

Clayton Douglas Kirn
50 Crossroads Drive
Shelby, MT 59474

FILED

06/06/2025

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: OP 25-0404

OP25-0404

IN THE SUPREME COURT OF THE STATE OF MONTANA

CLAYTON DOUGLAS KIRN,
Petitioner,

vs.

STATE OF MONTANA,
Respondent.

CAUSE NO. DA-21-0381

WRIT OF MANDAMUS

FILED

JUN 06 2025

Bowen Greenwood
Clerk of Supreme Court
State of Montana

COMES NOW, the Petitioner, Clayton D. Kirn, by and through himself, pro se, and files with this Court this Writ of Mandamus.

BACKGROUND

On, or about the 23rd of April, 2025. The Petitioner filed a Motion for Substitution of District Court Judge (see Att. "1"), and a Rule 60(b) motion.(see Att. "2"). On the 17th day of April, 2025, both pieces of mail were mailed to said Court Clerk.(see Att. "3"). On the 17th day of May, 2025 the Petitioner contacted said Court Clerk, and was informed by said Court Clerk that no filings had been received.

STANDARD OF REVIEW

"We review district court decisions on the issuance of a writ of mandamus for correctness." Boehm v. Park Cty., 2018 Mt. 165,

7, 392 Mont. 72, 421 P.3d 789; Belgrade Educ. Ass'n v. Belgrade Sch. Dist. No. 44, 2004 Mt. 318, 6, 324 Mont. 50, 102 P.3d 517.

DISCUSSION

A court may issue a writ of mandamus to compel performance of an official duty where there is no "plain, speedy, and adequate remedy in the ordinary course of law." Section 27-26-102, MCA. Mandamus is appropriate only when the public official involved is under a "clear legal duty" to act. O'Brien v. Krantz, 2018 Mt. 191, 8, 423 P.3d 572, 392 Mont. 265 (Internal quotation omitted). In other words, the official act sought to be compelled cannot be a "discretionary function." Jeppeson v. Dept. of State [***1193]. Lands, 205 Mont. 282, 288, 667 P.2d 428, 431 [*370] (1993) (citation omitted).

Pursuant to § 3-5-501(1)(a), MCA, "[t]he clerk of the district court, in addition to keeping the records and performing the duties prescribed elsewhere shall...take charge of and safely keep or dispose of according to law all books, papers, and records that are filed or deposited in the clerk's office." Under Montana law, a clerk of court must file matters (*emphasis added*) as well as dispose of them. A judge only reviews matters once they have been filed with the clerk.


In this matter the Petitioner filed proper documents with the court clerk, and the court clerk chose to neither return said filings stating that said filings were in error, or to file said filings with the proper judicial body. Thus, violating the court clerk's clear and mandatory duty to file said filings.

Furthermore, no "fast, speedy, nor adequate relief exists for the Petitioner. Since if said Court Clerk fails to perform said duty, no record to appeal shall exist.

CLOSING

In closing, the Petitioner MOVES this Court to compel the Second Judicial District Court to accept the Petitioner's filings, or provide a reason why said filings have not been accepted.

DATED this 18th day of May, 2025.

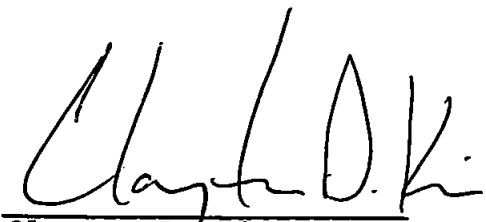

Clayton D. Kirn

CERTIFICATE OF SERVICE

I, Clayton D. Kirn, hereby swear that a true and correct copt of this Writ of Mandamus was served by U.S. Mail on the following:

Tom Powers
Clerk of District Court
Butte-Silver Bow Courthouse
155 West Granite Street
Butte, MT 59701

DATED this 18th day of May, 2025.


Clayton D. Kirn