

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

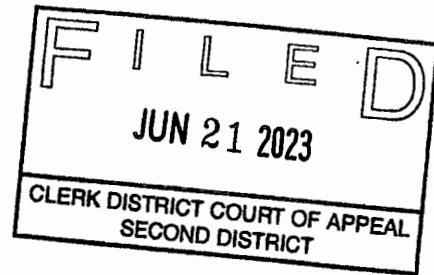
CLAY G. COLSON,  
  
Petitioner,

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

v.

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

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



**PETITION TO REVIEW ORDER EXCLUDING PRESS COVERAGE  
OF PROCEEDINGS IN THE CIRCUIT COURT OF THE SIXTH  
JUDICIAL CIRCUIT, IN AND FOR PINELLAS COUNTY, FLORIDA**

**I. BASIS FOR INVOKING JURISDICTION**

Pursuant to Florida Rule of Appellate Procedure 9.100(d),  
Petitioner, THERESA D. RUBALCAVA, respectfully petitions this  
Court for an order allowing me to make 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. JUDGE PATRICIA ANN MUSCARELLA is a Respondent  
because Judge Muscarella presided over proceedings in Case  
Number 21-005793-CI in the lower court and entered an Order  
prohibiting me from filming proceedings based upon the Sixth

Judicial Circuit's Administrative Order No. 2008-076 PA/PI-CIR and JUDGE ANTHONY RONDOLINO is a Respondent as he is currently Chief Judge of the Sixth Judicial Circuit, and as such, possesses the authority to issue, revise, and revoke administrative orders in the Sixth Circuit.

## **II. STATEMENT OF FACTS**

CLAY G. COLSON initiated proceedings in Case Number 21-005793-CI in the lower court because in November of 2021, the City of Tarpon Springs, Florida (hereinafter referred to as the "City") violated the City's comprehensive plan by approving a development order concerning nearly 74 acres of greenspace along the Anclote River allowing MORGAN GROUP DEVELOPMENT, LLC (hereinafter referred to as the "Morgan Group") to develop a proposed 404-unit multifamily project with a clubhouse, on-site recreational amenities, parking, and stormwater facilities (hereinafter referred to as the "development").

Thousands of citizens are concerned that this development would have significant negative impacts on the Anclote River, on traffic on U.S. 19, and on City and County services to residents of and visitors to the area.

The actions taken by the City in considering and approving such development have been featured and criticized in multiple news reports by the Tampa Bay Times, the Tarpon Springs Beacon, local television stations, and online news outlets.

During its consideration and approval of such development, the City enacted various measures to restrict the First Amendment rights of those opposed to such development in an apparent effort to minimize criticism, news coverage and awareness of the many grounds and arguments raised in opposition to such development, the overwhelming opposition of citizens to such development, the lack of public support for such development, and the significant negative impacts that such development would have on the Anclote River, on traffic on U.S. 19, and on City and County services to residents of and visitors to the area.

In spite of the City's efforts to reduce awareness of and opposition to such development, every member of the City's commission who voted to approve the Morgan Group's development has since been voted out of office, and such election results show that the citizens overwhelmingly disapprove of such development.

Judge Muscarella entered an Order dismissing Case Number 21-005793-CI in the lower court because Clay G. Colson failed to join the Morgan Group as a party, and Mr. Colson initiated an appeal of such order in Case Number 2D22-3637 in this Court.

On February 20, 2023, Mr. Colson executed a Transfer of Interest transferring all claims in Case Number 21-005793-CI and all claims arising from such case to me, and shortly thereafter, Mr. Colson passed away.

On March 17, 2023, I filed a Motion for Substitution of Appellant in Case Number 2D22-3637 in this Court, and on April 5, 2023, this Court entered an Order in Case Number 2D22-3637 releasing jurisdiction to the lower court for Judge Muscarella to hold an evidentiary hearing on the Transfer of Interest and issue a report and recommendation on whether the Transfer of Interest served to transfer Mr. Colson's interest in pursuit of the claims in Case Number 21-005793-CI and Case Number 2D22-3637 to me.

I believed that due to the public interest in this development, this hearing and these proceedings would be considered newsworthy as did Cathy Turille, and in an effort to obtain approval to film the proceedings in the lower court and comply with the Sixth

Judicial Circuit's Administrative Order No. 2008-076 PA/PI-CIR, on May 8, 2023, Ms. Turille sent a letter to Stephen Thompson, the Public Information Officer for the Sixth Judicial Circuit requesting to film proceedings in Case Number 21-005793-CI. See Appendix 1.

However, as predicted by the late, great Clay G. Colson, neither Stephen Thompson nor any other person with the Public Information Office for the Sixth Judicial Circuit has responded to Ms. Turille's request to this day. See Appendix 1.

As a result, on May 19, 2023, I filed my Motion to Allow Filming of Proceedings in Case Number 21-005793-CI. See Appendix 2.

On May 22, 2023, at the beginning of the evidentiary hearing on the Transfer of Interest, Judge Muscarella denied my Motion to Allow Filming of Proceedings without hearing argument or taking evidence concerning it. See Appendix 3, page 5.

On May 23, 2023, Judge Muscarella entered an Order Denying my Motion to Allow Filming based upon the Sixth Judicial Circuit's Administrative Order No. 2008-076 PA/PI-CIR and without making any findings of fact. See Appendix 4.

Prior to entering the Order Denying my Motion to Allow Filming, Judge Muscarella did not provide notice to the news media that she was going to consider prohibiting filming of proceedings in Case Number 21-005793-CI. See Appendix 5.

See the Sixth Judicial Circuit's Administrative Order No. 2008-076 PA/PI-CIR in Appendix 6.

### **III. NATURE OF THE RELIEF SOUGHT**

The nature of the relief sought is 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 and declaring the Sixth Judicial Circuit's Administrative Order No. 2008-076 PA/PI-CIR invalid.

### **IV. ARGUMENT**

#### **I. Judge Muscarella's Order Denying my Motion to Film Proceedings violates the First Amendment, Florida Rule of General Practice and Judicial Administration 2.450, and controlling precedent, and therefore, should be reversed.**

Florida Rule of General Practice and Judicial Administration 2.450(b)(1) 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.)

“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, any person is allowed to exercise the First Amendment right to gather news, and "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).

Prior to closing proceedings to press coverage, 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.

However, the Docket in Case Number 21-005793-CI (Appendix 5) shows that no notice of any hearing was filed on any motion to prohibit filming and that no notice of any hearing was filed on my Motion to Allow Filming of Proceedings, and therefore, no notice of any intent to prohibit filming was given to members of the local news media and no evidentiary hearing was held although both are



required prior to prohibiting filming by Miami Herald Publishing Co. v. Lewis, 426 So.2d 1, (Fla. 1982).

Furthermore, Judge Muscarella's Order Denying my Motion to Film Proceedings (Appendix 4) made no findings of fact to support denial of my motion in further violation of Miami Herald Publishing Co. v. Lewis, 426 So.2d 1, (Fla. 1982).

Wherefore, Judge Muscarella's Order Denying my Motion to Film Proceedings should be reversed.

**II. The Sixth Judicial Circuit's Administrative Order No. 2008-076 PA/PI-CIR violates the First Amendment, Florida Rule of General Practice and Judicial Administration 2.450, and controlling precedent, and therefore, should be declared invalid.**

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.

Furthermore, Florida Rule of General Practice and Judicial Administration 2.120(c) specifically provides that Administrative Orders cannot be inconsistent with the Constitution or rules adopted by the Florida Supreme Court. Moreover, Florida Rule of General Practice and Judicial Administration 2.450 provides that filming 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.

An administrative order that adds terms and conditions to the rules of procedure adopted by the Florida Supreme Court is invalid. See, e.g., Hatcher v. Davis, 798 So.2d 765, 766 (Fla. 2d DCA 2001).

However, 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, requiring a hearing and requiring an evidentiary basis before prohibiting news gathering in court proceedings, and it ignores the provision in Rule 2.450 that filming shall be allowed and impermissibly adds terms and conditions to Rule 2.450.

Furthermore, the Sixth Judicial Circuit's Administrative Order No. 2008-076 PA/PI-CIR requires people who it defines as not meeting its definition of a professional journalist to ask the Public Information Office for permission to film, and the Public Information Office ignores and does not respond to such requests. See Appendix 1.

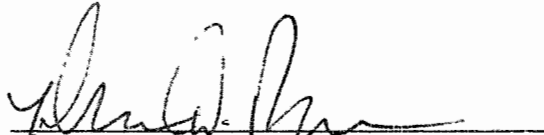
Wherefore, the Sixth Judicial Circuit's Administrative Order No. 2008-076 PA/PI-CIR should be declared invalid.

Respectfully submitted,

  
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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 21 day of June 2023.

  
\_\_\_\_\_  
THERESA D. RUBALCAVA  
319 Lebeau St.  
Clearwater, FL 33755  
727-418-7125

**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