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IN THE SUPREME COURT OF FLORIDA

FILED
SID J. WHITE
DEC 9 1983
CLERK, SUPREME COURT

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| AMERICAN INSTITUTE OF DEFENSIVE DRIVING, INC., A FLORIDA NOT FOR PROFIT CORPORATION, | : |
| Petitioner, | : |
| v. | : |
| TRAFFIC COURT REVIEW COMMITTEE, A COMMITTEE OF THE SUPREME COURT OF FLORIDA | : |
| Respondent. | : |

**PETITION FOR WRIT OF MANDAMUS**
**PETITION FOR REVIEW**

The Petitioner, AMERICAN INSTITUTE OF DEFENSIVE DRIVING, INC., hereinafter referred to as "A.I.D.D.," by and through undersigned counsel, petitions the Court for issuance of a Writ of Mandamus to the Respondent, TRAFFIC COURT REVIEW COMMITTEE, hereinafter referred to as "COMMITTEE," and in support thereof, states:

## I. JURISDICTION

Through this Petition, the Petitioner, A.I.D.D. seeks to have this Court order the Respondent to license and certify the Petitioner pursuant to Article 2.03 of the Basic Driver Improvement School Minimum Standards (hereinafter referred to as "Minimum Standards") (A 1-5) as a basic driver improvement school in Palm Beach County, Florida. This Court has original jurisdiction of this action pursuant to Article V, Section 3(b)(8) of the Florida Constitution, and under Rule 9.030(a)(3) of the Florida Rules of Appellate Procedure. Further, the status of the Respondent as a committee formed under the control and auspices of the Florida Supreme Court pursuant to Rule 6.040, Rules of Practice and Procedure for Traffic Court (hereinafter referred to as the "Traffic Court Rules"), effectively mandates that any action brought to review its policies, procedures and determinations, be brought before this Court. Jurisdiction is also appropriate under State ex rel. Roberts v. Knox, 153 Fla. 165, 14 So.2d 262 (Fla., Division A 1943).

## II. FACTS

1. Petitioner is a wholly-owned subsidiary of Honest Ballot Association, Inc., a not-for-profit corporation organized under the corporate laws of the State of New York, recognized as being tax-exempt under Section 501(c)(3) of the Internal Revenue Code.

2. Respondent is a committee established under the direct control and supervision of the Florida Supreme Court. Among the functions it has assumed is the setting of minimum standards for basic driver improvement schools. However, such a function does not seem to be authorized by law.[1]

3. Although basic driver improvement schools were operating in various counties as subsidiaries of the National Safety Council at the time of the establishment of the Respondent Committee, they were "grandfathered" in as certified programs. Since its inception approximately seventeen years ago,[2] the Committee has never approved another basic driver improvement program in the entire State of Florida. The functions and procedures of the Committee were never defined by the Court, although its primary function seems to be to investigate violations of the Rules by traffic court personnel. Rule 6.156.

4. Petitioner was incorporated for the sole purpose of establishing basic driver improvement schools in the State of Florida. These programs have increased in importance since the September 18, 1986 amendment to Rule 6.330 providing that persons may avoid being assessed points by electing to attend traffic school. 494 So.2d 1129.

5. In furtherance thereof, Petitioner developed a driver improvement program by contract under the auspices of DTA, Inc. DTA, Inc. runs driver improvement schools nationally and is the most statistically effective driver improvement program in the

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[1] This exceeding of the Respondent's statutory authority will be discussed in greater detail in the Argument section, infra.

[2] See, In re Transition Rule 20, 306 So.2d 489 (Fla. 1974), Florida Rules of Practice and Procedure for Traffic Courts, Rules 6.110, 6.156.

country. Petitioner used this program when attempting to establish a basic driver improvement school in Palm Beach County, Florida.

6. On February 9, 1988, the Petitioner wrote to R. William Rutter, Jr., Chief Judge of the Palm Beach Circuit Court of the Fifteenth Judicial District and, pursuant to Article 2.03 of the Minimum Standards requested "a meeting" with the Court to request certification (A 6-7). A Petition was filed with the Court (A 8-9).

7. On February 19, 1988, pursuant to Article 2.03-1 of the Minimum Standards, the Court notified the Safety Council of Palm Beach County, Inc. (hereinafter referred to as "Safety Council"), the affiliate of the National Safety Council which operated the only basic driver improvement school in Palm Beach County, that it had scheduled "a meeting" to allow Petitioner to make a presentation for certification as a second basic driver improvement school. (A 10) Said hearing was scheduled for, and held on March 7, 1988, before Judge Rutter and Judge Robert M. Gross, Administrative Judge of the County Court. The Safety Council and its attorney were present at the hearing pursuant to Article 2.03-2 of the minimum standards.

8. On April 11, Judge Rutter, pursuant to Article 2.06 of the minimum standards, sent a letter to Richard Cox, Executive Secretary of the Traffic Court Review Committee, notifying him that a hearing had been held, and informing the Respondent that ". . . it was the opinion of Judge Gross and myself [J. Rutter] that the petition met the requirements set forth in Article 2.03(3) . . . .". The letter furthered requested that the Committee ". . . take the appropriate steps . . ." to certify Petitioner (A 11). On April 20, 1988, the petition was on the agenda of the Traffic Court Review Committee, item III F, (A 12), which met in Tampa. The full committee referred the application to a sub-committee.

9. On June 2, 1988, at the direction of the Respondent, the Petitioner complied with Article 2.06 and presented its basic driver improvement course in front of approximately 20 students, to Jon Prothero, Ph.D., Research and Training Specialist for the

Bureau of Driver Improvement of the Florida Department of Highway Safety and Motor Vehicles. Dr. Prothero then prepared a three page, single-spaced, detailed written evaluation of the program which was submitted to the Respondent Committee (A 13-15). Dr. Prothero's extensive report stated, in part, that the A.I.D.D. course " . . . effectively covers the objectives of the Florida Basic Driver Improvement Program. I recommend its use in the Florida Basic Driver Improvement Program."

10. On July 1, 1988, the Driver Improvement School Subcommittee met in Tampa, considered Petitioner's program as Agenda Item I-A (A 16), and approved it (2 to 1) after hearing from A.I.D.D., its attorneys, Safety Council members, and their attorneys. The Chairman of the full committee, County Court Judge Gerald Klein, from Dade County, being the sole dissenting vote on the Subcommittee.

11. It should be noted that at the sub-committee meeting of July 1, 1988, at agenda item I-B, the sub-committee had before it a letter of inquiry/complaint of April 8, from the National Training Systems Institute (A 17-19). N.I.S.I., which is not related or affiliated with the Petitioner, raised the complaint that the Minimum Standards " . . . may be both arbitrary and unfair as they unduly restrict the opportunity for legitimate safety organizations to provide service in your State for the following reasons: . . . ." The sub-committee directed the Executive Secretary to respond. Petitioner believes that said response is still pending.

12. On July 12, 1988, the Traffic Court Review Committee met in Tampa and considered A.I.D.D.'s application for certification (See transcript, A 20-42).

13. One of the Committee Members, Attorney Frederick Heidgerd, is also the attorney for the Broward County Citizens Safety Council, Inc., d/b/a National Safety Council, Broward Chapter. They are a subsidiary of the National Safety Council, the parent company of the organization which Petitioner would be in competition with if certified. Heidgard does not admit this

conflict until October 10, 1988. Despite his obvious conflict of interest, Heidgerd, as the meeting opens, takes the matter out of turn and questions 'the record.' Heidgerd took an active and adversarial role in referring the matter back to the new Chief Judge of Palm Beach County (Judge Rutter having left the Bench) and, in effect, rejecting Petitioner's application.

15. Heidgerd first indicated (at A 22) that he, and other members of the Committee, had previously discussed Petitioner's application (in violation of the Florida Sunshine Law) and had found procedural problems with its consideration. (A 14) He objected to what he characterized as non-existent findings of Judge Rutter (A 22), yet specific findings of fact are not required by the minimum standards. He also raised spurious objections to the manner in which the application had been noticed for the "meeting" before Judge Rutter, even though the competing entity had participated fully in the "meeting." No objection to notice had been raised before Judge Rutter, as obviously a review of the record reveals notice was correctly done by the Court.

15. Heidgerd also falsely represented to the Committee that certain required submissions were missing from the package supplied to the Committee. (A 22) Mr. Cox, the Executive Secretary of the Committee, contradicted Heidgerd and stated (at A 32), "In the packet [given to the Committee] is the Petition that was filed [with Judge Rutter] by Mr. Barbakoff, and it does refer to certain Exhibits A through E, and for purpose of keeping down the size of the packet, I didn't include all that, but they are in the record here." However, the Committee, intent on finding any reason to reject the application, ignored its own executive secretary's statement.

16. The Petitioner pointed out to the Committee that appropriate notice had been furnished (A 24), that a complete petition package had been submitted to Judge Rutter (A 24-25), and that all the necessary supporting documents had been submitted to, and approved by, Judges Rutter and Gross (A 24-28).

17. In addition, the Petitioner had witnesses who

traveled to Tampa from Palm Beach, New York, Texas, and Miami to attend the July 12 meeting. They were prepared to testify that the Petitioner met all of criteria for certification. The witnesses included Dr. John Prothero, who had investigated and evaluated the Petitioner's program for the Department of Highway Safety and Motor Vehicles (A 26). The Respondent Committee declined to hear the witnesses.

18. Heidgerd moved to compel the Petitioner to make its presentation again to the new Chief Judge of Palm Beach Circuit Court, who had succeeded to the position subsequent to Judge Rutter's leaving the Bench. The Committee also heard opposition to the Petitioner's application from former Chief Justice Adkins of this Court, who appointed many of the Committee members, and a former committee advisor of the Respondent. Shortly after leaving the bench, Justice Atkins appeared on June 25, 1987 (A 43-50) before the very committee he formed and chaired for many years, in a new role as counsel for the Florida Association of D.U.I. Programs. (A 50) At the July 12 meeting, Justice Adkins expressed the view that no competition with the National Safety Council should be permitted, and that its better to use all the income to better the one existing school as that would benefit the State of Florida (A 36-37). This view is obviously that of the Respondent as well.

19. Ultimately, after Judge Klein arbitrarily cut off discussion (A 39), the Committee refused to hear the application on its merits, indicating to Steve Zack, co-counsel for the petitioner, that A.I.D.D. must begin the certification process from the beginning, before the new Chief Judge. The Committee at time could not even tell Mr. Zack what it was being sent back for (A 32-33). Judge Klein stated, "I'll have Mr. Cox communicate with you directly."

20. As a result of the confusion as to what the committee's function was, an ad hoc Certification and Jurisdictional Subcommittee was formed at the July 12 meeting. This ad hoc committe met September 8, and September 29, and was

given 12 issues raised at the July 12 meeting (A 51-52), including:

1) Does the Chief Judge have to make specific findings of fact in relation to the requirements for certification as an additional school/program?

6) Must the proof of the specific requirement for certification (current C.P.A. audit, proof of non-profit status, etc.) be made to the Committee?

10) Why is there no procedure for the certification of new courses in the DUI standards as there is in relation to Driver Improvement Schools (Section 2.05-2.07 and 3.05-3.07)?

How could the Committee deny consideration of the Petition on July 12 when all these questions existed?

21. The Petitioner wrote on August 19th (A 53) requesting reconsideration and was placed on the October 10, 1988, agenda in Tampa at Agenda item II-B (A 54). During the course of the meeting (transcribed as A 55-150), it became apparent that the Respondent was in the process of amending the Minimum Standards for at least the third time. Each time they have been amended, the amendments were specifically designed to defeat the application of a competitor to a National Safety Council affiliate.

22. The Minimum Standards which were in effect in April, 1986 (A 151-154) did have inserted into it the arbitrary and impossible language " . . . The agency seeking certification must prove that an additional school can provide a worthwhile function which the certified Basic Driver Improvement School does not offer and is unable to offer." This requirement is absurd because the certified school will always be able to offer a worthwhile function in the future once it is pointed out by its competitor. Additionally, the Standards require the Petitioner to prove that both schools " . . . can operate feasibly in the geographic area served." What other entity seeking to do business with the State of Florida is required to prove that its competitiors will not suffer economically?

23. Subsequently, the Minimum Standards were amended and had inserted (see A 2) a requirement, 2.05, that programs seeking

certification obtain an I.R.S. exemption letter under Section 501(c)(3) of the I.R.S. Code. This was inserted in the Minimum Standards in an effort to stop a school from competing with the Safety Council. There is no rational reason to require a Florida not-for-profit corporation to also qualify as an I.R.S. tax-exempt organization, unless it is to keep in all the present schools (who do not hold the I.R.S. exemption) without allowing free enterprise and competition. As of October 10, 1988, a third set of standards has been passed (effective April 1, 1989) which states at 2.03, "The procedure for certification of an additional school shall be adversarial in nature." This was inserted to specifically inhibit the success of the Petitioner. Judge Hurley in Palm Beach County, has implemented the adversary process per his order of October 25, 1988 (A 160-162), which provided for service of witness lists, interrogatories, and depositions, and a de novo evidentiary hearing. The absurdity of requiring an adversary proceeding for a business to compete in Florida is shown by the 62 witnesses listed by the Safety Council (A 163-167). In point of fact, the Minimum Standards grant an absolute monopoly in the State of Florida to programs who were "grandfathered" in.

24. While the former procedure (A 1-5) at 2.03-2 and 2.03-3 only required that a agency seeking certification have a "meeting" with the chief judge in the Circuit with the then-certified school(s) present, the new standards require a full evidentiary procedure, including depositions, interrogatories, and a trial. The applying program will have to reveal its teaching techniques, and the unique features and all business aspects of its program to its competition before any hearings. This, of course, will allow the National Safety Council affiliates to alter their program in order to defeat the application.

25. In support of its application <u>for reconsideration</u>, set on October 10, 1988, the Petitioner had an affidavit and attached memo from Judge Gross (A 168-170) stating at (A 168) that, "After providing the National Safety Council of Palm Beach an opportunity to address the Court, Judge Rutter and I agreed that

the American Institute of Defensive Driving would benefit the citizens of Palm Beach County, while allowing the National Safety Council of Palm Beach County to continue, operate and co-exist." Judge Rutter was also present at the Tampa meeting to answer any questions the Committee had regarding the presentation made before him, and any findings of fact. The Respondent refused to allow him to speak, and further refused to reconsider its prior action. Chairman Klein, without a motion before the Committee, without discussion, and without authority, stated (at A 141): " . . . it's the ruling of the chair that we cannot proceed on this agenda item at this time because we haven't got the information requested from the chief judge from Palm Beach County." (A 120).

## III. RELIEF SOUGHT

Petitioner seeks to have this Court grant the following relief:

a. Compel the Respondent to certify Petitioner as a Basic Driver Improvement School in Palm Beach County, Florida.

b. Compel the Respondent to establish fair and reasonable procedures for certification of applicants: striking, at a minimum, the I.R.S. 501(c)(3) requirement; the adversary hearing procedure; and the requirement for a new school to " . . . provide a worthwhile function which the certified basic driver improvement school does not offer and is unable to offer." 2.03-3.

c. Compel the Respondent to comply with the State Code of Ethics regarding conflicts of interest.

d. Establish a procedure for the appellate review of the decisions and policies of the Respondent.

## IV. ARGUMENT

Historically, mandamus has proven to be a broader remedy than prohibition. Thus, while prohibition has been utilized primarily to prevent the exercise of unlawful jurisdiction by the judiciary, mandamus is not so limited. Wincor v. Turner, 215 So.2d 3 (Fla. 1968). This broader use of the writ of mandamus is reflected in the Florida Rules of Appellate Procedure, which limit the issuance of writs of prohibition by this Court solely to

judicial conduct, while permitting the Court to issue writs of mandamus to state officers and agencies, as well as to the courts.[3]

Because the Respondent is an State agency[4] which operates as a committee of this Court, the Petitioner has no recourse but to pray for the intervention of this Court in the exercise of its supervisory power over its own committee; no other adequate remedy exists. As stated in 35 Fla.Jur.2d, "MANDAMUS AND PROHIBITION," Section 15, pp. 208-209:

> It is the inadequacy, not the mere absence of another legal remedy, and the danger of a failure of justice without it, that generally determines the issuance of mandamus. The other remedy, to bar mandamus, must not only be adequate in the general sense of the term, but it must be specific and appropriate to the circumstances of the particular case, clear, complete, and sufficiently speedy to prevent material injury. These rules apply where the other remedy is an action before a quasi-judicial body, such as the Public Service Commission. [Citations omitted]

In the instant case, the Petitioner has complied with all administrative procedures and exhausted all administrative remedies. In addition, no judicial forum other than this Court would have the jurisdiction to order the Respondent, a committee of this Court, to take any affirmative action. On the other hand, it would be ludicrous for this Court to be without the jurisdiction to review the actions of its own committee. Thus, this Court is the correct and only forum for this petition- both for purposes of the issuance of a writ of mandamus, and for the purpose of reviewing the arbitrary and improper exercise of Respondent's authority.

The Petitioner has a clear legal right to the utilization of a fair and impartial process for the evaluation of its

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[3] Rule 9.030(a)(3)

[4] F.S.A. 112.312(2) defines a State agency subject to ethical codes as:

> . . . any state, regional, county, local, or municipal government entity of this state, whether executive, judicial, or legislative; any department, division, bureau, commission, authority, or political subdivision of this state therein; or any public school, community college, or state university.

application for certification as a Basic Driver Improvement School, and the Respondent has an indisputable legal duty to provide such a process. The failure of the Respondent to establish fair procedures, and its alteration of the standards whenever a serious applicant attempts to establish a program to compete with, or to supplement that of the local National Safety Council affiliate, entitles the Petitioner to the issuance by this Court of a writ of mandamus. State, Dept. of Health, Etc. v. Hartsfield, 399 So.2d 1019 (Fla. 1st DCA 1981).

It is manifest that the Petitioner has standing to contest the possible violation of the Sunshine Law (F.S.A. 286.011), especially where this violation directly affects its particular interest. Godheim v. City of Tampa, 426 So.2d 1084 (2d DCA 1983). But more importantly, A.I.D.D. has the right to this issuance of a writ of mandamus where, as in the instant case, Respondent abuses its discretion in such as way that it amounts to a failure to act in accordance with the law. This is especially true where bias and/or political reasons prompt improper behavior. City of Hialeah v. State ex rel. Danels, 97 So.2d 198 (3d DCA 1957).

Further, it is difficult to ascertain the statutory authority for the establishment of minimum standards by Respondent. Rule 6.040 of the Traffic Court Rules defines the Committee as "the committee appointed by the Supreme Court to study and consider the application and administration of these rules for traffic courts in Florida and which shall make recommendations to the Supreme Court for changes in said rules."

Rule 6.110 authorizes the Committee to hear petitions for certification, when a school is not designated by the chief judge. Finally, Rule 6.156, which creates the Committee, authorizes the Committee to consider . . . all matters or complaints concerning the administration of these rules by Traffic Courts. Nowhere does the enabling legislation authorize the Respondent to set standards for certification. Nor does it authorize the establishment of a State policy encouraging and maintaining a monopoly, or the

impeding of the certification of qualified applicants.

The failure of Respondent to permit certification of any program other than those affiliated with the National Safety Council for the past seventeen years should at the very least merit this Court's attention and close scrutiny, especially where Committee members have continually voiced and voted their personal beliefs that no competition should be allowed.

Additionally, the unfairness of a procedure which requires an applicant to prove that it offers a service not currently available, and then allows the existing service to change its operation to adopt the services offered by the applicant, insures that the application will fail to comply with the minimum standards. Thus, unless the existing school simply refuses to supply a needed service, no application can or will meet the minimum standards. Copies of the various Minimum Standards implemented (A 1, A 151, A 155).

Respondant's function is to certify qualified applicants, not to buttress an entrenched monopoly. The transcripts contained in the appendix to this petition clearly demonstrate the unwillingness of the Respondent to allow any qualified agencies, other than those affiliated with the National Safety Council, to be certified in this State. This cannot be the intent of the law, or of this Court.

WHEREFORE, the Petitioner, American Institute of Defensive Driving, Inc. petitions this Honorable Court to enter the Writ herein requested, and grant such other relief as the Court feels is just.

Respectfully submitted,

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