

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL ANGELO DRAKE,

No. 36302

Petitioner,

vs.

THE SECOND JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, IN AND FOR
THE COUNTY OF WASHOE, THE
HONORABLE JANET J. BERRY, DISTRICT
JUDGE, AND AMY HARVEY, WASHOE
COUNTY CLERK,

FILED

NOV 17 2000

JANETTE M. BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

Respondents,

and

THE STATE OF NEVADA

Real Party In Interest.

ORDER GRANTING PETITION FOR
WRIT OF MANDAMUS

This proper person petition for a writ of mandamus seeks an order from this court directing the district court to file petitioner's motion to proceed in forma pauperis and civil complaint.

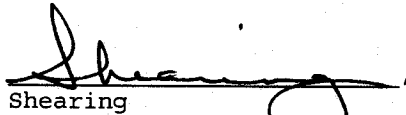
In the petition, petitioner contends that he submitted for filing in the district court a motion to proceed in forma pauperis and a civil complaint. The clerk of the district court did not file petitioner's motion to proceed in forma pauperis. Apparently, the clerk forwarded the submitted documents to the district court for review. The district court considered the substance of the civil complaint and concluded that it lacked substance in law or fact and denied petitioner's motion to proceed in forma pauperis. Subsequently, the motion and civil complaint were returned unfiled to petitioner.

A writ of mandamus is available to compel the performance of an act which the law requires as a duty resulting from an office, trust or station, NRS 34.160, or to control an arbitrary or capricious exercise of discretion. See Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981). A writ of mandamus will not issue, however, if petitioner has a plain, speedy and adequate remedy in the ordinary course of law. See NRS 34.170. Further, mandamus is an extraordinary remedy, and it is within the discretion of this court to determine if a petition will be considered. See Poulos v. District Court, 98 Nev. 453, 652 P.2d 1177 (1982); see also State ex rel. Dep't Transp. v. Thompson, 99 Nev. 358, 662 P.2d 1338 (1983).

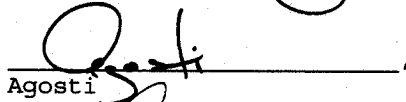
In Sullivan v. District Court, 111 Nev. 1367, 904 P.2d 1039 (1995), this court made clear that when documents in proper form are submitted for filing in the district court, the clerk of the court has a duty to file the documents. Here, petitioner submitted a motion to proceed in forma pauperis, along with an affidavit setting forth with particularity facts concerning his financial status. See NRS 12.015(1). Accordingly, the clerk of the district court had a duty to file the motion to proceed in forma pauperis. Thereafter, the district court must review the application to proceed in forma pauperis to determine whether petitioner has shown that he is indigent. See Sullivan 111 Nev. at 1371, 904 P.2d at 1042. If the court grants the application, the court must then proceed to require the filing of petitioner's civil complaint and to consider it in due course. See Donoho v. District Court, 108 Nev. 1027, 1030, 842 P.2d 731, 733 (1992).

Cause appearing, we grant this petition. Petitioner may resubmit to the respondent district court for filing his application to proceed in forma pauperis and his civil complaint. The clerk of this court shall issue a writ of mandamus compelling the respondent district court to process the resubmitted documents in accordance with NRS 12.015(1) and Sullivan.


It is so ORDERED.¹



Shearing J.



Agosti J.



Leavitt J.

cc: Hon. Janet J. Berry, District Judge
Attorney General
Michael Angelo Drake
Washoe County Clerk

¹Although petitioner has not been granted permission to file documents in this matter in proper person, see NRAP 46(b), we have received and considered petitioner's proper person documents. We deny as moot petitioner's proper person motion to file a reply to the answer.