

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

ALLISON COBB,

Petitioner,

v.

STATE OF FLORIDA and
CITY OF BOCA RATON, FLORIDA

Respondents.

Amended
Opinion filed: March 4, 2010

✓ For Petitioner:

Jeanne T. Melendez, Rothman & Associates, 200 S.
Biscayne Boulevard, Suite 2770, Miami, FL 33131

✓ For Respondent:

Joni Hamilton, Assistant City Attorney, 201 West Palmetto
Park Road, Boca Raton, FL 33432

PER CURIAM.

Allison Cobb seeks a writ of mandamus directing the county court judge to settle and approve a statement of the evidence. If a trial judge can approve of a statement of evidence, he or she should do so, but is not required to do so. *Rivera v. Rivera*, 863 So. 2d 489 (Fla. 4th DCA 2004). Trial courts do not have an obligation to settle and approve either party's proposed statements. See, e.g., *Schmidt v. Schmidt*, 997 So. 2d 451 (Fla. 2d DCA 2008). A writ of mandamus should issue when the petitioner has a clear legal right; respondent has a clear legal ministerial duty to perform; and petitioner has no other adequate legal remedy available. *Tucker*

v. *Rubin*, 748 So. 2d 376, 377 (Fla. 3d DCA 2000). Accordingly, the petition for writ of mandamus is **DENIED**.

Cobb additionally requests that the Court issue a writ of prohibition to bar the county court from trying her for the instant traffic infractions based on a statute of limitations defense. A writ of prohibition is discretionary and is not a writ of right. *Southern Records & Tape Serv. v. Goldman*, 502 So. 2d 413, 414 (Fla. 1986). A party seeking this relief must demonstrate that there is no other appropriate and adequate legal remedy and that damage is likely to follow the lower court's acting without authority of law or in excess of jurisdiction. *Resolution Trust Corp. v. Mayor and City Com'n of City of South Miami*, 633 So. 2d 1119, 1121 (Fla. 1st DCA 1994). Cobb's appropriate legal remedy is to raise this issue in the trial court or in a plenary appeal rather than filing a petition for writ of prohibition. The petition for writ of prohibition is **DENIED**.

CROW, KELLEY, EVANS, JJ., concur.

<u>BYE</u>	<u>BYE</u>	<u>BYE</u>
<u>TOGE</u>	<u>TOGE</u>	<u>TOGE</u>
BYVONEE ()	BYVONEE ()	BYVONEE ()
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