure.** A party desiring production under this rule shall serve notice as provided in ~~rule 1.080~~Florida Rule of Judicial Administration 2.516 on every other party of the intent to serve a subpoena under this rule at least 10 days before the subpoena is issued if service is by delivery or e-mail and 15 days before the subpoena is issued if the service is by mail ~~or e-mail~~. The proposed subpoena shall be attached to the notice and shall state the time, place, and method for production of the documents or things, and the name and address of the person who is to produce the documents or things, if known, and if not known, a general description sufficient to identify the person or the particular class or group to which the person belongs; shall include a designation of the items to be produced; and shall state that the person who will be asked to produce the documents or things has the right to object to the production under this rule and that the person will not be required to surrender the documents or things. A copy of the notice and

proposed subpoena shall not be furnished to the person upon whom the subpoena is to be served. If any party serves an objection to production under this rule within 10 days of service of the notice, the documents or things shall not be produced pending resolution of the objection in accordance with subdivision (d).

**(c) – (f) [No change]**

**Committee Notes**

[No change]

**RULE 1.410. SUBPOENA**

**(a) – (b) [No change]**

**(c) For Production of Documentary Evidence.** A subpoena may also command the person to whom it is directed to produce the books, documents (including electronically stored information), or tangible things designated therein, but the court, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may (1) quash or modify the subpoena if it is unreasonable and oppressive, or (2) condition denial of the motion on the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, documents, or tangible things. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms. A person responding to a subpoena may object to discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue costs or burden. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought or the form requested is not reasonably accessible because of undue costs or burden. If that showing is made, the court may nonetheless order discovery from such sources or in such forms if the requesting party shows good cause, considering the limitations set out in rule 1.280(d)(2). The court may specify conditions of the discovery, including ordering that some or all of the expenses of the discovery be paid by the party seeking the discovery. A party seeking a production of evidence at trial which would be subject to a subpoena may compel such production by serving a notice to produce such evidence on an adverse party as provided in ~~rule 1.080~~Florida Rule of Judicial Administration 2.516. Such notice shall have the

same effect and be subject to the same limitations as a subpoena served on the party.

**(d) – (h) [No change]**

**Committee Notes**

[No change]

**RULE 1.440. SETTING ACTION FOR TRIAL**

**(a) – (b) [No change]**

**(c) Setting for Trial.** If the court finds the action ready to be set for trial, it shall enter an order fixing a date for trial. Trial shall be set not less than 30 days from the service of the notice for trial. By giving the same notice the court may set an action for trial. In actions in which the damages are not liquidated, the order setting an action for trial shall be served on parties who are in default in accordance with ~~rule 1.080~~Florida Rule of Judicial Administration 2.516.

**(d) [No change]**

**Committee Notes**

[No change]

**Court Commentary**

[No change]

**RULE 1.442. PROPOSALS FOR SETTLEMENT**

**(a) – (b) [No change]**

**(c) Form and Content of Proposal for Settlement.**

(1) A proposal shall be in writing and shall identify the applicable Florida law under which it is being made.

(2) A proposal shall:

(A) name the party or parties making the proposal and the party or parties to whom the proposal is being made;

(B) state that the proposal resolves all damages that would otherwise be awarded in a final judgment in the action in which the proposal is served, subject to subdivision (F);

(C) state with particularity any relevant conditions;

(D) state the total amount of the proposal and state with particularity all nonmonetary terms of the proposal;

(E) state with particularity the amount proposed to settle a claim for punitive damages, if any;

(F) state whether the proposal includes attorneys' fees and whether attorneys' fee are part of the legal claim; and

(G) include a certificate of service in the form required by ~~rule 1.080~~Florida Rule of Judicial Administration 2.516.

(3) – (4) [No change]

**(d) – (j) [No change]**

**Committee Notes**

[No Change]

**RULE 1.510. SUMMARY JUDGMENT**

**(a) – (b) [No change]**

**(c) Motion and Proceedings Thereon.** The motion must state with particularity the grounds upon which it is based and the substantial matters of law to be argued and must specifically identify any affidavits, answers to interrogatories, admissions, depositions, and other materials as would be admissible in evidence ("summary judgment evidence") on which the movant relies. The movant must serve the motion at least 20 days before the time fixed for the hearing, and must also serve at that time a copy of any summary judgment

evidence on which the movant relies that has not already been filed with the court. The adverse party must identify, by notice served pursuant to ~~rule 1.080~~Florida Rule of Judicial Administration 2.516 at least 5 days prior to the day of the hearing if service by mail is authorized, or delivered, electronically filed, or sent by e-mail no later than 5:00 p.m. 2 business days prior to the day of the hearing, any summary judgment evidence on which the adverse party relies. To the extent that summary judgment evidence has not already been filed with the court, the adverse party must serve a copy on the movant pursuant to ~~rule 1.080~~Florida Rule of Judicial Administration 2.516 at least 5 days prior to the day of the hearing if service by mail is authorized, or by delivery, electronic filing, or sending by e-mail ~~to the movant's attorney~~ no later than 5:00 p.m. 2 business days prior to the day of hearing. The judgment sought must be rendered immediately if the pleadings and summary judgment evidence on file show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

**(d) – (g) [No change]**

**Committee Notes**

[No change]

## RULE 3.040. COMPUTATION OF TIME

Computation of time shall be governed by Florida Rule of Judicial Administration 2.514~~(a)~~, except for the periods of time of less than 7 days contained in rules 3.130, 3.132(a) and (c), and 3.133(a).

**Committee Notes**

[No change]

**Court Commentary**

[No change]

## ~~RULE 3.070. ADDITIONAL TIME AFTER SERVICE BY MAIL, WHEN PERMITTED, OR E-MAIL~~

~~Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other document on the party and the notice or document is served on the party by mail, when permitted, or e-mail, 3 days shall be added to the prescribed period.~~

~~**Committee Notes**~~

~~**1968 Adoption.** This is the same as rule 1.6(e), Florida Rules of Civil Procedure, except for the omission of subdivision (c) of the civil rules, which appears to be inapplicable to criminal cases.~~

~~**1972 Amendment.** Same as prior rule.~~

## RULE 9.100. ORIGINAL PROCEEDINGS

**(a) – (j) [No change]**

**(k) Reply.** Within ~~20~~30 days thereafter or such other time set by the court, the petitioner may serve a reply, which shall not exceed 15 pages in length, and supplemental appendix.

**(*l*) [No change]**

**Committee Notes**

[No change]

**Court Commentary**

[No change]

## RULE 9.110. APPEAL PROCEEDINGS TO REVIEW FINAL ORDERS OF LOWER TRIBUNALS AND ORDERS GRANTING NEW TRIAL IN JURY AND NONJURY CASES

**(a) – (f) [No change]**

**(g) Cross-Appeal.** An appellee may cross-appeal by serving a notice within ~~10~~15 days of service of the appellant's timely filed notice of appeal or

within the time prescribed for filing a notice of appeal, whichever is later. The notice of cross-appeal, accompanied by any filing fees prescribed by law, shall be filed either before service or immediately thereafter in the same manner as the notice of appeal.

**(h) – (m) [No change]**

**Committee Notes**

[No change]

**Court Commentary**

[No change]

## RULE 9.120. DISCRETIONARY PROCEEDINGS TO REVIEW DECISIONS OF DISTRICT COURTS OF APPEAL

**(a) – (c) [No change]**

**(d) Briefs on Jurisdiction.** The petitioner's brief, limited solely to the issue of the supreme court's jurisdiction and accompanied by an appendix containing only a conformed copy of the decision of the district court of appeal, shall be served within 10 days of filing the notice. The respondent's brief on jurisdiction shall be served within ~~20~~30 days after service of petitioner's brief. Formal requirements for both briefs are specified in rule 9.210. No reply brief shall be permitted. If jurisdiction is invoked under rule 9.030(a)(2)(A)(v) (certifications of questions of great public importance by the district courts of appeal to the supreme court), no briefs on jurisdiction shall be filed.

**(e) – (f) [No change]**

**Committee Notes**

[No change]

## RULE 9.125. REVIEW OF TRIAL COURT ORDERS AND JUDGMENTS CERTIFIED BY THE DISTRICT COURTS OF APPEAL AS REQUIRING IMMEDIATE

**RESOLUTION BY THE SUPREME COURT OF FLORIDA**

**(a) – (c) [No change]**

**(d) Response.** Any party may file a response within ~~5~~10 days of the service of the suggestion.

**(e) – (g) [No change]**

**Committee Notes**

[No change]

## RULE 9.130. PROCEEDINGS TO REVIEW NONFINAL ORDERS AND SPECIFIED FINAL ORDERS

**(a) – (f) [No change]**

**(g) Cross-Appeal.** An appellee may cross-appeal the order or orders designated by the appellant, to review any ruling described in subdivisions (a)(3)–(a)(5), by serving a notice within ~~10~~15 days of service of the appellant's timely filed notice of appeal or within the time prescribed for filing a notice of appeal, whichever is later. A notice of cross-appeal, accompanied by any filing fees prescribed by law, shall be filed either before service or immediately thereafter in the same manner as the notice of appeal.

**(h) – (i) [No change]**

**Committee Notes**

[No change]

## RULE 9.140. APPEAL PROCEEDINGS IN CRIMINAL CASES

**(a) [No change]**

**(b) Appeals by Defendant.**

**(1) – (3) [No change]**

**(4) Cross-Appeal.** A defendant may cross-appeal by serving a notice within ~~10~~15 days of service of the state's notice or service of an order on a motion pursuant to Florida Rule of Criminal Procedure 3.800(b)(2). Review of cross-appeals before trial is limited to related issues resolved in the same order being appealed.

**(c) Appeals by the State.**

**(1) – (2) [No change]**

**(3) Commencement.** The state shall file the notice prescribed by rule 9.110(d) with the clerk of the lower tribunal within 15 days of rendition of the order to be reviewed; provided that in an appeal by the state under rule 9.140(c)(1)(K), the state's notice of cross-appeal shall be filed within ~~10~~15 days of service of defendant's notice or service of an order on a motion pursuant to Florida Rule of Criminal Procedure 3.800(b)(2). Copies shall be served on the defendant and the attorney of record. An appeal by the state shall stay further proceedings in the lower tribunal only by order of the lower tribunal.

**(d) – (i) [No change]**

**Committee Notes**

[No change]

**Court Commentary**

[No change]

## RULE 9.141. REVIEW PROCEEDINGS IN COLLATERAL OR POSTCONVICTION CRIMINAL CASES

**(a) [No change]**

**(b) Appeals from Postconviction Proceedings Under Florida Rules of Criminal Procedure 3.800(a), 3.801, 3.802, 3.850, or 3.853.**

**(1) [No change]**

**(2) Summary Grant or Denial of All Claims Raised in a Motion Without Evidentiary Hearing.**

**(A) – (B) [No change]**

**(C) Briefs or Responses.**

(i) [No change]

(ii) The court may request a response from the appellee before ruling, regardless of whether the appellant filed an initial brief. The appellant may serve a reply within ~~20~~30 days after service of the response. The response and reply shall not exceed the page limits set forth in rule 9.210 for answer briefs and reply briefs.

**(D) [No change]**

**(3) [No change]**

**(c) – (d) [No change]**

**Committee Notes**

[No change]

## RULE 9.142. PROCEDURES FOR REVIEW IN DEATH PENALTY CASES

**(a) Procedure in Death Penalty Appeals.**

**(1) [No change]**

**(2) Briefs; Transcripts.** After the record is filed, the clerk will promptly establish a briefing schedule allowing the defendant 60 days from the date the record is filed, the state ~~45~~50 days from the date the defendant's brief is served, and the defendant ~~30~~40 days from the date the state's brief is served to serve their respective briefs. On appeals from orders ruling on applications for relief under Florida Rules of Criminal Procedure 3.851 or 3.853, and on resentencing matters, the schedules set forth in rule 9.140(g) will control.

**(3) – (5) [No change]**

**(b) [No change]**

**(c) Petitions Seeking Review of Nonfinal Orders in Death Penalty Postconviction Proceedings.**

**(1) – (7) [No change]**

**(8) Reply.** Within ~~20~~30 days after service of the response or such other time set by the court, the petitioner may serve a reply, which shall not exceed 15 pages in length, and supplemental appendix.

**(9) – (11) [No change]**

**(d) [No change]**

**Committee Notes**

[No change]

**Criminal Court Steering Committee Notes**

[No change]

## RULE 9.146. APPEAL PROCEEDINGS IN JUVENILE DEPENDENCY AND TERMINATION OF PARENTAL RIGHTS CASES AND CASES INVOLVING FAMILIES AND CHILDREN IN NEED OF SERVICES

**(a) – (f) [No change]**

**(g) Special Procedures and Time Limitations Applicable to Appeals of Final Orders in Dependency or Termination of Parental Rights Proceedings.**

**(1) – (2) [No change]**

**(3) Briefs.**

**(A) [No change]**

**(B) Times for Service.** The initial brief shall be served within ~~20~~30 days of service of the record on appeal or the index to the record on appeal. The answer brief shall be served within ~~20~~30 days of service of the initial brief. The reply brief, if any, shall be served within ~~10~~15 days of the service of the answer brief. In any appeal or cross-appeal, if more than 1 initial or answer brief is authorized, the responsive brief shall be served within 20 days after the last initial brief or within 10 days after the last answer brief was served. If the last authorized initial or answer brief is not served, the responsive brief shall be served within 20 days after the last authorized initial brief or within 10 days after the last authorized answer brief could have been timely served.

**(4) – (7) [No change]**

**(h) [No change]**

**(i) Ineffective Assistance of Counsel for Parents' Claims—Special Procedures and Time Limitations Applicable to Appeals of Orders in Termination of Parental Rights Proceedings Involving Ineffective Assistance of Counsel Claims.**

**(1) [No change]**

**(2) Rendition.** A motion claiming ineffective assistance of counsel filed in accordance with Florida Rule of Juvenile Procedure 8.530 shall toll rendition of the order terminating parental rights under Florida Rule of Appellate Procedure 9.020 until the lower tribunal files a signed, written order on the motion, except as provided by Florida Rule~~s~~ of Juvenile Procedure 8.530.

**(3) [No change]**

**(4) Ineffective Assistance of Counsel Motion Filed After Commencement of Appeal.** If an appeal is pending, a parent may file a motion claiming ineffective assistance of counsel pursuant to Florida Rule of Juvenile Procedure 8.530 if the filing occurs within 20 days of rendition of the order terminating parental rights.

**(A) Stay of Appellate Proceeding.** A parent or counsel appointed pursuant to Florida Rule of Juvenile Procedure 8.530 shall file a notice of a ~~timely-filed~~timely filed, pending motion claiming ineffective assistance of

counsel. The notice automatically stays the appeal until the lower tribunal renders an order disposing of the motion.

**(B) [No change]**

**(C) Duties of the Clerk~~,~~; Preparation and ~~Transmittal~~Transmission of Supplemental Record.** If the clerk of circuit court has already transmitted the record on appeal of the order terminating parental rights, the clerk shall automatically supplement the record on appeal with any motion pursuant to Florida Rule of Juvenile Procedure 8.530, the resulting order, and the transcript from the hearing on the motion. The clerk shall electronically transmit the supplement to the court and serve the parties within 5 days of the filing of the order ruling on the motion, or within 5 days of filing of the transcript from the hearing on the motion by the designated court reporter, whichever is later.

**Committee Notes**

[No change]

## RULE 9.180. APPEAL PROCEEDINGS TO REVIEW WORKERS' COMPENSATION CASES

**(a) – (e) [No change]**

**(f) Record Contents; Final Orders.**

**(1) – (4) [No change]**

**(5) Costs.**

**(A) [No change]**

**(B) Deposit of Estimated Costs.** Within ~~15~~20 days after the notice of estimated costs is served, the appellant shall deposit a sum of money equal to the estimated costs with the lower tribunal.

**(C) – (E) [No change]**

**(6) Transcript(s) of Proceedings.**

**(A) [No change]**

**(B) Objection to Court Reporter or Transcriptionist Selected.** Any party may object to the court reporter or transcriptionist selected by filing written objections with the judge who made the selection within ~~15~~20 days after service of notice of the selection. Within 5 days after filing the objection, the judge shall hold a hearing on the issue. In such a case, the time limits mandated by these rules shall be appropriately extended.

**(C) [No change]**

**(7) – (9) [No change]**

**(g) Relief From Filing Fee and Costs; Indigency.**

**(1) – (2) [No change]**

**(3) Costs of Preparation of Record.**

**(A) [No change]**

**(B) Time.** The verified petition to be relieved of costs must be filed within ~~15~~20 days after service of the notice of estimated costs. A verified petition filed prior to the date of service of the notice of estimated costs shall be deemed not timely.

**(C) – (E) [No change]**

**(F) Hearing on Petition to Be Relieved of Costs.** After giving 15 days' notice to the Division of Workers' Compensation and all parties, the lower tribunal shall promptly hold a hearing and rule on the merits of the petition to be relieved of costs. However, if no objection to the petition is filed by the division or a party within ~~20~~30 days after the petition is served, the lower tribunal may enter an order on the merits of the petition without a hearing.

**(G) – (I) [No change]**

**(h) – (i) [No change]**

**Committee Notes**

[No change]

**RULE 9.200. THE RECORD**

**(a) [No change]**

**(b) Transcript(s) of Proceedings.**

**(1) – (4) [No change]**

**(5) Statement of Evidence or Proceedings.** If no report of the proceedings was made, or if the transcript is unavailable, a party may prepare a statement of the evidence or proceedings from the best available means, including the party's recollection. The statement shall be served on all other parties, who may serve objections or proposed amendments to it within ~~10~~15 days of service. Thereafter, the statement and any objections or proposed amendments shall be filed with the lower tribunal for settlement and approval. As settled and approved, the statement shall be included by the clerk of the lower tribunal in the record.

**(c) Cross-Appeals.** Within 20 days of filing the notice of appeal, a cross-appellant may direct that additional documents, exhibits, or transcript(s) be included in the record. If less than the entire record is designated, the cross-appellant shall serve, with the directions, a statement of the judicial acts to be reviewed. The cross-appellee shall have ~~10~~15 days after such service to direct further additions. The time for preparation and transmittal of the record shall be extended by 10 days.

**(d) – (f) [No change]**

**Committee Notes**

[No change]

**RULE 9.210. BRIEFS**

**(a) – (e) [No change]**

**(f) Times for Service of Briefs.** The times for serving jurisdiction and initial briefs are prescribed by rules 9.110, 9.120, 9.130, and 9.140. Unless otherwise required, the answer brief shall be served within ~~20~~30 days after service of the initial brief; the reply brief, if any, shall be served within ~~20~~30 days after service of the answer brief; and the cross-reply brief, if any, shall be served within

~~20~~30 days thereafter. In any appeal or cross-appeal, if more than 1 initial or answer brief is authorized, the responsive brief shall be served within 20 days after the last initial or answer brief was served. If the last authorized initial or answer brief is not served, the responsive brief shall be served within 20 days after the last authorized initial or answer brief could have been timely served.

**(g) [No change]**

**Committee Notes**

[No change]

**Court Commentary**

[No change]

**RULE 9.300. MOTIONS**

**(a) Contents of Motion; Response.** Unless otherwise prescribed by these rules, an application for an order or other relief available under these rules shall be made by filing a motion therefor. The motion shall state the grounds on which it is based, the relief sought, argument in support thereof, and appropriate citations of authority. A motion for an extension of time shall, and other motions if appropriate may, contain a certificate that the movant's counsel has consulted opposing counsel and that the movant's counsel is authorized to represent that opposing counsel either has no objection or will promptly file an objection. A motion may be accompanied by an appendix, which may include affidavits and other appropriate supporting documents not contained in the record. With the exception of motions filed pursuant to rule 9.410(b), a party may serve 1 response to a motion within ~~10~~15 days of service of the motion. The court may shorten or extend the time for response to a motion.

**(b) – (d) [No change]**

**Committee Notes**

[No change]

**RULE 9.320. ORAL ARGUMENT**

Oral argument may be permitted in any proceeding. A request for oral argument shall be in a separate document served by a party:

(a) in appeals, not later than ~~10~~15 days after the last brief is due to be served;

(b) in proceedings commenced by the filing of a petition, not later than ~~10~~15 days after the reply is due to be served; and

(c) [No change]

Each side will be allowed 20 minutes for oral argument, except in capital cases in which each side will be allowed 30 minutes. On its own motion or that of a party, the court may require, limit, expand, or dispense with oral argument.

## RULE 9.330. REHEARING; CLARIFICATION; CERTIFICATION; WRITTEN OPINION

**(a) Time for Filing; Contents; Response.**

**(1) – (2) [No change]**

**(3) Response.** A response may be served within ~~10~~15 days of service of the motion.

**(b) [No change]**

**(c) Exception; Bond Validation Proceedings.** A motion for rehearing or for clarification of an order or decision in proceedings for the validation of bonds or certificates of indebtedness as provided by rule 9.030(a)(1)(B)(ii) may be filed within 10 days of an order or decision or within such other time set by the court. A reply may be served within ~~5~~10 days of service of the motion. The mandate shall issue forthwith if a timely motion has not been filed. A timely motion shall receive immediate consideration by the court and, if denied, the mandate shall issue forthwith.

**(d) – (e) [No change]**

**Committee Notes**

[No change]

## RULE 9.331. DETERMINATION OF CAUSES IN A DISTRICT COURT OF APPEAL EN BANC

**(a) – (c) [No change]**

**(d) Rehearings En Banc.**

**(1) Generally.** A rehearing en banc may be ordered by a district court of appeal on its own motion or on motion of a party. Within the time prescribed by rule 9.330, a party may move for an en banc rehearing solely on the grounds that the case or issue is of exceptional importance or that such consideration is necessary to maintain uniformity in the court's decisions. A motion based on any other ground shall be stricken. A response may be served within ~~10~~15 days of service of the motion. A vote will not be taken on the motion unless requested by a judge on the panel that heard the proceeding, or by any judge in regular active service on the court. Judges who did not sit on the panel are under no obligation to consider the motion unless a vote is requested.

**(2) – (3) [No change]**

**Committee Notes**

[No change]

**Court Commentary**

[No change]

## RULE 9.350. DISMISSAL OF CAUSES

**(a) [No change]**

**(b) Voluntary Dismissal.** A proceeding of an appellant or a petitioner may be dismissed before a decision on the merits by filing a notice of dismissal with the clerk of the court without affecting the proceedings filed by joinder or cross-appeal; provided that dismissal shall not be effective until ~~10~~15 days after service of the notice of appeal or until 10 days after the time prescribed by rule 9.110(b), whichever is later. In a proceeding commenced under rule 9.120,

dismissal shall not be effective until 10 days after the serving of the notice to invoke discretionary jurisdiction or until 10 days after the time prescribed by rule 9.120(b), whichever is later.

**(c) – (d) [No change]**

**Committee Notes**

[No change]

**RULE 9.360. PARTIES**

**(a) Joinder for Realignment as Appellant or Petitioner.** An appellee or respondent who desires to realign as an appellant or petitioner shall serve a notice of joinder no later than the latest of the following:

(1) within ~~10~~15 days of service of a timely filed ~~petition or~~ notice of appeal or petition;

(2) – (3) [No change]

The notice of joinder, accompanied by any filing fees prescribed by law, shall be filed either before service or immediately thereafter. The body of the notice shall set forth the proposed new caption. Upon filing of the notice and payment of the fee, the clerk shall change the caption to reflect the realignment of the parties in the notice.

**(b) – (c) [No change]**

**Committee Notes**

[No change]

**RULE 9.410. SANCTIONS**

**(a) [No change]**

**(b) Motion by a Party.**

**(1) – (2) [No change]**

**(3) Initial Service.** A copy of a motion for attorneys' fees as a sanction must initially be served only on the party against whom sanctions are sought. That motion shall be served no later than the time for serving any permitted response to a challenged document or, if no response is permitted as of right, within ~~15~~20 days after a challenged document is served or a challenged claim, defense, contention, allegation, or denial is made at oral argument. A certificate of service that complies with rule 9.420(d) and that reflects service pursuant to this subdivision shall accompany the motion and shall be taken as prima facie proof of the date of service pursuant to this subdivision. A certificate of filing pursuant to subdivision (b)(4) of this rule shall also accompany the motion, but should remain undated and unsigned at the time of the initial service pursuant to this subdivision.

**(4) [No change]**

**(5) Response.** A party against whom sanctions are sought may serve 1 response to the motion within ~~10~~15 days of the final service of the motion. The court may shorten or extend the time for response to the motion.

**Committee Notes**

[No change]

# AMERICAN BAR ASSOCIATION

STANDING COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY

**Formal Opinion 11-459** **August 4, 2011**

**Duty to Protect the Confidentiality of E-mail Communications with One's Client**

*A lawyer sending or receiving substantive communications with a client via e-mail or other electronic means ordinarily must warn the client about the risk of sending or receiving electronic communications using a computer or other device, or e-mail account, where there is a significant risk that a third party may gain access. In the context of representing an employee, this obligation arises, at the very least, when the lawyer knows or reasonably should know that the client is likely to send or receive substantive client-lawyer communications via e-mail or other electronic means, using a business device or system under circumstances where there is a significant risk that the communications will be read by the employer or another third party.*[1]

**Introduction**

Lawyers and clients often communicate with each other via e-mail and sometimes communicate via other electronic means such as text messaging. The confidentiality of these communications may be jeopardized in certain circumstances. For example, when the client uses an employer's computer, smartphone or other telecommunications device, or an employer's e-mail account to send or receive e-mails with counsel, the employer may obtain access to the e-mails. Employers often have policies reserving a right of access to employees' e-mail correspondence via the employer's e-mail account, computers or other devices, such as smartphones and tablet devices, from which their employees correspond. Pursuant to internal policy, the employer may be able to obtain an employee's communications from the employer's e-mail server if the employee uses a business e-mail address, or from a workplace computer or other employer-owned telecommunications device on which the e-mail is stored even if the employee has used a separate, personal e-mail account. Employers may take advantage of that opportunity in various contexts, such as when the client is engaged in an employment dispute or when the employer is monitoring employee e-mails as part of its compliance responsibilities or conducting an internal investigation relating to the client's work.[2] Moreover, other third parties may be able to obtain access to an employee's electronic communications by issuing a subpoena to the employer. Unlike conversations and written communications, e-mail communications may be permanently available once they are created.

The confidentiality of electronic communications between a lawyer and client may be jeopardized in other settings as well. Third parties may have access to attorney-client e-mails when the client receives or sends e-mails via a public computer, such as a library or hotel computer, or via a borrowed computer. Third parties also may be able to access confidential communications when the client uses a computer or other device available to others, such as when a client in a matrimonial dispute uses a home computer to which other family members have access.

In contexts such as these, clients may be unaware of the possibility that a third party may gain access to their personal correspondence and may fail to take necessary precautions. Therefore, the risk that third parties may obtain access to a lawyer's e-mail communications with a client raises the question of what, if any, steps a lawyer must take to prevent such access by third parties from occurring. This opinion addresses this question in the following hypothetical situation.

An employee has a computer assigned for her exclusive use in the course of her employment. The company's written internal policy provides that the company has a right of access to all employees' computers and e-mail files, including those relating to employees' personal matters. Notwithstanding this

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[1] This opinion is based on the ABA Model Rules of Professional Conduct as amended by the ABA House of Delegates through August 2011. The laws, court rules, regulations, rules of professional conduct, and opinions promulgated in individual jurisdictions are controlling.

[2] Companies conducting internal investigations often secure and examine the e-mail communications and computer files of employees who are thought to have relevant information.

policy, employees sometimes make personal use of their computers, including for the purpose of sending personal e-mail messages from their personal or office e-mail accounts. Recently, the employee retained a lawyer to give advice about a potential claim against her employer. When the lawyer knows or reasonably should know that the employee may use a workplace device or system to communicate with the lawyer, does the lawyer have an ethical duty to warn the employee about the risks this practice entails?

**Discussion**

Absent an applicable exception, Rule 1.6(a) requires a lawyer to refrain from revealing "information relating to the representation of a client unless the client gives informed consent." Further, a lawyer must act competently to protect the confidentiality of clients' information. This duty, which is implicit in the obligation of Rule 1.1 to "provide competent representation to a client," is recognized in two Comments to Rule 1.6. Comment [16] observes that a lawyer must "act competently to safeguard information relating to the representation of a client against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision." Comment [17] states in part: "When transmitting a communication that includes information relating to the representation of a client, the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients.... Factors to be considered in determining the reasonableness of the lawyer's expectation of confidentiality include the sensitivity of the information and the extent to which the privacy of the communication is protected by law or by a confidentiality agreement."

This Committee has recognized that these provisions of the Model Rules require lawyers to take reasonable care to protect the confidentiality of client information,[3] including information contained in e-mail communications made in the course of a representation. In ABA Op. 99-413 (1999) ("Protecting the Confidentiality of Unencrypted E-Mail"), the Committee concluded that, in general, a lawyer may transmit information relating to the representation of a client by unencrypted e-mail sent over the Internet without violating Model Rule 1.6(a) because the mode of transmission affords a reasonable expectation of privacy from a technological and legal standpoint. The opinion, nevertheless, cautioned lawyers to consult with their clients and follow their clients' instructions as to the mode of transmitting highly sensitive information relating to the clients' representation. It found that particularly strong protective measures are warranted to guard against the disclosure of highly sensitive matters.

Clients may not be afforded a "reasonable expectation of privacy" when they use an employer's computer to send e-mails to their lawyers or receive e-mails from their lawyers. Judicial decisions illustrate the risk that the employer will read these e-mail communications and seek to use them to the employee's disadvantage. Under varying facts, courts have reached different conclusions about whether an employee's client-lawyer communications located on a workplace computer or system are privileged, and the law appears to be evolving.[4] This Committee's mission does not extend to interpreting the substantive law, and

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[3] *See, e.g.*, ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 08-451 (2008) (Lawyer's Obligations When Outsourcing Legal and Nonlegal Support Services) ("the obligation to 'act competently to safeguard information relating to the representation of a client against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision'" requires a lawyer outsourcing legal work "to recognize and minimize the risk that any outside service provider may inadvertently -- or perhaps even advertently -- reveal client confidential information to adverse parties or to others who are not entitled to access ... [and to] verify that the outside service provider does not also do work for adversaries of their clients on the same or substantially related matters.").

[4] *See, e.g.*, Stengart v. Loving Care Agency, Inc., 990 A.2d 650, 663 (N.J. 2010) (privilege applied to e-mails with counsel using "a personal, password protected e-mail account" that were accessed on a company computer); Sims v. Lakeside Sch., No. C06-1412RSM, 2007 WL 2745367, at *2 (W.D. Wash. Sept. 20, 2007) (privilege applied to web-based e-mails to and from employee's counsel on hard drive of computer furnished by employer); National Econ. Research Assocs. v. Evans, No. 04–2618–BLS2, 21 Mass.L.Rptr. 337, 2006 WL 2440008, at *5 (Mass. Super. Aug. 3, 2006) (privilege applied to "attorney-client communications unintentionally stored in a temporary file on a company-owned computer that were made via a private, password-protected e-mail account accessed through the Internet, not the company's Intranet"); Holmes v. Petrovich Development Co., 191 Cal.App.4th 1047, 1068-72 (2011) (privilege

therefore we express no view on whether, and in what circumstances, an employee's communications with counsel from the employee's workplace device or system are protected by the attorney-client privilege. Nevertheless, we consider the ethical implications posed by the risks that these communications will be reviewed by others and held admissible in legal proceedings.[5] Given these risks, a lawyer should ordinarily advise the employee-client about the importance of communicating with the lawyer in a manner that protects the confidentiality of e-mail communications, just as a lawyer should avoid speaking face-to-face with a client about sensitive matters if the conversation might be overheard and should warn the client against discussing their communications with others. In particular, as soon as practical after a client-lawyer relationship is established, a lawyer typically should instruct the employee-client to avoid using a workplace device or system for sensitive or substantive communications, and perhaps for any attorney-client communications, because even seemingly ministerial communications involving matters such as scheduling can have substantive ramifications.

The time at which a lawyer has an ethical obligation under Rules 1.1 and 1.6 to provide advice of this nature will depend on the circumstances. At the very least, in the context of representing an employee, this ethical obligation arises when the lawyer knows or reasonably should know that the client is likely to send or receive substantive client-lawyer communications via e-mail or other electronic means,[6] using a business device or system under circumstances where there is a significant risk that the communications will be read by the employer or another third party. Considerations tending to establish an ethical duty to protect client-lawyer confidentiality by warning the client against using a business device or system for substantive e-mail communications with counsel include, but are not limited to, the following: (1) that the client has engaged in, or has indicated an intent to engage in, e-mail communications with counsel; (2) that the client is employed in a position that would provide access to a workplace device or system; (3) that, given the circumstances, the employer or a third party has the ability to access the e-mail communications; and (4) that, as far as the lawyer knows, the employer's internal policy and the jurisdiction's laws do not clearly protect the privacy of the employee's personal e-mail communications via a business device or system. Unless a lawyer has reason to believe otherwise, a lawyer ordinarily should assume that an employer's internal policy allows for access to the employee's e-mails sent to or from a workplace device or system.

The situation in the above hypothetical is a clear example of where failing to warn the client about the risks of e-mailing communications on the employer's device can harm the client, because the employment dispute would give the employer a significant incentive to access the employee's workplace e-mail and the employer's internal policy would provide a justification for doing so. The obligation arises once the lawyer has reason to believe that there is a significant risk that the client will conduct e-mail communications with the lawyer using a workplace computer or other business device or via the employer's e-mail account. This possibility ordinarily would be known, or reasonably should be known, at the outset of the representation. Given the nature of the representation–an employment dispute–the lawyer is on notice that the employer may search the client's electronic correspondence. Therefore, the lawyer must ascertain, unless the answer is already obvious, whether there is a significant risk that the client will use a business e-mail address for personal communications or whether the employee's position entails using an employer's device. Protective measures would include the lawyer refraining from sending e-mails

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inapplicable to communications with counsel using workplace computer); Scott v. Beth Israel Medical Center, Inc., 847 N.Y.S.2d 436, 440-43 (N.Y. Sup. Ct. 2007) (privilege inapplicable to employer's communications with counsel via employer's e-mail system); Long v. Marubeni Am. Corp., No. 05CIV.639(GEL)(KNF), 2006 WL 2998671, at *3-4 (S.D.N.Y. Oct. 19, 2006) (e-mails created or stored in company computers were not privileged, notwithstanding use of private password-protected e-mail accounts); Kaufman v. SunGard Inv. Sys., No. 05-CV-1236 (JLL), 2006 WL 1307882, at *4 (D.N.J. May 10, 2006) (privilege inapplicable to communications with counsel using employer's network).

[5] For a discussion of a lawyer's duty when receiving a third party's e-mail communications with counsel, *see* ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 11-460 (2011) (Duty when Lawyer Receives Copies of a Third Party's E-mail Communications with Counsel).

[6] This opinion principally addresses e-mail communications, which are the most common way in which lawyers communicate electronically with clients, but it is equally applicable to other means of electronic communications.

to the client's workplace, as distinct from personal, e-mail address,[7] and cautioning the client against using a business e-mail account or using a personal e-mail account on a workplace computer or device at least for substantive e-mails with counsel.

As noted at the outset, the employment scenario is not the only one in which attorney-client electronic communications may be accessed by third parties. A lawyer sending or receiving substantive communications with a client via e-mail or other electronic means ordinarily must warn the client about the risk of sending or receiving electronic communications using a computer or other device, or e-mail account, to which a third party may gain access. The risk may vary. Whenever a lawyer communicates with a client by e-mail, the lawyer must first consider whether, given the client's situation, there is a significant risk that third parties will have access to the communications. If so, the lawyer must take reasonable care to protect the confidentiality of the communications by giving appropriately tailored advice to the client.

[7] Of course, if the lawyer becomes aware that a client is receiving personal e-mail on a workplace computer or other device owned or controlled by the employer, then a duty arises to caution the client not to do so, and if that caution is not heeded, to cease sending messages even to personal e-mail addresses.

PART IV
FRAUDULENT USE OR POSSESSION OF IDENTIFYING INFORMATION


668.701 Short title.—This part may be cited as the "Antiphishing Act."
History.—s. 5, ch. 2006-232.

668.702 Definitions.—As used in this part, the term:
(1) "Department" means the Department of Legal Affairs.
(2) "Electronic mail address" has the same meaning as provided in s. 668.602.
(3) "Electronic mail message" has the same meaning as provided in s. 668.602.
(4) "Identifying information" has the same meaning as the term "personal identification information" as defined in s. 817.568(1).
(5) "Internet domain name" has the same meaning as provided in s. 668.602.
(6) "Web page" means a location that has a single uniform resource locator (URL) with respect to the World Wide Web or another location that can be accessed on the Internet.
History.—s. 5, ch. 2006-232.

668.703 Prohibited acts.—
(1) A person with an intent to engage in conduct involving the fraudulent use or possession of another person's identifying information may not represent oneself, directly or by implication, to be another person without the authority or approval of such other person through the use of a web page or Internet domain name and use that web page, Internet domain name, or a link to that web page or domain name or another site on the Internet to induce, request, or solicit a resident of this state to provide identifying information.
(2) A person with an intent to engage in conduct involving the fraudulent use or possession of identifying information may not send or cause to be sent to an electronic mail address held by a resident of this state an electronic mail message that is falsely represented as being sent by another person without the authority or approval of such other person, refers or links the recipient of the message to a web page, and directly or indirectly induces, requests, or solicits the recipient of the electronic mail message to provide identifying information.
History.—s. 5, ch. 2006-232.

668.704 Remedies.—
(1) The following persons may bring a civil action against a person who violates this part:
(a) A person engaged in the business of providing Internet access service to the public who is adversely affected by the violation.
(b) A financial institution as defined in s. 655.005(1) that is adversely affected by the violation.
(c) An owner of a web page, trademark, or service mark who is adversely affected by the violation.
(d) The Attorney General.
(2) A person bringing an action under this section may:

(a) Seek injunctive relief to restrain the violator from continuing the violation.
(b) Recover damages in an amount equal to the greater of:
1. Actual damages arising from the violation; or
2. The sum of $5,000 for each violation of the same nature.
(3) The court may increase an award of actual damages in an action brought under this section to an amount not to exceed three times the actual damages sustained if the court finds that the violations have occurred with a frequency as to constitute a pattern or practice.
(4) For purposes of this section, violations are of the same nature if the violations consist of the same course of conduct or action, regardless of the number of times the conduct or action occurred.
(5) A plaintiff who prevails in an action filed under this section is entitled to recover reasonable attorney's fees and court costs.
(6) By committing a violation under this part, the violator submits personally to the jurisdiction of the courts of this state. This section does not preclude other methods of obtaining jurisdiction over a person who commits a violation under this part.
(7) An action under this part may be brought in any court of competent jurisdiction to enforce such rights and to recover damages as stated in this part.
(8) The venue for a civil action brought under this section shall be the county in which the plaintiff resides or in any county in which any part of the alleged violation under this part took place, regardless of whether the defendant was ever actually present in that county. A civil action filed under this section must be brought within 3 years after the violation occurred.
(9) The remedies available under this section are in addition to remedies otherwise available for the same conduct under federal or state law.
(10) Any moneys received by the Attorney General for attorney's fees and costs of investigation or litigation in proceedings brought under this section shall be deposited as received into the Legal Affairs Revolving Trust Fund.
(11) Any moneys received by the Attorney General which are not for attorney's fees and costs of investigation or litigation or used for reimbursing persons found under this part to be damaged shall accrue to the state and be deposited as received into the Legal Affairs Revolving Trust Fund.
History.—s. 5, ch. 2006-232; s. 104, ch. 2013-18.

668.705 Exemptions.—
(1) This part does not apply to a telecommunications provider's or Internet service provider's good faith transmission or routing of, or intermediate temporary storing or caching of, identifying information.
(2) A provider of an interactive computer service is not liable under the laws of this state for removing or disabling access to content that resides on an Internet website or other online location controlled or operated by such provider if such provider believes in good faith that the content is used to engage in a violation of this part.
History.—s. 5, ch. 2006-232.

PART V
COMPUTER ABUSE AND DATA RECOVERY ACT



668.801 Purpose.—This part shall be construed liberally to:
(1) Safeguard an owner, operator, or lessee of a protected computer used in the operation of a business from harm or loss caused by unauthorized access to such computer.
(2) Safeguard an owner of information stored in a protected computer used in the operation of a business from harm or loss caused by unauthorized access to such computer.
History.—s. 2, ch. 2015-14.

668.802 Definitions.—As used in this part, the term:
(1) "Authorized user" means a director, officer, employee, third-party agent, contractor, or consultant of the owner, operator, or lessee of the protected computer or the owner of information stored in the protected computer if the director, officer, employee, third-party agent, contractor, or consultant is given express permission by the owner, operator, or lessee of the protected computer or by the owner of information stored in the protected computer to access the protected computer through a technological access barrier. Such permission, however, is terminated upon revocation by the owner, operator, or lessee of the protected computer or by the owner of information stored in the protected computer, or upon cessation of employment, affiliation, or agency with the owner, operator, or lessee of the protected computer or the owner of information stored in the protected computer.
(2) "Business" means any trade or business regardless of its for-profit or not-for-profit status.
(3) "Computer" means an electronic, magnetic, optical, electrochemical, or other high-speed data processing device that performs logical, arithmetic, or storage functions and includes any data storage facility, data storage device, or communications facility directly related to, or operating in conjunction with, the device.
(4) "Harm" means any impairment to the integrity, access, or availability of data, programs, systems, or information.
(5) "Loss" means any of the following:
(a) Any reasonable cost incurred by the owner, operator, or lessee of a protected computer or the owner of stored information, including the reasonable cost of conducting a damage assessment for harm associated with the violation and the reasonable cost for remediation efforts, such as restoring the data, programs, systems, or information to the condition it was in before the violation.
(b) Economic damages.
(c) Lost profits.
(d) Consequential damages, including the interruption of service.
(e) Profits earned by a violator as a result of the violation.
(6) "Protected computer" means a computer that is used in connection with the operation of a business and stores information, programs, or code in connection with the operation of the

business in which the stored information, programs, or code can be accessed only by employing a technological access barrier.
(7) "Technological access barrier" means a password, security code, token, key fob, access device, or similar measure.
(8) "Traffic" means to sell, purchase, or deliver.
(9) "Without authorization" means access to a protected computer by a person who:
(a) Is not an authorized user;
(b) Has stolen a technological access barrier of an authorized user; or
(c) Circumvents a technological access barrier on a protected computer without the express or implied permission of the owner, operator, or lessee of the computer or the express or implied permission of the owner of information stored in the protected computer. The term does not include circumventing a technological measure that does not effectively control access to the protected computer or the information stored in the protected computer.
History.—s. 3, ch. 2015-14.

668.803 Prohibited acts.—A person who knowingly and with intent to cause harm or loss:
(1) Obtains information from a protected computer without authorization and, as a result, causes harm or loss;
(2) Causes the transmission of a program, code, or command to a protected computer without authorization and, as a result of the transmission, causes harm or loss; or
(3) Traffics in any technological access barrier through which access to a protected computer may be obtained without authorization,
is liable to the extent provided in s. 668.804 in a civil action to the owner, operator, or lessee of the protected computer, or the owner of information stored in the protected computer who uses the information in connection with the operation of a business.
History.—s. 4, ch. 2015-14.

668.804 Remedies.—
(1) A person who brings a civil action for a violation under s. 668.803 may:
(a) Recover actual damages, including the person's lost profits and economic damages.
(b) Recover the violator's profits that are not included in the computation of actual damages under paragraph (a).
(c) Obtain injunctive or other equitable relief from the court to prevent a future violation of s. 668.803.
(d) Recover the misappropriated information, program, or code, and all copies thereof, that are subject to the violation.
(2) A court shall award reasonable attorney fees to the prevailing party in any action arising under this part.
(3) The remedies available for a violation of s. 668.803 are in addition to remedies otherwise available for the same conduct under federal or state law.
(4) A final judgment or decree in favor of the state in any criminal proceeding under chapter 815 shall estop the defendant in any subsequent action brought pursuant to s. 668.803 as to all matters as to which the judgment or decree would be an estoppel as if the plaintiff had been a party in the previous criminal action.

(5) A civil action filed under s. 668.803 must be commenced within 3 years after the violation occurred or within 3 years after the violation was discovered or should have been discovered with due diligence.
History.—s. 5, ch. 2015-14.

668.805 Exclusions.—This part does not prohibit any lawfully authorized investigative, protective, or intelligence activity of any law enforcement agency, regulatory agency, or political subdivision of this state, any other state, the United States, or any foreign country. This part may not be construed to impose liability on any provider of an interactive computer service as defined in 47 U.S.C. s. 230(f), of an information service as defined in 47 U.S.C. s. 153, or of a communications service as defined in s. 202.11, if the provider provides the transmission, storage, or caching of electronic communications or messages of a person other than the provider, related telecommunications or commercial mobile radio services, or content provided by a person other than the provider.
History.—s. 6, ch. 2015-14.

# The 2018 Florida Statutes

Title XLVI
CRIMES

Chapter 815
COMPUTER-RELATED CRIMES

View Entire Chapter

## CHAPTER 815
## COMPUTER-RELATED CRIMES



**815.01 Short title.**—The provisions of this act shall be known and may be cited as the "Florida Computer Crimes Act."

**History.**—s. 1, ch. 78-92.

**815.02 Legislative intent.**—The Legislature finds and declares that:

(1) Computer-related crime is a growing problem in government as well as in the private sector.

(2) Computer-related crime occurs at great cost to the public since losses for each incident of computer crime tend to be far greater than the losses associated with each incident of other white collar crime.

(3) The opportunities for computer-related crimes in financial institutions, government programs, government records, and other business enterprises through the introduction of fraudulent records into a computer system, the unauthorized use of computer facilities, the alteration or destruction of computerized information or files, and the stealing of financial instruments, data, and other assets are great.

(4) The proliferation of new technology has led to the integration of computer systems in most sectors of the marketplace through the creation of computer networks, greatly extending the reach of computer crime.

(5) While various forms of computer crime might possibly be the subject of criminal charges based on other provisions of law, it is appropriate and desirable that a supplemental and additional statute be provided which proscribes various forms of computer abuse.

**History.**—s. 1, ch. 78-92; s. 2, ch. 2014-208.

**815.03 Definitions.**—As used in this chapter, unless the context clearly indicates otherwise:

(1) "Access" means to approach, instruct, communicate with, store data in, retrieve data from, or otherwise make use of any resources of a computer, computer system, or computer network.

(2) "Computer" means an internally programmed, automatic device that performs data processing.

(3) "Computer contaminant" means any set of computer instructions designed to modify, damage, destroy, record, or transmit information within a computer, computer system, or computer network without the intent or

permission of the owner of the information. The term includes, but is not limited to, a group of computer instructions, commonly called viruses or worms, which are self-replicating or self-propagating and which are designed to contaminate other computer programs or computer data; consume computer resources; modify, destroy, record, or transmit data; or in some other fashion usurp or interfere with the normal operation of the computer, computer system, or computer network.

(4) "Computer network" means a system that provides a medium for communication between one or more computer systems or electronic devices, including communication with an input or output device such as a display terminal, printer, or other electronic equipment that is connected to the computer systems or electronic devices by physical or wireless telecommunication facilities.

(5) "Computer program or computer software" means a set of instructions or statements and related data which, when executed in actual or modified form, cause a computer, computer system, or computer network to perform specified functions.

(6) "Computer services" include, but are not limited to, computer time; data processing or storage functions; or other uses of a computer, computer system, or computer network.

(7) "Computer system" means a device or collection of devices, including support devices, one or more of which contain computer programs, electronic instructions, or input data and output data, and which perform functions, including, but not limited to, logic, arithmetic, data storage, retrieval, communication, or control. The term does not include calculators that are not programmable and that are not capable of being used in conjunction with external files.

(8) "Data" means a representation of information, knowledge, facts, concepts, computer software, computer programs, or instructions. Data may be in any form, in storage media or stored in the memory of the computer, or in transit or presented on a display device.

(9) "Electronic device" means a device or a portion of a device that is designed for and capable of communicating across a computer network with other computers or devices for the purpose of transmitting, receiving, or storing data, including, but not limited to, a cellular telephone, tablet, or other portable device designed for and capable of communicating with or across a computer network and that is actually used for such purpose.

(10) "Financial instrument" means any check, draft, money order, certificate of deposit, letter of credit, bill of exchange, credit card, or marketable security.

(11) "Intellectual property" means data, including programs.

(12) "Property" means anything of value as defined in s. 812.012 and includes, but is not limited to, financial instruments, information, including electronically produced data and computer software and programs in machine-readable or human-readable form, and any other tangible or intangible item of value.

**History.**—s. 1, ch. 78-92; s. 9, ch. 2001-54; s. 4, ch. 2010-117; s. 3, ch. 2014-208.

**815.04 Offenses against intellectual property; public records exemption.**—

(1) A person who willfully, knowingly, and without authorization introduces a computer contaminant or modifies or renders unavailable data, programs, or supporting documentation residing or existing internal or external to a computer, computer system, computer network, or electronic device commits an offense against intellectual property.

(2) A person who willfully, knowingly, and without authorization destroys data, programs, or supporting documentation residing or existing internal or external to a computer, computer system, computer network, or electronic device commits an offense against intellectual property.

(3) Data, programs, or supporting documentation that is a trade secret as defined in s. 812.081, that is held by an agency as defined in chapter 119, and that resides or exists internal or external to a computer, computer system, computer network, or electronic device is confidential and exempt from the provisions of s. 119.07(1) and

s. 24(a), Art. I of the State Constitution. This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

(4) A person who willfully, knowingly, and without authorization discloses or takes data, programs, or supporting documentation that is a trade secret as defined in s. 812.081 or is confidential as provided by law residing or existing internal or external to a computer, computer system, computer network, or electronic device commits an offense against intellectual property.

(5)(a) Except as otherwise provided in this subsection, an offense against intellectual property is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) If the offense is committed for the purpose of devising or executing any scheme or artifice to defraud or to obtain any property, the person commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 1, ch. 78-92; s. 1, ch. 94-100; s. 431, ch. 96-406; s. 1, ch. 2014-177; s. 4, ch. 2014-208; s. 5, ch. 2016-5; s. 20, ch. 2016-6.

**815.045 Trade secret information.**—The Legislature finds that it is a public necessity that trade secret information as defined in s. 812.081, and as provided for in s. 815.04(3), be expressly made confidential and exempt from the public records law because it is a felony to disclose such records. Due to the legal uncertainty as to whether a public employee would be protected from a felony conviction if otherwise complying with chapter 119, and with s. 24(a), Art. I of the State Constitution, it is imperative that a public records exemption be created. The Legislature in making disclosure of trade secrets a crime has clearly established the importance attached to trade secret protection. Disclosing trade secrets in an agency's possession would negatively impact the business interests of those providing an agency such trade secrets by damaging them in the marketplace, and those entities and individuals disclosing such trade secrets would hesitate to cooperate with that agency, which would impair the effective and efficient administration of governmental functions. Thus, the public and private harm in disclosing trade secrets significantly outweighs any public benefit derived from disclosure, and the public's ability to scrutinize and monitor agency action is not diminished by nondisclosure of trade secrets.

**History.**—s. 2, ch. 94-100.

**Note.**—Former s. 119.165.

**815.06 Offenses against users of computers, computer systems, computer networks, and electronic devices.**—

(1) As used in this section, the term "user" means a person with the authority to operate or maintain a computer, computer system, computer network, or electronic device.

(2) A person commits an offense against users of computers, computer systems, computer networks, or electronic devices if he or she willfully, knowingly, and without authorization:

(a) Accesses or causes to be accessed any computer, computer system, computer network, or electronic device with knowledge that such access is unauthorized;

(b) Disrupts or denies or causes the denial of the ability to transmit data to or from an authorized user of a computer, computer system, computer network, or electronic device, which, in whole or in part, is owned by, under contract to, or operated for, on behalf of, or in conjunction with another;

(c) Destroys, takes, injures, or damages equipment or supplies used or intended to be used in a computer, computer system, computer network, or electronic device;

(d) Destroys, injures, or damages any computer, computer system, computer network, or electronic device;

(e) Introduces any computer contaminant into any computer, computer system, computer network, or electronic device; or

(f) Engages in audio or video surveillance of an individual by accessing any inherent feature or component of a

computer, computer system, computer network, or electronic device, including accessing the data or information of a computer, computer system, computer network, or electronic device that is stored by a third party.

(3)(a) Except as provided in paragraphs (b) and (c), a person who violates subsection (2) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) A person commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if he or she violates subsection (2) and:

1. Damages a computer, computer equipment or supplies, a computer system, or a computer network and the damage or loss is at least $5,000;

2. Commits the offense for the purpose of devising or executing any scheme or artifice to defraud or obtain property;

3. Interrupts or impairs a governmental operation or public communication, transportation, or supply of water, gas, or other public service; or

4. Intentionally interrupts the transmittal of data to or from, or gains unauthorized access to, a computer, computer system, computer network, or electronic device belonging to any mode of public or private transit, as defined in s. 341.031.

(c) A person who violates subsection (2) commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the violation:

1. Endangers human life; or

2. Disrupts a computer, computer system, computer network, or electronic device that affects medical equipment used in the direct administration of medical care or treatment to a person.

(4) A person who willfully, knowingly, and without authorization modifies equipment or supplies used or intended to be used in a computer, computer system, computer network, or electronic device commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(5)(a) In addition to any other civil remedy available, the owner or lessee of the computer, computer system, computer network, computer program, computer equipment or supplies, electronic device, or computer data may bring a civil action against a person convicted under this section for compensatory damages.

(b) In an action brought under this subsection, the court may award reasonable attorney fees to the prevailing party.

(6) A computer, computer system, computer network, computer software, computer data, or electronic device owned by a defendant that is used during the commission of a violation of this section or a computer or electronic device owned by the defendant that is used as a repository for the storage of software or data obtained in violation of this section is subject to forfeiture as provided under ss. 932.701-932.704.

(7) This section does not apply to a person who:

(a) Acts pursuant to a search warrant or to an exception to a search warrant authorized by law;

(b) Acts within the scope of his or her lawful employment; or

(c) Performs authorized security operations of a government or business.

(8) For purposes of bringing a civil or criminal action under this section, a person who causes, by any means, the access to a computer, computer system, computer network, or electronic device in one jurisdiction from another jurisdiction is deemed to have personally accessed the computer, computer system, computer network, or electronic device in both jurisdictions.

(9) This chapter does not impose liability on a provider of an interactive computer service as defined in 47 U.S.C. s. 230(f), information service as defined in 47 U.S.C. s. 153, or communications service as defined in s. 202.11 that provides the transmission, storage, or caching of electronic communications or messages of others; other related telecommunications or commercial mobile radio service; or content provided by another person.

**History.**—s. 1, ch. 78-92; s. 11, ch. 2001-54; s. 5, ch. 2014-208.

**815.061 Offenses against public utilities.**—

(1) As used in this section, the term "public utility" includes:

(a) A public utility or electric utility as defined in s. 366.02.

(b) A utility as defined in s. 367.021.

(c) A natural gas transmission company as defined in s. 368.103.

(d) A person, corporation, partnership, association, public agency, municipality, cooperative, gas district, or other legal entity and their lessees, trustees, or receivers, now or hereafter owning, operating, managing, or controlling gas transmission or distribution facilities or any other facility supplying or storing natural or manufactured gas or liquefied gas with air admixture or any similar gaseous substances by pipeline to or for the public within this state.

(e) A separate legal entity created under s. 163.01 and composed of any of the entities described in this subsection for the purpose of providing utility services in this state, including wholesale power and electric transmission services.

(2) A person may not willfully, knowingly, and without authorization:

(a) Gain access to a computer, computer system, computer network, or electronic device owned, operated, or used by a public utility while knowing that such access is unauthorized.

(b) Physically tamper with, insert a computer contaminant into, or otherwise transmit commands or electronic communications to a computer, computer system, computer network, or electronic device that causes a disruption in any service delivered by a public utility.

(3)(a) A person who violates paragraph (2)(a) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) A person who violates paragraph (2)(b) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 6, ch. 2014-208.

**815.07 This chapter not exclusive.**—The provisions of this chapter shall not be construed to preclude the applicability of any other provision of the criminal law of this state which presently applies or may in the future apply to any transaction which violates this chapter, unless such provision is inconsistent with the terms of this chapter.

**History.**—s. 1, ch. 78-92.

# Supreme Court of Florida

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No. SC17-716

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**SANDRA KENT WHEATON,**
Petitioner,

vs.

**MARDELLA WHEATON,**
Respondent.

January 4, 2019

QUINCE, J.

Petitioner Sandra Wheaton seeks review of the decision of the Third District Court of Appeal in *Wheaton v. Wheaton*, 217 So. 3d 125 (Fla. 3d DCA 2017), on the ground that it expressly and directly conflicts with *Boatright v. Phillip Morris USA, Inc.*, 218 So. 3d 962 (Fla. 2d DCA 2017), *McCoy v. R.J. Reynolds Tobacco Co.*, 229 So. 3d 827 (Fla. 4th DCA 2017), and *Oldcastle Southern Group, Inc., v. Railworks Track Systems, Inc.*, 235 So. 3d 993 (Fla. 1st DCA 2017), regarding whether proposals for settlement made pursuant to section 768.79, Florida Statutes (2018), and Florida Rule of Civil Procedure 1.442 must comply with the email service provisions of Florida Rule of Judicial Administration 2.516. We have

jurisdiction. *See* art. V, § 3(b)(3), Fla. Const. For the reasons that follow, we quash the decision of the Third District.

## FACTS AND PROCEDURAL HISTORY

Respondent, Mardella Wheaton, sued her ex-daughter-in-law, Petitioner, Sandra Wheaton, for unlawful detainer. Petitioner served a proposal for settlement on Respondent via email. Respondent received the proposal but did not accept it.

The trial court granted Petitioner's motion for summary judgment.[1] Petitioner then moved to enforce her proposal for settlement and to collect attorney's fees. Respondent opposed the motion on three grounds: (1) the proposal was vague; (2) the proposal was not made in good faith; and (3) the proposal failed to strictly comply with the e-mail service requirements of rule 2.516. The trial court rejected the vagueness argument but agreed that the proposal failed to strictly comply with the requirements of rule 2.516.[2] The basis for the trial court's ruling was that Petitioner's email "did not include a certificate of service, a subject line containing the words 'SERVICE OF COURT DOCUMENTS,' and [failed to

1. Respondent appealed the summary judgment loss to the Third District, which affirmed the trial court per curiam. *Wheaton v. Wheaton*, 194 So. 3d 1036 (Fla. 3d DCA 2016).

2. Because the trial court found that the proposal was unenforceable, it did not reach the issue of whether the offer was made in good faith.

comply with] other requirements of rules 1.442, 1.080 and 2.516 of the Florida Rules of [Civil Procedure and Judicial Administration.]" In support of its conclusion, the trial court relied on the Fourth District Court of Appeal's decision in *Matte v. Caplan*, 140 So. 3d 686 (Fla. 4th DCA 2014), and precedent from this Court stating that section 768.79 and rule 1.442 must be strictly construed. Therefore, according to the trial court, Petitioner's failure to comply with all of the formatting requirements set forth in rule 2.516(b)(1)(E) rendered the proposal unenforceable.

Petitioner appealed the trial court's decision to the Third District Court of Appeal, arguing that "because the proposal for settlement is neither a pleading nor a 'document filed in any court proceeding,' it is not subject to the requirements of rule 2.516." *Wheaton*, 217 So. 3d at 127. The Third District acknowledged that subdivision (a) of rule 2.516 applies only to documents that are filed in court proceedings, and that section 768.79 and rule 1.442 expressly forbid a party from filing a proposal when it is initially served. *Id.* However, the court disagreed with Petitioner's reliance on the language in subdivision (a) of rule 2.516. *Id.* Instead, the court found that "[t]he relevant language is contained in subdivision (b) of rule 2.516, which provides in pertinent part: 'All documents required *or permitted to be served* on another party *must be served by e-mail*, unless the parties otherwise

stipulate or this rule otherwise provides.'" *Id.* The district court went on to hold that

> the document in question (the proposal for settlement) is "permitted to be served on another party." And because the parties did not "otherwise stipulate," and because the rule does not "otherwise provide," this proposal for settlement "*must* be served by e-mail" and therefore must be served in compliance with the e-mail requirements of rule 2.516, regardless of whether the document is contemporaneously filed with the court. We find this language plain and unambiguous, and hold that a proposal for settlement falls clearly within the scope of { "pageset": "S7f rule 2.516(b) and is subject to that rule's requirements.

*Id.* at 127-28 (footnote omitted). In so holding, the district court noted that it "agree[d] with the decision and analysis" set forth in the First District Court of Appeal's decision in *Floyd v. Smith*, 160 So. 3d 567 (Fla. 1st DCA 2015), and the Fourth District's decision in *Matte v. Caplan*, 140 So. 3d 686 (Fla. 4th DCA 2014). *Wheaton*, 217 So. 3d at 128.

Petitioner filed a motion for rehearing, arguing that the district court's decision was inconsistent with this Court's decision in *Kuhajda v. Borden Dairy Co. of Alabama, LLC*, 202 So. 3d 391 (Fla. 2016), which was published after briefing was completed in *Wheaton*. The district court summarily denied Petitioner's motion. Now before this Court, Petitioner contends that the Third District's decision expressly and directly conflicts with *Boatright v. Phillip Morris USA, Inc.*, 218 So. 3d 962 (Fla. 2d DCA 2017), *McCoy v. R.J. Reynolds Tobacco*

*Co.*, 229 So. 3d 827 (Fla. 4th DCA 2017), and *Oldcastle Southern Group, Inc. v. Railworks Track Systems, Inc.*, 235 So. 3d 993 (Fla. 1st DCA 2017).

## ANALYSIS

The conflict issue presented is whether proposals for settlement made pursuant to section 768.79, Florida Statutes, and Florida Rule of Civil Procedure 1.442 must comply with the email service provisions of Florida Rule of Judicial Administration 2.516. The standard of review in determining whether an offer of settlement comports with section 768.79, Florida Statutes, and Florida Rule of Civil Procedure 1.442 and is de novo. *Pratt v. Weiss*, 161 So. 3d 1268, 1271 (Fla. 2015). Because the conflict issue involves the interpretation of the Court's rules, in this case Florida Rule of Judicial Administration 2.516, the standard of review is also de novo. *Saia Motor Freight Line, Inc. v. Reid*, 930 So. 2d 598, 599 (Fla. 2006).

### Relevant Provisions

Section 768.79, Florida Statutes ("Offer of judgment and demand for judgment"), "provides a sanction against a party who unreasonably rejects a settlement offer." *Willis Shaw Exp., Inc. v. Hilyer Sod, Inc.*, 849 So. 2d 276, 278 (Fla. 2003). Section 768.79 provides in relevant part:

> In any civil action for damages filed in the courts of this state, if a defendant files an offer of judgment which is not accepted by the plaintiff within 30 days, the defendant shall be entitled to recover reasonable costs and attorney's fees incurred by her or him on the

> defendant's behalf . . . if . . . the judgment obtained by the plaintiff is at least 25 percent less than such offer, and the court shall set off such costs and attorney's fees against the award.

The statute further provides that an offer shall:

> (a) Be in writing and state that it is being made pursuant to this section.
>
> (b) Name the party making it and the party to whom it is being made.
>
> (c) State with particularity the amount offered to settle a claim for punitive damages, if any.
>
> (d) State the total amount.

§ 768.79(2), Fla. Stat. (2018). The section also states that a proposal "shall be served upon the party to whom it is made, but it shall not be filed unless it is accepted or unless filing is necessary to enforce the provisions of this section." § 768.79(3), Fla. Stat. (2018).

Section 768.79 is implemented by Florida Rule of Civil Procedure 1.442 ("Proposals for Settlement"). The rule provides that a proposal shall:

> (A) name the party or parties making the proposal and the party or parties to whom the proposal is being made;
>
> (B) state that the proposal resolves all damages that would otherwise be awarded in a final judgment in the action in which the proposal is served, subject to subdivision (F);
>
> (C) state with particularity any relevant provisions;
>
> (D) state the total amount of the proposal and state with particularity all nonmonetary terms of the proposal;
>
> (E) state with particularity the amount proposed to settle a claim for punitive damages, if any;
>
> (F) state whether the proposal includes attorneys' fees and whether attorneys' fees are part of the legal claim; and

> (G) include a certificate of service in the form required by rule 1.080.

Fla. R. App. P. 1.442(c)(2). The rule also states that a proposal "shall be served on the party or parties to whom it is made but shall not be filed unless necessary to enforce the provisions of this rule." Fla. R. App. P. 1.442(d).

While rule 1.442 requires proposals for settlement to include a certificate of service, rule 1.080 no longer contains a certificate of service provision. Instead, the rule states that "[e]very pleading subsequent to the initial pleading, all orders, and every other document filed in the action must be served in conformity with the requirements of Florida Rule of Judicial Administration 2.516." Fla. R. Civ P. 1.080(a).[3]

The relevant portions of rule 2.516 provide:

> (a) **Service; When Required.** Unless the court otherwise orders, or a statute or supreme court administrative order specifies a different means of service, *every pleading subsequent to the initial pleading and every other document filed in any court proceeding*, except applications for witness subpoenas and documents served by formal notice or required to be served in the manner provided for service of formal notice, *must be served in accordance with this rule on each party*. 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.

3. Rule 1.080(f) used to contain a certificate of service provision, but it was deleted in 2012 when rule 2.516 was adopted. *See In re Amend. to Fla. Rules of Jud. Admin.*, 102 So. 3d 505, 510 (Fla. 2012).

(b) **Service; How Made.** When service is required or permitted to be made upon a party represented by an attorney, service must be made upon the attorney unless service upon the party is ordered by the court.

(1) **Service by Electronic Mail ("e-mail").** *All documents required or permitted to be served on another party must be served by e-mail, unless the parties otherwise stipulate or this rule otherwise provides.* A filer of an electronic document has complied with this subdivision if the Florida Courts e-filing Portal ("Portal") or other authorized electronic filing system with a supreme court approved electronic service system ("e-Service system") served the document by e-mail or provided a link by e-mail to the document on a website maintained by a clerk ("e-Service"). The filer of an electronic document must verify that the Portal or other e-Service system uses the names and e-mail addresses provided by the parties pursuant to subdivision (b)(1)(A).

(Emphasis added.) The rule goes on to provide the following formatting requirements:

(i) All documents served by e-mail must be sent by an e-mail message containing a subject line beginning with the words "SERVICE OF COURT DOCUMENT" in all capital letters, followed by the case number and case style of the proceeding in which the documents are being served.

(ii) The body of the e-mail must identify the court in which the proceeding is pending, the case number, the name of the initial party on each side, the title of each document served with that e-mail, and the name and telephone number of the person required to serve the document.

(iii) Any document served by e-mail may be signed by any of the "/s/," "/s," or "s/" formats.

(iv) Any e-mail which, together with its attached documents, exceeds the appropriate size limitations specified in the Florida Supreme Court Standards for Electronic Access to the Court, must be divided and sent as separate e-mails, no one of which may exceed the appropriate size limitations specified in the Florida Supreme Court Standards for Electronic Access to the Court and each of which must be sequentially numbered in the subject line.

Fla. R. Jud. Admin. 2.516(b)(1)(E)(i)-(iv).

**Conflict Cases**

In *Boatright*, the plaintiffs served four proposals for settlement on the defendants—one from each plaintiff to each defendant. *Boatright*, 218 So. 3d at 964. The proposals were sent to the defendants via U.S. certified mail. *Id.* Following a jury verdict in their favor, the plaintiffs filed a motion for attorney's fees and costs based in part on the defendants' failure to accept the proposals for settlement. *Id.* The trial court denied the motion, finding that the plaintiffs were not entitled to attorney's fees and costs because they did not serve their proposals for settlement on the defendants by email, and therefore failed to strictly comply with section 768.79 and rule 1.442. *Id.*

In reversing the trial court, the Second District held that "proposals for settlement are not subject to the service requirements of rule 2.516 because the proposals do not meet rule 1.080(a)'s threshold requirement that they be 'filed in the action.' " *Id.* at 965. Additionally, the district court rejected the *Wheaton* court's reliance on subdivision (b) of rule 2.516, reasoning that "rule 2.516(b)(1)'s mandatory service requirement is confined to every pleading subsequent to the initial pleading and documents that are filed in court—it does not extend to literally every document which is due to be served." *Id.* at 970. In doing so, the district court certified conflict with the Third District's decision. *Id.* at 971.

In *McCoy*, the plaintiff served a proposal for settlement on each of three defendants by U.S. certified mail. *McCoy*, 229 So. 3d at 828. The defendants received the proposals for settlement but did not accept them. *Id.* After trial, the plaintiff obtained a verdict that entitled him to attorney's fees under section 768.79 and moved for attorney's fees. *Id.* The defendants opposed the motion, arguing that the plaintiff failed to email the proposals pursuant to rule 2.516. *Id.* The trial court denied the motion. *Id.*

The Fourth District reversed the trial court, finding that "[w]here a party has actual notice of an offer of settlement, and the offering party has satisfied the requirements of section 768.79 on entitlement, to deny recovery because the initial offer was not emailed is to allow the procedural tail of the law to wag the substantive dog." *Id.* (citing *Kuhajda*, 202 So. 3d 391). The court noted that both section 768.79 and rule 1.442 require service of proposals for settlement but prohibit filing, and found that as applied to rule 2.561(a), a proposal for settlement is neither a pleading nor a document "filed in any court proceeding." *McCoy*, 229 So. 3d at 829 (quoting Fla. R. Jud. Admin. 2.516(a)). Thus, "under the plain language of Rule 2.516(a), then, the initial offer of judgment is outside of the email requirements of that rule." *Id.* at 829.

The district court also disagreed with *Wheaton*, stating that in reaching its conclusion, the Third District

> imports language from rule 2.516(b) to add words to the plain language of 2.516(a). Instead of focusing on subsection 2.516(a), which specifies when email service is "required," the *Wheaton* court looked to subsection 2.516(b) to hold that email service was required for the initial delivery of an offer of judgment.
>
> We disagree with *Wheaton*; subsection (a) is not ambiguous, so a court should not add words to manipulate its meaning.

*Id.* (citation omitted).

In *Oldcastle*, the plaintiff sent a proposal for settlement by email to the defendant. *Oldcastle*, 235 So. 3d at 993-94. The defendant received the proposal—but did not accept it—and then the plaintiff received a judgment more than 25 percent greater than the amount demanded in the proposal. *Id.* at 994 (citing § 768.79(1), Fla. Stat. (2014)). The defendant argued that the proposal had to be served in accordance with rule 2.516, which the First District rejected. *Id.* at 995.

The district court acknowledged that the plaintiff's proposal did not comply with the formatting requirements set forth by rule 2.516(b)(1)(E). However, the court found that these requirements did not apply because "compliance with rule 2.516 is not required when serving a proposal for settlement." *Id.* at 994. To reach its conclusion, the court examined rule 2.516(a) and found that "since the proposal for settlement is not to be filed when it is served, the proposal is not included in the clause 'every other document filed in any court proceeding.' " *Id.* at 994-95. In

doing so, the court adopted the view of *Boatright* and *McCoy* and certified conflict with *Wheaton*. *Oldcastle*, 235 So. 3d at 994.

**Interpretation**

We have previously stated that both rule 1.442 and section 768.79 should be strictly construed. *See Campbell v. Goldman*, 959 So. 2d 223, 226 (Fla. 2007) (citing *Willis Shaw Express, Inc. v. Hilyer Sod, Inc.*, 849 So. 2d 276 (Fla. 2003)). "[W]hen the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation." *Holly v. Auld*, 450 So. 2d 217, 219 (Fla. 1984) (quoting *A.R. Douglass, Inc. v. McRainey*, 137 So. 157, 159 (Fla. 1931)); *accord Forsythe v. Longboat Key Beach Erosion Control Dist.*, 604 So. 2d 452, 454 (Fla. 1992). If, however, the language of the rule is ambiguous and capable of different meanings, this Court will apply established principles of statutory construction to resolve the ambiguity. *See, e.g., Gulfstream Park Racing Ass'n, Inc., v. Tampa Bay Downs, Inc.*, 948 So. 2d 599, 606 (Fla. 2006).

From the plain language of section 768.79 and rule 1.442, neither require service by email. The procedure for communicating an offer of settlement is set out in section 768.79(3), Florida Statutes (2018), which states:

> The offer *shall be served upon the party to whom it is made, but it shall not be filed* unless it is accepted or unless filing is necessary to enforce the provisions of this section.

(Emphasis added.) The statute only requires that the offer be served on the party to whom it is directed and not be filed with the court but does not require service by email.

Similarly, subdivision (d) of rule 1.442 outlines the procedure for communicating a proposal for settlement to the opposing party. The subdivision states:

> **(d) Service and Filing.** A proposal shall be served on the party or parties to whom it is made but shall not be filed unless necessary to enforce the provisions of this rule.

Fla. R. Civ. P. 1.442(d). Again, the rule provides that the offer must be served on the party to whom it is directed and not filed with the court but does not require service by email. However, unlike section 768.79, rule 1.442 provides that a proposal for settlement must "include a certificate of service in the form required by rule 1.080." Fla. R. Civ. P. 1.442(c)(2)(G).

As previously mentioned, rule 1.080 does not specify the form of the certificate of service. Instead, the rule provides:

> *Every pleading subsequent to the initial pleading, all orders, and every other document filed* in the action must be served in conformity with the requirements of Florida Rule of Judicial Administration 2.516.

Fla. R. Civ. P. 1.080(a) (emphasis added). This does not apply to proposals for settlement because a settlement offer is neither a pleading subsequent to the initial pleading, an order, or a document filed with the court. Accordingly, based on rule

1.080's plain language, rule 2.516 would not apply to proposals for settlement made pursuant to section 768.79 and rule 1.442.

It appears that in reaching its conclusion to the contrary, the Third District focused on construing rule 2.516 more than section 768.79 and rule 1.442. However, even the plain language of rule 2.516 does not support the Third District's conclusion. The provisions of rule 2.516 that are at issue in this case are subdivision (a), "Service; When Required," and subdivision (b), "Service; How Made." According to the first subdivision, "every pleading subsequent to the initial pleading and every other document filed in any court proceeding . . . must be served in accordance with this rule." Fla. R. Jud. Admin. 2.516(a). The rule goes on to state in the second subdivision that "[a]ll documents required or permitted to be served on another party must be served by e-mail, unless the parties otherwise stipulate or this rule provides otherwise." Fla. R. Jud. Admin. 2.516(b)(1). Therefore, the plain language of the rule provides that if a document is (1) a pleading subsequent to the initial pleading, or (2) a document filed in any court proceeding, it must be served according to the rule. Then, the rule goes on to provide that service must be made by email if the document (1) requires service or (2) permits service.

The Third District appeared to agree that the rule only requires service if the document is a pleading subsequent to the initial pleading or a document filed in

any court proceeding because it determined that a proposal for settlement is a document that is "permitted to be served on another party." *Wheaton*, 217 So. 3d at 127 (quoting Fla. R. Jud. Admin. 2.516(b)). However, if rule 2.516 creates two groups of documents that must be filed—documents that are required to be served and documents that are permitted to be served—proposals for settlement would not fall in the latter group. The proposal for settlement statute provides that a proposal "shall be served" on the party to whom it is made, but "shall not be filed" unless it is accepted or filing is necessary to enforce the provisions of the statute. § 768.79(3), Fla. Stat. (2018). Similarly, the rule that implements section 768.79 states "[a] proposal shall be served on the party or parties to whom it is made but shall not be filed unless necessary to enforce the provisions of this rule." Fla. R. Civ. P. 1.442(d). We have previously held that "[t]he word 'shall' is mandatory in nature." *Sanders v. City of Orlando*, 997 So. 2d 1089, 1095 (Fla. 2008); *see also Fla. Bar v. Trazenfeld*, 833 So. 2d 734, 738 (Fla. 2002) ("The word 'may' when given its ordinary meaning denotes a permissive term rather than the mandatory connotation of the word 'shall.' "). Therefore, a proposal for settlement is a document that must be served on the party to whom it is made but must not be filed with the court. By its plain language, a proposal for settlement is not a required document as contemplated by rule 2.516. Accordingly, the Third District erred in finding that a proposal for settlement is subject to the requirements of rule 2.516.

In support of its conclusion, the Third District relied on two cases: the First District's decision in *Floyd*, 160 So. 3d 567, and the Fourth District's decision in *Matte*, 140 So. 3d 686. However, neither case addresses the issue of rule 2.516 as it relates to proposals for settlement. In *Floyd*, the First District considered whether a proposal for settlement had to contain "a certificate of service in the form required by rule 1.080." *Floyd*, 160 So. 3d at 569 (quoting Fla. R. Civ. P. 1.442(c)(2)(G)). Having addressed that specific issue, *Floyd* is inapplicable to the instant case because it did not consider the issue of whether rule 2.516 applied to service of a proposal for settlement. Likewise, in *Matte*, the court addressed a motion for sanctions sought pursuant to section 57.105, Florida Statutes (2013). *Matte*, 140 So. 3d at 687-88. In that case, the court overlooked the limitation contained in rule 2.516(a) and began its analysis by construing subdivision (b). In doing so, the court found that preliminary service of a motion for sanctions under section 57.105 must be accomplished by email. However, motions for sanctions are similar to proposals for settlement in that they are forbidden from being initially filed. *See* § 57.105(4), Fla. Stat. (2018). This, as noted by the Second District Court of Appeal, "constitutes a fatal flaw in that court's reasoning." *Boatright*, 218 So. 3d at 969; *see also Douglas v. Zachry Indus., Inc.*, No. 6:13cv1943Or140GJK, 2015 WL 6750803, at *3 (M.D. Fla. Nov. 5, 2015) ("It is

this Court's view that the *Matte* decision overlooked the limiting language—'filed in any court proceeding'—and reached an incorrect conclusion as a result.").

Moreover, even if this Court were to accept the Third District's interpretation, Petitioner's failure to comply with the email formatting requirements set forth in rule 2.516 would not render the proposal unenforceable. Respondent contends that when parties seek to obtain attorney's fees, "all t's must be crossed and i's dotted." *Campbell*, 959 So. 2d at 227 (Pariente, J., specially concurring). However, we recently held that a proposal for settlement that did not strictly comply with rule 1.442(c)(2)(F) was not invalid where the proposal "complied with the relevant requirements of the rule that implemented the substantive requirements of section 768.79." *Kuhajda*, 202 So. 3d at 396. In that case, we recognized that section 768.79 and rule 1.442 must be strictly construed but found that strict construction was required "in contexts in which the provisions of the rule implemented the substantive requirements of section 768.79." *Id.* at 395. Because we found that "the offers of judgment at issue in this case are not ambiguous," we "decline[d] to invalidate Kuhajda's offers of judgment solely for violating a requirement in rule 1.442 that section 768.79 does not require." *Id.* In doing so, we reasoned that "[t]he procedural rule should no more be allowed to trump the statute here than the tail should be allowed to wag the dog." *Id.* at 395-

96. Ultimately, we held "a procedural rule should not be strictly construed to defeat a statute it is designed to implement." *Id.* at 396

As applied to the instant case, even if we were to find that rule 2.516 applied to proposals for settlement, Petitioner's failure to comply with the rule would not render the proposal unenforceable because the proposal complied with the substantive requirements set forth by section 768.79. Petitioner's proposal was in writing, stated that it was made pursuant to the section, named the party making the offer and the party to whom it was made, stated the amount offered to settle, and the total amount as required by the statute. *See* § 768.79(2)(a)-(d). Moreover, the proposal stated that it would resolve all damages that would otherwise be awarded in a final judgment, stated the relevant conditions, and whether the proposal included attorney's fees as required by the additional provisions found in the rule implementing the section. Fla. R. Civ. P. 1.442(c)(2). The only deficiencies the trial court found in the proposal were related to requirements set forth by rule 2.516. However, pursuant to *Kuhajda*, that should not be enough to find that the proposal is unenforceable. Because the proposal complied with the substantive requirements set forth by the statute, the proposal is valid.

## CONCLUSION

The plain language of section 768.79 and rule 1.442 do not require service by email. Moreover, because a proposal for settlement is a document that is

required to be served on the party to whom it is made, rule 2.516 does not apply. Accordingly, the Third District erred in affirming the trial court. Accordingly, we quash *Wheaton*, approve *Boatright*, *McCoy*, and *Oldcastle*, and remand for proceedings consistent with this decision.

It is so ordered.

PARIENTE, LEWIS, POLSTON, and LABARGA, JJ., concur.
CANADY, C.J., concurs in result with an opinion, in which LAWSON, J., concurs.

NO MOTION FOR REHEARING WILL BE ALLOWED.

CANADY, C.J., concurring in result.

I agree with the majority's conclusion that the "Petitioner's failure to comply with the email formatting requirements" of Florida Rule of Judicial Administration 2.516 is not a basis for determining the settlement proposal to be invalid. Majority op. at 17. But I disagree with the majority's holding that proposals for settlement are not subject to the email service requirement of rule 2.516. Majority op. at 15. So I would adopt the Third District's view of the interpretation of rule 2.516 but reject its conclusion that the settlement offer was invalid.

The adoption of rule 2.516 was the culmination of an effort to develop "a *comprehensive* proposal to implement e-mail service in Florida." *In re Amendments to Fla. Rules of Judicial Admin., Fla. Rules of Civil Procedure, Fla. Rules of Criminal Procedure, Fla. Prob. Rules, Fla. Rules of Traffic Court, Fla.*

*Small Claims Rules, Fla. Rules of Juvenile Procedure, Fla. Rules of Appellate Procedure, Fla. Family Law Rules of Procedure—E-Mail Serv. Rule*, 102 So. 3d 505, 506 (Fla. 2012) (emphasis added). In adopting rule 2.516, we acknowledged that it "was modeled after" the then-existing Florida Rule of Civil Procedure 1.080. *Id.* at 507. And we stated unequivocally that "new rule 2.516 provides that *all documents required or permitted to be served* on another party must be served by e-mail." *Id.* (emphasis added). Nothing in the history, context, or structure of the rule suggests that the unqualified reference in the text of subdivision (b) to "[*a*]*ll documents* required or permitted to be served" is intended to include only documents that are filed. Fla. R. Jud. Admin. 2.516(b)(1) (emphasis added).

Subdivision (a) of rule 2.516 contains general provisions concerning the requirements for service of pleadings and other documents that are "filed in any court proceeding." Fla. R. Jud. Admin. 2.516(a). The scope of subdivision (a) is thus limited to court filings. But that does not mean that the scope of subdivision (b) is similarly limited. Subdivision (a) simply does not address documents that are not filed. Subdivision (b), by its express terms, specifies how service must be made whenever "service is required or permitted to be made." Fla. R. Jud. Admin. 2.516(b). By its plain language, the scope of subdivision (b) necessarily extends beyond documents that are filed in court proceedings to include documents that are served but not filed.

The majority errs in relying on the reference in Florida Rule of Civil Procedure 1.442(c)(2)(G) to "a certificate of service in the form required by rule 1.080." Majority op. at 13. Since the adoption of rule 2.516 in 2012, rule 1.080 has not contained a form certificate of service. With the adoption of rule 2.516 the form certificate of service was moved to the new rule, where it is set forth in subdivision (f). So the reference on which the majority relies is an obsolete, erroneous reference to a superseded version of rule 1.080—a nonsensical reference that can only be treated as meaningless. It can certainly provide no guidance for interpreting the scope of rule 2.516(b), much less a basis for disregarding the plain language of that rule.

LAWSON, J., concurs.

Application for Review of the Decision of the District Court of Appeal – Direct Conflict of Decisions

Third District - Case No. 3D16-490

(Monroe County)

Maegan P. Luka, Philip J. Padovano, and Joseph T. Eagleton of Brannock & Humphries, Tampa, Florida; and Robert Stober of Hersoff, Lupino & Yagel, LLP, Tavernier, Florida,

for Petitioner

Dale R. Coburn, Gaelan P. Jones, and Matthew S. Francis of Vernis & Bowling of the Florida Keys, P.A., Islamorada, Florida,

for Respondent

## RULE 2.515. SIGNATURE AND CERTIFICATES OF ATTORNEYS AND PARTIES

**(a) Attorney's Signature and Certificates.** Every document 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, documents need not be verified or accompanied by affidavit. The signature of an attorney shall constitute a certificate by the attorney that:

(1) the attorney has read the document;

(2) to the best of the attorney's knowledge, information, and belief there is good ground to support the document;

(3) the document is not interposed for delay; and

(4) the document contains no confidential or sensitive information, or that any such confidential or sensitive information has been properly protected by complying with the provisions of rules 2.420 and 2.425. If a document 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 document had not been served.

**(b) Pro Se Litigant Signature.** A party who is not represented by an attorney shall sign any document and state the party's address and telephone number, including area code.

**(c) Form of Signature.**

(1) The signatures required on documents by subdivisions (a) and (b) of this rule may be:

(A) original signatures;

(B) original signatures that have been reproduced by electronic means, such as on electronically transmitted documents or photocopied documents;

(C) an electronic signature indicator using the "/s/," "s/," or "/s" [name] formats authorized by the person signing a document electronically served or filed; or

(D) any other signature format authorized by general law, so long as the clerk where the proceeding is pending has the capability of receiving and has obtained approval from the Supreme Court of Florida to accept pleadings and documents with that signature format.

(2) By serving a document, or by filing a document by electronic transmission using an attorney's assigned electronic filing credentials:

(A) that attorney certifies compliance with subdivision (a)(1) through (a)(4) and accepts responsibility for the document for all purposes under this rule;

(B) that attorney certifies compliance with all rules of procedure regarding service of the document on attorneys and parties;

(C) that attorney certifies that every person identified as a signer in the document as described in subdivision (c)(1)(C) has authorized such signature; and

(D) every signing attorney is as responsible for the document as if that document had been served by such signing attorney or filed using the assigned electronic filing credentials of such signing attorney.

## RULE 2.516. SERVICE OF PLEADINGS AND DOCUMENTS

**(a) Service; When Required.** Unless the court otherwise orders, or a statute or supreme court administrative order specifies a different means of service, every pleading subsequent to the initial pleading and every other document filed in any court proceeding, except applications for witness subpoenas and documents served by formal notice or required to be served in the manner provided for service of formal notice, must be served in accordance with this rule on each party. 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.

**(b) Service; How Made.** When service is required or permitted to be made upon a party represented by an attorney, service must be made upon the attorney unless service upon the party is ordered by the court.

**(1) Service by Electronic Mail ("e-mail").** All documents required or permitted to be served on another party must be served by e-mail, unless the parties otherwise stipulate or this rule otherwise provides. A filer of an electronic document has complied with this subdivision if the Florida Courts e-filing Portal ("Portal") or other authorized electronic filing system with a supreme court approved electronic service system ("e-Service system") served the document by e-mail or provided a link by e-mail to the document on a website maintained by a clerk ("e-Service"). The filer of an electronic document must verify that the Portal or other e-Service system uses the names and e-mail addresses provided by the parties pursuant to subdivision (b)(1)(A).

**(A) Service on Attorneys.** Upon appearing in a proceeding, an attorney must designate a primary e-mail address and may designate no more than two secondary e-mail addresses and is responsible for the accuracy of and changes to that attorney's own e-mail addresses maintained by the Portal or other e-Service system. Thereafter, service must be directed to all designated e-mail addresses in that proceeding. Every document filed or served by an attorney thereafter must include the primary e-mail address of that attorney and any secondary e-mail addresses. If an attorney does not designate any e-mail address for service, documents may be served on that attorney at the e-mail address on record with The Florida Bar.

**(B) Exception to E-mail Service on Attorneys.** Upon motion by an attorney demonstrating that the attorney has no e-mail account and lacks access to the Internet at the attorney's office, the court may excuse the attorney from the requirements of e-mail service. Service on and by an attorney excused by the court from e-mail service must be by the means provided in subdivision (b)(2).

**(C) Service on and by Parties Not Represented by an Attorney.** Any party not represented by an attorney may serve a designation of a primary e-mail address and also may designate no more than two secondary e-mail addresses to which service must be directed in that proceeding by the means

provided in subdivision (b)(1) of this rule. If a party not represented by an attorney does not designate an e-mail address for service in a proceeding, service on and by that party must be by the means provided in subdivision (b)(2).

**(D) Time of Service.** Service by e-mail is complete on the date it is sent.

(i) If, however, the e-mail is sent by the Portal or other e-Service system, service is complete on the date the served document is electronically filed.

(ii) If the person required to serve a document learns that the e-mail was not received by an intended recipient, the person must immediately resend the document to that intended recipient by e-mail, or by a means authorized by subdivision (b)(2) of this rule.

**(E) Format of E-mail for Service.** Service of a document by e-mail is made by an e-mail sent to all addresses designated by the attorney or party with either (a) a copy of the document in PDF format attached or (b) a link to the document on a website maintained by a clerk.

(i) All documents served by e-mail must be sent by an e-mail message containing a subject line beginning with the words "SERVICE OF COURT DOCUMENT" in all capital letters, followed by the case number and case style of the proceeding in which the documents are being served.

(ii) The body of the e-mail must identify the court in which the proceeding is pending, the case number, the name of the initial party on each side, the title of each document served with that e-mail, and the name and telephone number of the person required to serve the document.

(iii) Any document served by e-mail may be signed by any of the "/s/," "/s," or "s/" formats.

(iv) Any e-mail which, together with its attached documents, exceeds the appropriate size limitations specified in the Florida Supreme Court Standards for Electronic Access to the Court, must be divided and sent as separate e-mails, no one of which may exceed the appropriate size limitations specified in the Florida Supreme Court Standards for Electronic Access to the Court and each of which must be sequentially numbered in the subject line.

**(2) Service by Other Means.** In addition to, and not in lieu of, service by e-mail, service may also be made upon attorneys by any of the means specified in this subdivision. If a document is served by more than one method of service, the computation of time for any response to the served document shall be based on the method of service that provides the shortest response time. Service on and by all parties who are not represented by an attorney and who do not designate an e-mail address, and on and by all attorneys excused from e-mail service, must be made by delivering a copy of the document or by mailing it to the party or attorney at their last known address or, if no address is known, by noting the non-service in the certificate of service, and stating in the certificate of service that a copy of the served document may be obtained, on request, from the clerk of the court or from the party serving the document. Service by mail is complete upon mailing. Delivery of a copy within this rule is complete upon:

(A) handing it to the attorney or to the party,

(B) leaving it at the attorney's or party's office with a clerk or other person in charge thereof,

(C) if there is no one in charge, leaving it in a conspicuous place therein,

(D) if the office is closed or the person to be served has no office, leaving it at the person's usual place of abode with some person of his or her family above 15 years of age and informing such person of the contents, or

(E) transmitting it by facsimile to the attorney's or party's office with a cover sheet containing the sender's name, firm, address, telephone number, and facsimile number, and the number of pages transmitted. When service is made by facsimile, a copy must also be served by any other method permitted by this rule. Facsimile service occurs when transmission is complete.

(F) Service by delivery shall be deemed complete on the date of delivery.

**(c) Service; Numerous Defendants.** In actions when the parties are unusually numerous, the court may regulate the service contemplated by these rules on motion or on its own initiative in such manner as may be found to be just and reasonable.

**(d) Filing.** All documents must be filed with the court either before service or immediately thereafter, unless otherwise provided for by general law or other rules. If the original of any bond or other document required to be an original is not placed in the court file or deposited with the clerk, a certified copy must be so placed by the clerk.

**(e) Filing Defined.** The filing of documents with the court as required by these rules must be made by filing them with the clerk in accordance with rule 2.525, except that the judge may permit documents to be filed with the judge, in which event the judge must note the filing date before him or her on the documents and transmit them to the clerk. The date of filing is that shown on the face of the document by the judge's notation or the clerk's time stamp, whichever is earlier.

**(f) Certificate of Service.** When any attorney certifies in substance:

"I certify that the foregoing document has been furnished to (here insert name or names, addresses used for service, and mailing addresses) by (e-mail) (delivery) (mail) (fax) on ..... (date) …..

_____

Attorney"

the certificate is taken as prima facie proof of such service in compliance with this rule.

**(g) Service by Clerk.** When the clerk is required to serve notices and other documents, the clerk may do so by e-mail as provided in subdivision (b)(1) or by any other method permitted under subdivision (b)(2). Service by a clerk is not required to be by e-mail.

**(h) Service of Orders.**

(1) A copy of all orders or judgments must be transmitted by the court or under its direction to all parties at the time of entry of the order or judgment. No service need be made on parties against whom a default has been entered except orders setting an action for trial and final judgments that must be prepared and served as provided in subdivision (h)(2). The court may require that orders or judgments be prepared by a party, may require the party to furnish the court with stamped, addressed envelopes for service of the order or judgment, and may require that proposed orders and judgments be furnished to all parties before

entry by the court of the order or judgment. The court may serve any order or judgment by e-mail to all attorneys who have not been excused from e-mail service and to all parties not represented by an attorney who have designated an e-mail address for service.

(2) When a final judgment is entered against a party in default, the court must mail a conformed copy of it to the party. The party in whose favor the judgment is entered must furnish the court with a copy of the judgment, unless it is prepared by the court, with the address of the party to be served. If the address is unknown, the copy need not be furnished.

(3) This subdivision is directory and a failure to comply with it does not affect the order or judgment, its finality, or any proceedings arising in the action.

## RULE 2.520. DOCUMENTS

**(a) Electronic Filing Mandatory.** All documents filed in any court shall be filed by electronic transmission in accordance with rule 2.525. "Documents" means pleadings, motions, petitions, memoranda, briefs, notices, exhibits, declarations, affidavits, orders, judgments, decrees, writs, opinions, and any paper or writing submitted to a court.

**(b) Type and Size.** Documents subject to the exceptions set forth in rule 2.525(d) shall be legibly typewritten or printed, on only one side of letter sized (8 1/2 by 11 inch) white recycled paper with one inch margins and consecutively numbered pages. For purposes of this rule, paper is recycled if it contains a minimum content of 50 percent waste paper. Reduction of legal-size (8 1/2 by 14 inches) documents to letter size (8 1/2 by 11 inches) is prohibited. All documents filed by electronic transmission shall comply with rule 2.526 and be filed in a format capable of being electronically searched and printed in a format consistent with the provisions of this rule.

**(c) Exhibits.** Any exhibit or attachment to any document may be filed in its original size.

**(d) Recording Space and Space for Date and Time Stamps.**

(1) On all documents prepared and filed by the court or by any party to a proceeding which are to be recorded in the public records of any county, including but not limited to final money judgments and notices of lis pendens, a 3-

inch by 3-inch space at the top right-hand corner on the first page and a 1-inch by 3-inch space at the top right-hand corner on each subsequent page shall be left blank and reserved for use by the clerk of court.

(2) On all documents filed with the court, a 1-inch margin on all sides must be left blank for date and time stamps.

**(A) Format.** Date and time stamp formats must include a single line detailing the name of the court or Portal and shall not include clerk seals. Date stamps must be 8 numerical digits separated by slashes with 2 digits for the month, 2 digits for the date, and 4 digits for the year. Time stamps must be formatted in 12 hour time frames with a.m. or p.m. included. The font size and type must meet the Americans with Disabilities Act requirements.

**(B) Location.** The Portal stamp shall be on the top left of the document. The Florida Supreme Court and district courts of appeal stamps shall be on the left margin horizontally. Any administrative agency stamp shall be on the right margin horizontally. The clerk's stamp for circuit and county courts shall be on the bottom of the document.

**(C) Paper Filings.** When a document is filed in paper as authorized by rule, the clerk may stamp the paper document in ink with the date and time of filing instead of, or in addition to, placing the electronic stamp as described in subdivision (B). The ink stamp on a paper document must be legible on the electronic version of the document, and must neither obscure the content or other date stamp, not occupy space otherwise reserved by subdivision (B).

**(e) Exceptions to Recording Space.** Any documents created by persons or entities over which the filing party has no control, including but not limited to wills, codicils, trusts, or other testamentary documents; documents prepared or executed by any public officer; documents prepared, executed, acknowledged, or proved outside of the State of Florida; or documents created by State or Federal government agencies, may be filed without the space required by this rule.

**(f) Noncompliance.** No clerk of court shall refuse to file any document because of noncompliance with this rule. However, upon request of the clerk of court, noncomplying documents shall be resubmitted in accordance with this rule.

**Court Commentary**

**1989 Adoption.** Rule 2.055 [renumbered as 2.520 in 2006] is new. This rule aligns Florida's court system with the federal court system and the court systems of the majority of our sister states by requiring in subdivision (a)

that all pleadings, motions, petitions, briefs, notices, orders, judgments, decrees, opinions, or other papers filed with any Florida court be submitted on paper measuring 8 1/2 by 11 inches. Subdivision (e) provides a 1-year transition period from the effective date of January 1, 1990, to January 1, 1991, during which time filings that traditionally have been accepted on legal-size paper will be accepted on either legal- or letter-size paper. The 1-year transition period was provided to allow for the depletion of inventories of legal-size paper and forms. The 1-year transition period was not intended to affect compliance with Florida Rule of Appellate Procedure 9.210(a)(1), which requires that typewritten appellate briefs be filed on paper measuring 8 1/2 by 11 inches. Nor was it intended that the requirement of Florida Rule of Appellate Procedure 9.210(a)(1) that printed briefs measure 6 by 9 inches be affected by the requirements of subdivision (a).

Subdivision (b), which recognizes an exception for exhibits or attachments, is intended to apply to documents such as wills and traffic citations which traditionally have not been generated on letter-size paper.

Subdivision (c) was adopted to ensure that a 1 1/2 inch square at the top right-hand corner of all filings is reserved for use by the clerk of court. Subdivision (d) was adopted to ensure that all papers and documents submitted for filing will be considered filed on the date of submission regardless of paper size. Subdivision (d) also ensures that after the 1-year transition period of subdivision (e), filings that are not in compliance with the rule are resubmitted on paper measuring 8 1/2 by 11 inches.

This rule is not intended to apply to those instruments and documents presented to the clerk of the circuit court for recording in the Official Records under section 28.222, Florida Statutes (1987). It is also not intended to apply to matters submitted to the clerk of the circuit court in the capacity as ex officio clerk of the board of county commissioners pursuant to article VIII, section (1)(d), Florida Constitution.

**1996 Amendment.** Subdivision (c) was amended to make the blank space requirements for use by the clerk of the court consistent with section 695.26, Florida Statutes (1995). Subdivision (e) was eliminated because the transition period for letter-size and recycled paper was no longer necessary.

## RULE 2.525. ELECTRONIC FILING

**(a) Definition.** "Electronic transmission of documents" means the sending of information by electronic signals to, by or from a court or clerk, which when received can be transformed and stored or transmitted on paper, microfilm, magnetic storage device, optical imaging system, CD-ROM, flash drive, other electronic data storage system, server, case maintenance system ("CM"), electronic court filing ("ECF") system, statewide or local electronic portal ("e-portal"), or other electronic record keeping system authorized by the supreme court in a format sufficient to communicate the information on the original document in a readable format. Electronic transmission of documents includes electronic mail ("e-mail") and any internet-based transmission procedure, and may include procedures allowing for documents to be signed or verified by electronic means.

**(b) Application.** Only the electronic filing credentials of an attorney who has signed a document may be used to file that document by electronic transmission. Any court or clerk may accept the electronic transmission of documents for filing and may send documents by electronic transmission after the clerk, together with input from the chief judge of the circuit, has obtained approval of procedures, programs, and standards for electronic filing from the supreme court

("ECF Procedures"). All ECF Procedures must comply with the then-current e-filing standards, as promulgated by the supreme court in Administrative Order No. AOSC09-30, or subsequent administrative order.

**(c) Documents Affected.**

(1) All documents that are court records, as defined in rule 2.430(a)(1), must be filed by electronic transmission provided that:

(A) the clerk has the ability to accept and retain such documents;

(B) the clerk or the chief judge of the circuit has requested permission to accept documents filed by electronic transmission; and

(C) the supreme court has entered an order granting permission to the clerk to accept documents filed by electronic transmission.

(2) The official court file is a set of electronic documents stored in a computer system maintained by the clerk, together with any supplemental non-electronic documents and materials authorized by this rule. It consists of:

(A) documents filed by electronic transmission under this rule;

(B) documents filed in paper form under subdivision (d) that have been converted to electronic form by the clerk;

(C) documents filed in paper form before the effective date of this rule that have been converted to electronic form by the clerk;

(D) documents filed in paper form before the effective date of this rule or under subdivision (d) , unless such documents are converted into electronic form by the clerk;

(E) electronic documents filed pursuant to subdivision (d)(5); and

(F) materials and documents filed pursuant to any rule, statute or court order that either cannot be converted into electronic form or are required to be maintained in paper form.

(3) The documents in the official court file are deemed originals for all purposes except as otherwise provided by statute or rule.

(4) Any document in paper form submitted under subdivision (d) is filed when it is received by the clerk or court and the clerk shall immediately thereafter convert any filed paper document to an electronic document. "Convert to an electronic document" means optically capturing an image of a paper document and using character recognition software to recover as much of the document's text as practicable and then indexing and storing the document in the official court file.

(5) Any storage medium submitted under subdivision (d)(5) is filed when received by the clerk or court and the clerk shall immediately thereafter transfer the electronic documents from the storage device to the official court file.

(6) If the filer of any paper document authorized under subdivision (d) provides a self-addressed, postage-paid envelope for return of the paper document after it is converted to electronic form by the clerk, the clerk shall place the paper document in the envelope and deposit it in the mail. Except when a paper document is required to be maintained, the clerk may recycle any filed paper document that is not to be returned to the filer.

(7) The clerk may convert any paper document filed before the effective date of this rule to an electronic document. Unless the clerk is required to maintain the paper document, if the paper document has been converted to an electronic document by the clerk, the paper document is no longer part of the official court file and may be removed and recycled.

**(d) Exceptions.** Paper documents and other submissions may be manually submitted to the clerk or court:

(1) when the clerk does not have the ability to accept and retain documents by electronic filing or has not had ECF Procedures approved by the supreme court;

(2) for filing by any self-represented party or any self-represented nonparty unless specific ECF Procedures provide a means to file documents electronically. However, any self-represented nonparty that is a governmental or public agency and any other agency, partnership, corporation, or business entity acting on behalf of any governmental or public agency may file documents by electronic transmission if such entity has the capability of filing document electronically;

(3) for filing by attorneys excused from e-mail service in accordance with rule 2.516(b);

(4) when submitting evidentiary exhibits or filing non-documentary materials;

(5) when the filing involves documents in excess of the appropriate size limitations specified in the Florida Supreme Court Standards for Electronic Access to the Court. For such filings, documents may be transmitted using an electronic storage medium that the clerk has the ability to accept, which may include a CD-ROM, flash drive, or similar storage medium;

(6) when filed in open court, as permitted by the court;

(7) when paper filing is permitted by any approved statewide or local ECF procedures; and

(8) if any court determines that justice so requires.

**(e) Service.**

(1) Electronic transmission may be used by a court or clerk for the service of all orders of whatever nature, pursuant to rule 2.516(h), and for the service of any documents pursuant to any ECF Procedures, provided the clerk, together with input from the chief judge of the circuit, has obtained approval from the supreme court of ECF Procedures containing the specific procedures and program to be used in transmitting the orders and documents. All other requirements for the service of such orders must be met.

(2) Any document electronically transmitted to a court or clerk must also be served on all parties and interested persons in accordance with the applicable rules of court.

**(f) Administration.**

(1) Any clerk who, after obtaining supreme court approval, accepts for filing documents that have been electronically transmitted must:

(A) provide electronic or telephonic access to its equipment, whether through an e-portal or otherwise, during regular business hours, and all other times as practically feasible;

(B) accept electronic transmission of the appropriate size limitations specified in the Florida Supreme Court Standards for Electronic Access to the Court; and

(C) accept filings in excess of the appropriate size limitations specified in the Florida Supreme Court Standards for Electronic Access to the Court by electronic storage device or system, which may include a CD-ROM, flash drive, or similar storage system.

(2) All attorneys, parties, or other persons using this rule to file documents are required to make arrangements with the court or clerk for the payment of any charges authorized by general law or the supreme court before filing any document by electronic transmission.

(3) The filing date for an electronically transmitted document is the date and time that such filing is acknowledged by an electronic stamp or otherwise, pursuant to any procedure set forth in any ECF Procedures approved by the supreme court, or the date the last page of such filing is received by the court or clerk.

(4) Any court or clerk may extend the hours of access or increase the page or size limitations set forth in this subdivision.

**(g) Accessibility.** All documents transmitted in any electronic form under this rule must comply with the accessibility requirements of Florida Rule of Judicial Administration 2.526.

**Court Commentary**

**1997 Amendment.** Originally, the rule provided that the follow-up filing had to occur within ten days. In the 1997 amendment to the rule, that requirement was modified to provide that the follow-up filing must occur "immediately" after a document is electronically filed. The "immediately thereafter" language is consistent with language used in the rules of procedure where, in a somewhat analogous situation, the filing of a document may occur after service. *See, e.g.*, Florida Rule of Civil Procedure 1.080(d) ("All original papers shall be filed with the court either before service or *immediately thereafter*.") (emphasis added). "Immediately thereafter" has been interpreted to mean "filed with reasonable promptness." *Miami Transit Co. v. Ford*, 155 So.2d 360 (Fla.1963).

The use of the words "other person" in this rule is not meant to allow a nonlawyer to sign and file pleadings or other papers on behalf of another. Such conduct would constitute the unauthorized practice of law.

## RULE 2.526. ACCESSIBILITY OF INFORMATION AND TECHNOLOGY

Any document that is or will become a judicial branch record, as defined in rule 2.420(b)(1), and that is transmitted in an electronic form, as defined in rule 2.525, must be formatted in a manner that complies with all state and federal laws requiring that electronic judicial records be accessible to persons with disabilities, including without limitation the Americans with Disabilities Act and Section 508 of the federal Rehabilitation Act of 1973 as incorporated into Florida law by section 282.603(1), Florida Statutes (2010), and any related federal or state regulations or administrative rules.

## RULE 2.530. COMMUNICATION EQUIPMENT

**(a) Definition.** Communication equipment means a conference telephone or other electronic device that permits all those appearing or participating to hear and speak to each other, provided that all conversation of all parties is audible to all persons present.

**(b) Use by All Parties.** A county or circuit court judge may, upon the court's own motion or upon the written request of a party, direct that communication equipment be used for a motion hearing, pretrial conference, or a status conference. A judge must give notice to the parties and consider any objections they may have to the use of communication equipment before directing that communication equipment be used. The decision to use communication equipment over the objection of parties will be in the sound discretion of the trial court, except as noted below.

**(c) Use Only by Requesting Party.** A county or circuit court judge may, upon the written request of a party upon reasonable notice to all other parties, permit a requesting party to participate through communication equipment in a scheduled motion hearing; however, any such request (except in criminal, juvenile, and appellate proceedings) must be granted, absent a showing of good cause to deny the same, where the hearing is set for not longer than 15 minutes.

**(d) Testimony.**

**(1) Generally.** A county or circuit court judge, general magistrate, special magistrate, or hearing officer may allow testimony to be taken through

communication equipment if all parties consent or if permitted by another applicable rule of procedure.

**(2) Procedure.** Any party desiring to present testimony through communication equipment shall, prior to the hearing or trial at which the testimony is to be presented, contact all parties to determine whether each party consents to this form of testimony. The party seeking to present the testimony shall move for permission to present testimony through communication equipment, which motion shall set forth good cause as to why the testimony should be allowed in this form.

**(3) Oath.** Testimony may be taken through communication equipment only if a notary public or other person authorized to administer oaths in the witness's jurisdiction is present with the witness and administers the oath consistent with the laws of the jurisdiction.

**(4) Confrontation Rights.** In juvenile and criminal proceedings the defendant must make an informed waiver of any confrontation rights that may be abridged by the use of communication equipment.

**(5) Video Testimony.** If the testimony to be presented utilizes video conferencing or comparable two-way visual capabilities, the court in its discretion may modify the procedures set forth in this rule to accommodate the technology utilized.

**(e) Burden of Expense.** The cost for the use of the communication equipment is the responsibility of the requesting party unless otherwise directed by the court.

**(f) Override of Family Violence Indicator.** Communications equipment may be used for a hearing on a petition to override a family violence indicator under Florida Family Law Rule of Procedure 12.650.

## RULE 2.535. COURT REPORTING

**(a) Definitions.**

(1) "Approved court reporter" means a court employee or contractor who performs court reporting services, including transcription, at public expense and who meets the court's certification, training, and other qualifications for court reporting.

# The 2018 Florida Statutes



**90.502 Lawyer-client privilege.**—

(1) For purposes of this section:

(a) A "lawyer" is a person authorized, or reasonably believed by the client to be authorized, to practice law in any state or nation.

(b) A "client" is any person, public officer, corporation, association, or other organization or entity, either public or private, who consults a lawyer with the purpose of obtaining legal services or who is rendered legal services by a lawyer.

(c) A communication between lawyer and client is "confidential" if it is not intended to be disclosed to third persons other than:

1. Those to whom disclosure is in furtherance of the rendition of legal services to the client.

2. Those reasonably necessary for the transmission of the communication.

(2) A client has a privilege to refuse to disclose, and to prevent any other person from disclosing, the contents of confidential communications when such other person learned of the communications because they were made in the rendition of legal services to the client.

(3) The privilege may be claimed by:

(a) The client.

(b) A guardian or conservator of the client.

(c) The personal representative of a deceased client.

(d) A successor, assignee, trustee in dissolution, or any similar representative of an organization, corporation, or association or other entity, either public or private, whether or not in existence.

(e) The lawyer, but only on behalf of the client. The lawyer's authority to claim the privilege is presumed in the absence of contrary evidence.

(4) There is no lawyer-client privilege under this section when:

(a) The services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew was a crime or fraud.

(b) A communication is relevant to an issue between parties who claim through the same deceased client.

(c) A communication is relevant to an issue of breach of duty by the lawyer to the client or by the client to the lawyer, arising from the lawyer-client relationship.

(d) A communication is relevant to an issue concerning the intention or competence of a client executing an attested document to which the lawyer is an attesting witness, or concerning the execution or attestation of the document.

(e) A communication is relevant to a matter of common interest between two or more clients, or their successors in interest, if the communication was made by any of them to a lawyer retained or consulted in common when offered in a civil action between the clients or their successors in interest.

(5) Communications made by a person who seeks or receives services from the Department of Revenue under

the child support enforcement program to the attorney representing the department shall be confidential and privileged as provided for in this section. Such communications shall not be disclosed to anyone other than the agency except as provided for in this section. Such disclosures shall be protected as if there were an attorney-client relationship between the attorney for the agency and the person who seeks services from the department.

(6) A discussion or activity that is not a meeting for purposes of s. 286.011 shall not be construed to waive the attorney-client privilege established in this section. This shall not be construed to constitute an exemption to either s. 119.07 or s. 286.011.

**History.**—s. 1, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379; s. 16, ch. 92-138; s. 12, ch. 94-124; s. 1378, ch. 95-147; s. 1, ch. 2000-316.


**Consumer Protection**

# How to Protect Yourself: Imposter Scams

*Source: The Florida Attorney General's Office*

In an imposter scam, a con artist will contact a potential victim and pose as a family member, law enforcement officer or government agency representative. The scammer will demand money to be wired to them immediately to avoid penalties of some sort or to claim a prize.

## Charity Scams:

While there are numerous legitimate, worthy charities doing great work, some scam artists seek to take advantage of the charitable spirit of others. Imposters will pose as representatives of a legitimate charity or espouse a fictional charity in order to solicit funds, which they then pocket. Be sure you know that the charity soliciting money is legitimate before donating. Check to see if the charity is registered with the Florida Department of Agriculture and Consumer Services at www.800helpfla.com or by calling 1-800-HELP-FLA. You may also contact the Better Business Bureau's Wise Giving Alliance at www.give.org to determine whether the charity has any complaints against them.

## The Grandparents Scam:

Imposters pose as law enforcement officers and call grandparents claiming that a grandchild is in jail. They then demand immediate payment to bail the grandchild out of jail. In another iteration of the scam, a person claiming to be the grandchild will call saying they have been mugged or otherwise detained in another country and are in need of money to get home. To avoid falling victim, verify through another means the grandchild's whereabouts and avoid acting immediately.

## The IRS Scam:

Scammers pose as IRS agents and call or email potential victims claiming that they owe the IRS and unless they are paid immediately, they will be arrested. The imposters demand that the victim wire money or provide a prepaid debit card in order to pay the taxes and avoid arrest. Know that the IRS will never make first contact via email or over the phone. They will always make first contact by mail. Should you receive a letter that appears to be from the IRS and it instructs you to call a number, verify online that the number listed in the letter is in fact a number associated with the IRS. The IRS also will never demand you wire money or provide a prepaid debit card for payment.

## The Jury Duty Scam:

Imposters pose as law enforcement officers and call or email a potential victim claiming that they have missed jury duty. The imposters claim the victim must pay a fine immediately or they will be arrested. Know that a court official will never ask for you to wire money or ask for your confidential information over the phone or via email.

## The Arrest Warrant Scam:

Similar to the jury duty scam, imposters pose as law enforcement officers and call or email a potential victim claiming that they have a warrant out for their arrest or are otherwise being pursued by law enforcement. The imposters will claim the victim must pay them immediately or they will be arrested. Know that a law enforcement or court official will never ask for you to wire money or ask for your confidential information over the phone or via email.

## Sweepstakes and Lottery Scams:

Imposters claiming to be with the Governor's Office, Attorney General's Office or a private law firm will call or email a potential victim and tell them they have won the Publisher's Clearinghouse sweepstakes, a foreign sweepstakes or a foreign lottery. Victims are told they need to pay customs duties or taxes before the winnings can be sent to them. Legitimate sweepstakes do not require you to pay anything to receive the prize you have won. If you are told that you must pre-pay taxes, you are probably being scammed. Taxes can either be withheld from a cash award or, more commonly, are reported by the company to the IRS and you declare the prize as part of your annual tax return. Also, know that participating in a foreign lottery is against federal law.

## Utility Scams:

Imposters claim to be from one of the utilities in Florida and threaten to turn off the power, gas or water unless a payment is made. Should you receive such a call, hang up and contact your utility provider using the phone number that appears on your bill to determine the status of your account. Report any fraudulent utilities calls to your utility provider.

## File a complaint.

If you believe you are the victim of an imposter scam, file a complaint with the Attorney General's Office online at www.myfloridalegal.com or by phone at 1-866-9-NO-SCAM.

You may also file a complaint with the Florida Department of Agriculture and Consumer Services, which acts as the State's consumer complaint clearinghouse, at www.floridaconsumerhelp.com.

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Florida Toll Free Numbers:

- Fraud Hotline 1-866-966-7226
- Lemon Law 1-800-321-5366

# Inheritance scams

These scams offer you the false promise of an inheritance to trick you into parting with your money or sharing your bank or credit card details.

- How this scam works
- Warning signs
- Protect yourself
- Have you been scammed?
- More information
- Related news
- From the web

## How this scam works

A scammer may contact you out of the blue to tell you that you can claim a large inheritance from a distant relative or wealthy benefactor. You may be contacted by letter, phone call, text message, email or social networking message.

The scammer usually poses as a lawyer, banker or other foreign official, and claims that the deceased left no other beneficiaries.

Sometimes the scammer will say you are legally entitled to claim the inheritance. Alternatively, they might say that an unrelated wealthy person has died without a will, and that you can inherit their fortune through some legal trickery because you share the same last name.

You will be told that your supposed inheritance is difficult to access due to government regulations, taxes or bank restrictions in the country where the money is held, and that you will need to pay money and provide personal details to claim it.

See: Typical inheritance scam letter ( PDF 108.12 KB ) .

Scammers will go to great lengths to convince you that a fortune awaits if you follow their instructions. They may even send you a large number of seemingly legitimate legal documents to sign, such as power of attorney documents. In some cases you may be invited overseas to examine documents and the money.

You may be introduced to a second or even third scammer – posing as a banker, lawyer or tax agent – to 'help facilitate the legal and financial aspects of the transaction'.

If you make a payment, you won't receive the sum of 'inheritance' money promised to you, and you won't get your money back.

As part of their story to prove your relationship, these scammers often also seek personal information such as identification or birth certificates. If you provide this information you may also leave yourself open to identity theft.

## Warning signs

> You are contacted out of the blue by a scammer posing as a lawyer or banker and offering you a large inheritance from a distant relative or wealthy individual. They may even ask you to pose as the next of kin to an unclaimed inheritance.

> The offer looks convincing and may use official-looking letterhead and logos, but will usually contain spelling mistakes and grammatical errors.

## Inheritance scams statistics

January 2019

**Amount lost**

**$23 700**

**Number of reports**

**333**

**Reports with financial losses**

**1.5%**

**Gender**

Female 52%  Male 47.7%

Gender X 0.3%

**Delivery method**

Text message 62.2%  Email 15.3%

Mail 14.4%  Social networking 2.7%

Phone 2.4%  Fax 1.2%

Mobile Applications 1.2%

In person 0.6%

**Age**

The size of the supposed inheritance may be very large, sometimes many millions of dollars.

You are provided with fake bank statements, birth certificates and other documents if you question the legitimacy.

You are asked to provide your bank account details, copies of identity documents as verification, and to pay a series of fees, charges or taxes to help release or transfer the money out of the country through your bank.

Fees may initially be for small amounts but you will be asked to make further larger payments.

The scammer offers to meet you in person to verify the proposal, but this rarely eventuates.

## Protect yourself

Never send money or give credit card, online account details or copies of personal documents to anyone you don't know or trust.

Avoid any arrangement with a stranger that asks for up-front payment via money order, wire transfer, international funds transfer, pre-loaded card or electronic currency, like Bitcoin. It is rare to recover money sent this way.

Seek advice from an independent professional such as a lawyer, accountant or financial planner if in doubt.

Do an internet search using the names, contact details or exact wording of the letter/email to check for any references to a scam – many scams can be identified this way.

If you think it's a scam, don't respond — scammers will use a personal touch to play on your emotions to get what they want.

Remember there are no get-rich-quick schemes: if it sounds too good to be true it probably is.

## Have you been scammed?

If you think you have provided your account details, passport, or other personal identification details to a scammer, contact your bank, financial institution, or other relevant agencies immediately.

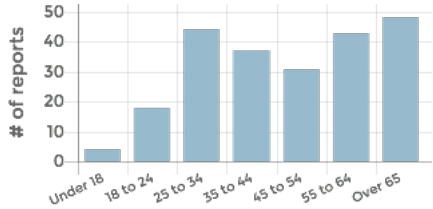
We encourage you to report scams to the ACCC via the report a scam page. This helps us to warn people about current scams, monitor trends and disrupt scams where possible. Please include details of the scam contact you received, for example, email or screenshot.

We also provide guidance on protecting yourself from scams and where to get help.

Spread the word to your friends and family to protect them.

## More information

### Nigerian scams




View more statistics

This data is based on reports provided to the ACCC by web form and over the phone.

The data is published on a monthly basis. Our quality assurance processes may mean the data changes from time to time.

Some upper level categories include scam reports classified under 'Other' or reports without a lower level classification due to insufficient detail provided. Consequently, upper level data is not an aggregation of lower level scam categories.

Nigerian scams involve someone overseas offering you a share in a large sum of money or a payment on the condition you help them to transfer money out of their country. While these scams originated in Nigeria, they now come from all over the world.


## Attempts to gain your personal information

Scammers use all kinds of sneaky approaches to steal your personal details. Once obtained, they can use your identity to commit fraudulent activities such as using your credit card or opening a bank account.

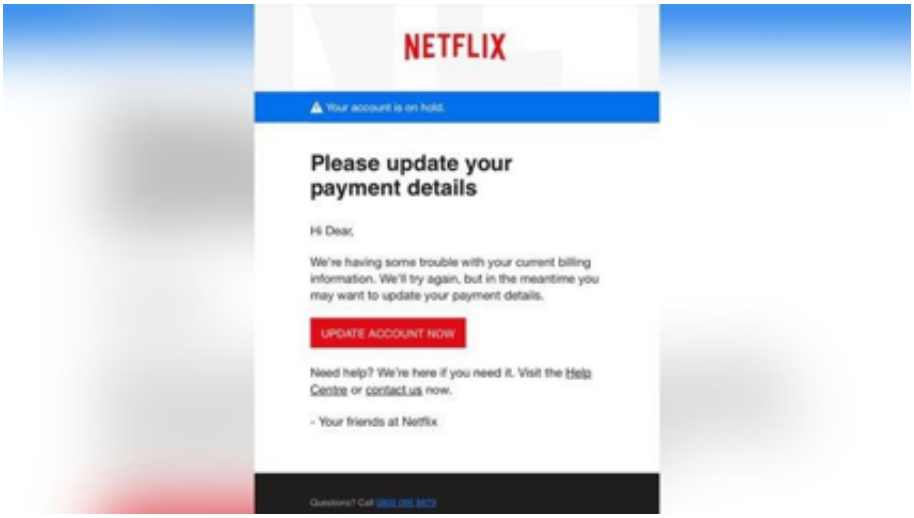
FEDERAL TRADE COMMISSION
Consumer Information
consumer.ftc.gov

# Netflix phishing scam: Don’t take the bait

December 26, 2018
by Colleen Tressler
Consumer Education Specialist, FTC

Phishing is when someone uses fake emails or texts to get you to share valuable personal information – like account numbers, Social Security numbers, or your login IDs and passwords. Scammers use your information to steal your money, your identity (https://www.consumer.ftc.gov/articles/0005-identity-theft), or both. They also use phishing emails to get access to your computer or network. If you click on a link, they can install ransomware (https://www.consumer.ftc.gov/blog/2016/11/how-defend-against-ransomware) or other programs that can lock you out of your data.

Scammers often use familiar company names or pretend to be someone you know. Here’s a real world example featuring Netflix. Police in Ohio shared a screenshot of a phishing email designed to steal personal information. The email claims the user’s account is on hold because Netflix is “having some trouble with your current billing information” and invites the user to click on a link to update their payment method.




Before you click on a link or share any of your sensitive information:

- **Check it out.** If you have concerns about the email, contact the company directly. But look up their phone number or website yourself. That way, you’ll know you’re getting the real company and not about to call a scammer or follow a link that will download malware (https://www.consumer.ftc.gov/articles/0011-malware).
- **Take a closer look.** While some phishing emails look completely legit, bad grammar and spelling can tip you off to phishing. Other clues: Your name is missing, or you don’t even have an account with the company. In the Netflix

example, the scammer used the British spelling of “Center” (Centre) and used the greeting, “Hi Dear.” Listing only an international phone number for a U.S.-based company is also suspicious.

- **Report phishing emails.** Forward them to *spam@uce.gov (mailto:spam@uce.gov)* (an address used by the FTC) and to *reportphishing@apwg.org (mailto:reportphishing@apwg.org)* (an address used by the Anti-Phishing Working Group, which includes ISPs, security vendors, financial institutions, and law enforcement agencies). You can also report phishing to the FTC at *ftc.gov/complaint (https://www.ftccomplaintassistant.gov/)*. Also, let the company or person that was impersonated know about the phishing scheme. For Netflix, forward the message to *phishing@netflix.com (mailto:phishing@netflix.com)*.

For more tips and information, visit this article on phishing (https://www.consumer.ftc.gov/articles/0003-phishing). Then test your knowledge by playing this game (https://www.consumer.ftc.gov/media/game-0011-phishing-scams).

Blog Topics: Money & Credit (https://www.consumer.ftc.gov/blog/money-%26-credit)

# Phishing

Phishing scams are attempts by scammers to trick you into giving out personal information such as your bank account numbers, passwords and credit card numbers.



## How does this scam work?

A scammer contacts you pretending to be from a legitimate business such a bank, telephone or internet service provider. You may be contacted by email, social media, phone call, or text message.

The scammer asks you to provide or confirm your personal details. For example, the scammer may say that the bank or organisation is verifying customer records due to a technical error that wiped out customer data. Or, they may ask you to fill out a customer survey and offer a prize for participating.

Clues for spotting a fake email

Alternatively, the scammer may alert you to 'unauthorised or suspicious activity on your account'. You might be told that a large purchase has been made in a foreign country and asked if you authorised the payment. If you reply that you didn't, the scammer will ask you to confirm your credit card or bank details so the 'bank' can investigate. In some cases the scammer may already have your credit card number and ask you to confirm your identity by quoting the 3 or 4 digit security code printed on the card.

Phishing messages are designed to look genuine, and often copy the format used by the organisation the scammer is pretending to represent, including their branding and logo. They will take you to a fake website that looks like the real deal, but has a slightly different address. For example, if the legitimate site is 'www.realbank.com.au', the scammer may use an address like 'www.reallbank.com'.

If you provide the scammer with your details online or over the phone, they will use them to carry out fraudulent activities, such as using your credit cards and stealing your money.

### Other types of phishing scams

> Whaling and spear phishing - the scammer targets a business in an attempt to get confidential information for fraudulent purposes. To make their request appear legitimate, they use details and information specific to the business that they have obtained elsewhere.

> Pharming - the scammer redirects you to a fake version of a legitimate website you are trying to visit. This is done by infecting your computer with malware which causes you to be redirected to the fake site, even if you type the real address or click on your bookmarked link.

## Warning signs

> You receive an email, text or phone call claiming to be from a bank, telecommunications provider or other business you regularly deal with, asking you to update or verify your details.

## Phishing statistics

January 2019

**Amount lost**

**$73 080**

**Number of reports**

**2 224**

**Reports with financial losses**

**1.5%**

**Gender**

Male 49.1% Female 48.2%

Gender X 2.7%

**Delivery method**

Phone 49.8% Email 26.3%

Text message 19.4% Internet 1.8%

Social networking 0.9%

Not provided 0.5% Mail 0.4%

Mobile Applications 0.4%

In person 0.3% Fax 0.1%

**Age**

The email or text message does not address you by your proper name, and may contain typing errors and grammatical mistakes.

The website address does not look like the address you usually use and is requesting details the legitimate site does not normally ask for.

You notice new icons on your computer screen, or your computer is not as fast as it normally is.

## Protect yourself

Do **not** click on any links or open attachments from emails claiming to be from your bank or another trusted organisation and asking you to update or verify your details – just press delete.

Do an internet search using the names or exact wording of the email or message to check for any references to a scam – many scams can be identified this way.

Look for the secure symbol. Secure websites can be identified by the use of 'https:' rather than 'http:' at the start of the internet address, or a closed padlock or unbroken key icon at the bottom right corner of your browser window. Legitimate websites that ask you to enter confidential information are generally encrypted to protect your details.

Never provide your personal, credit card or online account details if you receive a call claiming to be from your bank or any other organisation. Instead, ask for their name and contact number and make an independent check with the organisation in question before calling back.

## Have you been scammed?

If you think you have provided your account details to a scammer, contact your bank or financial institution immediately.

We encourage you to report scams to the ACCC via the report a scam page. This helps us to warn people about current scams, monitor trends and disrupt scams where possible. Please include details of the scam contact you received, for example, email or screenshot.

We also provide guidance on protecting yourself from scams and where to get help.

Spread the word to your friends and family to protect them.

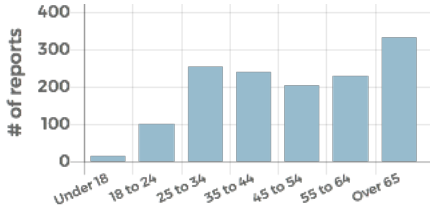
## More information

### Malware & ransomware

Malware tricks you into installing software that allows scammers to access your files and track what you are doing, while ransomware demands payment to ‘unlock’ your computer or files.

### Identity theft

Identity theft is a type of fraud that involves using someone else's identity to steal money or gain other benefits.




View more statistics

This data is based on reports provided to the ACCC by web form and over the phone.

The data is published on a monthly basis. Our quality assurance processes may mean the data changes from time to time.

Some upper level categories include scam reports classified under ‘Other’ or reports without a lower level classification due to insufficient detail provided. Consequently, upper level data is not an aggregation of lower level scam categories.

# Your Account Has Not Been Hacked

The latest scam is will shock you for a moment (unless you have read the info before):

Imagine someone emails you from your own email address and claims that he/she has control over your email, even your computer. He/she claims also having access to your webcam and recordings of you watching pornography on the web. The "hacker" asks for a ransom in bitcoin, threatening to release your files and recordings to friends and clients in your address book.

Faking people's email has happened for years. This particular scam has been going on for a few months now. It "spoofs" you email pretending to come from your account. We want to alert you, so you don't panic once such a mail reaches you.

**While it might be a good idea to use safe passwords and change them once in a while, we have not come across a single case where a mailbox or account was actually compromised.**

The email might read like this:

> Hello!
> I'm is very good programmer, known in darkweb as tedd40.
> I hacked this mailbox more than six months ago, through it I infected your operating system with a virus (trojan) created by me and have been spying for you a very long time.
> I understand it is hard to believe, but you can check it yourself.
> I'm sent this e-mail from your account. Try it yourself.
> Even if you changed the password after that – it does not matter, my virus intercepted all the caching data on your computer and automatically saved access for me.
> I have access to all your accounts, social networks, email, browsing history.
> Accordingly, I have the data of all your contacts, files from your computer, photos and videos.

> I was most struck by the intimate content sites that you occasionally visit.
> You have a very wild imagination, I tell you!
> During your pastime and entertainment there, I took screenshot through the camera of your device, synchronizing with what you are watching.
> Oh my god! You are so funny and excited!
> I think that you do not want all your contacts to get these files, right?
> If you are of the same opinion, then I think that $219 is quite a fair price to destroy the dirt I created.
> Send the above amount on my BTC wallet (bitcoin): 1JRCbCH9E3iLhSXPTqtkgfAsJNT2xD74C5
> As soon as the above amount is received, I guarantee that the data will be deleted, I do not need it.
> Otherwise, these files and history of visiting sites will get all your contacts from your device.
> Also, I'll send to everyone your contact access to your email and access logs, I have carefully saved it!
> Since reading this letter you have 48 hours!
> After your reading this message, I'll receive an automatic notification that you have seen the letter.
> I hope I taught you a good lesson.
> Do not be so nonchalant, please visit only to proven resources, and don't enter your passwords anywhere!
> Good luck!

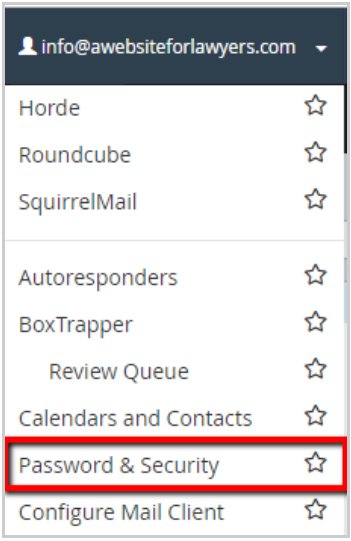
## What can you do?

If in doubt about your email security, change your email password. Changing your password does not require contacting us – we actually only in rare cases send passwords via email due to security concerns.

Log into your webmail account at https://mydomain.com/webmail (replace mydomain.com with your domain) and enter your email and password.

On the top right, you'll find a drop-down menu including your option to reset the password.

In case you do not recall your password, we can reset it for you.





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