

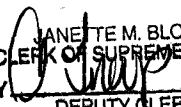
IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN MICHAEL SCHAEFER, A/K/A J.  
MICHAEL SCHAEFER,  
Petitioner,  
vs.  
THE STATE BAR OF NEVADA,  
Respondent.

No. 48090

**FILED**

OCT 18 2006

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus seeks to compel the state bar to proceed expeditiously on petitioner's reinstatement petition, and specifically, to intervene and prevent a reinstatement hearing panel chair or a disciplinary board chair from entertaining bar counsel's motion to strike the reinstatement petition. In addition, petitioner asks this court to require bar counsel to contact petitioner by telephone before serving any document, so that petitioner can instruct bar counsel whether to serve the document at petitioner's Las Vegas or Baltimore address. Finally, petitioner contends that no filing fee is due for this petition because it concerns a bar matter.

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,<sup>1</sup> or to control an arbitrary or capricious exercise of discretion.<sup>2</sup>

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<sup>1</sup>NRS 34.160; see also Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991).

<sup>2</sup>Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

Generally, the writ will issue only when the petitioner has no plain, speedy and adequate remedy in the ordinary course of law.<sup>3</sup> Further, mandamus is an extraordinary remedy, and whether a petition will be entertained is entirely within the discretion of this court.<sup>4</sup> Petitioner bears the burden of demonstrating that this court's intervention by way of extraordinary relief is warranted.<sup>5</sup>

We are not persuaded that writ relief is warranted. First, petitioner has an adequate remedy at law in the form of permitting the disciplinary board chair (or the hearing panel chair) to rule on bar counsel's motion to strike. Second, SCR 109(2) incorporates NRCP 5 for service in bar matters. NRCP 5 requires service at a party's "last-known address." The rule does not require duplicate service at two addresses, and it does not require that bar counsel consult with petitioner telephonically every time bar counsel wishes to serve a document. Accordingly, we deny the petition.

Finally, petitioner contends that no filing fee is due in this matter. We disagree. NRS 2.250(1)(a) and (c) clearly require that the filing and court automation fees be paid when any "special proceeding by way of mandamus" is filed with this court. Contrary to petitioner's position, this is not a "bar matter" for which no fee is due, since it is not the type of review required by this court under SCR 116. Only after a

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<sup>3</sup>Gumm v. State, Dep't of Education, 121 Nev. 371, 375, 113 P.3d 853, 856 (2005); NRS 34.170.

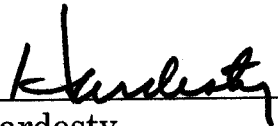
<sup>4</sup>Poulos v. District Court, 98 Nev. 453, 455, 652 P.2d 1177, 1178 (1982); see also Smith, 107 Nev. at 677, 818 P.2d at 851.

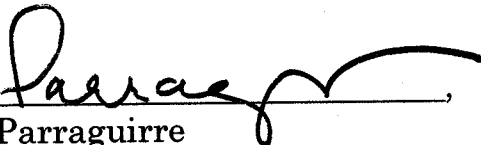
<sup>5</sup>Pan v. Dist. Ct., 120 Nev. 224, 228-29, 88 P.3d 840, 844 (2004).

final decision on petitioner's reinstatement petition has been made will SCR 116 review, for which no fee will be due, be undertaken. Accordingly, petitioner has ten days from the date of this order to pay the fees required by NRS 2.250(1).

It is so ORDERED.

 J.  
Becker

 J.  
Hardesty

 J.  
Parraguirre

cc: Rob W. Bare, Bar Counsel  
Wayne Blevins, Executive Director  
John Michael Schaefer