



# The Florida Senate

Issue Brief 2010-316

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Committee on Governmental Oversight and Accountability

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## ELECTRONIC FILING OF DOCUMENTS

### AT THE DIVISION OF ADMINISTRATIVE HEARINGS

#### Statement of the Issue

Currently, the Division of Administrative Hearings (DOAH) permits, but does not mandate, the electronic filing of documents in some types of administrative proceedings. DOAH also electronically distributes selected orders. There is no statutory authority for mandating the electronic filing of any orders or documents. The purpose of this Issue Brief is to describe the current state of electronic filing at DOAH, and examine whether to provide statutory authority allowing or mandating electronic filing in administrative proceedings.

#### Discussion

##### The Division of Administrative Hearings

The Division of Administrative Hearings, administratively housed within the Department of Management Services, administers two programs. In the Adjudication of Disputes program, Administrative Law Judges (ALJs) adjudicate administrative disputes brought pursuant to the Administrative Procedure Act of Ch. 120, F.S. In the Workers' Compensation Appeals program, Judges of Compensation Claims (JCCs) adjudicate workers' compensation disputes brought pursuant to Ch. 440, F.S.

##### Current Electronic Filing Practices

In ALJ cases, DOAH currently accepts electronically filed (e-filed) documents from members of the Florida Bar and qualified representatives, when they have registered for e-filing with DOAH. Pleadings filed electronically substitute for paper or facsimile-filed documents. The documents must be filed as PDF files, and cannot exceed 8 megabytes in size. Agency Clerks may also submit new cases to DOAH electronically, as an alternative to paper or facsimile-filed referrals. In JCC cases, members of the Florida Bar and licensed adjusters, when registered with DOAH, may also file pleadings electronically.<sup>1</sup> Electronic filing is permissive; nobody is obligated or required to do so.

DOAH began accepting e-filed documents in May of 2004 and, through the end of 2004, 581 registered attorneys e-filed 1,345 pleadings.<sup>2</sup> The chart below<sup>3</sup> specifies the amount of e-filed and paper-filed documents at DOAH for the three most recent fiscal years:

Fiscal Year	Paper	E-Filing
2006-07	50,647	7,520
2007-08	54,471	8,695
2008-09	51,993	12,024

Though specific data is not available, e-filing should create savings to users in terms of paper, postage, and time.

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<sup>1</sup> DOAH's *Statement of Agency Organization and Operation*, available at <http://www.doah.state.fl.us/internet/usedDocs/AgencyOrgOperation.pdf>, on September 4, 2009.

<sup>2</sup> DOAH's *Thirty-First Annual Report*, p. 7

<sup>3</sup> Data provided in emails from DOAH, on file with the committee.

A review of the practices of other states reveals that no state requires mandatory electronic filing in administrative proceedings, and at least fifteen states<sup>4</sup> prohibit e-filing in administrative proceedings. Some states<sup>5</sup> permit e-filing pursuant to rule, and a few states<sup>6</sup> statutorily permit e-filing in administrative actions.

### **Authority for Electronic Filing**

Pursuant to s. 120.54(5)(b)4., F.S., the Administration Commission<sup>7</sup> must adopt uniform rules of procedure<sup>8</sup> for the filing of petitions for administrative hearings brought pursuant to ss. 120.569 and 120.57, F.S. Rule 28-106.104(7), F.A.C., provides that, if an agency allows documents to be filed by email or facsimile, the party so filing the document represents that the original signed document will be retained for the duration of all related proceedings, and that the party shall produce it upon request. The statutory references related to filing with DOAH do not currently address electronic filing.

### **Expanding Electronic Filing**

The Legislature may wish to consider whether to expand electronic filing in administrative proceedings. There is a continuum of possibilities, from requiring e-filing in all circumstances to encouraging e-filing and leaving it optional. One possibility could include requiring e-filing by state agencies, but keeping it permissive for litigants without legal representation.

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<sup>4</sup> Alabama, Arizona, Colorado, Georgia, Iowa, Illinois, Kansas, Kentucky, Maryland, Minnesota, North Dakota, Oklahoma, Rhode Island, South Carolina, and Wyoming.

<sup>5</sup> California, Florida, Maine, Massachusetts, Michigan, Mississippi, North Carolina, Texas, and the Western District of Wisconsin

<sup>6</sup> Alaska, Connecticut, Missouri, Oregon, South Dakota, and Tennessee.

<sup>7</sup> The Administration Commission is created as part of the Executive Office of the Governor, composed of the Governor and Cabinet. The Governor is chair of the commission. Section 14.202, F.S.

<sup>8</sup> The Uniform Rules of Procedure are adopted in Chapter 28-106 of the Florida Administrative Code.