Judges, concealed weapons in courtroom

Number: AGO 2012-08

Date: February 29, 2012

Subject:
Judges, concealed weapons in courtroom

The Honorable Scott J. Silverman
Circuit Judge
Eleventh Circuit of Florida
Lawson E. Thomas Courthouse Center
175 Northwest First Avenue
Miami, Florida 33128

RE: CONCEALED WEAPONS – COURTS – JUDGES – judge's authority to determine who may carry concealed weapon in courtroom. s. 790.06, Fla. Stat.

Dear Judge Silverman:

You ask substantially the following question:

May a bailiff possessing a concealed weapons permit carry a concealed weapon in the county courthouse with the permission of the presiding judge?

In sum:

A presiding judge may determine who will carry a concealed weapon in his or her courtroom and such determination necessarily allows the individual to proceed through the courthouse in order to access the courtroom.

You state that pursuant to section 790.06, Florida Statutes, you have authorized your bailiff to carry a concealed weapon in your courtroom. Your bailiff has a current concealed weapons permit and is certified by the National Rifle Association as a law enforcement firearms instructor.[1]

Section 790.06, Florida Statutes, authorizes the Department of Agriculture and Consumer Services to issue licenses to carry concealed weapons or concealed firearms.[2] Any person in compliance with the licensure requirements may carry a concealed weapon, but must carry the license, along with valid identification, at all times while in possession of the concealed weapon.[3]

Section 790.06(12)(a), Florida Statutes, however, in pertinent part, states:

"A license issued under this section does not authorize any person to openly carry a handgun or carry a concealed weapon or firearm into:

4. Any courthouse;
5. Any courtroom, except that *nothing* in this section would preclude a judge from carrying a concealed weapon or determining who will carry a concealed weapon in his or her courtroom[.]" (e.s.)

The plain language of section 790.06(12)(a)5., Florida Statutes, exempts from the prohibition against concealed weapons in a courtroom a judge and anyone who is determined by the judge to be authorized to carry a concealed weapon in his or her courtroom. The statute recognizes the authority of a judge to designate individuals who may carry a concealed weapon in his or her courtroom.

An express power duly conferred by statute may include the implied authority to use the means necessary to carry out the express power.[4] Thus, where the plain language of the statute authorizes a judge to designate those individuals authorized to carry a concealed weapon in his or her courtroom and the statute acknowledges that nothing in the section will preclude such authority, logic would dictate that the individual so authorized would be able to carry the concealed weapon through the courthouse in order to access the courtroom in which he or she is authorized to carry the weapon.[5]

While I have been unable to locate a local court rule for Miami-Dade County relating to the carrying of concealed weapons, as an illustrative point, I would note that the Sixth Judicial Circuit in Pasco County has adopted a rule relating to court security which states: "Except for judges, *bailiffs*, and law enforcement officers as provided in this paragraph, no person possessing a firearm, taser, electronic control weapon, ammunition, knife, mace, pepper spray, or dangerous weapon may enter or occupy a court facility."[6] (e.s.) Thus, other circuits have recognized that bailiffs are authorized to carry weapons in a courtroom or the court area of a courthouse.

Accordingly, it is my opinion that a presiding judge may determine who will carry a concealed weapon in his or her courtroom and such determination necessarily allows the individual to proceed through the courthouse in order to access the courtroom.

Sincerely,

Pam Bondi
Attorney General

PB/tals

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[1] It is presumed that since you indicate that your bailiff has a current concealed weapons permit, he or she is not acting as a certified law enforcement officer for purposes of the exemption in s. 790.051, Fla. Stat., which exempts law enforcement officers from the licensing and penal provisions of the chapter "when acting at any time within the scope or course of their official duties or when acting at any time in the line of or performance of duty."

[2] Section 790.06(1), Fla. Stat.

[3] *Id.*

[4] *Cf. State ex rel. Greenburg v. Florida State Board of Dentistry*, 297 So. 2d 628 (Fla. 1st DCA 1974), *cert. dismissed*, 300 So. 2d 900 (Fla. 1974); *City of Cape Coral v. GAC Utilities, Inc., of Florida*, 281 So. 2d 493 (Fla. 1973) (a statutorily created entity may only exercise such powers as have been expressly granted by law or may be necessarily implied therefrom in order to carry out an expressly granted power).

[5] *See Florida State University v. Jenkins*, 323 So. 2d 597 (Fla. 1st DCA 1975) (implied power must be essential in order to carry out the expressly granted power or duty imposed); *Gardinier, Inc. v. Florida Department of Pollution Control*, 300 So. 2d 75 (Fla. 1st DCA 1974) (implied powers accorded administrative agencies must be indispensable to powers expressly granted).

[6] Administrative Order No. 2009-083 PA-CIR, Sixth Judicial Circuit in and for Pasco and Pinellas Counties, Fla.