

NO. 75310

FILED

MAR 12 2018

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY [Signature]  
DEPUTY CLERK

IN THE SUPREME COURT OF THE STATE OF NEVADA

Dominic Malone

Petitioner/Plaintiff,

v.

The Eighth Judicial District  
Court of the State Of Nevada, In and  
For the County of Clark

Respondent/Defendant.

District Court

Case No. 06-C-224572-2

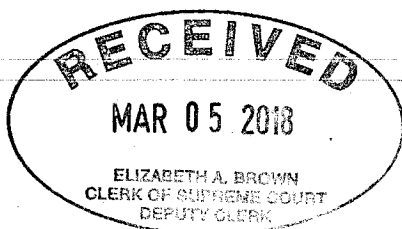
Dept. No. 17

Docket No. \_\_\_\_\_

PETITION FOR WRIT OF MANDAMUS

COMES NOW, Petitioner/Plaintiff, DOMONIC DOMENICO MALONE, pro per,  
and respectfully moves this Honorable Court to issue a Petition for Writ of Mandamus, being filed  
contemporaneously herewith, directing Judge Michael Villani/Betsy Allen to reverse and vacate  
his order, and/or actions in denying Petitioner/Plaintiff access to his entire  
Criminal case file.

This motion is made and based pursuant to the supporting Points and Authorities attached hereto,  
N.R.S. 34.150 through N.R.S. 34.310, N.R.A.P., Rule 21, as well as all papers, pleadings, and  
documents on file herein.



18-09483

POINTS AND AUTHORITIES

Statement of Facts

1) On June, 8 2017 Judge Michael Villani ordered and notified Betsy Allen to give Petitioner Malone, her ex-client, his criminal case file.

2) Betsy Allen failed to comply with the order so Petitioner Malone filed a Writ of Mandamus to make the lower court truly enforce the order and possibly impose sanctions or contempt.

3) On December 28, 2017 Malone's initial Writ of Mandamus was denied, without reaching the merits, for failure to follow N.B.A.P. 21(a)(4).

4) Petitioner Malone does not have adequate access to the legal law library which is why he was unaware of the necessary procedure.

5) Betsy Allen and the Special Public Defenders office have failed to follow the law and hand over the Petitioner's case file as of the day of this filing.

## II. LEGAL ARGUMENT

Petitions for Extraordinary Writs are addressed to the sound discretion of the Supreme Court of Nevada and may issue when there is no plain, speedy, and adequate remedy at law. See, State v. Second Judicial District Court ex. rel. County of Washoe, 11 P.3d 1209, \_\_\_ Nev. \_\_\_ (2000).

A writ of mandamus is issued to compel performance of an act which the law especially enjoins as a duty resulting from an office, trust or station. See, Lewis v. Stewart, 619 P.2d 1212, 96 Nev. 846 (1980).

A writ of mandamus may issue to control arbitrary or capricious exercise of discretion. See, Barnes v. Eighth Judicial District Court of the State of Nevada, in and for Clark County, 748 P.2d 483, 103 Nev. 679 (1987).

This Court has also held that the action being sought to be compelled must be one already required by law. See, Mineral County v. State, Department of conservation and Natural Resources, 20 P.3d 800, \_\_\_ Nev. \_\_\_ (2001).

Mandamus is the appropriate vehicle for challenging contested orders entered by the District Court. See, Angell v. Eighth Judicial District court in and for the county of Clark, 839 P.2d 1329, 108 Nev. 923 (1992).

It has also been held that a writ of mandamus is proper when the petitioner raises urgent and important issue[s] of law requiring clarification by the Supreme Court. See, Falcke v. Douglas County, 3 P.3d 661, \_\_\_ Nev. \_\_\_ (2000).

LEGAL ARGUMENT

On June 8, 2017 Judge Michael Villani ordered the Petitioner's previous counsel Betsy Allen and the Special Public Defenders Office to send the criminal case file in its entirety, to the Petitioner. (See Exhibit 1.) Although it was ordered Petitioner has yet to receive the file.

Pursuant to NRS 7.055, upon dismissal or withdrawal counsel must surrender the clients entire case file. When Betsy Allen failed to follow the order Malone, after other attempts of correspondence, filed a Petition For Writ of Mandamus on September 26, 2017. On December 28, 2017 the court without reaching the merits, procedurally denied the petition pursuant to NRAP 21(c)(4), specifically lack of supporting documentation. The reason Petitioner failed to comply with the proper procedure rules is because he does not have adequate access to the legal library and the institutional law library itself is inadequate. Petitioner currently has an institutional grievance regarding this issue. (See Exhibit 2)

Exhibit 1 expressly shows the court ordered Betsy Allen to give Malone a copy of the case file and that she was personally notified of it. There is no excuse why Malone's rights should be violated due to Betsy Allen's disregard of the law. Malone cannot properly file all his post-conviction material without his lawfully due access to his case file.

Only an Order from this court with the lawful

MEMORANDUM OF POINTS AND AUTHORITIES

threat of contempt and sanctions upon Betsy Allen  
can make her do her duty and all of the afore mentioned  
is a just and fair demonstration of the fact that  
extraordinary relief from this court is warranted to  
correct the situation.

Respectfully Submitted this 23rd day of 18  
February 2018

*Dominic R. Malone*

DOMINIC R. MALONE #69418

**CONCLUSION**

WHEREFORE, all of the above stated reasons, Petitioner/Plaintiff respectfully requests this Honorable Court to Order Judge Michael Villani and Betsy Allen to hand over and deliver Petitioner's entire case file within a reasonable amount of time as required by N.R.S. 34.830.

DATED this 23rd day of February, 2018.

Respectfully submitted,

Donovan K. Mel

Petitioner/Plaintiff

**CERTIFICATE OF SERVICE**

I hereby certify pursuant to N.R.C.P. 5(b) that I am the Petitioner/Plaintiff in the foregoing Petition for Writ of Mandamus, and that on this 23rd day of February, 2018, I did serve a true and correct copy of the above mentioned document, by giving it to a prison official at the Ely State Prison to deposit in the U.S. Mail, sealed in an envelope, postage pre-paid, and addressed as follows:

Supreme Court of Nevada  
Office of the Clerk  
201 S. Carson Street,  
Suite 201  
Carson City, NV 89701

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DATED this 23rd day of February, 2018.

Donovan K. Mel

Petitioner/Plaintiff

**AFFIRMATION**  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding \_\_\_\_\_

Petition For Writ of Mandamus  
(Title of Document)

filed in District Court Case No. \_\_\_\_\_

☒ Does not contain the social security number of any person.

-OR-

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

\_\_\_\_\_  
(State specific law)

-OR-

B. For the administration of a public program or  
for an application for a federal or state grant.

Domonic R. McL  
(Signature)

2/23/2018  
(Date)

**DISTRICT COURT  
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****June 08, 2017**

06C224572-2

The State of Nevada vs Domonic R Malone

**June 08, 2017****8:30 AM****Defendant's Pro Per Motion for Order to Show  
Cause****HEARD BY:** Villani, Michael**COURTROOM:** RJC Courtroom 11A**COURT CLERK:** Olivia Black**RECORDER:** Cynthia Georgilas**PARTIES****PRESENT:**LoGrippo, Frank R.  
State of NevadaAttorney for State  
Plaintiff**JOURNAL ENTRIES**

- Defendant not present. Court noted this motion was directed to the Special Public Defender's Office and Betsy Allen. Court further noted Defendant requested a copy of his file. COURT ORDERED, Special Public Defender and Betsy Allen to send a copy of the file to Defendant in Indian Springs; if not already sent. COURT FURTHER ORDERED, Status Check SET; Ms. Allen to place in a pleading format that the file had been sent. Court stated it would not entertain the Motion to Show Cause and ORDERED, motion DENIED.

06/29/17 8:30 AM STATUS CHECK: DEFENDANT'S FILE

CLERK'S NOTE: The above minute order has been placed in the attorney folder of the Special Public Defender's, Betsy Allen, Esq. and distributed to

DOMONIC MALONE # 69418

P O BOX 650

INDIAN SPRING, NV 89070 //ob/06/08/17.



7A28

ORIGINAL

8th Reg.

## INMATE REQUEST FORM

1.) INMATE NAME	DOC #	2.) HOUSING UNIT	3.) DATE
DOMONIC R. MALONE	69418	8-A-34	1-13-18

4.) REQUEST FORM TO: (CHECK BOX)

☐ CASEWORKER☐ MEDICAL☐ EDUCATION☐ LAUNDRY☐ VISITING☐ PROPERTY ROOM☐ MENTAL HEALTH☒ LAW LIBRARY☐ SHIFT COMMAND☐ OTHER☐ CANTEEN☐ DENTAL

RECEIVED  
JAN 16 2018  
HIGH DESERT STATE PRISON  
LAW LIBRARY

5.) NAME OF INDIVIDUAL TO CONTACT:

Attn: Mr. Ghraoui LLC;

6.) REQUEST: (PRINT BELOW)

I have open cases that are active Case no. NW Sup. Ct. 73000;  
850C 06-C-224572-2 each dealing with my actual innocence. However, this is my 8th time  
seeking to be placed on the legal library list. This is my final request please put me on  
the law library list for both available days

Thank you &amp; God Bless

7.) INMATE SIGNATURE

Domenic R. Malone

DOC #

69418

8.) RECEIVING STAFF SIGNATURE

DATE

9.) RESPONSE TO INMATE

APPOINTMENT

Scheduled

FEB 01 AM

Appointment

10.) RESPONDING STAFF SIGNATURE

DATE

Log Number \_\_\_\_\_

NEVADA DEPARTMENT OF CORRECTIONS  
INFORMAL GRIEVANCE

NAME: DONONIC RONALDO ALONSO

I.D. NUMBER: 69418

INSTITUTION: HIGH DESERT PRISON

UNIT: 8-A

GRIEVANT'S STATEMENT: This grievance is due to current litigation that involves my liberty, therefore, if correct legal access is not afforded, then this failure can and will result in me being denied my appeal for lack of sufficient showing of claims for relief. • Access to electronic filing • Access to more accurate legal case law and information • Having better qualified free staff assistance, to aid in the legal research of case filings. • Have a first comes, first bases law library

SWORN DECLARATION UNDER PENALTY OF PERJURY

INMATE SIGNATURE: D. Alonso P. Malone

DATE: 1/23/18 TIME: 8:AM

GRIEVANCE COORDINATOR SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_ TIME: \_\_\_\_\_

GRIEVANCE RESPONSE: \_\_\_\_\_

CASEWORKER SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_

☐ GRIEVANCE UPHELD ☐ GRIEVANCE DENIED ☐ ISSUE NOT GRIEVABLE PER AR 740

GRIEVANCE COORDINATOR APPROVAL: \_\_\_\_\_

DATE: \_\_\_\_\_

☐ INMATE AGREES

☐ INMATE DISAGREES 202

INMATE SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_

FAILURE TO SIGN CONSTITUTES ABANDONMENT OF THE CLAIM. A FIRST-LEVEL GRIEVANCE MAY BE PURSUED IN THE EVENT THE INMATE DISAGREES.

Original: To inmate when complete, or attached to formal grievance  
Canary: To Grievance Coordinator  
Pink: Inmate's receipt when formal grievance filed  
Gold: Inmate's initial receipt

NEVADA DEPARTMENT OF CORRECTIONS  
GRIEVANT'S STATEMENT CONTINUATION FORM

NAME: DOMONIC RONALD MALONE I.D. NUMBER: 69418

INSTITUTION: HIGH DESERT STATE PRISON UNIT #: 8A

GRIEVANCE #: INFORMAL GRIEVANCE LEVEL: INFORMAL

GRIEVANT'S STATEMENT CONTINUATION: PG. 2 OF 2

access, this is due to level one having workers and school students that can not  
attend on certain days. Have access to administration forms (i.e. administration  
claim forms) and all form pertaining to institutional use.

Domonic R. Malone

Original: Attached to Grievance  
Pink: Inmate's Copy