IN THE SUPREME COURT OF FLORIDA

CASE NO. SC21-990

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

COMMENTS OF THE

SELF-REPRESENTED LITIGATION NETWORK (SRLN)

SRLN is a national collaborative network of nearly 3,000 justice system professionals from the judicial, government, technological, academic, research, philanthropic, nonprofit and for-profit sectors who are working to advance best practices to make the courts better for self-represented litigants (SRLs). SRLN leadership has developed a deep understanding of and appreciation for the work done by justice leaders in Florida, having served as a consultant to The Florida Bar Foundation and the Florida Commission on Access to Civil Justice, and in the course of those

consultancies has worked closely with the Florida Bar, the Florida Office of State Court Administration, and the Florida Civil Legal Aid Association. These comments do not represent the opinion of any one participant within the network, rather they reflect the current best practices and principles in access to justice throughout the United States.

Introduction

Courts were designed by and for lawyers, yet today, depending on case type and location, 65% - 100% of the parties are representing themselves, and while no definitive count exists for Florida, snapshot studies by local courts reflect a similar profile of self-represented litigants within the Florida courts. Recently, when the Florida Supreme Court transferred the work of the Florida Commission on Access to Civil Justice, it acknowledged the importance of "focus[ing] on improvements that can be made within the State Courts System to assist self-represented litigants and support the judicial branch in ensuring effective access to justice for all."[1]

[1] Florida Supreme Court Press Release, *Access to Civil Justice Commission Transition Brings Focus to Self-Represented Litigant*

SRLN leadership advises courts, legal aid programs, and bar associations throughout the country on process, program, and policy strategies that will improve operational efficiency for courts within this new reality while also ensuring due process and equal protection for the public. SRLN recognizes technology as a hugely powerful tool in advancing justice, and since its inception in 2005, SRLN has championed the effective use of technology, which necessarily includes off-ramps and human supports for those who are burdened by the digital divide, have a disability that frustrates the use of technology being made available, speak a language other than what is used in the technology tools, or are experiencing conditions or situations such that technology is not a viable or equitable pathway to the courts. SRLN submits these comments to serve as valuable guidance for the court as it develops a framework for safe, accessible, effective, and secure integration of technology in court proceedings.

Mission (September 20, 2021) available at https://www.floridasupremecourt.org/News-Media/Court-News/Access-to-Civil-Justice-Commission-Transition-Brings-Focus-to-Self-Represented-Litigant-Mission.

The Petition in support of the amendments notes in numerous places that the analysis is based on the anecdotal experience of members of the committee. Therefore, we conclude that various external resources and data were unavailable during the committee's deliberations. In an effort to be most helpful to the court in its ongoing work, these comments provide resources and data that, when taken into consideration, point to a number of surely unintended consequences such as denying public access to the courts, undermining due process, equal protection, and court neutrality, increasing the administrative burden on judges, clerks, and lawyers, and exposing lawyers and the public to cyber security risks. However, these harms can be mitigated or eliminated through refinement of the proposed changes, and in some instances, further study.

Integrating technology into court operations presents a once in a generation opportunity to streamline, simplify, and modernize the justice system, yet re-aligning a centuries old system designed by and for lawyers working in an analog environment is a complex and challenging undertaking that, to be successful, calls for a multi-stakeholder, iterative, and evidence based approach. Fortunately

models and best practices are available to guide these activities, which admittedly are new to the justice system. But new challenges require new approaches, and SRLN believes courts are in a good position to take full advantage of the approaches available today.

After sharing background resources on best practices for integration of technology in court proceedings, these comments are organized around four themes: 1) public access to the courts; 2) due process, equal protection, and neutrality; 3) administrative burdens on Judges, Clerks, and lawyers; and 4) cyber security risks for the public and lawyers. The comments conclude with recommendations to aid the court in its decision making.

Best Practices for Integration of Technology in Court Proceedings

During the course of the pandemic, the Conference of Chief Justices and Conference of State Court Administrators, and leading national organizations such as the National Center for State Courts

(NCSC)[2], the American Bar Association (ABA)[3], the National Legal Aid and Defender Association (NLADA)[4], and the Center for Court Innovation (CCI)[5] have developed best practices guidance to aid courts in creating hybrid environments that optimize technology and ensure constitutional protections are not eroded and substantive law not undermined. Common themes among these resources call for courts to be mindful of the following as they adopt new procedures that integrate technology:

- upholding a party's right to advocate for them self within our adversarial system;
- engaging all stakeholder groups impacted, recognizing self-represented litigants as the largest user group;
- segmenting case types and stages of the proceedings, and then conducting a close analysis from the perspectives of the

---

[2] See NCSC's Pandemic resources generally at https://www.ncsc.org/newsroom/public-health-emergency, which include technology guidance and resolutions to guide technology, simplification, and self-help services.
[3] ABA Resolution and lengthy memo providing guidance on remote at https://www.ncsc.org/newsroom/public-health-emergency.
[4] NLADA research on ODR at https://www.nlada.org/sites/default/files/NLADA%20Pew%20ODR%20Report%20Ensuring%20Equity%20in%20Efficiency.pdf.
[5] CCI Sixth Amendment Initiative at https://www.courtinnovation.org/sixth-amendment.

different stakeholder groups of how constitutional and substantive rights are impacted;

- adopting an iterative approach that relies on data, analysis, and tailored research;
- ensuring parties have access to the needed technology, and when they don't, provide alternative access;
- complying with the Americans with Disabilities Act, both in terms of the technology being used, and building the non-technological offramps when the appropriate accommodation cannot be provided via technology;
- ensuring alternative access for those who speak a language other than what the technology provides.

As the court considers the current proposal, we urge it to explore how each of these concerns has been addressed in the current proposal, and not to shy away from the need for additional evidence, research, options, or deliberation of how to implement just and even-handed rules. It is worth noting that the committee deliberated without any public hearings or other public input. Widely accepted best practices of today call for public engagement and user testing. Given the potential for wide ranging substantive

impact flowing from these changes, it may be most prudent to implement more limited temporary changes that enable the Florida Courts to optimize the general use of technology, but do not foreclose ultimately creating more nuanced final rules that take full advantage of these newly discovered resources and data.

Public Access to the Courts

Article I, § 21 of the Florida Constitution provides an explicit right of access to the courts and declares "the courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay."

The proposed rule changes that would require service by email and compel remote appearances close the courts for those without access to technology, including but not limited to those who:

- lack access to the internet entirely;
- lack a device that connects to the internet;
- lack necessary connectivity speeds to make the internet functional;
- lack the financial means to afford a device;
- lack the financial means to afford sufficient data plans;

- lack the language skills or physical or cognitive abilities necessary to interface with the court's technology without human support and/or other accommodations.

The Petition notes that it is the belief of the committee that the majority of Floridians have access to the internet and related devices, and that any cost for these technologies is de minimis and therefore to be shouldered by the parties. The Petition cites no evidence for these assertions, and therefore we conclude the federal and private data were not available to them at the time of deliberations, and provide it herein.

The data does indeed support the hypothesis that the majority of Floridians have excellent connectivity; however, the data also unequivocally demonstrates that nearly three million Floridians do not have access to the necessary technology and that this burden of digital exclusion falls disproportionately on Black and Brown households, as well as the elderly.

Reliable sources of data on digital access include the Federal Communications Commission (FCC), which provides a yearly report on broadband availability and speed,[6] as well as the American

[6] See https://www.fcc.gov/economics-analytics/industry-analysis-division.

Community Survey (ACS), which provides data on "computer" ownership and type of internet subscription access[7], and the National Telecommunications and Information Administration (NTIA), which uses several different public and private data sources to show information on broadband availability within the United States.[8] Layers in the NTIA map were created using data sourced from the American Community Survey collected by the U.S. Census, Ookla, Measurement Lab (M-Lab), Microsoft and the Federal Communications Commission (FCC).

These best in class sources provide the Court and its partners specific, segmented data that can guide the design of supportive offramps and services for those who cannot access the court through digital means.

---

[7] See https://www.census.gov/acs/www/about/why-we-ask-each-question/computer/ which sets out the questions of the survey and defines computer as desktop, laptop, smartphone, tablet or other portable wireless computer, some other type of computer. Snapshot of ACS survey questions are in Appendix B. See also https://www.arcgis.com/home/item.html?id=4f43b3bb1e274795b14e5da42dea95d5.

[8] See https://broadbandusa.maps.arcgis.com/apps/webappviewer/index.html?id=ba2dcd585f5e43cba41b7c1ebf2a43d0.

When reported in the aggregate at the county level by the FCC, Florida communities appear to have excellent access, and the majority of Floridians should indeed be able to use technology effectively to access court proceedings, resources, and utilize online options. However, a less positive picture emerges at the tract level[9] and an even more grim, yet focused picture at the block level.[10]

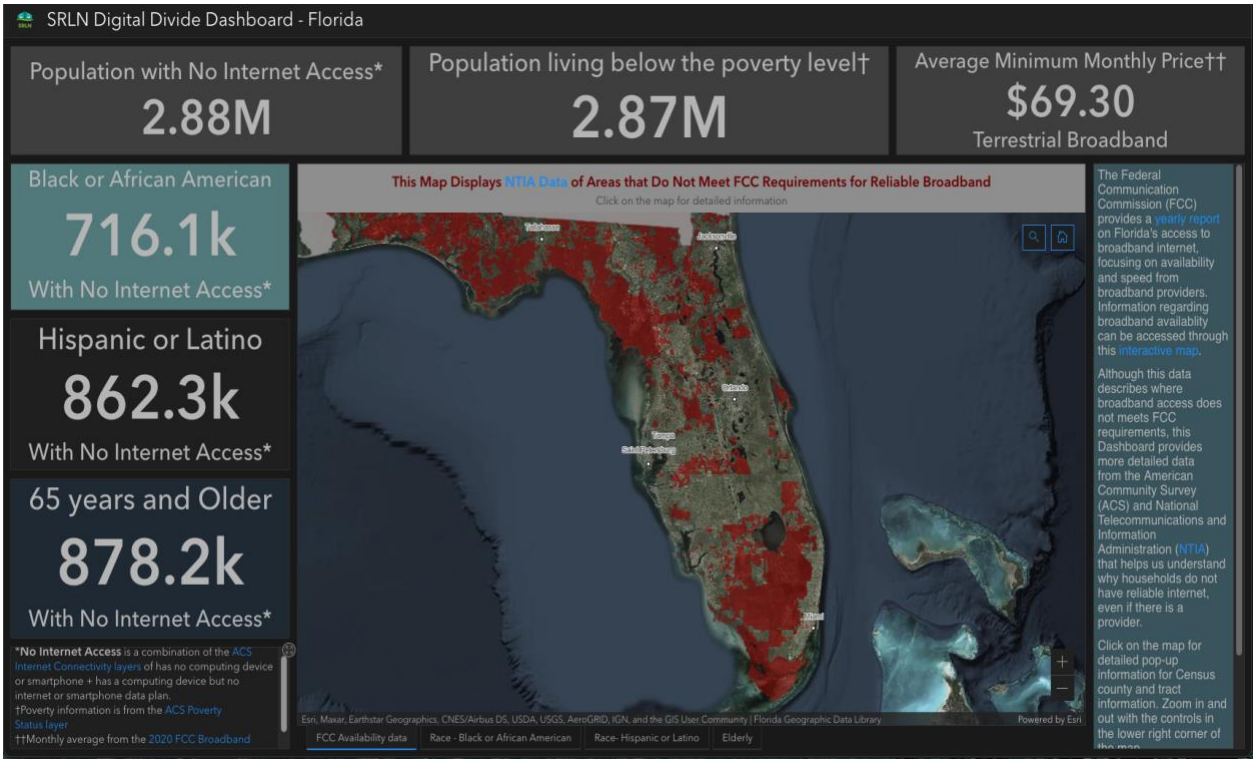
The following image from the NTIA combined data shows the areas of Florida that do not meet FCC Requirements for reliable broadband.[11]

---

[9] Tract is a permanent statistical subdivision of a county with between 1,200 - 8,000 inhabitants. See http://www.census.gov.

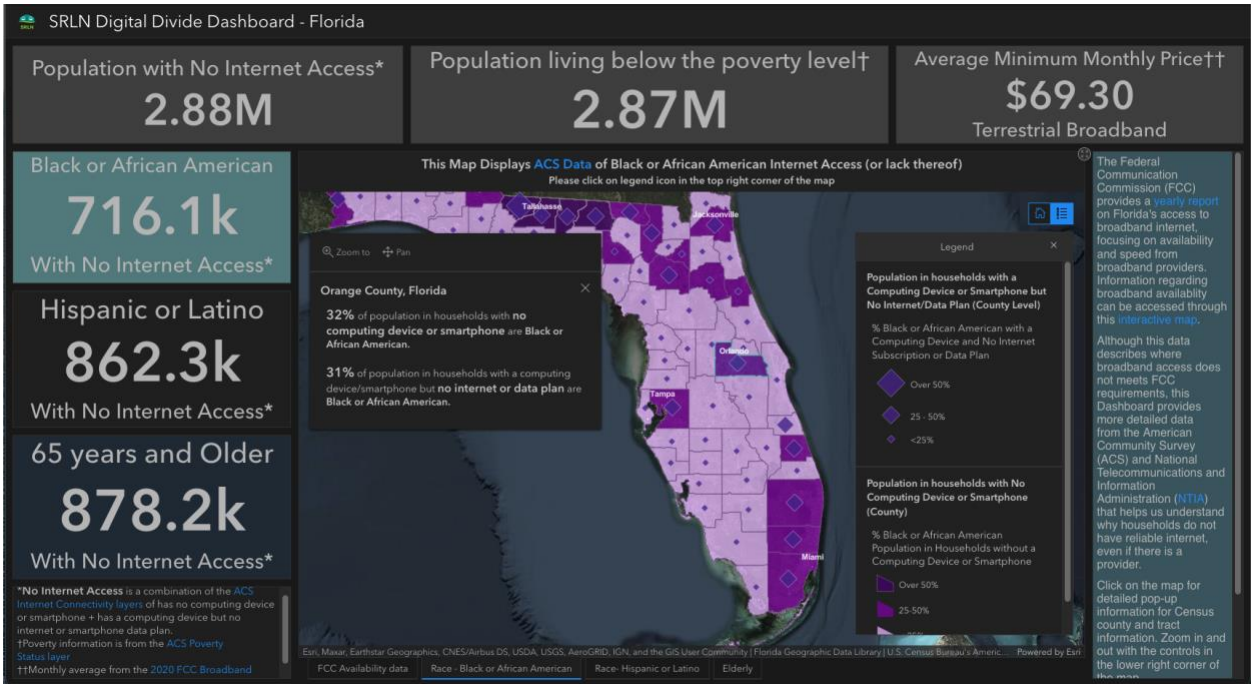
[10] Blocks are the smallest level of geography for which data is available and are described as statistical areas bounded by visible features such as roads, streams, and railroad tracks and non-visible boundaries such as property lines, city, township, school district, county limits and short line-of-sight extensions of roads. See http://www.census.gov.

[11] This screenshot is taken from SRLN's interactive Digital Divide Dashboard available at https://www.arcgis.com/apps/dashboards/6e1792b001a9439184be086677df184b. In the right column of this dashboard is a link to an interactive map layer application with the relevant layers for Florida from the FCC, ACS, and NTIA data.



The next image displays ACS data on the internet and computer access of Black Floridians. If you visit the interactive map at https://www.arcgis.com/apps/dashboards/6e1792b001a9439184be086677df184b, you can zoom in and see more detail and even higher percentages of people lacking access at the tract and block levels. The darker the purple, the less access there is. If you visit

the interactive map, you can click on the tabs to see the impact on Hispanic or Latino people, and the elderly.



The data establishes that nearly three million Floridians do not have internet access (whether wired and/or access to a device), and yet these Floridians are entitled to access to the courts. The constitution does not say access for most people, but rather for every person. The court can ensure access for every person despite the digital divide by creating rules that allow for and seamlessly

integrate necessary offramps[12], without prejudice, for those who are digitally excluded.

The available data also does not support the committee's anecdotal conclusion that the cost of access is de minimis. In the upper right-hand of the dashboard, we report that the average monthly cost of terrestrial broadband is $69.30. Visit the interactive maps to see more data on this. There is no publicly available data on the cost of data plans for smartphones. This cost for terrestrial broadband also does not include the cost of a computing device, whether computer, smartphone or tablet.

Therefore, the portion of the proposed rule that places the burden of the cost of technology on the parties should be stricken.

---

[12] For example, offramps can include the following: opt-in for technology upon filing, thereby ensuring that the people without technology are not burdened with an additional procedural step or stigmatization of asking not to use technology; court based self-help centers; community partnerships with trusted intermediaries who are trained on resources and processes so that those without technology can, within their neighborhoods and from non-profit and government agencies with whom they already interact, get the benefit of and are informed about the court self-help resources and court forms, which are available only on-line and mostly in English; community partnerships with entities that can offer access hubs to support those who opt-in for technology but lack skill, bandwidth speeds, data packages, or experience language or ADA barriers, or those who agree to use technology for non-evidentiary matters, or those, who opted-in, but in the course of the case their technology fails or is eliminated.

Due Process, Equal Protection, and Neutrality

Due process, equal protection, and neutrality are cornerstones of justice. As technology is integrated into the courts, special attention must be given to these questions. Indeed, the first principle of the CCJ/COSCA Guiding Principles for Post Pandemic Technology is "[E]nsure principles of due process, procedural fairness, transparency, and equal access are satisfied when adopting new technologies."[13] In *Turner v. Rogers*[14], the U.S. Supreme Court found that, in the absence of counsel, due process for self-represented litigants requires courts to provide "alternative procedural safeguards." Applying the *Turner* notion of "alternative procedural safeguards" to technology integration calls on courts to recognize that self-represented litigants may need alternative procedures and not simply the default procedures for lawyers. Great care must be taken to ensure that new procedures created to support technology do not disenfranchise those without technology.

[13] Guiding Principles for Post-Pandemic Court Technology (CCJ/COSCA July 16, 2020) at https://www.ncsc.org/__data/assets/pdf_file/0014/42332/Guiding-Principles-for-Court-Technology.pdf.
[14] Turner v. Rogers, et al., 564 U.S. 431 (2011).

Integrating technology creates new disparities between parties. In addition to access to a device connected to the internet, access includes a number of additional considerations such as speed and stability of the connection, the cost of the data being consumed, skill and experience in using a platform, access to a suitable location to participate, and the aesthetics of appearance on a screen;[15] Judges often indicate that "how someone looks and speaks" are important aspects of their credibility determination when assessing testimony. A self-represented litigant with an unstable connection, bad lighting, worrying their data plan is going to run out, and children roaming about will simply not present as well as the individual who can be in court or broadcasting from a lawyer's office. In addition, the research is mounting that in certain proceedings, particularly criminal, parties are significantly prejudiced by remote hearings, receiving longer sentences, higher

[15] Within weeks of the onset of the pandemic and the professional world moving online, articles abounded on ways to improve one's online appearance. See for example https://www.inc.com/jason-aten/5-ways-to-look-your-best-on-your-next-zoom-meeting.html. Low and moderate income individuals are unlikely to be able to invest in special lighting, cameras, mics, backgrounds and the like to improve their appearance, yet professionals rely heavily upon these add-ons to improve their online presence.

bail amounts and the like.[16] Research on the impact of remote in civil proceedings is not yet available, but given the early results from the criminal side, it is fair to expect that in certain evidentiary matters, compulsory remote is putting a party at a disadvantage.

Similarly, mandatory email service gives those with constant immediate access to their email an unfair advantage over those who must borrow another person's or organization's computer to check their email.[17] Access to the borrowed computer may only be possible once a week, by appointment, or turn on whether the party can find transportation to the borrowed device. The proposed

---

[16] See generally the Center for Court Innovation's Sixth Amendment Initiative at https://www.courtinnovation.org/sixth-amendment, as well as an evolving research bibliography at https://www.courtinnovation.org/sites/default/files/media/document/2021/Review%20of%20Literature%20and%20Other%20Resources%20BJA%206th%20Amendment.pdf.

[17] Mandatory email service also raises serious questions about injecting commercial vendors of email and internet providers into the constitutionally mandated step of service. Under current rules, the U.S. Postal Service, a government body free and available to all, provides the "highway" for service, the lynchpin of due process. Mandatory email service shifts this fundamental constitutional act to the "highways" of commercial vendors that require customers to pay for the service, have no obligation to maintain service, and are subject to regular and wide-ranging cyber-attacks. Should individuals want to take on this risk, that could be permissible. But compulsory use of email and internet eliminates an individual's right to choose the level of risk and puts a fundamental constitutional right in the hands of commercial vendors.

changes start the response clock at the time the email is sent, which means the technologically advantaged will have more time to respond, and the technologically disadvantaged may not even be able to access the filing until after the response time has run.

The court cannot correct this disparity, but it can avoid inappropriately and unjustly forcing this disparity upon people. Compulsory remote appearances and email service favor the technologically advantaged (whether individuals or institutional actors such as prosecutors, credit card companies, hospitals, and landlords) and were the court to adopt the rule as written, from the perspective of the technologically disadvantaged self-represented litigant, it is no longer a neutral forum. Court rules ought not undermine the courts neutrality, nor should rules erode public trust and confidence in the institution and the rule of law. Court rules ought to, among other things, ensure a fair playing field so each party has a full hearing of the merits of their case.

The American justice system is an adversarial one in which the parties have the right and responsibility to advocate for their positions, whether a legal strategy around which facts and witnesses to put before the judge, or procedural strategy such as a motion to invoke the formal rules in a small claims action, certain

motions to change venue, or making a demand for a jury trial. Indeed, the Florida Rules of Professional Conduct note in the preamble, "[a]s an advocate, a lawyer zealously asserts his client's position under the rules of the adversary system."[18] Rule 4.1.2 Objectives and Scope of Representation delves further into the nature of the attorney-client relationship, with a first principle that a lawyer must abide by a client's decisions. And the comments to the rule note that a "lawyer should assume responsibility for technical and legal tactical issues but should defer to the client regarding such questions as the expense to be incurred and concern for third persons who might be adversely affected." For self-represented parties, they are responsible for all decisions in deciding how to manage their case, and a court rule ought not strip them of that full authority.[19]

---

[18] Florida Rules of Professional Conduct available at https://www-media.floridabar.org/uploads/2021/07/CH-4-2022_01-JUL-RRTFB-7-23-2021-4.pdf.

[19] It is sometimes argued that rules that apply to lawyers should apply to self-represented litigants (SRLs), but the most important distinguishing characteristic between lawyers and SRLs is that SRLs are parties to the case, whereas lawyers are not. Therefore, a rule that constrains a lawyer is a professional management rule, but a rule that unfairly constrains an SRL abrogates his or her legal rights and ability to have their matter fully heard.

A growing body of research and experience during the pandemic is establishing that remote appearances can and do have a substantive impact, and can create an advantage of one party over another. This evidence suggests that remote appearances in substantive hearings or a trial can be used as a strategic choice by the parties. The court is overstepping its role and undermining its position of neutrality when it automatically compels one type of appearance over another. A judge would not review discovery and tell parties which evidence or witnesses to bring to trial or order a jury on behalf of parties. Rather, a judge considers evidence brought by the parties, rules on appropriate objections, and issues decisions. Making remote compulsory or leaving the decision entirely in the discretion of the court creates circumstances in which the court arguably becomes an active participant in the proceeding by 1) making a strategic choice on behalf of the parties, and 2) assisting and favoring the technologically advantaged.

However, this caution regarding neutrality does not mean technology cannot be integrated into operations and that there can be no remote hearings or efiling; what it means is that the rules need to ensure the parties can drive the decision of how technology is used in their case. It is after all, their case, not the court's case.

Voicing similar concerns in August 2020, the American Bar Association adopted a resolution to limit compulsory use of virtual and remote course procedures to essential proceedings. This Resolution sought to limit the compulsory use of virtual and remote court procedures to essential proceedings, while permitting the use of such procedures whenever litigants provided **informed consent** and were further provided the option of an in-person hearing whenever such a hearing was safely possible. The Resolution further encouraged each jurisdiction employing virtual or remote court: (1) to establish committees to conduct evidence-based reviews of virtual and remote court procedures; (2) to guarantee equal access, due process and fundamental fairness; (3) to provide additional funding to improve access to virtual or remote court proceedings; (4) to ensure that the public, including the media, is provided access to court proceedings unless an appropriate exception applies, in which case the privacy of the proceeding should be protected; (5) to provide training on virtual and remote procedures; and (6) to study the impacts of these procedures for possible prejudicial effect or disparate impact on outcomes. The full Resolution is attached in Appendix A.

Administrative Burden on Judges, Clerks, and Lawyers

Care should be taken to avoid setting a default rule that will require additional administrative burdens on Judges, Clerks, lawyers, and the public. As currently drafted, the proposed amendments set remote appearances and email service as the default rule, and invite additional motion practice by those who are digitally excluded. According to the data described above, upwards of three million Floridians, most of whom are people of color or the elderly, comprise the digitally excluded, and are likely to be self-represented parties. Therefore, it is reasonable to expect that they will need the most support and assistance in requesting and navigating the process to secure exemptions. It is not unreasonable to expect they will file numerous spurious motions attempting to seek an exemption because the proposal does not lay out any standardized simple process and therefore each court - or even Judge (given that the proposal vests so much discretion in each Judge, also creating an enormous hurdle with respect to an appellate standard of review) - will make their own rules. This is the very opposite of a statewide rule, but rather a rule likely to have the unintended consequence of incentivizing each Judge to come up

with their own approach. Without a consistent approach, public trust and confidence in the courts erodes and there is no meaningful way to deploy reliable self-help resources because the answer of what to do when and how, as well as likelihood of success, will depend on the Judge and the case. This framework incentivizes each party to seek one-on-one help from the court for each and every case, thereby significantly increasing the work of the Clerks, judicial assistants, and Judges. If self-represented litigants do not have simple, standardized procedures to follow, they must ask questions, and this results in more work for Judges, Clerks, and opposing counsel.

The proposal as written with respect to email service creates an explosion of new work by creating an open-door policy for parties to email their questions - if it is challenging to corral self-represented litigants into regular motion practice, the rule as written has, for the not legally trained, arguably changed "motion practice" to "email practice," which is completed in the press of a button. This avalanche of new communications between parties and the court will create confusion and delay in the management of cases, putting a significantly greater burden on the Clerks who must process filings, and judges who must make sense of

everything that has been filed. Self-represented parties who do not have the stamina or ability to file motions will simply be excluded from the court altogether. In those cases where one side is represented by a lawyer, the rule as written will likely put lawyers in the position of managing excessive "email practice."

However, there is an elegant solution that would further the courts goals of simplification, effective triage, and technology integration and also comport with due process and equal protection and ensure informed consent. The rule could provide for an opt-in process upon filing. Specifically, there are three distinct decisions: 1) remote appearances for non-evidentiary matters, 2) remote appearances for evidentiary matters, and 3) email service (although per the discussion below around cybersecurity, email service as a policy is not advisable).

Each of these buckets has different considerations, and therefore it is reasonable for a party to agree to one, some, or none. An opt-in process also allows for education about the risks and benefits, and expectations of a party should they opt-in. This entry point could also set out the rules of how to change one's selection based on a change of circumstance. Sorting users at the front end will eliminate the need for chaotic motion/email practice during the

case, and identify early in the case which users will need additional supports to exercise their constitutional right of access to the courts, thereby allowing the court and its partners to develop appropriate information and referral systems to get that support. A rule setting a statewide standardized opt-in process would also start to build a solid standardized statewide foundation for universal e-filing. Of course, any practice needs to be studied for its impact as well, and the court prepared to modify the rule based on the results of research. This is especially so for the scenario where a party opts in to remote appearance for evidentiary proceedings.

Cyber Security Risks for the Public and Lawyers

As courts develop new rules to integrate technology, cyber security issues must be a central consideration. This is a fast moving and evolving area. On September 15, 2021 The Joint Technology Committee of the Conference of State Court Administrators, National Center for State Courts, and the National Association of Court Managers released comprehensive new guidance entitled *Cybersecurity Basics for Courts*,[20] and so it is

[20] Cybersecurity Basics for Courts (Joint Technology Committee 2021) available at

understood this guidance, like the data discussed above, was not available to the committee during its deliberations. The report introduces the state of cybersecurity in courts as follows:

> The number, scope, and breadth of organizations experiencing cybersecurity incidents in the past few years is vast and unsettling. Attacks against courts are on the rise, and the methods of attack continue to become more sophisticated. The reality is that regardless of preventive measures, most organizations will deal with some form of cybersecurity incident. Accepting that courts will face cybersecurity incidents is essential.
>
> Cybersecurity often comes at a cost, not only in terms of dollars, but also convenience and performance. Properly balancing cybersecurity and convenience can be a challenge for management when looking at what security measure to invest and implement. As recent cyber-attacks demonstrate, **convenience should not be a reason to circumvent sound security practices and policies**.[21] (emphasis added)

The proposed rule changes would set email as the default form of service, and the rationale is that it is convenient, precisely what the new guidance cautions against. And while tempting, an approach based on convenience is exposing the court, parties, and

---

https://www.ncsc.org/__data/assets/pdf_file/0037/68887/JTC-2021-05-Cybersecurity-QR_Final-Clean.pdf.

[21] Id. at 3.

lawyers to a wide range of extremely serious and permanently harmful cyber security risks.

Email messages are generally sent over untrusted networks-external networks that are outside the organization's security boundary. When these messages lack appropriate security safeguards, they are like postcards that can be read, copied, and modified at any point along these paths, and malware, viruses, ransomware, spam and phishing, social engineering, and more can be inserted and attached. Securing an e-mail system is the responsibility of an organization's IT department and email administrator, however in this case, given the court is considering compelling those outside of the court such as parties and lawyers to use email, it has the obligation to consider how its rules could impact the security of law firms and individuals in addition to the court's security.[22] Anyone responsible for the confidentiality, integrity, security and availability of the information sent via email

[22] Id. at Appendix A of *Cybersecurity Basics for Courts* for details on how cyberattacks are carried out. A general google search about the dangers associated with unencrypted email will also yield an extensive amount of information and guidance.

should be aware of the threats facing email systems and understand the basic techniques for securing these systems.

Self-represented parties using free email services will not have security protocols or IT departments, and there will be no way for them to protect themselves from attacks, or as subjects of spoofing, unwittingly appear to be the source of an attack on opposing counsel or the court. If service is by email, what happens if parties do not want to open an email or attachment because it looks suspicious, or can they even tell if it is suspicious?

In addition to email security issues, the transmission of personally identifiable information (PII) over unencrypted communications exposes parties to serious risk and could arguably create obligations on counsel to protect the information of opposing parties.[23] Generally, personally identifiable information is any information about an individual, including (1) any information that can be used to distinguish or trace an individual's identity, such as

[23] See for example information provided to Berkeley Lab employees at https://commons.lbl.gov/display/cpp/Risks+to+PII#test--710944848. See also SEC Actions Up the Ante for Cybersecurity Disclosures (Bloomberg Law September 14, 2021) at https://news.bloomberglaw.com/private-equity/sec-actions-up-the-ante-for-cybersecurity-disclosures.

name, social security number, date and place of birth, mother's maiden name, or biometric records; and (2) any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. Some information considered PII is available in public sources, such as telephone books and public websites. However, even non-PII, like first and last names, telephone numbers, and email addresses, can become PII when combined with additional information that could be used to identify an individual. The loss of, or unauthorized access to PII can result in substantial harm, fraud, embarrassment, and inconvenience to individuals as well as identity theft. Therefore, it is a best practice to minimize the collection of PII, and if an entity is in possession of PII (and under the email service rule, law firms would be in possession of opposing party's PII) they must take steps to protect it. And of course, it cannot be protected via an unencrypted email system.

Were the court to adopt the mandatory email service rule as proposed, it would be exposing the public and the bar to significant cyber security threats (both in terms of attacks to their computer systems and theft of and misuse of PII), which is certainly an

unintended consequence of these efforts to improve convenience. If parties wish to assume the risk of unencrypted email communications, that is their choice, although it is wholly unadvisable. Given the risks and the widespread recognition across all branches of government that unencrypted communications and exposed PII should be avoided at all costs, the rule as proposed with respect to email should not be adopted and instead refashioned in response to emerging guidance on cyber security.

Conclusion

The leadership of the Florida Courts is courageously forging a new path as it develops rules and policies to best integrate technology, and their leadership is commendable. However, the proposed changes as written have a number of serious unintended consequences that strongly support further study, especially with respect to remote appearances in evidentiary proceedings. With respect to non-evidentiary appearances, a modified approach to allow for opt-in selection and the deployment of necessary supports for those who cannot use technology appear to be an excellent opportunity to combine technology, triage, simplification, and build out the self-help centers recommended in the Florida Commission

on Civil Justice's 2020 report, *Voices in the Civil Justice System: Learning from Self-Represented Litigants and their Trusted Intermediaries*. Finally, with respect to the email provisions, the data and the research overwhelmingly support the conclusion that the risks far outweigh the rewards and that it is not prudent at this time to abolish service by mail and set unencrypted email as the default for service.

Technology integration is a complicated and pressing issue nationally, and we applaud Florida on its leadership in this area, and look forward to the evolving conversation, which in the future must necessarily also include the public, who as self-represented litigants, are the largest user group in the courts. We also join in supporting the comments of the Florida Civil Legal Aid Association, Disability Rights Florida, and the National Legal Aid and Defender Association.

SELF-REPRESENTED LITIGATION NETWORK

/s/Katherine Alteneder
Consulting Senior Strategic Advisor
SRLN
1828 L Street NW, Suite 300 – A
Washington, D.C. 20036
Phone: 907-854-2067

Katherine@srln.org

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing notice and attached Appendices were filed with the Clerk of Court on September 30, 2021, via the Florida Courts E-Filing Portal, which will serve a notice of electronic filing to those listed below:

/s/Katherine Alteneder

Dustin William Metz Operations Manager Innovations & Outreach Unit Office of the State Courts Administrator 500 S. Duval St. Tallahassee, FL 32399-6556 metzd@flcourts.org Florida Bar No. 64002

Monica Vigues-Pitan 4343 West Flagler Street; #100 Miami, Florida 33134 mviguespitan@legalervicesmiami.org Florida Bar No. 0685011