

IN THE SUPREME COURT OF THE STATE OF NEVADA

GEORGE E. REACH,
Petitioner,
vs.
THE STATE BAR OF NEVADA,
Respondent.¹

No. 44264

FILED

MAR 04 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This original proper person writ petition² seeks to compel the State Bar of Nevada to pursue a disciplinary grievance against an attorney. We conclude that extraordinary relief is not warranted, and so deny the petition.

A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust or station,³ or to control an arbitrary or capricious exercise of discretion.⁴ A writ of mandamus will not issue, however, if petitioner has a plain, speedy

¹We direct the clerk to conform the caption on this court's docket to the caption on this order.

²Petitioner titled his petition as one for "praecipe." As discussed below, it appears that the remedy petitioner seeks is properly mandamus. Also, although petitioner's failure to pay this court's filing fee constitutes an independent basis for denial of the petition, we have nevertheless considered the petition's merits.

³See NRS 34.160.

⁴See Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

and adequate remedy in the ordinary course of law.⁵ Further, mandamus is an extraordinary remedy, and it is within the discretion of this court to determine if a petition will be considered.⁶

Petitioner maintains that the state bar has a duty to investigate and prosecute allegations of attorney misconduct, and that his grievance has merit. Although petitioner is correct that the state bar has a duty generally to investigate and prosecute alleged attorney misconduct,⁷ we agree with the state bar that in this instance, no attorney misconduct has been shown.

The documentation submitted by petitioner indicates that the attorney in question filed an application for default judgment and a supporting affidavit in a justice's court collection matter. These documents erroneously stated that petitioner had not timely filed an answer. The justice's court granted a default judgment, even though petitioner had in fact filed a timely answer to the complaint. About two weeks after the default judgment was entered, the attorney asked that the default judgment be set aside, because it was entered in error since petitioner had answered the complaint.

Petitioner has submitted nothing in support of his writ petition to indicate that the erroneous statements in the attorney's application for default judgment and affidavit were anything but

⁵NRS 34.170.

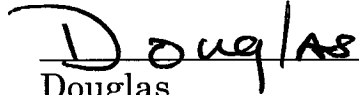
⁶Poulos v. District Court, 98 Nev. 453, 455, 652 P.2d 1177, 1178 (1982); see also Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991).

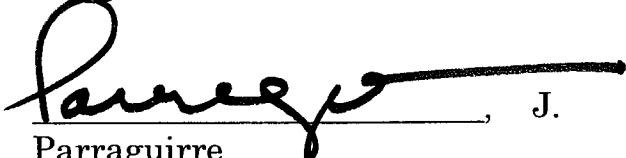
⁷See SCR 104(1).

inadvertent. This conclusion is supported by the attorney's prompt efforts to rectify his mistake. Thus, no misconduct has been shown, and extraordinary relief is not warranted. We therefore deny this petition.

It is so ORDERED.


_____, J.
Maupin


_____, J.
Douglas


_____, J.
Parraguirre

cc: Rob W. Bare, Bar Counsel
George E. Reach
Sean P. Hillin