

DECLARATORY JUDGMENTS/WRITS OF MANDAMUS

To: Economic Affairs Interim Committee
From: Bart Campbell, Staff Attorney
Re: Declaratory Judgments/Writs of Mandamus

I. Original Jurisdiction of State Supreme Court over actions for declaratory judgments.

A. Article VII, Section 2, Mont. Const.

"It (the Supreme Court) has original jurisdiction to issue, hear, and determine writs of habeas corpus and such other writs as may be provided by law."

The Supreme Court under Article VII, sec. 2, has the authority to hear actions for declaratory judgments and writs, which would include writs of mandamus. The court usually will not exercise original jurisdiction to hear a matter unless it finds that: 1. constitutional issues of statewide importance are involved; 2. the case involves purely legal questions of statutory or constitutional construction; and 3. urgency factors exist making the normal appeal process inadequate.

Many of the cases brought under this section are declaratory judgment actions brought by a citizen against a government agency, the governor, or the legislature asking the court to rule that an action taken by the governmental agency is illegal or unconstitutional.

In the present instance, there is a good possibility that the Supreme Court would not exercise original jurisdiction as the elements of the three-part test set out above may not be present.

II. District Court jurisdiction over actions for declaratory judgment and writs of mandamus.

A. Writs of Mandamus

3-5-302(5) "The district court and its judges have power to issue, hear, and determine writs of mandamus, quo warranto, certiorari, prohibition, and injunction, other original remedial writs..."

27-26-102 "(1) A writ of mandamus may be issued by the supreme court or the district court or any judge of the district court to any lower tribunal, corporation, board, or person to compel the performance of an act that the law specially enjoins as a duty resulting from an office, trust, or station or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled and from which the party is unlawfully precluded by the lower tribunal, corporation, board, or person.

(2) The writ must be issued in all cases in which there is not a plain, speedy, and adequate remedy in the ordinary course of law."

Rule 57. Declaratory judgments. "The procedure for obtaining a declaratory judgment pursuant to Title 27, chapter 8, Montana Code Annotated, shall be in accordance with these rules, and the right to trial by jury may be demanded under the circumstances and in the manner provided in Rules 38 and 39, subject to the provisions of section 27-8-302, Montana Code Annotated. The existence of another adequate remedy does not preclude a judgment for

declaratory relief in cases where it is appropriate. The court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar."

III. Conclusion

An action may be commenced by a citizen or an agency of government against another agency of the government seeking declaratory relief on whether the action or inaction of the other governmental agency is illegal or unconstitutional. If an official or agency is not performing a legally required task, a writ of mandamus may be obtained to order that person or agency to perform the task.