

Clay G. Colson  
4318 Joy Drive  
Land O'Lakes, FL 34638

July 5, 2022


Second District Court of Appeal  
811 East Main Street  
Lakeland, FL 33801

Case No. 2D22-1756

Dear Clerk:

Enclosed you will find my Motion for Rehearing.

Thanks,

A handwritten signature in cursive script that reads "Clay G. Colson". The signature is written in black ink and is positioned above the printed name.

Clay G. Colson

Enclosure

IN THE DISTRICT COURT OF APPEAL  
FOR THE SECOND DISTRICT  
STATE OF FLORIDA

CLAY G. COLSON,

Petitioner,

Case No.: 2D22-1756

L.T. No.: 21-005793-CI

v.

JUDGE PATRICIA ANN MUSCARELLA  
and THE CITY OF TARPON SPRINGS,  
FLORIDA,

Respondents. \_\_\_\_\_ /

**PETITIONER'S MOTION FOR REHEARING AND  
MOTION FOR REHEARING EN BANC**

The Petitioner moves for rehearing pursuant to Fla. R. App. P. 9.330 and moves for rehearing en banc pursuant to Fla. R. App. P. 9.331.

On June 21, 2022, this Court entered an Order which denied the Petition to require JUDGE PATRICIA ANN MUSCARELLA and any other judge presiding over the proceedings in the lower court to allow me to make audio and/or video recordings of all proceedings without prejudice to seek permission to record future proceedings in accordance with the Sixth Judicial Circuit's Administrative Order No. 2008-076 PA/PI-CIR.

However, in entering its Order of June 21, 2022, this Court overlooked the fact that Florida Rule of Appellate Procedure 9.100(k) provides for 30 days to reply to the Response served by City of Tarpon Springs, Florida (hereinafter referred to as the “City”) on June 13, 2022, and as a result of this oversight, I will show that it appears that this Court may have relied on a misrepresentation made by counsel for the City concerning the application of Sixth Judicial Circuit’s Administrative Order No. 2008-076 PA/PI-CIR.

In addition, I will show that this Court overlooked the fact that it appears that JUDGE MUSCARELLA has no intention of allowing me, or any other lowly citizen, to record proceedings and the fact that JUDGE MUSCARELLA ignored the procedure and precedent for prohibiting recording of proceedings.

Furthermore, I will show that it appears that this Court overlooked the fact that the Sixth Judicial Circuit’s Administrative Order No. 2008-076 PA/PI-CIR violates the First Amendment right that all citizens have to gather news, violates Florida Rule of General Practice and Judicial Administration 2.450, and is an invalid administrative order.

Finally, I will show that Florida Rule of General Practice and Judicial Administration 2.451 does not empower the Courts to prevent lowly citizens from exercising their First Amendment right to gather news.

**I. Counsel for the City of Tarpon Springs, Florida misrepresented Sixth Judicial Circuit's Administrative Order No. 2008-076 PA/PI-CIR and such Admin. Order appears to be designed to deny citizens their right to record proceedings and appeal such denials.**

In its Response, counsel for the City claims that Admin. Order 2008-076 PA/PI-CIR provides that “If one is not a professional journalist, then one may present a request seeking prior approval to operate a device capable of taking pictures or capturing sound **to the presiding judge** or the court's public information officer....” Emphasis added.

However, paragraph 3.a. of Admin. Order 2008-076 PA/PI-CIR actually states, “A person not meeting the definition of “professional journalist” shall present his or her request to the Public Information Officer (PIO) of the Sixth Judicial Circuit.... The PIO will then inform the requester whether or not the presiding judge has approved the request.” Note that contrary to the misrepresentation made by counsel for the City, the Admin. Order does not state that someone

who does not meet the Admin. Order's definition of a professional journalist can present a request to record to the presiding judge, but instead, requires lowly citizens to present their requests to the PIO. Most importantly, note that the Admin. Order does not state that the PIO will obtain an order from the presiding judge approving or denying the request to record. See a copy of the Sixth Judicial Circuit's Administrative Order No. 2008-076 PA/PI-CIR in the Respondent's Appendix.

As a result, if I had known about such Admin. Order and had attempted to follow its procedure for requesting to record the proceedings before JUDGE MUSCARELLA, I would not have had an order to appeal or a transcript of a proceeding showing that my request had been denied if JUDGE MUSCARELLA had denied my right to record court proceedings and I had simply been informed of such denial by the PIO as the Admin. Order provides.

As the first point raised for denial of my Petition in the Response filed by counsel for the City was that I did not include any record showing that my request to record the hearing was denied by JUDGE MUSCARELLA and as this Court issued an Order on June 2, 2022 requiring either a written order or a transcript showing that

my request to record the proceedings was denied, if I had followed the procedure in the Admin. Order and my request was denied, I would not have had an order or transcript to produce. As a result, it appears that this Court would have denied my Petition because I could not have provided an order or a transcript.

The affidavit that I filed in my Appendix to my Petition showed that Judge Muscarella denied my request to record the proceedings, and that showing was not sufficient for this Court. So, how could a letter, or an affidavit of a phone call, from the PIO denying my request to film be sufficient to support my petition?

As the Sixth Judicial Circuit's Administrative Order No. 2008-076 PA/PI-CIR appears to be designed to allow judges to deny requests to record proceedings and avoid any record of such denial that would support an appeal, this Court should have recognized this design flaw and should not have simply denied my Petition and directed me to comply with such Admin. Order if I want to try to record future proceedings.

Finally, there is no doubt that my request to record the proceeding would have been denied if I had complied with the Admin. Order because when I notified JUDGE MUSCARELLA that I

was recording the proceeding, JUDGE MUSCARELLA stated, “It’s against all the rules to record anything, Mr. Colson.” See the transcript of JUDGE PATRICIA ANN MUSCARELLA’s oral pronouncement prohibiting the Petitioner from recording the hearing held in the lower court on May 2, 2022 in the Supplement to my Appendix.

Therefore, it is clear that JUDGE MUSCARELLA has no intention of allowing me to record any proceedings in violation of my First Amendment right to gather news, and my Petition for an order compelling JUDGE PATRICIA ANN MUSCARELLA and any other judge presiding over the proceedings in the lower court to allow me to make audio and/or video recordings of all proceedings should be granted.

**II. The Sixth Judicial Circuit’s Administrative Order No. 2008-076 PA/PI-CIR violates the First Amendment right that all citizens have to gather news.**

My Petition showed that “Freedom of the press is not, and has never been a private property right granted to those who own the news media. It is a cherished and almost sacred right of each citizen....” State ex rel. Miami Herald Publishing Co. v. McIntosh, 340 So.2d 904, 910 (Fla. 1977).

“News delayed is news denied. To be useful to the public, news events must be reported when they occur. Whatever happens in any courtroom directly or indirectly affects all the public. To prevent star-chamber injustice the public should generally have unrestricted access to all proceedings.” Id.

“[T]he public and press have a right to know what goes on in a courtroom whether the proceeding be criminal or civil.” Id. At 908.

“A trial is a public event, and there is no special perquisite of the judiciary which enables it to suppress, edit or censor events which transpire in proceedings before it...” Id. at 908-909.

Furthermore, "without some protection for seeking out the news, freedom of the press could be eviscerated." Branzburg v. Hayes, 408 U.S. 665, 681, 92 S.Ct. 2646, 33 L.Ed.2d 626 (1972).

Finally, a court’s discretion is limited in deciding whether to prohibit news gathering. Chavez v. State, 832 So.2d 730, 759 (Fla. 2002).

However, counsel for the City did not cite any case holding that the right to gather news is not a right that all citizens can exercise or that a person loses such right by filing a lawsuit.

Instead, counsel for the City simply cited the Sixth Judicial Circuit’s



Administrative Order No. 2008-076 PA/PI-CIR which states that there is a difference in how professional journalists and other citizens can be treated when a request is made to gather news by recording court proceedings. Counsel for the City also claimed that lowly citizens can be prohibited from recording court proceedings by Florida Rule of General Practice and Judicial Administration 2.451.

Of course, lowly rules are not supposed to abridge fundamental rights, and Florida Rule of General Practice and Judicial Administration 2.120(c) specifically provides that Administrative Orders cannot be inconsistent with the Constitution or Supreme Court opinions, and therefore, as the Sixth Judicial Circuit's Administrative Order No. 2008-076 PA/PI-CIR contradicts both the First Amendment and Supreme Court decisions concerning news gathering, it is invalid.

In addition, the Committee Note to Florida Rule of General Practice and Judicial Administration 2.451 provides that use of devices capable of recording by persons other than jurors parallels Florida Rule of General Practice and Judicial Administration 2.450 which provides that recording shall be allowed provided that it does not disrupt proceedings or is likely to undermine the fair

administration of justice. In fact, the Court Commentary to Rule 2.450 provides that the Rule constitutes a general authorization for recording proceedings for all purposes.

Therefore, my Petition for an order compelling JUDGE PATRICIA ANN MUSCARELLA and any other judge presiding over the proceedings in the lower court to allow me to make audio and/or video recordings of all proceedings should be granted.

**III. The procedure and precedent for prohibiting recording of proceedings was ignored by JUDGE MUSCARELLA and is violated by the Sixth Judicial Circuit's Administrative Order No. 2008-076 PA/PI-CIR.**

When determining whether news gathering will be restricted, the court must provide notice and an opportunity for the media to be heard. Chavez v. State, 832 So.2d 730, 758 (Fla. 2002) citing WFTV, Inc. v. State, 704 So.2d 188, 190 (Fla. 4th DCA 1997).

Moreover, a court's discretion is limited in deciding whether to prohibit news gathering. Chavez v. State, 832 So.2d 730, 759 (Fla. 2002).

Prior to closing proceedings for the purpose of news gathering, the court must notify the local news media that a motion for closure has been filed, the time at which it will be heard, and that the

media have the right to be heard at the hearing on closure. Miami Herald Publishing Co. v. Lewis, 426 So.2d 1, 7 (Fla. 1982).

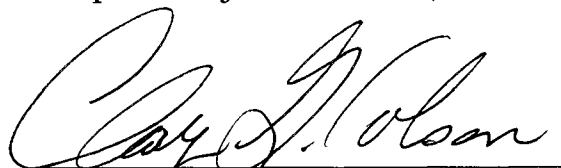
“In determining this question, an evidentiary hearing should be held and findings of fact should be recorded by the judge in his order granting or refusing closure.” Id. at 7-8.

When JUDGE MUSCARELLA prohibited me from recording the proceeding below, she did not continue the hearing to notify any news organizations that news gathering might be restricted, and she did not seek argument or evidence that by recording the hearing, the proceedings might be disrupted or the fair administration of justice might be undermined. See the transcript of JUDGE MUSCARELLA’s oral pronouncement prohibiting the Petitioner from recording the hearing held in the lower court on May 2, 2022 in the Supplement to my Appendix.

Furthermore, the Sixth Judicial Circuit’s Administrative Order No. 2008-076 PA/PI-CIR ignores the Florida Supreme Court’s precedent requiring notice to the local news media, a hearing and an evidentiary basis before prohibiting news gathering in court proceedings which is another reason why such Admin. Order is invalid.

Therefore, my Petition for an order compelling JUDGE PATRICIA ANN MUSCARELLA and any other judge presiding over the proceedings in the lower court to allow me to make audio and/or video recordings of all proceedings should be granted, or at the least, this Court should order JUDGE MUSCARELLA to notify the local news media that she has set a hearing in the proceedings in the lower court to consider restricting news gathering in such proceedings and require JUDGE MUSCARELLA to have some evidentiary basis that is approved by precedent before denying any future request to record proceedings.

Respectfully submitted,

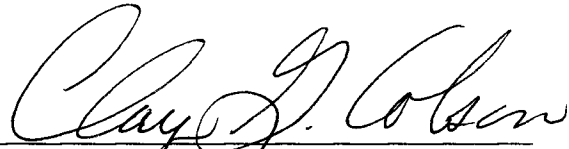


CLAY G. COLSON

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this petition has been served by U.S. Mail to Jay Daigneault, Esq. of Trask Daigneault, LLP counsel for the City of Tarpon Springs, Florida at 1001 S. Fort Harrison

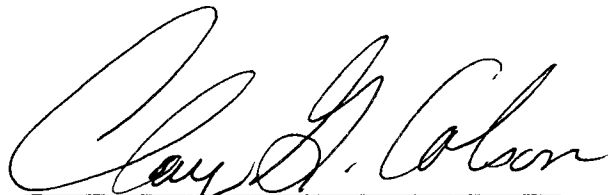
Ave., Suite 201 in Clearwater, FL 33756 and to Judge Patricia Ann Muscarella at 315 Court St., Room 423 in Clearwater, FL 33756 on this 5<sup>th</sup> day of July 2022.



CLAY G. COLSON  
4318 Joy Drive  
Land O'Lakes, FL 34638  
813-601-3391

**CERTIFICATE OF COMPLIANCE**

I hereby certify that this petition complies with the applicable font and word limit requirements of the Florida Rules of Appellate procedure.



CLAY G. COLSON