



To: Israel Reyes and Christopher Reyes, Police Legal Advisors

From: Miriam Soler Ramos, City Attorney for the City of Coral Gables *MSR*

RE: Legal Opinion Regarding the Authority of the City Attorney Relating to the Filing of Petitions for Risk Protection Orders Pursuant to Section 790.401, F.S.

Date: August 4, 2020

Section 2-252, "City attorney and the legal department," of the City Code, sets forth the function of the City Attorney's Office, the qualifications of attorneys that work for the office, how compensation is determined for the City Attorney, the City Attorney's authority to delegate his/her authority to inhouse and outside counsel, and includes a list of the duties and authority provided to the City Attorney. The City Attorney Ordinance was adopted in 2006 and last amended in 2015.

Specifically, subsection (e), of section 2-252, states as follows:

Duties. The city attorney shall be the head of the legal department, and in that capacity shall have the following authority:

(3) To file, prosecute or defend, for an on behalf of the city, all complaints, suits, code violations, enforcement actions, offenses and controversies to which the city is a party, or to which it is in the city's interest to become a party, before any court or other tribunal; to file suit where expressly authorized by the city code. **The approval of the city commission shall be sought before filing suit, except where immediate action is warranted, in which case the city attorney, with the approval of the city manager, may act in the best interests of the city, and will notify the city commission [Emphasis added].**

In 2018, the Florida Legislature passed the Majority Stoneman Douglas High School Public Safety Act (the "Act") in response to a tragic school shooting. The law is designed to enhance public safety by restricting the possession of firearms and ammunition by persons who have been found to pose a significant danger to themselves or others. Part of the Act establishes a process by which a law enforcement agency may obtain a Risk Protection Order ("RPO") if a court finds that an individual is a significant danger to him/herself or others. Should such a finding be made, the RPO requires the individual to surrender to law enforcement all firearms, ammunition, and any license to carry a concealed weapon or firearm for a period of time and prohibits said individual

from having custody of or attempting to purchase a firearm or ammunition while the RPO is in effect. To initiate the process of obtaining an RPO, a petition must be filed by either a law enforcement officer or a law enforcement agency. It is important to note that no one, other than law enforcement, may file a petition for an RPO.

Outside of the RPO process, the filing of a petition in court would fall under section 2-252(e)(3) of the City Code and require approval by the City Commission prior to filing. However, that requirement cannot apply to the RPO petition process for a number of reasons. Since the City Attorney Ordinance pre-dated the Act, the requirements of the Act were not contemplated at the time of its adoption. As stated above, only law enforcement may file a petition for an RPO. Consequently, for the City, the decision whether to seek one lies solely within the purview of the Coral Gables Police Department which is not only solely authorized, but also uniquely equipped with the information and ability to decide whether a petition should be filed. This process must be free from all political influence. Section 2-252(e)(3) provides an alternative process with requires that the City Attorney seek the City Manager's approval. However, that process is also problematic as it also diminishes the authority, vested wholly in the police department, to decide whether a petition should be filed.

Additionally, from a practical standpoint, it is problematic to require City Commission approval prior to the filing of a petition for an RPO given the strict deadlines associated with doing so. Rarely would a Commission meeting be scheduled at the precise time necessary to obtain that approval prior to the required filing deadline and requiring a special City Commission meeting to be scheduled each time is impractical at best. Similar timing concerns are associated with requiring approval from the City Manager.

For these reasons, this opinion concludes that the filing of a petition for an RPO does not require City Commission or City Manager approval, under section 2-252(e)(3) of the City Code. This opinion is issued pursuant to Section 2-252(e)(1) and (8) of the City Code.

August 2020

CITY OF CORAL GABLES
CITY ATTORNEY'S OFFICE

OPINION REGARDING THE AUTHORITY OF THE CITY ATTORNEY RELATING TO THE
FILING OF PETITIONS FOR RISK PROTECTION ORDERS PURSUANT TO SECTION 790.401, F.S.

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August 2020

Paulk, Enga

From: Ramos, Miriam
Sent: Tuesday, August 4, 2020 10:34 AM
To: Paulk, Enga
Cc: Suarez, Cristina
Subject: Opinion re. City Attorney authority and RPOs
Attachments: opinion - city atty authority and RPOs.docx

Enga, please see attached for you to conform and publish. The opinion is being issued by me to Israel and Christopher Reyes, Police Legal Advisors.

Thanks,

Miriam Soler Ramos, Esq., B.C.S.

City Attorney

Board Certified by the Florida Bar in City, County, and Local Government Law

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