



INTER ALIA

APRIL 2020

NEWSLETTER OF THE MANATEE COUNTY BAR ASSOCIATION

The Manatee County Bar Association leadership has determined, based upon the updated CDC guidelines that all events will be cancelled through April 30th. We will review rescheduling events and next steps at that time.

The MCBA office will be closed until further notice but we will be responding via email as soon as we can. We will also be posting to our website and emailing updates to our membership during this time. Thank you for your patience.



Risk Protection Order in Florida

By Brian Iten, Esq., MCBA Secretary

The “Marjory Stoneman Douglas High School Public Safety Act” was enacted because the Legislature found “a need to comprehensively address the crisis of gun violence, including, but not limited to, gun violence on school campuses.” Ch. 18-3, § 2, Laws of Fla. In response to that need, Florida legislators chose to provide “law enforcement and the courts with the tools to enhance public safety by temporarily restricting firearm possession by a person who is undergoing a mental health crisis and when there is evidence of a threat of violence . . .” *Id.* The enabling legislation, which created the risk protection order (RPO), was codified at Section 790.401, Fla. Stat. (2018). Closely modeled on those statutes which permit persons to seek protective injunctions, a limited duration final RPO can only be issued at the conclusion of an evidentiary hearing, a hearing which must be held within 14 days of the filing of a petition by a law enforcement officer or law enforcement agency. A final RPO shall not issue unless the Court first finds the petitioner has proven its case by clear and convincing evidence. When granted, a final order can remain in effect for no more than 12 months. It may only be extended upon motion of the petitioner, followed by an evidentiary hearing, wherein the petitioner bears the burden of proof. Much like an injunction for protection, an RPO can initially be granted on an ex parte basis.

A review of Section 790.401 reveals that the statute in question does not provide a respondent with the “full panoply” of procedural guarantees that would be available in other contexts, such as a criminal jury trial. *See Morrissey v. Brewer*, 408 U.S. 471, 499 (1972). Of course, the “procedural strictness and exactitude of criminal law” does not apply to “non-criminal situations.” *Sheffey v. Futch*, 250 So. 2d 907, 910 (Fla. 4th DCA 1971) (distinguishing the due process rights associated with a criminal prosecution from those available to a public official facing removal from office). Time and again, the Florida legislature has created expedited proceedings to address matters which require swift resolution. Examples can be found with protective injunctions; tenant removal via summary procedure under

Sections 83.21 and 51.011, Fla. Stat.; injunctions against violations of the Mortgage Brokerage and Mortgage Lending Act under Section 494.0013, Fla. Stat.; prejudgment replevin proceedings under Section 78.068, Fla. Stat.; involuntary inpatient placement under Section 394.467, Fla. Stat.; and proceedings involving the denial of media access to public records and judicial matters under Section 119.11, Fla. Stat. While the foregoing statutes, along with Section 790.401, do not contemplate extensive discovery – given the accelerated time frames that they provide – they still afford litigants procedural due process.

Procedural due process requires that each litigant be given proper notice and a full and fair opportunity to be heard. The same protection is provided by both the Florida and United States Constitutions. Although all litigants have a right to procedural due process, there is no uniform test to determine its application: The extent of procedural due process protection varies with the character of the interest and nature of the proceeding involved. There is, therefore, no single unchanging test which may be applied to determine whether the requirements of procedural due process have been met. Courts instead consider the facts of the particular case to determine whether the parties have been accorded that which the state and federal constitutions demand. To be sufficient, the notice must be reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. The notice must convey the required information, and it must afford a reasonable time for those interested to make their appearance. The proceeding itself must only be essentially fair.

Carmona v. Wal-Mart Stores, East, LP, 81 So. 3d 461, 463-64 (Fla. 2d DCA 2011) (internal citations and quotations omitted). “To satisfy due process requirements at an injunction hearing, the parties must have a reasonable opportunity to prove or disprove the allegations made in the complaint.” *Furry v. Rickles*, 68 So. 3d 389, 390 (Fla. 1st DCA 2011). “This includes allowing relevant testimony of pertinent, noncumulative witnesses who are present and cross-examination of the parties.” *Id.*

(continued on page 5)

(Risk Protection Order continued from page 1)

FREQUENTLY ASKED QUESTIONS:

Q: Who can initiate a RPO?

A: Only a law enforcement agency or a law enforcement officer.

Q: How does the initial temporary ex-parte RPO come to be issued?

A: Once a petitioner files a petition, accompanied by one or more supporting affidavits, those documents are submitted to the Circuit Court, in the same manner law enforcement officers submit search warrants and arrest warrants to judges for their approval.

Q: How long does the temporary ex-parte RPO remain in effect?

A: The temporary order remains valid until the Court holds the final hearing, which typically takes place within 14 days of the issuance of the temporary order.

Q: What is the evidentiary burden that must be satisfied by the petitioner at the final hearing?

A: Section 790.401(3)(b) provides that “if the court finds by clear and convincing evidence that the respondent poses a significant danger of causing personal injury to himself or herself or others by having in his or her custody or control, or by purchasing, possessing, or receiving, a firearm or any ammunition, the court must issue a risk protection order for a period that it deems appropriate, up to and including but not exceeding 12 months.”

Q: Does the statute provide for court-appointed counsel?

A: No.

Q: Does the statute give the Court the ability to address a respondent’s potential mental health and chemical dependency issues?

A: Yes, Section 790.401(3)(f) provides that “[d]uring the hearing, the court must consider whether a mental health evaluation or chemical dependency evaluation is appropriate and, if such determination is made, may order such evaluations, if appropriate.”

Q: Where are the respondent’s firearms kept prior to the expiration or termination of the RPO?

A: Section 790.401(7)(a) dictates that “[u]pon issuance of a risk protection order under this section, including a temporary ex parte risk protection order, the court shall order the respondent to surrender to the local law enforcement agency all firearms and ammunition owned by the respondent in the respondent’s custody, control, or possession except as provided in subsection (9), and any license to carry a concealed weapon or firearm . . . held by the respondent.” Subsection (9) provides that a “respondent may elect to transfer all firearms and ammunition owned by the respondent that have been surrendered to or seized by a local law enforcement agency pursuant to subsection (7) to another person who is willing to receive the respondent’s firearms and ammunition.”

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Greg Porges and his firm Porges, Hamlin, Knowles & Hawk, P.A. celebrate the firm's 50th Anniversary this year.

Greg Porges and the Porges, Hamlin, Knowles & Hawk Firm Celebrate 50 years!

It's hard to throw a stone in the courthouse and not hit someone who, at some time, has practiced law with Greg Porges. This includes many of the Circuit's judges. In fact, one office in Porges' downtown law firm is permanently off limits to attorneys, because so many attorneys who have inhabited that office have left the firm to become judges.

A mainstay and iconic member of the Manatee County Bar Association (MCBA), Porges continues his practice today. He and his firm have hit a milestone by celebrating the firm's 50th Anniversary this year.

Porges is a former MCBA Lifetime Achievement Award winner, and members of his firm have served the MCBA in many capacities throughout the years. In fact, the MCBA utilized office space in the Porges firm's building for many years. Legal Aid Manasota honored Greg at their "Lawyers & Legends" program in 2013. Anyone who knows Porges recognizes remnants of his characteristic New York accent. He was born in Long Island and attended law school at night at Fordham University. He also served in the U.S. Coast Guard Reserves for eight years. Greg went to work at Empire Trust Company as a trust officer before moving to Florida. He and wife Jan moved to Florida in 1967 after visiting Jan's family on vacation. They were delighted to leave the cold winters behind. Porges still "celebrates" yearly the figurative burning of his commuter rail pass. Upon moving to Bradenton, Greg accepted a position in banking at Manatee National Bank in the trust department.

In 1970, Porges joined George Harrison and John Harllee in practice, and has never left the firm that they started together. They all became part of the familial legal community in Manatee County that still exists today. In the early days, Porges played church softball with Judge Thomas Gallen, and walked to work with his then-neighbor Bob Blalock.

Porges' firm has had many name iterations over the years, but today is known as Porges, Hamlin, Knowles & Hawk. For 50 continual years, the firm has represented clients and provided legal services in west Florida, and beyond.

Today, the firm employs eight attorneys, and continues to represent a diverse client base. Long time partners Tim Knowles and Curtis Hamlin are joined by partners Mary Hawk and Jason DePaola. Of counsel with the firm is Alan Prather; and associates Bryony Swift and James Turff round out the field. The partners wish to express their sincere gratitude to the firm's clients, associates, legal assistants, colleagues, friends and families for being a part of the firm's growth and legacy during the past 50 years. PHKH looks forward to continuing these wonderful relationships and remaining active in the MCBA.



The Porges firm has inhabited 1205 Manatee Avenue West since the 1970s. The MCBA once occupied office space in the building – free of charge.



Lawyers & Legends 2013



Greg Porges, US Coast Guard



Law School Graduation



Greg banking with Shelton Moody, at Manatee National Bank



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MCBA Day At The Arcadia Rodeo

Many MCBA members were spotted at the Arcadia Rodeo! Judges Henderson and Parker were seen working a concession stand, and Judge Henderson was also spotted entertaining the crowd with the Manatee River Bluegrass Band. In total, fourteen judges attended this year's rodeo. Telese McKay's son was seen participating in the calf scramble. All in all, a great event – hope to see you next year!



Points of Pride

44



SSes students named National Merit Scholar finalists since 2005

18

State championships won by Falcons sports teams.

\$7.1 MILLION



Merit-based aid offered by colleges to graduates of the class of 2019

13



Universities ranked among the 25 most selective by U.S. News and World Report that SSES grads have matriculated to since 2013



700 total enrollment

Pre-K3 through grade 12

55%

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20+

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Welcome New Members!

Kevin Moore Collver, Esq.

University of Florida, 1995
 Year admitted to the Florida Bar, 1997
 Mr. Collver is an attorney with Barnes, Walker, Goethe,
 Perron & Shea, PLLC,
 3119 Manatee Ave. West, Bradenton, FL 34205.

Susan K. Flynn, Esq.

Stetson University, 2011
 Year admitted to the Florida Bar, 2011
 Ms. Flynn is the CEO of Bon Eau Enterprises, LLC,
 1767 Lakewood Ranch Blvd., Box #304,
 Lakewood Ranch, FL 34211.

Melissa Gould, Esq.

City University of New York, 2007
 Year admitted to the Florida Bar, 2007
 Ms. Gould is an assistant state attorney in the Florida
 State Attorney's Office,
 1112 Manatee Ave. West, Bradenton, FL 34205.

Kelley Ann Thompson, Esq.

Stetson University, 2019
 Year Admitted to the Florida Bar, 2019
 Ms. Thompson is an associate attorney with Barnes,
 Walker, Goethe, Perron & Shea, PLLC,
 3119 Manatee Ave. West, Bradenton, FL 34205.



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MCBA & COURT UPDATES DURING COVID-19



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The MCBA Facebook page will have updates regarding events and membership. Like our page!



The MCBA website is another source for updates. The MCBA has cancelled ALL events through April 15th. Visit us at www.manateebar.com



The 12th JD website has the most up-to-date updates and changes regarding the Courts. Visit them at <https://www.jud12.flcourts.org/>



MEMBER RESOURCES AVAILABLE DURING COVID-19

Please continue to visit our Facebook Page and website to find links to various resources offered by the Florida Bar, as well as other voluntary bar associations throughout the state. The offerings are too numerous to mention and being added daily. Use this time wisely and take advantage of the offerings being made available to you. Photo courtesy of the Florida Bar.

Interested in Serving on the MCBA Board of Directors?

The Nominating Committee will be reviewing nominations soon. Please submit your Letter of Intent via email to: MCBA@ManateeBar.com by April 15, 2020.



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Do You Have A Settlement?

"A good deal is a state of mind." – Lee Iacocca

When representing a client in a mediation, the goal must always be to craft a written and enforceable agreement that deals with all possible issues, including a release. The provision for a release must be done with specificity at the time the agreement is signed; otherwise, your client may become involved in unexpected costly litigation that could have easily been avoided. The agreement/release should specifically state who is releasing, who is being released, what claims are being released, and any other terms and conditions. Do not leave the mediation conference without a clear written agreement on these points, as you may not have a settlement.

In *O'Neill vs. Scher*, 997 So. 2d 1205 (Fla 3d DCA 2008) the parties participated in a mediation, which resulted in the parties and their counsel executing a document entitled, "Memorandum of Settlement." In the Memorandum of Settlement, O'Neill agreed to release any present and/or future interest that she may have had in the Estate of Benjamin Scher, the Benjamin Scher Revocable Inter Vivos Trust, the Benjamin Scher Irrevocable Trust, the Estate of Sophie Scher, the Sophie Scher Revocable Inter Vivos Trust, and the Estate of Richard Scher. The agreement further provided that it was a memorial of the terms of the settlement and the parties agreed to execute formal releases after the mediation in accordance with the terms set forth in the agreement.

Almost immediately after the mediation the parties were back in court on motions to enforce the settlement. One of the issues in dispute was whether the release language in the agreement should be limited to its own terms or read broadly to encompass a universal general release. The trial court ruled in favor of the general release argument. The 3rd DCA reversed, stating: "...the release that the trial court ordered O'Neill to execute is overly broad and does not accurately reflect the release of interests and/or claims to which O'Neill agreed in the settlement agreement. Indeed, O'Neill only agreed in Paragraph 3 of the Memorandum of Settlement to release six specific present and/or future interests. The general release, on the other hand, contains broad provisions releasing O'Neill's present and/or future claims for matters, persons, and entities not listed or considered in the settlement agreement. On remand, the parties shall draft a release concerning only those six specific claims contained in Paragraph 3 of the Memorandum of Settlement and shall release no other present and/or future claims."

The use of the term "general release" in a settlement agreement as a document to be signed as part of the agreement can also create substantial problems, as noted in *Johnson vs. Clark*, 2006 WL 3780511, a 2006 case from the United States District Court for the Middle District of Florida. In this case a dispute arose as to the scope of a release signed by Clark in light of the terms of the mediation agreement, which provided that "full general releases" would be exchanged. The court denied Clark's attempt to expand the scope of the release. The court noted that "the Florida Supreme Court has recognized that there are no standard general releases; all are unique. The fact that a proposed release is described as being general is virtually meaningless. It would be essential to know what is being released, who is being released, and any conditions and terms of the release. In other words, the covenant to execute "mutual general releases" as set forth in the mediation agreement essentially had no meaning until the actual general releases were

executed and, in any event, the covenant can only be understood in the context of the mediation itself...."

If, as part of your negotiations during the mediation, a proposal is made that the parties agree to sign a "standard general" release, avoid the temptation of taking the easy way out on that non-monetary term. Insist on an agreement as to the explicit language of the release. Keep in mind the issues discussed in these two cases. As a practice tip, if a general release is part of the bargain, then write it into the agreement, or attach the release to your mediation agreement as a standalone exhibit. Communicate with opposing counsel prior to the mediation and make every attempt to reach an agreement as to the release language that will be incorporated into a settlement agreement. It will be in the best interest of your client to have this issue agreed upon prior to the mediation, or at the mediation, so as to avoid any post-mediation expenses associated with a part of the settlement agreement that should have been anticipated.

D. Robert Hoyle, Esquire

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Jeffrey S. Goethe, Esq.

- Admitted to the Florida Bar in 1990
- Florida Bar Board-Certified in Wills, Trusts & Estates
- Fellow, American College of Trust and Estate Counsel
- AV-rated by Martindale-Hubbell
- Current chair of the Florida Probate Rules Committee
- The Florida Bar's RPPTL Section Executive Council; Homestead Committee Co-Chair; Bar Journal Committee Co-Chair; Wills, Trusts & Estates Certification Course Committee Chair; Probate Law and Procedure Committee Co-Vice Chair
- Past President of the Manatee County Bar Association



Lawrence W. Thomas, Esq.

- Admitted to the Florida Bar in 1985
- Past Director and Secretary of the Manatee County Bar Association
- Practice areas include wills, trusts, estates, and elder law



M. Brandon Robinson, Esq.

- Admitted to the Florida Bar in 2015
- United States Department of Veteran's Affairs Accredited Attorney
- Combat Veteran, United States Marine Corps
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DATES TO REMEMBER:

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| April 24, 2020 | MCBA Beach Party – Grimes Family Beach House _CANCELLED |
| May 6, 2020 | Board of Directors Meeting - MCJC |
| May 13, 2020 | YLD Board of Directors Meeting - MCJC |
| May 21, 2020 | Diversity & Inclusion Committee Meeting - MCJC |
| May 27, 2020 | LAW DAY Luncheon *Note: DATE CHANGE!!! |
| May 28, 2020 | Judge Robert Farrance Retirement Party – Pier 22 – more to come |
| June 3, 2020 | Board of Directors Meeting - MCJC |
| June 4, 2020 | Intellectual Property CLE – details to come |
| June 10, 2020 | YLD Board of Directors Meeting - MCJC |
| June 18, 2020 | Diversity & Inclusion Committee Meeting - MCJC |
| June 23, 2020 | Family Section CLE – details to come |
| June 24, 2020 | General Membership Luncheon Pier 22 |

*dates are subject to change

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Bradenton based law firm is seeking an associate attorney with 1-3 years' civil litigation experience preferably in the area of Construction Defect and/or Personal Injury. Must be an active member of the Florida Bar with strong communication, writing and interpersonal skills. A successful employment history is also required. Salary is commensurate with experience and benefits are provided.

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Welcomes

James C. Turffs, Esq.



We are pleased to announce that James C. Turffs, Esq., has joined our firm as an attorney. James is experienced in negotiation, mediation, trial and appeal. His practice areas have included civil litigation in state and Federal courts; Sunshine Law and public records cases; and complex landlord/tenant, foreclosure, contract and probate litigation.



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Steve Heintz and David Becker are in the less than 1% of Florida lawyers that are board certified by the Florida Bar. Less than 1/2 of 1% are board certified by the National Board. Steve is certified by the National Board of Trial Advocacy.





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