

IN THE SUPREME COURT OF THE STATE OF NEVADA

PERCY LAVAE BACON,  
Petitioner,  
vs.  
CHARLES J. SHORT, CLERK OF THE  
EIGHTH JUDICIAL DISTRICT COURT, IN  
AND FOR CLARK COUNTY, NEVADA,  
Respondent,

No. 50140

**FILED**

FEB 13 2008

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
CHIEF DEPUTY CLERK

ORDER GRANTING, IN PART, PETITION FOR WRIT OF MANDAMUS

This is an original proper person petition for a writ of mandamus challenging the district court's failure to file a complaint.

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, or to control an arbitrary or capricious exercise of discretion.<sup>1</sup> Whether we will consider a petition for extraordinary relief is within our sole discretion.<sup>2</sup> A petitioner seeking extraordinary relief has the burden of demonstrating that this court's intervention is warranted.<sup>3</sup>

Petitioner alleges that on or about March 26, 2006, he mailed certain documents to the "District Court" at 200 S. Third Street, Las Vegas, Nevada, 89155. Attached to his petition are copies of the documents that he allegedly mailed: complaint, summons, motion for

<sup>1</sup>See NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

<sup>2</sup>NRS 34.170; Poulos v. District Court, 98 Nev. 453, 456, 652 P.2d 1177, 1178 (1982) (denying petition for writ of mandamus); Smith v. District Court, 107 Nev. 674, 679, 818 P.2d 849, 853(1991) (denying petition for writ of mandamus or prohibition).

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

leave to proceed in forma pauperis and supporting affidavit, draft order granting the motion, and motion for an order directing the North Las Vegas Police Department to identify certain police officers. The handwritten complaint is captioned “Percy Lavae Bacon, Plaintiff, vs. R. Laswell, John Does 1–3, North Las Vegas Police Officers, North Las Vegas Chief of Police, Paresi, North Las Vegas Police Captain, Gillenwater, Defendants.” Petitioner asserts that none of these documents has been filed, and he petitions this court to issue an extraordinary writ directing the clerk of the district court to file all such documents.

On December 6, 2007, this court entered an order directing petitioner to serve respondent with a copy of the petition, within fifteen days. Petitioner has provided this court with a certificate of service stating that respondent was served with a copy of the petition on December 13, 2007. Although we also directed respondent to file an answer within thirty days of service, respondent has not filed any answer to date.

In Sullivan v. District Court,<sup>4</sup> we granted a proper person petition for a writ of mandamus and issued a writ compelling the Eighth Judicial District Court clerk to file an application to proceed in forma pauperis. As we held in Sullivan, “[t]he clerk of the district court has an absolute duty to file petitioner’s [in forma pauperis] application and to properly receive and keep a record of petitioner’s complaint.”<sup>5</sup>


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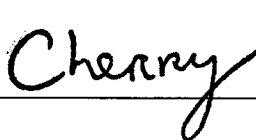
<sup>4</sup>111 Nev. 1367, 904 P.2d 1039 (1995).


<sup>5</sup>Id. at 1372, 904 P.2d at 1042; see also NRS 12.015(1) (providing that any person may file an affidavit seeking leave to proceed in a civil action without the payment of fees).

As petitioner's allegations here are directly analogous to the Sullivan case and respondent has failed to file an answer contesting petitioner's allegations,<sup>6</sup> we are satisfied that this court's intervention by way of extraordinary relief is warranted. Accordingly, we grant, in part, this petition for a writ of mandamus. The clerk of this court shall serve upon respondent a copy of petitioner's complaint, in forma pauperis application and affidavit, and the other documents attached to the writ petition filed with this court on September 10, 2007. The clerk of this court shall also issue a writ of mandamus compelling respondent to file petitioner's in forma pauperis application and affidavit, and to receive the complaint and other documents.<sup>7</sup> Petitioner's documents must be considered to have been filed and received on March 26, 2006.

It is so ORDERED.

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

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

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

<sup>6</sup>Cf. NRCP 5(e) (providing that the district court clerk cannot refuse to accept pleadings and other papers for filing on the basis that those papers are not presented in the proper form); NRAP 31(c); County Comm'rs v. Las Vegas Discount Golf, 110 Nev. 567, 875 P.2d 1045 (1994) (treating respondents' failure to comply with the briefing schedule as a confession of error under NRAP 31(c)).

<sup>7</sup>At this time, the district court need only receive, but not yet file, petitioner's complaint and other documents not related to his in forma pauperis application. If the district court grants petitioner's in forma pauperis application, then it must file petitioner's other documents. Sullivan, 111 Nev. at 1371, 904 P.2d 1042 (citing Donoho v. District Court, 108 Nev. 1027, 1030, 842 P.2d 731, 733 (1992)).

cc: Percy Lavae Bacon  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger/Civil Division  
Eighth District Court Clerk