

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

THERESA D. RUBALCAVA,

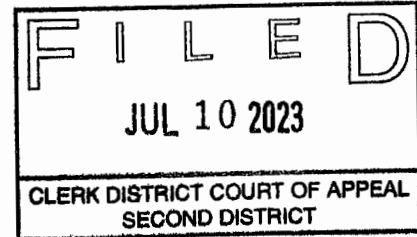
Case No.: 2D23-1312

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

Petitioner,

v.

THE CITY OF TARPON SPRINGS,
FLORIDA, MORGAN GROUP
DEVELOPMENT, LLC, et al.,



Respondents. _____ /

**PETITIONER'S MOTION FOR REHEARING,
CERTIFICATION, ISSUANCE OF A WRITTEN OPINION, AND
FOR REHEARING EN BANC**

The Petitioner moves for rehearing, certification and/or issuance of a written opinion pursuant to Florida Rule of Appellate Procedure 9.330 and moves for rehearing en banc pursuant to Florida Rule of Appellate Procedure 9.331.

On June 21, 2023, I filed my Petition to Review Order Excluding Press Coverage of Proceedings in the Circuit Court of the Sixth Judicial Circuit, in and for Pinellas County, Florida seeking an order allowing audio and/or video recordings of all proceedings in the lower court and declaring the Sixth Judicial Circuit's Administrative Order No. 2008-076 PA/PI-CIR invalid and showing

that the lower court and its administrative order violated precedent of this Court, precedent the Florida Supreme Court and Florida Rule of General Practice and Judicial Administration 2.450 all of which provide for the First Amendment activities of news gathering by filming court proceedings some of which will be cited in detail in the following motions.

Less than 48 hours later, without bothering to wait for any responses,¹ on June 23, 2023, this Court entered an Order without any explanation which denied my Petition to compel 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 and to declare the Sixth Judicial Circuit's Administrative Order No. 2008-076 PA/PI-CIR invalid.²

¹ Apparently, some members of this Court may have been concerned that one or more of the Respondents would agree that the lower court and its administrative order violated precedent and Rule 2.450.

² Ironically, Judge Stevan T. Northcutt, one of the judges who authorized the Order of June 23, 2023, was a free lance journalist and also a reporter for major local newspapers who relied on our First Amendment rights to gather and report news, but now, he apparently believes that the public should not be allowed to see that judges ignore the law to rule in favor of certain powerful interests.

I. Motion for a Written Opinion.

Petitioner moves for issuance of a written opinion because this Court's Order issued on June 23, 2023 is a per curiam denial which prevents discretionary review by the Florida Supreme Court and does not explain why this Court ignored precedent of this Court, controlling precedent the Florida Supreme Court and Florida Rule of General Practice and Judicial Administration 2.450(b)(1) which states, "At least 1 portable television camera, operated by not more than 1 camera person, **shall** be permitted in any trial or appellate court proceeding." (Emphasis added.)

Of course, this Court cannot explain why it ignored its prior precedent as well as controlling precedent of the Florida Supreme Court and Florida Rule of General Practice and Judicial Administration 2.450 which require courts to allowing filming of proceedings, and that is why it issued its Order of June 23, 2023 which did not attempt to explain why a court proceeding which had

However, perhaps, like the mainstream news has demonstrated repeatedly for the last couple of decades, Judge Northcutt has always believed that the public should be kept in the dark and simply be told that decisions are just and follow the rule of law instead of allowing the public to see how decisions are made in violation of the law and against the public's best interests?

generated considerable public interest and news coverage could not be filmed and why a local administrative order could be used to overrule the Florida Supreme Court and Rule 2.450.

WHEREFORE, the Petitioner dares this Court to attempt to explain the basis for entry of its Order of June 23, 2023.

II. Motion for Rehearing.

When considering this Petition and deciding to enter the Order of June 23, 2023, the members of this Court who authorized entry of such Order overlooked, misapprehended or chose to ignore the mountain of Florida Supreme Court precedent requiring that Florida courts allowing filming of court proceedings including, but not limited to, the following:

State ex rel. Miami Herald Publishing Co. v. McIntosh, 340 So.2d 904, 910 (Fla. 1977);

Miami Herald Publishing Co. v. Lewis, 426 So.2d 1, 7 (Fla. 1982);

and Chavez v. State, 832 So.2d 730, 759 (Fla. 2002). All of which require Florida courts allow filming of proceedings unless the Court provides notice that it intends to prohibit filming, conducts an evidentiary hearing at which evidence is presented showing that allowing filming will interfere with the fair administration of justice

by having a negative impact on the right to a fair trial before an impartial jury.

Yet, even though the Petition and the record showed that JUDGE PATRICIA ANN MUSCARELLA did not follow the required procedure and did not making any finding that the fair administration of justice would be negatively impacted by filming and might undermine the right to a fair trial before an impartial jury³ and even though the Sixth Judicial Circuit's Administrative Order No. 2008-076 PA/PI-CIR impermissibly switches the burden from the court to the person who seeks to film and sets up a trap which allows a request to film to be denied without any written order, three members of this Court issued the Order of June 23, 2023 denying the Petition.

WHEREFORE, the Petitioner requests this Court to rehear the Petition, actually review it and the law cited in it, allow responses, follow the rule of law by following controlling precedent of the Florida Supreme Court and Rule 2.450, and grant the Petition by entering an order allowing me and any other person to make audio

³This would have been impossible because no jury trial was requested in the action in the lower court.

and/or video recordings of all proceedings in the lower court and declaring the Sixth Judicial Circuit's Administrative Order No. 2008-076 PA/PI-CIR invalid.

III. Motion for Certification of Conflict.

Petitioner moves for an order certifying conflict with the aforementioned Florida Supreme Court cases and the following cases which require an actual threat to the fair administration of justice before prohibiting filming of court proceedings including, but not limited to:

WFTV, Inc. v. State, 704 So.2d 188 (Fla. 4th DCA 1997); and Florida Times-Union v. State, 747 So.2d 1030 (Fla. 1st DCA 1999).

Requiring Florida's courts to follow precedent of the Florida Supreme Court including, but not limited to:

Regan v. ITT Industrial Credit Co., 469 So.2d 1387, 1390 (Fla. 1st DCA 1984) approved, 487 So.2d 1047 (Fla.1986).

Prohibiting lower courts from making rules or enacting administrative orders which conflict with the rules of procedure adopted by the Florida Supreme Court including, but not limited to:

Valdez v. Chief Judge of the Eleventh Judicial Circuit, 640 So.2d 1164 (Fla. 3d DCA 1994).

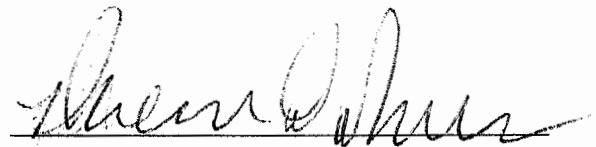
WHEREFORE, the Petitioner requests this Court to certify conflict with the aforementioned cases.

IV. Motion for Rehearing En Banc.

Petitioner moves for rehearing en banc because this Court overlooked or failed to apply prior rulings of this Court including: Hatcher v. Davis, 798 So.2d 765 (Fla. 2d DCA 2001) holding that an administrative order that adds terms and conditions to the rules of procedure adopted by the Florida Supreme Court is invalid; and Sarasota Herald-Tribune v. State, 916 So.2d 904 (Fla. 2d DCA 2005) holding that filming and photography should be allowed if there is no evidentiary basis showing an immediate threat to the fair administration of justice.

WHEREFORE, the Petitioner requests that this Court hear the Petition en banc and grant the relief requested in the Petition.

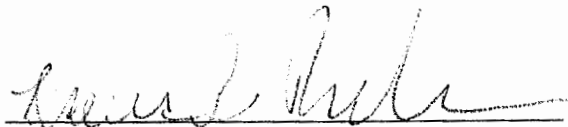
Respectfully submitted,



THERESA D. RUBALCAVA

CERTIFICATE OF SERVICE

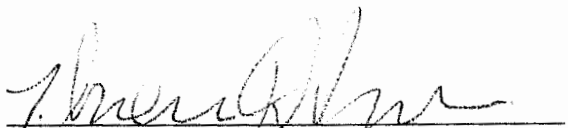
I hereby certify that a copy of this petition has been served by U.S. Mail to Andrew J. Salzman, Esq. of Unice Salzman Jenson, P.A. at 1815 Little Rd., Second Floor in Trinity, FL 34655; to Shane T. Costello, Ed Armstrong, and A. Evan Dix of Hill, Ward & Henderson, P.A. at at 600 Cleveland St., Suite 800 in Clearwater, FL 33755; to Judge Patricia Ann Muscarella at 315 Court St., Room 423 in Clearwater, FL 33756; and to the Honorable Anthony Rondolino, Chief Judge of the Sixth Judicial Circuit at 545 1st Ave. N., Suite 400 in St. Petersburg, FL 33701 on this 10 day of July 2023.



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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.



THERESA D. RUBALCAVA