

**NOT FINAL UNTIL TIME EXPIRES FOR REHEARING AND, IF FILED, DETERMINED  
IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
IN AND FOR PINELLAS COUNTY, FLORIDA  
APPELLATE DIVISION**

CYNTHIA GRAHAM,  
Petitioner,

v.

PINELLAS COUNTY SHERIFFS OFFICE, et al.,  
Respondents.

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Ref. No.: 15-000063-AP-88B  
UCN: 522015AP000063XXXXCI

**ORDER AND OPINION**

Petitioner seeks a Writ of Prohibition to prevent the Pinellas County Sheriff's Office ("PCSO") Civil Service Board ("CSB") from acting outside of its jurisdiction. Petitioner contends that CSB's jurisdiction to hear Petitioner's pending employment discipline appeal terminated when: (1) CSB failed to commence a hearing on her appeal within 30 days; (2) CSB improperly referred her appeal to the Division of Administrative Hearings ("DOAH"); (3) CSB failed to provide information about mediation; and (4) DOAH failed to provide information about summary procedures. For the reasons set forth below, the Petition for Writ of Prohibition is denied.

**Facts and Procedural History**

On August 14, 2015, the PCSO Professional Standards Bureau issued an Inter-Office Memorandum, which found the following: On April 10, 2015, Petitioner, Cynthia Graham, was working at the Pinellas County Jail. She was acting in the capacity of Field Training Officer and was responsible for the security of a control room. Petitioner was aware of the presence of a loaded firearm in an unsecured cabinet in the control room that compromised its security. Apparently, Petitioner failed to remedy the situation. After the firearm situation was discovered, PCSO investigated Petitioner. She gave conflicting testimony both during the initial investigation and during an administrative review board hearing.

The Memorandum also determined that Petitioner was in violation of PCSO policies and regulations and notified Petitioner that Sheriff Bob Gualtieri had terminated her employment. On August 18, 2015, Petitioner properly filed a timely Notice of Appeal of the termination decision

and requested review from CSB. On September 10, 2015, the Pinellas County Attorney referred Petitioner's appeal to DOAH pursuant to Section 74-86(h), Pinellas County Code of Ordinances. On September 15, DOAH entered an Initial Order, which required the parties to coordinate schedules to set a final hearing. On September 21, the parties responded to the Initial Order and on September 22, 2015, DOAH set the final hearing for November 10, 2015. On October 14, at the request of PCSO, DOAH cancelled and re-set the final hearing for November 13, 2015. On November 2, 2015, Petitioner filed the instant Petition for Writ of Prohibition. On November 3, DOAH entered an order staying its proceedings until the Petition is resolved.

### **Standard of Review**

Circuit courts have original jurisdiction to issue writs of prohibition. Fla. Const. Art V, Section 5(b); Fla. R. App. P. 9.030(c)(3). “[T]he writ of prohibition is that process by which a superior court prevents an inferior court or tribunal from exceeding its jurisdiction or usurping jurisdiction with which it has not been vested by law.” *State ex rel. Fla. Real Estate Comm'n v. Anderson*, 164 So. 2d 265, 268 (Fla. 2d DCA 1964).

### **Discussion**

In the instant Petition, Petitioner seeks issuance of a writ of prohibition to prohibit CSB from hearing the appeal of her employment discipline action on the basis that CSB does not have jurisdiction. “Prohibition is an extraordinary writ by which a superior court may prevent an inferior court or tribunal . . . from acting outside its jurisdiction. When it is shown that a lower court is without jurisdiction or attempting to act in excess of its jurisdiction, prohibition may be granted. Prohibition will be invoked only in emergency cases to forestall an impending present injury where person seeking writ has no other appropriate and adequate legal remedy.” *Sanders v. Laird*, 865 So. 2d 649, 651 (Fla. 2d DCA 2004) (internal citations omitted); *see generally Mandico v. Taos Const., Inc.*, 605 So. 2d 850, 851 (Fla. 1992), *opinion corrected on denial of reconsideration* (Oct. 8, 1992). Prohibition proceedings cannot be used as a substitute for, or to function as, appellate proceedings. *State ex rel. Arnold v. Revels*, 113 So. 2d 218, 224 (Fla. 1st DCA 1959).

CSB has jurisdiction to hear appeals from certain staff disciplinary actions. §§ 74-82, 74-83(a)(2), (3), Pinellas County Code of Ordinances. “Jurisdiction is the power to act, the authority

to adjudicate the subject matter.” *Bush v. State*, 945 So. 2d 1207, 1211 (Fla. 2006). Subject matter jurisdiction means that the court has the power to lawfully hear and determine a cause. *Cunningham v. Standard Guar. Ins. Co.*, 630 So. 2d 179, 181 (Fla. 1994). CSB may lawfully hear appeals from eligible staff, including full-time deputy sheriffs like Petitioner, who are members of the classified service, that arise from “personnel actions brought under the sheriff’s rules, procedures, or policies which result in dismissal. . . .” §§ 74-83(a)(2)-(3), 74-78(a), Pinellas County Code of Ordinances. Eligible staff must file a notice of appeal within five days of the receipt of notice of personnel disciplinary action, or they waive all rights to an appeal. *Id.* at § 74-84(a). “[CSB] shall commence a hearing on an appeal within 30 days from the date upon which the notice of appeal was received . . . and shall proceed diligently to conclude such hearing in an expeditious fashion.” *Id.* at § 74-86(a). At any stage in the appeal hearing procedure, CSB may, upon stating its reasons, “contract with [DOAH] to have the hearing conducted pursuant to chapter 120, Florida Statutes.” *Id.* at §§ 74-83(a)(1), (4), 74-86(h).

Here, Petitioner contends that a Writ of Prohibition should be issued to CSB because CSB does not have jurisdiction over her appeal for four reasons: (1) CSB failed to commence a hearing within 30 days of her Notice of Appeal of the termination; (2) CSB improperly referred Petitioner’s appeal to DOAH; (3) CSB failed to advise Petitioner whether mediation was available; and (4) DOAH failed to advise Petitioner that summary procedures were applicable to her appeal. However, none of these arguments are a basis upon which a writ of prohibition can be granted since they do not bear on the issue of CSB’s jurisdiction to hear Petitioner’s appeal. CSB’s jurisdiction is entirely reliant on whether Petitioner is eligible staff who timely filed an appeal of her disciplinary action. Since Petitioner was a full-time deputy sheriff, she qualified as a member of the classified service from whom CSB may hear appeals of disciplinary action. Thus, because Petitioner qualified as eligible staff and timely appealed her termination, CSB properly has jurisdiction over her appeal. *See id.* at §§ 74-83(a)(2), 74-84(a).

The Court notes that even if Petitioner’s arguments had merit, granting the Petition for Writ of Prohibition would be contrary to fairness and justice because it would deprive her of her ability to appeal her employment discipline action. Although Petitioner requests that this Court restore her “former status with all rights, title, compensation, benefits and retroactive compensation,” the Court could not lawfully grant this relief. Rather, a writ of prohibition would

only serve to prohibit CSB and DOAH from hearing her appeal and effectively deprive Petitioner of any avenue through which to appeal her termination.

**Conclusion**

Because the Pinellas County Sheriff's Office Civil Service Board is not acting without jurisdiction, it is

**ORDERED AND ADJUDGED** that the Petition for Writ of Prohibition is **DENIED**.

**DONE AND ORDERED** in Chambers at St. Petersburg, Pinellas County, Florida, this 13 day of JULY, 2016.

Original Order entered on July 13, 2016, by Circuit Judges Jack Day, Pamela A.M. Campbell, and Thomas Ramsberger.

COPIES FURNISHED TO:  
JAN THOMAS GOVAN, ESQ.  
542 BAY AVE  
CLEARWATER, FL 33756

BRUCE CULPEPPER  
1230 APALACHEE PARKWAY  
TALLAHASSEE, FL 32399

CAROLE SANZERI, ESQ.  
315 COURT STREET  
CLEARWATER, FL 33756

PAUL F. ROZELLE, ESQ.  
10750 ULMERTON ROAD  
LARGO, FL 33778