

January 14, 2003
By Federal Express

Florida Supreme Court
Supreme Court Building
500 South Duval Street
Tallahassee, Florida 32399-1925

Dear Honorable Justices:

I am writing on behalf of the Orange County Sheriff's Office in response to the invitation in the December 15, 2002 "Florida Bar News" for comments about the forms for temporary and permanent injunctions in domestic, dating, and repeat violence cases. Specifically, I am concerned with Paragraph 3, "Firearms," which includes the following provision: "Respondent shall surrender any firearms and ammunition in the Respondent's possession to the _____ County Sheriff's Department."

As a preliminary matter, we would like to note that this provision is difficult to enforce for two reasons. First, no deadline for compliance is identified. If a respondent has failed to comply with this provision within 10 days of being served with the injunction, does he or she have additional time for compliance or is he or she in violation of the injunction? Second, the respondent is not asked to identify the firearms in his or her custody or control. We respectfully suggest including a space on the application for an injunction for petitioners to list respondents' firearms. We also suggest that Judges ask respondents to identify the firearms in their custody or control.

This provision requires sheriffs' offices to expend considerable resources to provide firearms storage without fee to domestic abusers and others in their counties. Many practical questions arise. For example, what safety procedures should be instituted to deal with persons who have a history of violence and who are visiting a sheriff's office facility to deliver guns, particularly in light of the terrorism threat and law enforcement's high state of alert? Per Florida Statutes 890.01 and 790.06(12), how may a respondent deliver a concealed firearm to a sheriff's office facility without committing a third-degree felony? What procedures should be in place to ensure a respondent asking for return of firearms is not precluded from possessing them (e.g., probation, felony conviction, injunction extended, new injunction issued)? The injunctions themselves do not provide answers to these questions.

We find that a majority of temporary injunctions never result in permanent injunctions. This results in a revolving door through which firearms are deposited and returned within days of the court's order. As mentioned previously, this entails a considerable drain on resources. When storing lost or abandoned property, we are entitled to recover our costs per Chapter 705, F.S. The injunctions do not provide for the recovery of these costs. At the very least, if a law enforcement agency is amenable to providing this service, the courts should require proper remuneration from the respondent.

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Local municipalities should be asked to help bear the burden of storing these weapons. Any such responsibility should not rest solely with the local sheriff's office. Also, there are private companies that provide storage for weapons. The use of private providers is a viable option that would reduce or eliminate the need for law enforcement involvement. The local court could list such vendors in the same manner as traffic schools and anger management providers.

We question whether the injunction provision is consistent with the separation of powers doctrine. Also, there is no provision in the Florida Constitution or Florida statutes requiring sheriffs' offices to be the repository for all regulated firearms. Florida Statute 790.08 provides that the Sheriff is responsible for keeping and storing weapons that are:

1. Held in evidence with regard to arrests made by deputies [790.08(1)].
2. To be disposed of because the suspect has been convicted of crimes relating to Florida Statute 790.07, F.S. [s. 790.08(2)].
3. Believed to be lost or discarded [790.08(4), (5) and (6)].

The fact that both federal and state law prohibit the possession of firearms by persons against whom a permanent injunction has been issued does not automatically create a corresponding responsibility on the sheriffs to accept and store these weapons.

We suggest the following revision to the injunction forms: "Respondent shall surrender any firearms and ammunition in the Respondent's possession custody or control within [#] calendar days of being served with this injunction to either a private storage facility designated by the Chief Judge of this judicial circuit or a local law enforcement agency within this judicial circuit that offers such a service the _____ County Sheriff's Department. The respondent shall be responsible for paying all fees assessed by the provider for this service."

We certainly share the concerns of the courts with safeguarding victims of these crimes. We have one of the most proactive and dedicated domestic violence units in the state, if not in the country, and we have always sought to provide services to those who live in daily fear of violence and reprisals from their spouses and partners. This letter is written as an appeal for us to work together to address the justifiable concerns of the court in denying access to firearms to those who would jeopardize the lives of their families. Our concerns are twofold - assist in protecting victims and not place an unreasonable or unlawful burden on sheriffs' offices statewide. This issue requires discussion and discernment to ascertain what best keeps victims safe while at the same time taking into account the considerable and reasonable concerns of law enforcement in this matter.

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If you have any questions or concerns, please do not hesitate to contact me. Thank you for your attention to this matter.

Sincerely,

KEVIN BEARY
Sheriff of Orange County

Dorothy K. Burk
Senior Assistant General Counsel

C: Sheriff Kevin Beary
Chief Judge Belvin Perry
Public Safety Director Jerry Demings
Chief Deputy Brad Margeson
Lieutenant Kevin Behan
Bernie Rice, General Counsel