

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDWARD ELRY MORRISON,  
Petitioner,  
vs.  
EIGHTH DISTRICT COURT CLERK,  
Respondent.

No. 49756

**FILED**

FEB 14 2008

TRAGIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

This proper person petition for a writ of mandamus challenges the Eighth District Court Clerk's failure to file certain documents submitted for filing by petitioner and return to petitioner a file-stamped copy. We directed respondent to file an answer to the petition; respondent has failed to comply with our order.

A writ of mandamus is an extraordinary remedy, and the determination of whether to consider a petition is solely within our discretion.<sup>1</sup> A writ of mandamus is available to compel the performance of

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<sup>1</sup>See Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991).

an act that the law requires, or to control a manifest abuse of discretion.<sup>2</sup> The petition will only be granted when there is a clear right to the relief requested and the petitioner has no plain, speedy, and adequate remedy in the ordinary course of law.<sup>3</sup> Furthermore, the burden is on the petitioner to establish that mandamus relief is appropriate.<sup>4</sup>

The district court clerk has a duty to file documents submitted to it for filing, if they are in the proper form.<sup>5</sup> Based on our review of the petition, and in light of respondent's failure to file an answer as ordered, we conclude that our extraordinary intervention is warranted and we grant the petition. Accordingly, we direct the clerk of this court to issue a writ of mandamus directing the Eighth District Court Clerk to file all documents properly submitted by petitioner for filing, and to return a file-stamped copy to petitioner if he has provided an extra copy of the document and has provided a postage-paid envelope to mail the file-stamped copy to him.

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<sup>2</sup>See NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

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

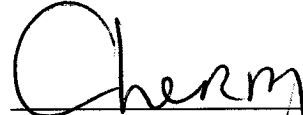
<sup>4</sup>Pan v. Dist. Ct., 120 Nev. 222, 228, 88 P.3d 840, 844 (2004); NRAP 21(a).

<sup>5</sup>See Sullivan v. District Court, 111 Nev. 1367, 904 P.2d 1039 (1995). We further note that, under Sullivan, even if a filing fee is due and is not submitted with the document, the clerk may not simply return the document unfiled, but must mark the document received and keep a copy in the court's file. See id. at 1371, 904 P.2d at 1042.

It is so ORDERED.<sup>6</sup>

 \_\_\_\_\_, J.

Maupin

 \_\_\_\_\_, J.

Cherry

 \_\_\_\_\_, J.

Saitta

cc: Edward Elry Morrison  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk

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<sup>6</sup>We direct the clerk of this court to file petitioner's motion for entry of confession of error, received on January 18, 2008. We deny the motion, since the confession of error doctrine does not apply to writ petitions, which are addressed solely to our discretion.