

IN THE THIRTEENTH JUDICIAL CIRCUIT
FOR THE STATE OF FLORIDA
General Civil Division

BENJAMIN THOMPSON,
Petitioner,

Circuit Civil Case No.: 22-CA-137
Division: H

vs.

HILLSBOROUGH COUNTY
SHERIFF'S OFFICE,
Respondent.

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This cause is before the court on Petitioner Benjamin Thompson's January 7, 2022 Petition for Writ of Mandamus. Petitioner seeks to compel Respondent Hillsborough County Sheriff's Office to convene a compliance review hearing to address the denial of a hearing concerning Petitioner's unpaid suspension, which denial he contends violates the Law Enforcement Officers' Bill of Rights codified in section 112.532, Florida Statutes. Petitioner initially requested a hearing to address the merits of his suspension from his employment without pay citing section 112.532(4)(b), Florida Statutes, as support for a hearing (which will be referred to as "merits hearing"). Petitioner's request was rejected because Petitioner's unpaid suspension is pre-disciplinary, and his case is still being investigated; thus, his right to a merits hearing has not ripened. For the same reason, a subsequent request for a compliance review hearing was rejected. This petition followed. Because Petitioner has not stated a clear, legal right to either a merits hearing or a compliance review hearing, the petition will be denied without need for a response.

I. JURISDICTION

This Court has jurisdiction to issue writs of mandamus. Art. V, § 5(b), Fla. Const.

II. LEGAL STANDARD

A writ of mandamus is an extraordinary remedy. Its issuance is appropriate only when necessary to vindicate the rights of citizens because a governmental agency or official has refused to perform a ministerial duty that the petitioner has established a clear legal right to see performed. *Fla. League of Cities v. Smith*, 607 So. 2d 397, 400-401 (Fla. 1992); *Migliore v. City of Lauderhill*, 415 So. 2d 62, 63 (Fla. 4th DCA 1982). Mandamus is appropriate to attempt to compel a compliance review hearing. *Migliore*, at 63.

III. FACTUAL BACKGROUND

Petitioner is a deputy employed by the Hillsborough County Sheriff. As law enforcement officers, he and his employer appear to be subject to the Law Enforcement Officers Bill of Rights codified in sections 112.532-112.535, Florida Statutes.¹ On December 14, 2021, because of his alleged policy violations during the arrest of a suspect the previous day, Petitioner was notified that he was being suspended without pay while the incident was being investigated. The notice, which Petitioner signed, set forth facts giving rise to the decision to investigate the matter. In furtherance of the investigation, an interview appears to have been scheduled for January 4, 2022. On January 3, 2022, Petitioner, through counsel, notified the investigator that he believed his unpaid suspension violated the law, specifically section 112.532(4), because he had not been given a merits hearing to address the supposed findings leading to his suspension. As a remedy, he requested to be reinstated to full pay, retroactive to the date he was suspended, until he could be afforded a hearing to address the findings. In the alternative, Petitioner requested a compliance review hearing in accordance with section 112.534, to address the alleged violation of his rights. According to correspondence in Petitioner's appendix, Respondent refused Petitioner's request for a compliance review hearing on the grounds that 1) Petitioner had received the required notice before the unpaid suspension, 2) the right to address any findings was not triggered where the matter was still being investigated, and 3) the suspension was not currently disciplinary. The petition, which asks this court to command the sheriff to conduct a compliance review hearing, followed.

IV. ANALYSIS

Section 112.532(1)'s enumerated rights include limitations on the time, place, and manner of any questioning of the officer, the officer's rights to counsel, and to be informed of specific matters. The appendix to the petition indicates that Petitioner has not been interviewed, is represented by counsel, and has been furnished all required notices. Section 112.532(4)(a) specifically affords officers the right to be notified when disciplinary *or* punitive action is imposed and the reason for it. In the event any potentially punitive personnel action is taken, all the statute requires is that the officer be notified of the action, and the reason for the action, before it is taken. *Id.* Here, Petitioner was informed of the unpaid suspension and the reason it was imposed. But potentially punitive personnel action is not necessarily disciplinary, and such is the situation here. *Cf.* §112.532(4)(a) and 112.532(4)(b), Fla. Stat. (distinguishing between punitive action and disciplinary action). After the investigation is complete, should any personnel action become disciplinary, Petitioner may then be entitled to a hearing to address the findings. §112.534(b), Fla. Stat. Nothing in the relevant statutes prohibits suspension without pay, or requires suspension only with pay, during the investigative period. Indeed, case law confirms the distinction between the pre-disciplinary investigative phase and the imposition of disciplinary action. *See Fraternal Order of*

¹ Section 112.532(2), Florida Statutes, (the subsection), which relates to the composition of compliance review boards, does not apply to sheriffs or deputy sheriffs. It is not known, and this court did not investigate, the impact of this provision on the matter before it. However, it does not appear to negate the applicability of the statutes cited herein.

Police, Gator Lodge 67 v. City of Gainesville, 148 So. 3d 798, 808 (Fla. 1st DCA 2014) (investigative phase distinguished from disciplinary phase for purposes of requesting compliance review); *Migliore*, 415 So. 2d at 64-5. Because Petitioner's case is in the investigative phase and the suspension is pre-disciplinary, the denial of a merits hearing was not improper.

Nor was it necessary to convene a compliance review hearing to determine whether or not a violation had occurred. To start the process, section 112.534(1)(a) requires an aggrieved officer to notify the investigator of the alleged "intentional violation" of the officer's rights. The notice of violation must set forth the factual basis for each violation. *Id.* Then, if the violation is not cured, the officer may request that the agency head or designee be informed of the violation. §112.534(1)(b), Fla. Stat. Here, however, there was nothing to cure because Petitioner's notice set forth no facts to suggest that a violation had occurred. In addition, Petitioner did not pursue the next step to secure a hearing.

In light of the court's determination that Petitioner has not stated a clear, legal right to a compliance review hearing, it is unnecessary to direct a response to the petition.

It is therefore ORDERED and ADJUDGED that the petition for writ of mandamus is DENIED in Tampa, Hillsborough County, Florida, on the date imprinted with the Judge's signature.

Electronically Conformed 1/12/2022
Emmett L. Battles

Emmett L. Battles, CIRCUIT JUDGE

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