CITY, COUNTY AND LOCAL GOVERNMENT LAW SECTION

The Agenda

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Risk Protection Orders: a Law Enforcement Tool to Help Address the Crisis of Gun Violence

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On February 14, 2018, a lone gunman entered Marjory Stoneman Douglas High School killing 17 people and injuring 17 more. As a result, the Florida legislature passed the Marjory Stoneman Douglas High School Public Safety Act which was signed by Governor Rick Scott on March 9, 2018.[1] The Florida Legislature found "a need to comprehensively address the crisis of gun violence, including but not limited to, gun violence on school campus."[2]

Within the Marjory Stoneman Douglas High School Public Safety Act is The Risk Protection Order Act which created Florida Statutes Section 790.401 that went into effect on March 9, 2018.[3] The purpose of Section 790.401 is to "temporarily prevent individuals who are at high risk of harming themselves or others from accessing firearms or ammunition by allowing law enforcement

See "Risk Protection Orders" page 17

Chair's Report

By Don Crowell

As I have started this year as Chair of the City, County and Local Government Law section, I find myself excited and honored in this time of unprecedented change. In looking forward I start by looking back. I cannot adequately express the gratitude and admiration I have for our immediate past Chair, David Miller.

David handled navigating uncharted waters during the last half of his term as the pandemic descended upon our state, and managed to lead the section to have some of the most heavily attended virtual seminars that our section has seen. He adapted to the new normal. In doing so he was able to provide an elevated level of service to our membership – making timely critical information available to allow our members to better serve their clients. He, as is his way, did not do it alone, but rather lead a team that was very efficient and effective in making thoughts and goals a reality. He did it not only for these seminars, but also didn't take his eye off the ball in making good on some of his priorities including the recently finalized changes to the

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CHAIR'S REPORT
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section's bylaws. These have been a long time coming and David lead the effort to push this across the finish line. Thank you David!

There were many people that helped in these efforts and their contributions should not be forgotten or ignored, but Janette Smith, Victoria Mendez and Amanda Coffey are three in particular that from my perspective deserve special recognition for their efforts in getting these seminars out to the membership and the bylaws finalized. Thank you to all who worked to make these efforts as successful as they were!

For my goals this year, I have modest ideas that I hope will be utilitarian for the long-term success of the section. First, I am beginning to coordinate some strategic long-range planning for the section. I am doing my best to set aside my own preconceptions about what that will look like and allow that to develop with input from a group. Please let me know if you want to be involved. Second, I intend to focus efforts on diversity and inclusion in all things relating to the section. I want to challenge our membership and our Executive Council to find ways to incorporate that concept in everything we do. While I believe that our section has done well on this issue generally, until that becomes so automatic throughout our section, our community and our country, we should not lose sight of its importance and benefits. Third, and in a related vein, I want to emphasize mental health, mental wellness, and destigmatization of mental illness. I say that this is related because, it is in my mind yet another form of inclusion. Fourth, while I can't wait to see everyone and have networking opportunities, it has become clear how fundamentally important it is to have the ability to provide effective webinars, have virtual meetings and otherwise maximize the use of technology to better serve our membership. I intend to support the section having more opportunities to meet, learn and network virtually. I also am working to have the website updated and am very pleased with the continuing social media efforts on the section's behalf.

On all of these points I welcome ideas on how to make them real or make them better. Part of the benefits of inclusion is that the varied ideas that come from different experiences add perspective, and often breadth and depth to any conversation. If you have ideas for how to encourage or achieve more diversity or inclusion, ideas for new stand-alone seminars or webinars, for networking event formats, for long range ideas for the section, please don't hesitate to reach out. Let's make them happen.

As a final thought, and in recognition of the stress most if not all of us feel right now due to the pandemic and the related issues that stem from it, be good to yourselves and to others. Find time to do something active and find time to help someone achieve something they couldn't without you. In short, do what local government lawyers do!

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TECHNOLOGY AND THE AMERICANS WITH DISABILITIES ACT

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Florida Municipal Attorneys Association
38th Annual Seminar
July 2019

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The Americans With Disabilities Act and the Rehabilitation Act

Title II of the Americans With Disabilities Act ("ADA") applies to State and local governmental entities. Title II mandates that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132.

As public entities, governmental entities must not:

a) deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service...

b) otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

28 C.F.R. 35.130.

Similarly, Section 504 of the Rehabilitation Act of 1973, requires that no otherwise qualified individual with a disability, on the basis of that disability, be excluded from participation in or be denied the benefit of the services, programs, activities, or to otherwise be discriminated against. 29 U.S.C. § 794(a)

The Rehabilitation Act defines "program or activity" to mean "all of the operations" of a department, agency, special purpose district, or other instrumentality of a state or of a local government. 29 U.S.C. § 794(b)

Title III of the Americans with Disabilities Act ("ADA") prohibits discrimination on the basis of disabilities in places of public accommodations, commercial facilities, and private entities that offer certain examination and courses related to educational and occupational certification.

The ADA defines public accommodations as private entities that own, operate, or lease places of public accommodation. Examples of public accommodations include stores and shops, restaurants and bars, service establishments, theaters, hotels, recreation facilities, private museums and schools. In order to comply with the ADA accessibility guidelines, public accommodations must:

> Make reasonable modifications in policies, practices, and procedures that deny equal access to individuals with disabilities, unless a fundamental alteration would result in the nature of the goods and services provided.

28 CFR § 36.302

> Furnish auxiliary aids when necessary to ensure effective communication, unless an undue burden or fundamental alteration would result.

28 CFR § 36.303

Lack of regulations

Since 2003, the Department of Justice ("DOJ") has issued, and then abandoned, several phases of agency guidance which attempted to articulate a uniform position regarding ADA website accessibility. Specifically, on December 15, 2017, the DOJ announced the withdrawal of four previously announced Advance Notices of Proposed Rulemaking ("ANPRM").

An ANPRM is used by an agency as a vehicle for obtaining public participation in the formulation of a regulatory change typically before the agency has done significant research or

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investigation on its own. One of the primary uses of an ANPRM is to involve the interested public in a potential regulatory action at an early stage, before the agency has arrived at even a tentative decision on a particular regulatory change. In some cases the agency may issue an ANPRM to test public reaction to a proposal.

In July 2010, the DOJ issued an ANPRM titled "Accessibility of Web Information" to establish specific website accessibility requirements and noting that "a clear requirement that provides covered entities clear guidance on what is required under the ADA does not exist."

That specific ANPRM was withdrawn by the DOJ in December 2017. In that withdrawal, the DOJ stated:

The Department is evaluating whether promulgating regulations about the accessibility of Web information and services is necessary and appropriate. Such an evaluation will be informed by additional review of data and further analysis. The Department will continue to assess whether specific technical standards are necessary and appropriate to assist covered entities with complying with the ADA. Accordingly, the Department is withdrawing the two previously announced ANPRMs related to the accessibility of Web information and services, "Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Government Entities and Public Accommodations" (RIN l 190-AA6I) (75 FR 43460), and "Nondiscrimination on the Basis of Disability: Accessibility of Web Information and Services of State and Local Government" (RIN 1190-AA65) (81 FR 28658).

...

In consideration of the foregoing, the Department announces the withdrawal of the four abovenamed ANPRMs. Such ANPRMs had no force or effect of law, and no party should rely upon them as presenting the Department of Justice's position on these issues.

Six months later, 86 members of Congress sent a letter to Attorney General Jeff Sessions requesting guidance from the DOJ. The members of Congress expressed support for the DOJ in providing guidance and clarity with regard to website accessibility under the ADA. The letter referenced the extensive litigation arising out of websites, noted that the "problem was expanding at a rapid rate," and stated "the absence of statutory, regulatory, or other controlling language on this issue only fuels the proliferation of these suits since there are no requirements these complaints have to meet." The members of congress urged the DOJ to issue guidelines that could be followed. Although primarily addressing Title III, it was also applicable to Title II.

Two months later, in September 2018, the DOJ responded to the letter. The DOJ stated that it continued to evaluate whether specific web accessibility standards through regulations were necessary to ensure compliance with the ADA under both Title II and Title III. The DOJ stated further that "the Department has consistently taken the position that the absence of a specific regulation does not serve as a basis for noncompliance with a statute's requirements." And that absent specific technical requirements for websites through rulemaking, entities have "flexibility in how to comply with the ADA's general requirements of nondiscrimination and effective communication."

Potential Defenses to ADA Claims

The Nexus Theory - Gil v. Winn-Dixie

Title III prohibits disability discrimination in places of public accommodation. 42 U.S.C. § 12182. The statute lists twelve finite and definitive categories of physical entities that qualify as places of public accommodation. 42 U.S.C. § 12181(7).

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Nationally, there is a split of authority as to whether Title III applies to non-physical locations. But the Eleventh Circuit has previously held that held that Title III only applies to access to physical spaces. Rendon v. Valleycrest Prods., Ltd., 294 F.3d 1279, 1285-86 (11th Cir. 2002) (finding Title III prohibits tangible and non-tangible barriers to "concrete space").

The Eleventh Circuit has not yet ruled whether a website is a place of public accommodation under the ADA. However, that could change any day. In the matter styled Gil v. Winn-Dixie Stores, Inc., 257 F. Supp. 3d 1340 (S.D. Fla. June 12, 2017), Winn-Dixie appealed to Eleventh Circuit in Case No. 17-13467-CC, on August 1, 2017, after the plaintiff prevailed at a trial. The parties attended oral argument in the appeal on October 4, 2018 and a decision is pending. Of note, the trial court did not actually decide "whether Winn–Dixie's website is a public accommodation in and of itself," but the parties and supporting amicus curiae extensively briefed that issue.

In Access Now, Inc. v. Southwest Airlines, Co., 227 F. Supp. 2d 1312 (S.D. Fla. 2002), the Southern District explicitly answered the question of whether a website is a place of pubic accommodation in the negative. In that case, Judge Patricia A. Seitz held the plain language of the ADA and its enforcing regulations, as well as the prior rulings of the Eleventh Circuit, show the ADA only extends to access to physical locations. Id. Judge Seitz determined:

Where Congress has created specifically enumerated rights and expressed the intent of setting forth "clear, strong, consistent, enforceable standards," courts must follow the law as written and wait for Congress to adopt or revise legislatively-defined standards that apply to those rights. Here, to fall within the scope of the ADA as presently drafted, a public accommodation must be a physical, concrete structure. To expand the ADA to cover "virtual" spaces would be to create new rights without well-defined standards.

Southwest Airlines, 227 F. Supp. 2d at 1318. Subsequently, Judge Joan A. Leonard considered the "nexus theory" as it pertains to Internet websites in Gomez v. Bang & Olufsen Am., Inc., No. 1:16-cv23801-JAL, 2017 WL 1957182, (S.D. Fla. Feb. 2, 2017). Judge Leonard concluded that:

Based on the text of the ADA, the Eleventh Circuit's reasoning in Rendon and the rationale employed by other courts who have construed the ADA in the context of commercial websites, the [c]ourt concludes that a website that is wholly unconnected to a physical location is generally not a place of public accommodation under the ADA. However, if a plaintiff alleges that a website's inaccessibility impedes the plaintiff's "access to a specific, physical, concrete space[,]" and establishes some nexus between the website and the physical place of public accommodation, the plaintiff's ADA claim can survive a motion to dismiss.

Gomez, 2017 WL 1957182, at *3. Other courts have followed suit and held that websites are not places of public accommodation. See Gomez v. Bang & Olufsen America, Inc., No. 1:16-cv-23801-JAL, 2017 WL 1957182, at *3-4 (S.D. Fla. Feb. 2, 2017) (finding that websites are not places of public accommodation under the ADA); Kidwell v. Fla. Comm'n on Human Relations, No. 2:16-cv-00403-UA-CM, 2017 WL 176897, at *5 (M.D. Fla. Jan. 17, 2017) (same); Young v. Facebook, Inc., 790 F. Supp. 2d 1110, 1115 (N.D. Cal. 2011) (same).

The Winn-Dixie matter is fully briefed and currently awaiting a decision from the Eleventh Circuit.

Gil v. Broward County

In a Title II case, the court applied the so-called nexus approach and held that "in the absence of

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allegations that Plaintiff's inability to use the website impedes his access to Defendant's physical buildings or facilities…" his claim must be dismissed. Gil v. Broward Cty., Fla., No. 18-60282-CIV, 2018 WL 4941108, at *3 (S.D. Fla. May 7, 2018)

Gomez v. Palm Beach County

Another District Court Judge in the Southern District of Florida determined otherwise. In Gomez, the County sought dismissal of the complaint under the nexus theory, or alternatively, to stay the matter during the pendency of the Winn-Dixie appeal. The Honorable William J. Zloch noted that in order to state a claim under Title II, "a Plaintiff must prove the following elements: (1) that he is a qualified individual, (2) excluded from participating in a public entity's services, programs, or activities, (3) because of his disability." Judge Zloch noted that a Title III plaintiff "must establish that his or her access to a physical place of public accommodation has been impeded because of an inaccessible website." But Judge Zloch refused to apply the doctrine to the County and stated:

Defendant's position is further undermined by the language of Title II and Section 504. Those statutes broadly prohibit discrimination by public entities and federally funded programs and activities, respectively, unlike Title III, which specifically addresses public accommodations. Title III naturally implicates physical places in a way that Title II and Section 504 do not. The Court holds that Plaintiff need not plead that he is impeded from physical use of Defendant's physical facilities or spaces.

Standing

A plaintiff bringing suit under Title II of the ADA must have Article III standing to maintain a justiciable claim. Aaron Private Clinic Mgmt. LLC v. Berry, 912 F.3d 1330, 1339 (11th Cir. 2019) ("it is settled that Congress cannot erase Article III's standing requirements by statutorily granting the right to sue to a plaintiff who would not otherwise have standing"); Elk Grove Unified Sch. Dist. v. Newdow, 542 U.S. 1, 11, (2004) ("In every federal case, the party bringing the suit must establish standing to prosecute the action."), abrogated on other grounds by Lexmark Int'l, Inc. v. Static Control Components, Inc., 572 U.S. 118, 134 (2014).

A plaintiff must demonstrate three things to establish standing under Article III: First, he must show that he has suffered an "injury-in-fact." Second, the plaintiff must demonstrate a causal connection between the asserted injury-in-fact and the challenged action of the defendant. Third, the plaintiff must show that "the injury will be redressed by a favorable decision."

Shotz v. Cates, 256 F.3d 1077, 1081 (11th Cir. 2001) (further noting that "[t]hese requirements are the 'irreducible minimum' required by the Constitution" for a plaintiff to proceed in federal court.")

A plaintiff seeking injunctive relief must also demonstrate "a real and immediate - as opposed to a merely conjectural or hypothetical - threat of future injury." Wooden v. Bd. of Regents of Univ. Sys. of Georgia, 247 F.3d 1262, 1284 (11th Cir. 2001). To satisfy the future injury requirement, a plaintiff must establish more than a "some day" intention. Lujan v. Defs. of Wildlife, 504 U.S. 555, 564 (1992) ("the affiants' profession of an "inten[t]" to return to the places they had visited before...is simply not enough. Such "some day" intentions—without any description of concrete plans, or indeed even any specification of when the some day will be—do not support a finding of the "actual or imminent" injury that our cases require"); see also Rosenkrantz v. Markopoulos, 254 F. Supp. 2d 1250, 1253 (M.D. Fla. 2003) (dismissing the plaintiff's ADA complaint for want of standing because the plaintiff had not "demonstrated anything but a speculative or conjectural

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future injury" when he lived hundreds of miles away from the establishment he sued, he indicated that he was likely to travel to the city where the establishment was located in the next one to two years, and when the plaintiff had only visited such location once in the past).

The Honorable James S. Moody, Jr. of the Middle District of Florida recently articulated a viable test for determining whether a "tester" plaintiff possesses standing to pursue a Title II website claim. Joel Price v. City of Ocala, Case No. 5:19-cv-00039-JSM-PR, 2019 WL 1811418 (April 22, 2019) ("...although a Title II tester (likely) has satisfied the injury-in-fact requirement by discovering an ADA violation, the tester must still articulate a real and immediate threat of future injury to have standing...").

Judge Moody dismissed the "tester" plaintiff's complaint because he lacked adequate standing to pursue his claims against the defendant municipality. Price, at *10. In finding that there was no immediate threat of future injury to the tester plaintiff in his Title II website case, Judge Moody identified and analyzed the following non-exclusive, non-dispositive factors: (1) what ties or connections a plaintiff has to link the plaintiff to the defendant governmental entity; (2) the type of information that is allegedly inaccessible; and (3) the relationship between the inaccessibility of the information and the plaintiff's alleged future harm. Price, at *8.

Following that framework, the Honorable William F. Jung of the Middle District of Florida also dismissed a tester plaintiff's complaint against the Town of Longboat Key in the matter styled Joel Price v. Town of Longboat Key, Case No. 8:19-cv-00591-WFJ-AAS, 2019 WL 2173834. Judge Jung found that the tester plaintiff lacked Article III standing and dismissed the complaint because the plaintiff failed to allege facts sufficient to give rise to "a real and immediate threat of future injury" and because the plaintiff did not suffer an injury in fact.

Mootness

Article III of the Constitution limits the jurisdiction of the federal courts to the consideration of "Cases" and "Controversies." Troiano v. Supervisor of Elections in Palm Beach Cty., Fla., 382 F.3d 1276, 1281 (11th Cir. 2004).

> [A] case is moot when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome. As this Court has explained, put another way, a case is moot when it no longer presents a live controversy with respect to which the court can give meaningful relief.

Id.; see also Arizonans for Official English v. Arizona, 520 U.S. 43, 68 n. 22,(1997) ("[t]he requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence...")*;* Najjar v. Ashcroft, 273 F.3d 1330, 1336 (11th Cir.2001) (per curiam) ("[M]ootness is jurisdictional. Any decision on the merits of a moot case or issue would be an impermissible advisory opinion."); Kallen v. J.R. Eight, Inc., 775 F. Supp. 2d 1374, 1379 (S.D. Fla. 2011) ("If an ADA plaintiff has already received everything to which he would be entitled, i.e., the challenged conditions have been remedied, then these particular claims are moot absent any basis for concluding that plaintiff will again be subjected to the same wrongful conduct by this defendant.").

As for voluntary cessation, "[i]t has long been the rule that 'voluntary cessation of allegedly illegal conduct does not deprive the tribunal of power to hear and determine the case, i.e., does not make the case moot.'" Sec'y of Labor v. Burger King Corp., 955 F.2d 681, 684 (11th Cir.1992). "Because of the possibility that the defendant could merely return to his old ways, [t]he test for mootness in cases such as this is a stringent one.... A case might become moot if subsequent events made it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur." Id.

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In Haynes v. Hooters of Am., LLC, 893 F.3d 781 (11th Cir. 2018), the Eleventh Circuit determined that a tester plaintiff's Title III ADA claim against Hooters was not moot because "while Hooters may be in the process of updating the accessibility of its website, there is nothing in the record demonstrating that Hooters has successfully done so" and because "some of the relief requested by [the palintiff] remains outstanding and could be granted by a court." Id. at 784.

Significantly, however, when the defendant is not a private citizen but a government actor, there is a rebuttable presumption that the objectionable behavior will not recur. Troiano, 382 F.3d at1283. Indeed, "[g]overnmental entities and officials have been given considerably more leeway than private parties in the presumption that they are unlikely to resume illegal activities." Coral Springs St. Sys., Inc. v. City of Sunrise, 371 F.3d 1320, 1328–29, 1331 (11th Cir.2004) ("Whether the repeal of a law will lead to a finding that the challenge to the law is moot depends most significantly on whether the court is sufficiently convinced that the repealed law will not be brought back").

In City of Sunrise, the Eleventh Circuit held that the plaintiff's case was moot because the defendant city amended the subject sign code soon after the plaintiff complained about its constitutionality. Id. at 1329. The Court was further "persuaded" that the defendant city would not bring back the sign code based on the city "expressly disavow[ing] any intention of defending the old Sign Code" and the city's representation that there was "no indication whatsoever that the City would reenact the [subject] Sign Code in the future." Id. at 1332-1333; see also Revolution Outdoor v. City of Casselberry, No. 00–10863, 234 F.3d 711 (11th Cir.2000) (unpublished opinion) (affirming district court's award of summary judgment in the defendant city's favor where the city adopted a formal resolution that it would not readopt any aspect of the challenged old sign code and because the new sign code was the product of "substantial deliberation."); Jews for Jesus v. Hillsborough County Aviation Authority, 162 F.3d 627 (11th Cir.1998) (holding that where a public airport had lifted a prohibition on distributing literature after a complaint had been filed, the issue of whether the prior policy was constitutional was "a purely academic point" and was accordingly moot, precisely because there was "no reasonable expectation that the challenge [would] resume after the lawsuit [was] dismissed.").

The Primary Jurisdiction Doctrine

The primary jurisdiction doctrine provides that a "court of competent jurisdiction may dismiss or stay an action pending a resolution of some portion of the action by an administrative agency." See Smith v. GTE Corp., 236 F.3d 1292, fn. 3 (11th Cir. 2001) ("...the primary jurisdiction doctrine comes into play whenever enforcement of the claim requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative body; in such a case the judicial process is suspended pending referral of such issues to the administrative body for its view"); see also United States v. Western Pac. R.R. Co., 352 U.S. 59, 64,(1956) (the primary jurisdiction doctrine "is concerned with promoting proper relationships between the courts and administrative agencies charged with particular regulatory duties"); Boyes v. Shell Oil Prods. Co., 199 F.3d 1260, 1265 (11th Cir. 2000) (the doctrine aims to "protect[ ] the administrative process from judicial interference.").

In deciding whether abstention under the primary-jurisdiction doctrine is appropriate, two factors are considered: the "expertise of the agency deferred to" and the "need for a uniform interpretation of a statute or regulation." Sierra v. City of Hallandale Beach, Fla., 904 F.3d 1343, 1351 (11th Cir. 2018). Indeed, "[p]rimary jurisdiction applies where a claim is originally cognizable in the courts, but enforcement of the claim requires, or is materially aided by, the resolution of threshold issues, usually of a factual nature, which are placed within the special competence of

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the administrative body." Golden Hill Paugussett Tribe of Indians v. Weicker, 39 F.3d 51, 58-59 (2d Cir. 1994) (citing Western Pac. R.R., 352 U.S. at 63–64).

As it applies to the enactment and enforcement of the ADA, it is clear that the Attorney General is first required to promulgate regulations to carry out Title II, Part A, of the ADA. 42 U.S.C. §12134(a) ("The Attorney General shall promulgate regulations in an accessible format that implement this part.")(emphasis added); see also Bircoll v. Miami-Dade County, 480 F. 3d 1072, 1082 (11th Cir. 2007); Access Now Inc. v. Southwest Airlines Co., 227 F.Supp.2d 1312, 1317-18 (S.D. Fla. 2002); 28 C.F.R. Part 35 (providing that Title II of the ADA delegates to the DOJ, through the Attorney General, the sole responsibility for the promulgation of such standards).

The Department of Justice– charged with rule-making pursuant to 42 U.S.C. § 12134(a)– has not promulgated any regulations uniformly adopting specific website accessibility guidelines for Title II ADA entities' websites. See 82 FR 60932 (dated December 26, 2017, withdrawing previously proposed advance notices of proposed rulemaking pertaining to Title II of the ADA for the purpose of "evaluating whether promulgating regulations about the accessibility of Web information and services is necessary and appropriate").

The current influx and high volume of website accessibility ADA suits against local governmental entities in federal courts and the inconsistent and varied manners in which courts have dealt with such cases demonstrates the need for the DOJ to first define, promulgate, and enact regulations adopting clearly-defined and easily enforceable website accessibility guidelines.

Municipal Website Posting Requirements under Florida Statutes[1]

The Florida Statutes require municipalities (cities, towns and villages) to post specified information on municipal websites (if the municipality has a website). The following materials have been identified as needing to be on the website. Each statutory reference should be reviewed to determine the specific requirements for each post.

Postings on Municipal Websites:

Section 112.664, Florida Statutes, Defined Benefit Retirement Plan Reports/Information.

Section 163.035, Florida Statutes, Notice of Establishing Recreational Customary Use.

Section 166.021(8), Florida Statutes, Economic Development Activity Contract Reports.

Section 166.241, Florida Statutes, Tentative Budget, Final Adopted Budget, Budget Amendment, Adopted Amendment.

Section 218.32, Florida Statutes, Annual Financial Report.

Section 316.0083(1), Florida Statutes, Red Light Traffic Infraction Program Information.

Section 553.79(1), Florida Statutes, Building Permit Applications.

Section 668.6076, Florida Statutes, Electronic Mail Notice.

Section 823.151, Florida Statutes, Lost or Stray Dogs and Cats Information.

1 [Disclaimer: This information attempts in good faith to identify the Florida Statutes imposing website posting requirements onto municipalities; however, it is not held out to be all-inclusive or all-encompassing of all website requirements. If you are aware of an additional website posting requirement for municipalities under the Florida Statutes, please contact the Florida League of Cities' Legal Department at 800-342-8112.] Last updated: May 22, 2019

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Postings on Municipal Pension Websites:

Section 112.664, Florida Statutes, Defined Benefit Retirement Plan Reports/Information.

Section 175.061(8), Florida Statutes, Firefighter Pension Board of Trustees Accounting Report.

Section 185.05(8), Florida Statutes, Municipal Police Pension Board of Trustees Accounting Report.

Other Contingent Required Postings:

Section 165.0615(6), Florida Statutes, Municipal Conversion of Independent Special District.

Section 62-550.824, Florida Administrative Code, Florida Department of Environmental Protection Consumer Confidence Report/Water Utility.

New Posting Requirements from 2019 Legislative Session:

Section 163.371, Florida Statutes, Community Redevelopment Agency Map, Annual Report, Audit, CS/HB 9, effective October 1, 2019.

Section 166.222 and Section 553.80(7), Florida Statutes, Building Permit and Inspection Fee Schedules and Building Permit and Inspection Utilization Report, CS/HB 127, effective July 1, 2019.

Section 166.241, Florida Statutes, Tentative Budget, Final Adopted Budget, HB 861, effective upon becoming law.

Section 70.002, Florida Statutes, County Property Appraiser Website – Property Owner Bill of Rights, CS/HB 1159, effective July 1, 2019.

Governmental Posting Requirements[2]

State Requirements

Elections

General, primary, Special, Bond, and Referendum Elections - Election preparation report; general election (100.032)

1. Supervisor of Election post report >=3 months before general election

General, primary, Special, Bond, and Referendum Elections - Initiatives; procedure for placement on ballot (100.371(5)(e)5)

1. Summary from each initiative
2. URL for the information statements on the Secretary of State and Office of Economic and Demographic Research websites as required by 101.20

Voting Methods and procedure - Polling Place (101.5612 (2))

1. Time and place of tabulation equipment testing

Voting Methods and procedure - Polling Place (101.71 (2))

1. Change in polling location >=7 and <= 30 days prior to election

2 This list was developed by Brian Ross, CGCIO, IT Director, City of Haines City, FL. The disclaimer in footnote 1 applies equally to this list.

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Conducting Elections and Ascertaining the Results - County Canvassing board; Duties (102.141 (2))

1. Time and place of County Canvassing Board meeting >=48 beforehand

Defined Benefit Retirement Plans

Public officers and Employees: general Provisions - Reporting Standards for Defined benefit retirement plans or systems (112.664 (2))

1. Funded ratio of the plan in most recent actuarial valuation
2. Most recent financial statement and actuarial valuation (including link to Division of Retirement Actuarial Summary Fact Sheet for the plan
3. Side-by-side comparison of the plan's assumed rate of return compared to actual rate of return, % of cash, equity, bond and alternative investments in plan portfolio for previous 5 years
4. Any charts and graphs of data above

County Government

County Government - County Economic Development Powers (125.045 (4))

1. Report from Contracted entity doing economic development activities on behalf of the County detailing how County funds are spent

County Government - Enforcement and amendment of the Florida Building Code and the Florida Fire Prevention Code; Inspection fees; inspectors; etc. (125.56 (4)(b))

1. Each type of building permit application
    i. must be able to submit electronically
        1. e-mail PDF
        2. Electronic Fill-in form

County Annual Budget - Preparation and adoption of Budget (129.03 (3)(c))

1. Tentative budget posted >= 2 days before public hearing
2. Final budget posted <= 30 days after adoption

County Annual Budget - Execution and amendment of budget (129.06 (2)(f)2)

1. Posted <=5 days after adoption of amendment

City Government

Formation of Local Governments - Municipal Conversion of independent special districts upon elector initiated and approved referendum (165.0615 (6)(b))

1. Elector-initiated municipal incorporation plan
2. Descriptive summary of plan
3. Reference to public places to view the plan
4. Posted on county website if independent district does not have one

Municipalities - Powers (166.021 (8)(d))

1. Report from Contracted entity doing economic development activities on behalf of the City detailing how City funds are spent

Municipalities - Fiscal years, budgets, and budget amendments (166.241)

1. Tentative budget must be posted >=2 days before budget hearing (166.241 (3))
2. Final budgeted posted <= 30 days after adoption. (166.241 (3))
3. Amended budget posted <= 5 days after adoption (166.241 (5))
4. If agency has no website, county must post within reasonable amount of time

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Pensions

Firefighter Pensions - Board of trustees; members; term of office; meetings; legal entity; costs (175.061 (8)(a)1)

1. Detailed accounting report (if the board has a website)

Municipal Police Pensions - Board of trustees; members; term of office; meetings; legal entity; costs (185.05 (8)(a)1)

1. Detailed accounting report (if the board has a website)

Special Districts

Uniform Special District Accountability Act - Reports; Budgets; Audits (189.016)

1. Tentative budget posted >= 2 days before hearing and remain for >= 45 days (except WMDs) (189.016 (4))
2. Final adopted budget must be posted <= 30 days after adoption and remain for >= 2 years (except WMDs) (189.016 (4))
3. Amended budget must be posted <= 5 days after adoption and remain for >= 2 years (189.016 (7))

Uniform Special District Accountability Act - Special Districts; required reporting of information; webbased public access (189.069)

1. After first full year of creation, must maintain an official website
   i. Independent special districts maintain a separate website (189.069 (1)(a))
   ii. Dependent special districts shall be prominently displayed on agency home page (189.069(1)(b))
   iii. Special district website must contain: (189.069 (2)(a))
      1. Full legal name of special district
      2. Public Purpose
      3. The name, official address, official e-mail address, and, if applicable, term and appointing authority for each member of the governing body of the special district.
      4. The fiscal year of the special district.
      5. The full text of the special district's charter, the date of establishment, the establishing entity, and the statute or statutes under which the special district operates, if different from the statute or statutes under which the special district was established. Community development districts may reference chapter 190 as the uniform charter but must include information relating to any grant of special powers.
      6. The mailing address, e-mail address, telephone number, and website uniform resource locator of the special district.
      7. A description of the boundaries or service area of, and the services provided by, the special district.
      8. A listing of all taxes, fees, assessments, or charges imposed and collected by the special district, including the rates or amounts for the fiscal year and the statutory authority for the levy of the tax, fee, assessment, or charge. For purposes of this subparagraph, charges do not include patient charges by a hospital or other health care provider.
      9. The primary contact information for the special district for purposes of communication from the department.
      10. A code of ethics adopted by the special district, if applicable, and a hyperlink to generally applicable ethics provisions.
      11. The budget of the special district and any amendments thereto in accordance with s. 189.016.

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12. The final, complete audit report for the most recent completed fiscal year and audit reports required by law or authorized by the governing body of the special district.
13. A listing of its regularly scheduled public meetings as required by s. 189.015(1).
14. The public facilities report, if applicable.
15. The link to the Department of Financial Services' website as set forth in s. 218.32(1)(g) to view financial reports.
16. At least 7 days before each meeting or workshop, the agenda of the event, along with any meeting materials available in an electronic format, excluding confidential and exempt information. The information must remain on the website for at least 1 year after the event.

Uniform Special District Accountability Act - Voluntary merger of independent special district (189.074)

1. Proposed joint merger plan, Descriptive summary, Reference to public places to view the plan <= 5 days after bodies approve resolution endorsing the proposed merger (189.074 (2) (a) 13 (c) 2)
2. Merger plan, Descriptive summary, Reference to public places to view the plan <= 5 days after bodies approve merger (189.074 (4) (c) 12(e) 2)

Property Assessments

Assessments - Certificates of Value Adjustment board and property appraiser; extensions on the assessment rolls (193.122 (2))

1. Post <= 1 week after certifying tax rolls

Administrative and Judicial Review of property taxes - Assessment notice; objections to assessments (194.011 (5)(a)2(b))

1. Uniform policies and procedures manual on Clerks of Circuit Courts website

Property Assessment Administration and Finance - Property Appraiser and tax collectors to submit budgets to Department of Revenue (195.087 (6))

1. Property appraiser post final budget on official website <= 30 days after adoption
2. Tax collector post final budget on official website <= 30 days after adoption
3. County must have links to tax Collector and Property Appraiser websites
4. If Constitutional officer does not have a website, the County must post

Financial Reports

Financial Matters pertaining to Political Subdivisions - Annual financial reports; local government entities (218.32 (1)(g))

1. Post a link to Department of Financial Services' website to view submitted annual financial reports
2. County must post link if City does not have a website

Financial Matters pertaining to Political Subdivisions - County fee officers; financial matters (218.35 (4))

1. Clerk of the circuit court budget posted on county website <= 30 days after adoption

Red Light Cameras

State Uniform traffic Control - Mark Wandall Traffic Safety program; administration; report (316.0083 (1)(b)1.c.)

1. Information on a person's right to request a hearing, related court costs, form to request a hearing

continued, next page

Building Permits

Building Construction Standards - permits; applications; issuance; inspections (553.79 (1)(b))

1. Each type of building permit application
    i. must be able to submit electronically
        1. E-mail PDF
        2. Electronic Fill-in form

Liens, generally - Notice of Commencement and applicability of lien (713.135 (6)(c))

1. If accept building permits electronically, access to building permit applications in searchable format

Website Public Records Notice

Public Record Status of e-mail addresses; agency website notice (668.6076)

1. If your agency operates a web site & uses e-mail, the agency must place conspicuously on the website:
    i. Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.

Animal Control

Public Nuisances - Lost or Stray dogs and cats (823.151)

1. Public notice of lost or stray dogs and cats <= 48 hours of admission (823.151 (2)(a)3)
2. Shelter location, hours, fees, and return to owner process (823.151 (2)(a)5)

Water Utility

Florida DEP Consumer Confidence Report (CCR) (62-550.824)

1. Community water system serving 100,000+ must post current CCR on Internet
2. Agency may have written agreement to require posting on website in lieu of mailing CCR to all customers.

Federal Requirements

Water Utility

EPA Consumer Confidence Report (CCR) (Annual Drinking Water Quality Report) (40 CFR 141.155)

1. Community water system serving 100,000+ must post current CCR on Internet

Electronic Documents

Rehabilitation Act of 1973 Section 504 (29 USC 794)

1. Applicable to recipients of federal funds

Americans with Disabilities Act (28 CFR 35 & 36)

1. Title II for State and Local Governments (28 CFR 35)
2. Title III for Public accommodations (28 CFR 36)

SAVE THE DATES

Executive Council Meetings

October 22, 2020
5:00 p.m. – 6:30 p.m.
Rosen Plaza • Orlando

Date TBA
The Florida Bar Winter Meeting (January 13-15, 2021)
Rosen Shingle Creek • Orlando

April 29, 2021
Ritz Carlton Golf Resort • Naples

Date TBA
The Florida Bar Convention (June 23-26, 2021)
Boca Raton Resort & Club

CLE Seminars

October 2, 2020
Bankruptcy Law and Local Government Webinar
Zoom

November 13, 2020 (Tentative)
Land Use 2020
Webinar

46th Annual Public Employment Labor Relations Forum (PERLF)
October 22-23, 2020
Rosen Plaza • Orlando

City, County and Local Government Certification Review Course 2021
April 28-29, 2021
Ritz Carlton Golf Resort • Naples

Public Finance 2021
April 29, 2021
Ritz Carlton Golf Resort • Naples

44th Annual Local Government Law in Florida
April 30 – May 1, 2021
Ritz Carlton Resort • Naples

officers to obtain a court order when there is demonstrated evidence that a person poses a significant danger to himself or others, including significant danger as a result of a mental health crisis or violent behavior."[4] This court order is called a risk protection order ("RPO").[5]

RPOs provide local governments—through their respective law enforcement agencies—an additional tool[6] to address firearm safety concerns within their communities through the civil process. Although this tool can be used in conjunction with the criminal process or other civil processes, it is a standalone means to address a firearm safety concern.[7] Additionally, the RPO civil process is typically resolved much quicker than the criminal process and could provide individuals and families with time to address the root cause of the underlying issues through non-criminal intervention. Local governments must also consider that they are generally preempted from "the whole field of regulation of firearms and ammunition . . ." under Florida Statutes Section 790.33 (2019). Thus, with limited means to enact firearms-related regulations, local governments wishing to address the issue of firearm violence may consider exploring all available options which include RPOs.

The purpose of this article is to introduce RPOs, the general process to obtain a RPO, and other considerations surrounding RPOs. For the sake of brevity and the introductory purpose of this article, the author does not present a complete review of Section 790.401; readers are encouraged to read Section 790.401 in its entirety. Further, the process provided herein is typical within the Eleventh Judicial Circuit of Florida in and for Miami-Dade County.[8] Additionally, Section 790.401 provides various pathways and options available to litigants that deviate from the sample procedure provided in this article, and local rules in the various circuits may have additional requirements.

I. Introduction to Risk Protection Orders ("RPOs")

a. What Is a RPO?

A RPO is a court order which (1) requires a respondent to surrender all firearms and ammunition in the respondent's custody, control, or possession; (2) requires a respondent to surrender any license to carry a concealed weapon or firearm in the respondent's custody, control, or possession; (3) prohibits a respondent from having in his or her custody or control a firearm or ammunition while the RPO is in effect; and (4) prohibits a respondent from purchasing, possessing, receiving, or attempting to purchase or receive, a firearm or ammunition while the order is in effect.[9] Additionally, the court may also (5) require a respondent to undergo a mental health evaluation or a chemical dependency evaluation.[10]

There are two types of RPOs: "a temporary ex parte order" and "a final order."[11] This article will refer to a temporary ex parte order as a temporary RPO and the final order as a final RPO.

A temporary RPO—as its name suggests—is limited in time and may be entered after the filing of the petition but before a hearing on the petition for a final RPO.[12] The temporary RPO expires "upon the hearing on the [final] risk protection order."[13] A temporary RPO may be issued if the "court finds there is reasonable cause to believe that the respondent poses a significant danger of causing personal injury to himself or herself or others in the near future by having in his or her custody or control, or by purchasing, possessing, or receiving, a firearm or ammunition . . . ."[14] (Emphasis added.) Because the temporary RPO serves as temporary relief until a final hearing is held, the standard of "reasonable cause" is a lesser standard than that of a final RPO which is addressed in the next paragraph.

The final RPO—unlike its name suggests—is a RPO with a maximum allowable time of one calendar year.[15] Along with other requirements, the final RPO must state the date it expires.[16] A final RPO may be issued "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 . . . ."[17] (Emphasis added.)

b. Who Can Petition for a RPO?

Only a law enforcement agency or a law enforcement officer may petition the court for a RPO.[18] Oftentimes, a civilian will seek help from law enforcement involving a family member, friend, neighbor, roommate, co-worker, etc. where firearm safety is a concern that warrants a determination on whether a RPO is appropriate. Other times, an officer will recognize a situation in which a RPO should be considered. In either scenario, it is a government agency that initiates RPO proceedings while a civilian's role is limited to that of a witness for either the government petitioner or the respondent. For this reason, it is imperative that law enforcement agencies and their employees be aware of the purpose of a RPO, the factors a court considers in ruling on a petition for a RPO, and the RPO process.

c. What Factors Does a Court Consider When Ruling on a Petition for a RPO?

Section 790.401(3)(c) provides fifteen non-exclusive factors which a court may consider when ruling on a petition for a RPO. It is integral that law enforcement officers recognize not just the enumerated factors, but also any other factors which in their training and experience should be brought to the court's attention to aid in determining if a RPO should be entered against a respondent. The enumerated factors under Florida Statutes Section 790.401(3)(c) are:

1. A recent act or threat of violence by the respondent against himself or herself or others, whether or not such violence or threat of violence involves a firearm.

2. An act or threat of violence by the respondent within the past 12 months, including, but not limited to, acts or threats of violence by

continued, next page

the respondent against himself or herself or others.

3. Evidence of the respondent being seriously mentally ill or having recurring mental health issues.

4. A violation by the respondent of a risk protection order or a no contact order issued under s. 741.30, s. 784.046, or s. 784.0485.

5. A previous or existing risk protection order issued against the respondent.

6. A violation of a previous or existing risk protection order issued against the respondent.

7. Whether the respondent, in this state or any other state, has been convicted of, had adjudication withheld on, or pled nolo contendere to a crime that constitutes domestic violence as defined in s. 741.28.

8. Whether the respondent has used, or has threatened to use, against himself or herself or others any weapons.

9. The unlawful or reckless use, display, or brandishing of a firearm by the respondent.

10. The recurring use of, or threat to use, physical force by the respondent against another person or the respondent stalking another person.

11. Whether the respondent, in this state or any other state, has been arrested for, convicted of, had adjudication withheld on, or pled nolo contendere to a crime involving violence or a threat of violence.

12. Corroborated evidence of the abuse of controlled substances or alcohol by the respondent.

13. Evidence of recent acquisition of firearms or ammunition by the respondent.

14. Any relevant information from family and household members concerning the respondent.

15. Witness testimony, taken while the witness is under oath, relating to the matter before the court.

II. The Risk Protection Order Process

From the moment a petition for a RPO is filed, Section 790.401 establishes deadlines which serve to protect the due process rights of the respondent.[19] However, in addition to the requisite deadlines, there are recommended steps a law enforcement agency should consider undertaking. Both—the required steps and recommended steps—are addressed in this section. As noted in the introduction, this process is typical in the Eleventh Judicial Circuit of Florida in and for Miami-Dade County.

a. Determining if a petition for a RPO is proper and considerations prior to filing a petition for a RPO. Law enforcement agencies are tasked with a difficult situation. On the one hand, they must prepare a petition for a RPO that has several requirements (listed below in step two). On the other hand, they have a potentially volatile situation involving danger to one or more civilians which requires expediency. Therefore, the following recommended actions should take place while law enforcement is determining if a petition for a risk protection order should be filed:

1. Interview and obtain sworn statements from the potential respondent and any potential witnesses. Be sure to secure contact information for

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all witnesses which is essential should a witness need to be subpoenaed for an evidentiary hearing.

2. Use lawful means to secure, for safekeeping, any firearms and ammunition which the respondent may have access to. This is an integral step for the safety of the respondent and those around him or her prior to the entry of a RPO.

3. Gather evidence that supports the fifteen enumerated factors under Section(3)(c) as well as any other relevant factors. Consider collecting photographs of the scene, respondent, firearms, injuries, medication, etc.; physical evidence such as firearms, ammunition, other weapons, drugs or drug paraphernalia, etc.; and background information including concealed carry weapons permits, Baker or Marchman Act history, employment history, educational history, social media, etc.[20]

4. Reach out to neighboring law enforcement agencies—especially jurisdictions where the respondent works, spends recreational time, and lives—to determine if they have any additional information.

5. Gather any other relevant information that an investigation may uncover. Law enforcement is in an advantageous position in this pre-filing process due to their expertise in conducting investigations.

b. Filing a petition for a RPO. The petition must meet several requirements:[21]

1. "Allege that the respondent poses a significant danger of causing personal injury to himself or herself or others by having a firearm or any ammunition in his or her custody or control or by purchasing, possessing, or receiving a firearm or any ammunition . . . ."[22]

2. "[M]ust be accompanied by an affidavit made under oath stating specific statements, actions, or facts that give rise to a reasonable fear of significant dangerous acts by the respondent . . . ."[23] Typically, the lead officer assigned to the case is in the best position to prepare and swear to the supporting affidavit. The fruits of the investigation listed above in step one form the basis of the affidavit, and affidavits from other witness officers or witnesses can be exhibits to the primary affidavit.

3. "Identify the quantities, types, and locations of all firearms and ammunition the petitioner believes to be in the respondent's current ownership, possession, custody, or control . . . ."[24]

4. "Identify whether there is a known existing protection order governing the respondent under s. 741.30, s. 784.046, or s. 784.0485 or under any other applicable statute."[25]

5. Attest whether the petitioner has provided the required notice under Section 790.401(2)(g) to the respondent's family, respondent's household members, or any person at risk of violence or advise of the steps that the petitioner will take to provide the requisite notice.[26]

6. List the address of record of the appropriate law enforcement agency.[27]

7. Although not required, a physical description of the respondent and respondent's location should be included in the petition. Under Section 790.401(5), as part of the requirement to effectuate service, the clerk of the court must provide the serving law enforcement agency the physical description and location of the respondent.

c. If a temporary RPO is sought, then an ex parte hearing must occur on the day the petition is filed or the next *business* day.[28] The ex parte hearing may be conducted in person or via phone.[29] Keep in mind that if a petition is filed on the day before a weekend or holiday, the ex parte hearing may not occur until several days later.

d. Service of the petition, service of the notice of hearing and/or temporary RPO, and the surrender of firearms, ammunition, and license to carry a concealed weapon. Once a petition has been filed, a hearing is set.[30] On or before the next business day, a copy of the notice of hearing and petition must be forwarded to the appropriate law enforcement agency for service as required under Section 790.401(5).[31] Additionally, if the court entered a temporary RPO, it must be served together with the notice of hearing and petition.[32]

If a temporary RPO is entered, at the time of service of the temporary RPO the serving law enforcement agency is required to request that the respondent surrender his or her firearms, ammunition, and license to carry a concealed weapon in his or her custody, control, or possession.[33] However, prior to a demand to surrender pursuant to a temporary RPO, the petitioning law enforcement should consider speaking with family, neighbors, co-workers, or friends to attempt a mutually agreeable surrender of, or use other lawful means to obtain, the firearms and ammunition. If surrender presents difficulties, Section 790.401 provides two solutions: seeking a search warrant[34] or transferring the firearms and ammunition to a third party.[35]

e. Compliance hearing to occur within 3 business days of a RPO's issuance.[36] When any RPO is issued, a hearing must be set to ensure that the respondent has complied with the requirements of a RPO.[37] This hearing

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may be canceled upon satisfactory showing that the respondent has complied with the RPO.[38] In the event of a temporary RPO, this step typically proceeds before the hearing on the final RPO.

f. Preparing for the hearing on the petition for final RPO. Oftentimes, this hearing is held within two weeks of the court ordering the hearing.[39] Because of this expedited process, formal discovery may not be an option. Instead, preparation involves speaking and preparing potential witnesses, subpoenaing said witnesses, and gathering any other evidence found during the investigation. Attorneys representing the law enforcement petition should work closely with the agency to prepare for this hearing. Alternatively, this is also time for the petitioner and respondent to discuss a potential resolution.

g. If the petitioner is successful at the hearing, the maximum allowable time for a RPO is one year.[40] Once a final RPO is entered, both the petitioner and respondent are provided with additional remedies.

The petitioner may request an extension of the RPO within 30 days of the RPO's expiration.[41] If the respondent contests this extension, the court will decide, under a clear and convincing standard, if a RPO extension is warranted by reviewing any relevant factors.[42] If the respondent does not contest the extension, the petitioner must assert via motion or affidavit that the relevant circumstances that warranted the entry of the RPO remain.[43]

The respondent may submit one written request for a hearing to vacate the RPO.[44] The respondent may also make the same request every time a RPO is extended.[45] Upon this request, the Court shall set a date for a hearing.[46] The respondent has the burden of proving by a clear and convincing standard that he or she "does not pose a significant danger of causing personal injury to himself or herself or others by having in his or her custody or control, purchasing, possessing, or receiving a firearm or ammunition."[47]

III. Conclusion

RPOs under Section 790.401 provide local governments with effective, non-criminal means of addressing potential firearm violence in their communities. At the same time, to ensure due process, Section 790.401 provides stringent requirements that must be complied with before a court grant a petition to enter a RPO. Additionally, the RPO process can be a frightening and stressful period for not just the respondent, but the respondent's family, friends, neighbors, co-workers, and the community. It is integral that law enforcement keep these considerations in mind throughout the process. Furthermore, law enforcement should remember that a RPO is only one tool that can be used in conjunction with other available law enforcement tools to aide in the safety of their communities.

Finally, consultation with the local rules and contacting the local courts and clerk of courts for any additional resources, procedures, or considerations when seeking a RPO can help avoid procedural missteps. Because every RPO case presents a unique challenge, understanding these requirements will help ensure optimal outcomes under varying circumstances.

Endnotes:

1 C.S.S.B. 7026, 120th Leg., Reg. Sess. (Fla. 2018).

2 *Id.*

3 *Id.*

4 *Id.*

5 § 790.401(1)(c), Fla. Stat. (2019).

6 "This section does not affect the ability of a law enforcement officer to remove a firearm or ammunition or license to carry a concealed weapon or concealed firearm from any person or to conduct any search and seizure for firearms or ammunition pursuant to other lawful authority." § 790.401(12), Fla. Stat. (2019).

7 § 790.401(2), Fla. Stat. (2019).

8 Fla. 11th Jud. Cir. Procedures for Handling Petitions for Risk Protection Orders. https://www.jud11.flcourts.org/Self-Help-Center/Mental-Health/Firearm-Restrictions/Risk-Protection-Orders.

9 § 790.401(3)(g), Fla. Stat. (2019).

10 § 790.401(3)(f), Fla. Stat. (2019).

11 § 790.401(1)(c), Fla. Stat. (2019).

12 § 790.401(4)(a), Fla. Stat. (2019).

13 § 790.401(4)(f), Fla. Stat. (2019).

14 § 790.401(4)(c), Fla. Stat. (2019).

15 § 790.401(3)(b), Fla. Stat. (2019).

16 § 790.401(3)(g), Fla. Stat. (2019).

17 § 790.401(3)(b), Fla. Stat. (2019).

18 § 790.401(1)(a), Fla. Stat. (2019).

19 "The process established by s. 790.401, Florida Statutes, is intended to apply only to situations in which the person poses a significant danger of harming himself or herself or others by possessing a firearm or ammunition and to include standards and safeguards to protect the rights of respondents and due process of law." C.S.S.B. 7026, 120th Leg., Reg. Sess. (Fla. 2018).

20 *Blinston v. Palm Beach County Sheriff's Office*, 45 Fla. L. Weekly D1032 (Fla. 4th DCA Apr. 29, 2020) (finding that the evidence that can be considered under Section 790.401 is not limited to 12 months).

21 § 790.401(2), Fla. Stat. (2019).

22 § 790.401(2)(e)(1.), Fla. Stat. (2019).

23 *Id.*

24 § 790.401(2)(e)(2.), Fla. Stat. (2019).

25 § 790.401(2)(e)(3.), Fla. Stat. (2019).

26 § 790.401(2)(f), Fla. Stat. (2019).

27 § 790.401(2)(g), Fla. Stat. (2019).

28 § 790.401(4)(d), Fla. Stat. (2019).

29 *Id.*

30 § 790.401(3)(a), Fla. Stat. (2019).

31 § 790.401(3)(a)(1.), Fla. Stat. (2019).

32 § 790.401(3)(a)(2.), Fla. Stat. (2019).

34 *Id.*

35 § 790.401(7)(e) and (9), Fla. Stat. (2019).

36 § 790.401(7)(f), Fla. Stat. (2019).

37 *Id.*

38 *Id.*

39 § 790.401(3)(a), Fla. Stat. (2019).

40 § 790.401(3)(b), Fla. Stat. (2019).

41 § 790.401(6)(c), Fla. Stat. (2019).

42 § 790.401(6)(c)(3.), Fla. Stat. (2019).

43 *Id.*

44 § 790.401(6)(a), Fla. Stat. (2019).

45 *Id.*

47 § 790.401(6)(a)(2.), Fla. Stat. (2019).