

IN THE SUPREME COURT OF THE STATE OF NEVADA

PAUL THOMAS MCCREARY AND
LAUSTEVEION DELANO JOHNSON,
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND RACHAEL GANATTA,
CHIEF JUDGE LAW CLERK,

Respondents.

No. 45265

FILED

MAY 26 2006

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

KITRICH A. POWELL,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE
SHIRLEY B. PARRAGUIRRE, CLARK
COUNTY CLERK, AND RACHAEL
GANATTA, CHIEF JUDGE LAW
CLERK,

Respondents.

No. 45288

ALLEN WHITE,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND RACHAEL GANATTA,
CHIEF JUDGE LAW CLERK,

Respondents.

No. 45326

ORDER GRANTING PETITIONS FOR WRITS OF MANDAMUS

These are proper person petitions for writs of mandamus, challenging the Eighth Judicial District Court's alleged refusal to file petitioners' complaints and applications to proceed in forma pauperis.

Petitioners contend that the district court refused to file their complaints and applications to proceed in forma pauperis. Instead, the documents were apparently returned to petitioners, with either a memorandum from respondent Law Clerk Rachel Ganatta or an unsigned memorandum. We note that, although the copies of these memoranda attached to the petitions indicate that the applications to proceed in forma pauperis were being returned, no mention is made of the complaints being returned. Respondents, however, contend that their complaints were also returned.

Based on the attached copies of the memoranda, it appears that the petitioners' applications were returned for several reasons. Most of the applications were returned because the petitioners' complaints allegedly did not meet the jurisdictional and subject matter requirements of the Nevada statutes. These memoranda indicate that because the complaints were allegedly "insufficient," the district court judge would not sign the order allowing petitioners to proceed in forma pauperis.

Because the actions of both the district court and Ganatta appeared to violate the requirements for receiving and filing complaints and applications to proceed in forma pauperis outlined in Sullivan v. District Court,¹ we directed the respondents to file an answer to the petition that, among other things, addressed whether they had complied

¹111 Nev. 1367, 904 P.2d 1039 (1995).

with the requirements outlined in Sullivan. Respondents did not file an answer or otherwise respond to this court's order.

In Sullivan, we held that when a district court receives a complaint and an application to proceed in forma pauperis, the district court must file the application and must stamp the complaint "received" and record the date on which the document was received.² The clerk of the district court is required to maintain a copy of the received document in the record of the case, regardless of whether the document is ever filed.³ The district court is further required to rule on the application, and if the application is granted, the district court must require the filing of the complaint and other documents, and consider them in due course.⁴

Moreover, as we noted in Jordan v. State, Department of Motor Vehicles,⁵ the district court is not authorized to review the complaint's substance when considering a litigant's application to proceed in forma pauperis.

[U]pon receiving a complaint and an application to proceed in forma pauperis, the district court must first consider the application's merits and determine whether the accompanying affidavit and any additional investigation demonstrate that the applicant is unable to pay the costs of proceeding with the action. If the court so finds,

²Id. at 1371, 904 P.2d at 1042. We note that some of the copies of petitioners' complaints do bear a stamp indicating that they were received by the district court.

³Id.

⁴Id.

⁵121 Nev. ___, 110 P.3d 30 (2005).

the court must grant the applicant leave to proceed without the payment of costs and file the complaint.⁶

Based on the documents submitted by petitioners, we conclude that respondents have failed to comply with the requirements for receiving and filing complaints and applications to proceed in forma pauperis outlined in Sullivan.⁷ Additionally, the memoranda accompanying the returned applications indicate that respondents improperly considered the petitioners' complaints in reviewing their applications.⁸ Finally, to the extent that some of these memoranda effectively deny petitioners' applications, we note that neither law clerks nor the district court clerk have judicial authority, and thus they cannot rule on these applications.⁹ Even if the memoranda were issued by a judge, they do not constitute proper judicial dispositions of the applications.¹⁰

Accordingly, we conclude that respondents' actions were improper and we grant the petitions. The clerk of this court shall issue a writ of mandamus directing the clerk of the district court that, if she has not already done so, she shall file petitioners' applications to proceed in forma pauperis and stamp the complaints "received" and record the date on which the documents were received. The writ shall further direct the district court to maintain copies of the received documents in the record of

⁶Id. at ___, 110 P.3d at 40-41.

⁷111 Nev. 1367, 904 P.2d 1039.


⁸Jordan, 121 Nev. at ___, 110 P.3d at 40-41.


⁹Sullivan, 111 Nev. at 1370 n.5, 904 P.2d at 1041 n.5.

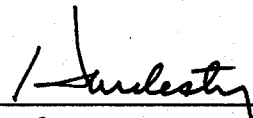
¹⁰Id. at 1370, 904 P.2d at 1041.

the cases if such copies are not presently maintained. Finally, if it has not already done so, the district court must properly rule on petitioners' applications in accordance with the requirements outlined in this order.

It is so ORDERED.¹¹


_____, J.
Maupin


_____, J.
Gibbons


_____, J.
Hardesty

cc: Hon. Kathy A. Hardcastle, Chief Judge, Eighth Judicial District Court
Eighth Judicial District Court Dept. 16, District Judge
Kitrich A. Powell
Paul Thomas McCreary
Lausteveion Delano Johnson
Allen White
Attorney General George Chanos/Las Vegas
Clark County District Attorney David J. Roger/Civil Division
Clark County Clerk

¹¹Although petitioners have not been granted leave to file papers in proper person, see NRAP 46(b), we have considered the proper person documents received from them.