

IN THE
SUPREME COURT OF MISSOURI

STATE OF MISSOURI ex rel.)	
JEREMIAH W. (JAY) NIXON,)	
Attorney General,)	
)	
Relator,)	No. SC 86013
)	
vs.)	
)	
HONORABLE MATT BLUNT)	
Secretary of State,)	
)	
Respondent.)	

**APPENDIX A TO RESPONDENT'S MEMORANDUM IN SUPPORT
OF RESPONDENT'S AFFIRMATIVE DEFENSES**

This appendix is an alphabetical listing of the 49 states other than Missouri with the legal precedent that Mandamus should lie only where there is a clear, unequivocal, specific right to be enforced or that Mandamus cannot be used to establish a right.

Alabama:

Alabama Republican Party v. McGinley, 2004 WL 1099995, *3-4 (Ala. 2004).

Mandamus is a drastic and extraordinary writ, to be issued only where there is (1) a clear legal right in the petitioner to the order sought, (2) an imperative duty upon the respondent to perform, accompanied by a refusal to do so, (3) the lack of another adequate remedy, and (4) properly invoked jurisdiction of the court.

Alaska:

Human Resources Co. v. Alaska Commission on Post-Secondary Education, 946 P.2d 441, 445 (Alaska 1997). "[m]andamus is proper to command an official to perform

an act which is a positive command and so plainly prescribed as to be free from doubt, and the claim must be clear and certain.

Arizona:

Sears v. Hull, 961 P.2d 1013, 1016 (Az. 1998). Mandamus is an extraordinary remedy issued by a court to compel a public officer to perform an act which the law specifically imposes as a duty.

Arkansas:

Hanley v. Arkansas State Claims Comm'n, 970 S.W.2d 198, 200 (Ark. 1998). Judiciary may issue a writ of mandamus to an executive or legislative officer only if the duty to be compelled is ministerial and not discretionary, and the petitioner must further show a clear and certain right to the relief sought and the absence of any other adequate remedy.

Axley v. Hardin, 110 S.W.3d 766, 769 (Ark. 2003). The purpose of the writ of mandamus is to enforce an established right or to enforce the performance of duty.

Redd v. Sossamon, 868 S.W.2d 466, 467 (Ark. 1994). Writ of mandamus will not be issued to establish a right; rather, extraordinary writ is issued only to enforce a right that is already established.

California:

Lungren v. Deukmejian, 755 P.2d 299, 301 (Cal. 1988). Mandate will not lie unless applicant for writ has present interest in remedy he seeks and respondent has present duty to perform acts that applicants seek to compel; applicant's right and

respondent's duty are measured as of time proceeding is filed.

Colorado:

Widder v. Durango School District No. 9-R, 85 P.3d 518, 523 (Colo. 2004).

Before a court will issue mandamus, (1) the plaintiff must have a clear right to the relief sought, (2) the defendant must have a clear duty to perform the act requested, and (3) there must be no other remedy available.

Connecticut:

Miles v. Foley, 752 A.2d 503, 509 (Conn. 2000). A writ of mandamus is proper only when: (1) the law imposes on the party against whom the writ would run a duty the performance of which is mandatory and not discretionary; (2) the party applying for the writ has a clear legal right to have the duty performed; and (3) there is no other specific adequate remedy.

McAllister v. Nichols, 474 A.2d 792, 794 (Conn. 1984). Since mandamus neither gives nor defines rights which one does not already have, it cannot, and does not, act upon doubtful and contested right.

Delaware:

Hamilton v. State, 769 A.2d 743, 746 (Del. Supr. 2001). A writ of mandamus is a command that may be issued by the Superior Court to an inferior court, public official or agency to compel the performance of a duty to which the petitioner has established a clear legal right.

Florida:

Huffman v. State, 813 So.2d 10, 11 (Fla. 2000). In order to be entitled to a writ of mandamus, the petitioner must have a clear legal right to the requested relief and no other adequate remedy, and the respondent must have an indisputable legal duty to perform the requested action.

Curtis v. City of Miami Beach, 46 So.2d 24, 24 (Fla. 1950). [Mandamus] does not lie to establish a right, but is used to enforce a right after its establishment.

Georgia:

Mid-Georgia Environmental Management Group, L.L.P. v. Meriwether County, 594 S.E.2d 344, 347 (Ga. 2004). Mandamus is an extraordinary remedy and is available against a public official only when the petitioner shows a clear legal right to the relief sought or a gross abuse of discretion.

Hawaii:

State v. Kealaiki, 22 P.3d 588, 592 (Hawaii 2001). A "writ of mandamus" is an extraordinary remedy that will not issue unless the petitioner demonstrates: (1) a clear and indisputable right to relief, and (2) a lack of other means to adequately redress the alleged wrong or obtain the requested action.

Idaho:

Rogers v. Gooding Public Joint School District No. 231, 20 P.3d 16, 19 (Id. 2001). If the act sought to be compelled of the public officer is ministerial, the court must find the party seeking the writ of mandamus has a clear legal right to have the act performed and the officer has a clear duty to perform the act.

Illinois:

People ex rel. Ryan v. Roe, 778 N.E.2d 701, 703 (Ill. 2002). Mandamus is an extraordinary remedy traditionally used to compel a public official to perform a purely ministerial duty; writ of mandamus will be awarded only if a plaintiff establishes a clear, affirmative right to relief, a clear duty of the public official to act, and a clear authority in the public official to comply with the writ.

Indiana:

State ex rel. Fadell v. Porter Superior Court, 475 N.E.2d 310, 312 (Ind. 1985).

An action for mandamus cannot be employed to adjudicate and establish a right or to define and impose a duty.

Iowa:

Heald v. Rodman, 179 N.W.2d 767, 770 (Iowa 1970). Writ of mandamus will not issue in doubtful cases, but only if a right involved and duty sought to be enforced are clear and certain and if no other specific and adequate mode of relief is available to complaining party.

Hewitt v. Ryan, 356 N.W.2d 230, 233 (Iowa 1984). Mandamus is not to be used to establish rights but to enforce rights that have already been established.

Kansas:

McMillen v. U.S.D. No. 380, Marshall County, Kansas, 855 P.2d 896, 899 (Kan. 1993). Mandamus is extraordinary remedy generally recognized as appropriate for purpose of compelling public officer to perform clearly defined duty imposed by law and not involving exercise of discretion.

Kansas Bar Association v. Judges of Third Judicial District, 14 P.3d 1154, 1156 (Kan. 2000). A party must be clearly entitled to the order sought before mandamus is proper.

Kentucky:

County of Harlan v. Appalachian Regional Healthcare, Inc., 85 S.W.3d 607, 613 (Ky. 2002). Mandamus is an extraordinary remedy which compels the performance of a ministerial act or mandatory duty where there is a clear legal right or no adequate remedy at law.

Louisiana:

Felix v. St. Paul Fire and Marine Insurance Co., 477 So.2d 676, 682 (La. 1985). Mandamus will lie to compel performance of prescribed duties that are purely ministerial and in which no element of discretion is left to public officer, but there must be clear and specific legal duty which ought to and can be performed.

Maine:

Portland Sand & Gravel, Inc. v. Town of Gray, 663 A.2d 41, 43 (Me. 1995). Mandamus is appropriate and necessary remedy when plaintiff shows: that it has right to have act done; that it is plain duty of defendant to do act; and that writ will be availing and that plaintiff has no other sufficient and adequate remedy.

Maryland:

City of Seat Pleasant v. Jones, 774 A.2d 1167, 1172 (Md. 2001). The writ of mandamus process is extraordinary, and if the right be doubtful, or the duty discretionary, or of a nature to require the exercise of judgment, or if there be any ordinary adequate

legal remedy to which the party applying could have recourse, the writ will not be granted.

Massachusetts:

Angelico v. Commissioner of Insurance, 258 N.E.2d 299, 302 (Mass. 1970).

Mandamus will not issue unless respondent is under a legal duty to perform some particular act or acts, performance of which court can order in definite terms and enforce if necessary. Mandamus will not issue unless respondent is under a legal duty to perform some particular act or acts, performance of which court can order in definite terms and enforce if necessary.

Michigan:

Shelby Township Police and Fire Retirement Board v. Charter Township of Shelby, 475 N.W.2d 249, 256 (Mich. 1991). Mandamus is an extraordinary remedy and only appropriate where there is clear legal duty bearing upon the defendant and clear legal right by the plaintiff to discharge that duty.

Minnesota:

State v. Wilson, 632 N.W.2d 225, 227 (Minn. 2001). A writ of mandamus may issue only to enforce a clear present duty.

Mississippi:

Board of Education of Forrest County v. Sigler, 208 So.2d 890, 892 (Miss. 1968).

"Mandamus" is an extraordinary writ, and before it can be issued it must affirmatively appear that four essential elements are present: (1) a petition must be brought by officers or persons authorized to bring the suit; (2) there must appear a clear right in the petition

to relief sought; (3) there must exist a legal duty on part of defendant to do the thing which petitioner seeks to compel; and (4) there must be an absence of another remedy at law.

Montana:

Newman v. Wittmer, 917 P.2d 926, 932 (Mont. 1996). Writ of mandate is available when party requesting it is entitled to performance of clear legal duty by party against whom writ is sought; if there is clear legal duty, district court must grant writ if there is no plain, speedy, and adequate remedy available in ordinary course of law.

Nebraska:

Ways v. Shively, 646 N.W.2d 621, 626 (Neb. 2002). Mandamus is a law action and is an extraordinary remedy, not a writ of right, issued to compel performance of a purely ministerial act or duty, imposed by law upon an inferior tribunal, corporation, board, or person, where (1) the relator has a clear right to the relief sought, (2) there is a corresponding clear duty existing on the part of the respondent to perform the act, and (3) there is no other plain and adequate remedy available in the ordinary course of the law.

Nevada:

Mineral County v. State, Department of Conservation and Natural Resources, 20 P.3d 800, 805 (Nev. 2001). Writ of "mandamus" is available to compel performance of an act by inferior state tribunal, corporation, board, or person, but the action being compelled must be one already required by law.

New Hampshire:

Godfrey v. Godfrey, 281 A.2d 155, 156 (N.H. 1971). Mandamus is an extraordinary remedy which is granted only when there is clear and apparent right to relief requested and when no other adequate relief is available.

New Jersey:

Galleno v. Scott, 94 A.2d 312, 315 (N.J. 1953). Mandamus lies to remedy official inaction where the right to be enforced or the duty to be performed is certain and specific, and the writ does not issue to compel the doing of an idle act.

New Mexico:

State ex rel. Coll v. Johnson, 990 P.2d 1277, 1281 (N.M. 1999). A writ of mandamus is available only to one who has a clear legal right to the performance sought; it is available only in limited circumstances to achieve limited purposes.

New York:

Spring Realty Co. v. New York City Loft Board, 503 N.E.2d 1367, 1368 (N.Y. 1986). Mandamus is extraordinary remedy which lies only to compel performance of purely ministerial act, where there is clear right to relief sought.

North Carolina:

Sutton v. Figgati, 185 S.E.2d 97, 99 (N.C. 1971). "Writ of mandamus" is a personal action based upon allegation and proof that defendant has neglected or refused to perform a personal duty which plaintiff has a clear legal right to have him perform.

North Dakota:

Fargo Education Association v. Paulsen, 239 N.W.2d 842, 844 (N.D. 1976). Prerequisites to issuance of writ of mandamus are that petitioner must show that he has

no plain, speedy, and adequate remedy in ordinary course of law and that he has clear legal right to performance of particular act sought to be compelled by writ.

Ohio:

State ex rel. Savage v. Caltrider, 800 N.E.2d 358, 360 (Ohio 2003). In order to be entitled to extraordinary relief in mandamus, relator must establish clear legal right to relief sought, corresponding clear legal duty on part of respondent, and lack of adequate remedy in ordinary course of law.

Oklahoma:

Chandler (U.S.A.), Inc. v. Tyree, 87 P.3d 598, 604 (Okla. 2004). A typical case for mandamus has five elements: (1) the party seeking the writ has no plain and adequate remedy in the ordinary course of the law, (2) the party seeking the writ possesses a clear legal right to the relief sought, (3) the respondent (defendant) has a plain legal duty regarding the relief sought, (4) the respondent has refused to perform that duty, and (5) the respondent's duty does not involve the exercise of discretion.

Oregon:

U.S. v. Cohn, 272 P.2d 982, 984 (Or. 1954). Relator is not entitled to mandamus unless he has a clear legal right to performance of particular duty sought to be enforced and there is a plain legal duty on the part of the defendant to perform the act.

Pennsylvania:

Finnegan v. Pennsylvania Board of Probation and Parole, 838 A.2d 684, 687 (Pa. 2003). To justify mandamus relief, there must be (1) a clear legal right in the plaintiff,

(2) a corresponding duty in the governmental body, and (3) the absence of any other adequate and appropriate remedy.

Hamm v. Board of Education for School District of Philadelphia, 470 A.2d 189, 190 (Pa. Cmwlth. 1984). Purpose of mandamus is not to establish legal rights, but to enforce those rights already established beyond peradventure.

Rhode Island:

Providence Teachers Union Local 958, AFT/RIFT, AFL-CIO v. Providence School Board, 748 A.2d 270, 272 (R.I. 2000). Writ of mandamus should issue only when: party petitioning for such extraordinary remedy has shown clear legal right to obtain relief sought by the writ; respondents have ministerial legal duty to perform the requested act without discretion to refuse; and petitioner possesses no adequate remedy at law.

South Carolina:

City of Rock Hill v. Thompson, 563 S.E.2d 101, 102 (S.C. 2002). Mandamus is the highest judicial writ and is issued only when there is a specific right to be enforced, a positive duty to be performed, and no other specific remedy.

Porter v. Jedziniak, 512 S.E.2d 497, 497 (S.C. 1999). Primary purpose of a writ of mandamus is to enforce an established right and to enforce a corresponding imperative duty created or imposed by law.

South Dakota:

Black Hills Central Railroad Co. v. City of Hill City, 674 N.W.2d 31, 34 (S.D. 2003). Because mandamus is an extraordinary remedy, a writ will be issued only when the duty to act is clear.

Tennessee:

State v. Irick, 906 S.W.2d 440, 442 (Tenn. 1995). Mandamus is a summary remedy, extraordinary in its nature, and is to be applied only when a right has been clearly established, so that there remains only a positive ministerial duty to be performed, and it will not lie when the necessity or propriety of acting is a matter of discretion.

Texas:

In re Bass, 113 S.W.3d 735, 738 (Tex. 2003). Mandamus issues only to correct a clear abuse of discretion or the violation of a duty imposed by law when there is no other adequate remedy by law.

Utah:

Street v. Fourth Judicial District Court, Utah County, 191 P2d 153, 157 (Utah 1948). Generally, mandamus may issue to compel the performance of a purely ministerial act by an inferior court, board, tribunal or officer where the act sought to be coerced is one specially enjoined by law and both the duty to perform the act and the right of the applicant to have the act performed are clear.

Vermont:

Town of Victory v. State, 814 A.2d 369, 376 (Vt. 2002). To establish entitlement to mandamus relief: (1) the petitioner must have a clear and certain right to the action sought by the request for a writ. (2) the writ must be for the enforcement of ministerial duties, but not for review of the performance of official acts that involve the exercise of the official's judgment or discretion, and (3) there must be no other adequate remedy at law.

Virginia:

Ancient Art Tattoo Studio Ltd. V. City of Virginia Beach, 561 S.E.2d 690, 692 (Va. 2002). Writ of mandamus may be issued only when there is a clear right to the relief sought, a legal duty to perform the requested act, and no adequate remedy at law.

Washington:

Walker v. Munro, 879 P.2d 920, 924 (Wash. 1994). Court will not issue writ of mandamus in anticipation of supposed admission of duty or if duty does not exist at time writ is sought.

West Virginia:

State ex rel. Beirne v. Smith, 591 S.E.2d 329, 333 (W.Va. 2003). A writ of mandamus will not issue unless three elements coexist--(1) a clear legal right in the petitioner to the relief sought; (2) a legal duty on the part of respondent to do the thing which the petitioner seeks to compel; and (3) the absence of another adequate remedy.

Wisconsin:

Mount Horeb Community Alert v. Village Board of Mt. Horeb, 665 N.W.2d 229, 233 (Wis. 2003). Mandamus is an extraordinary writ issued in the discretion of the circuit court to compel compliance with a plain legal duty.

Wyoming:

In re Board of County Commissioners, 33 P.3d 107, 111 (Wyo. 2001). In order to warrant the issuance of mandamus, not only must there be a legal right in the relator, but owing to the extraordinary and drastic character of mandamus and the caution exercised

by courts in awarding it, it is also important that the right sought to be enforced be clear and certain, so as not to admit of any reasonable controversy.