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The Journal of The DuPage County Bar Association

Mandamus Actions in Illinois

By Sharmila Roy

Introduction:

Most new (or newish) lawyers probably think of writs of mandamus as belonging to some mist shrouded archaic time and would be very surprised indeed to know that both Illinois and federal law provide for the writ.1 In Illinois, one may petition the circuit courts for a writ of mandamus "to command a public official to perform some ministerial nondiscretionary duty in which the party seeking such relief has established a clear right to have it performed and a corresponding duty on the part of the official to act."2 The authority of the respondent to comply with the writ must also be clear.3 Finally, the petitioner must show that a demand was made on the official concerned but that he refused to comply.4 This is to make sure that the officer in question has the option of performance before the court exacts compliance.5

The writ of mandamus has been utilized in widely varying circumstances. For example, the writ has been used to direct city and state boards of education to comply with state law regarding allocation of state funds6, to ensure that public aid officials comply with their nondiscretionary duty to make assistance payments7, and to require that elections be held to fill the vacancy in the office of the alderman for the 44th Ward of the City of Chicago.8 It has also been used to order the reinstatement of a probationary employee discharged in violation of state law9, to require members of the Civil Service Commission to promulgate rules for competitive civil service examinations10, and interestingly, to direct the Governor to convene the Senate so that a President of the Senate could be elected by a proper quorum.11

This essay is a bare-bones attempt to describe the basic requirements for the writ of mandamus and to point out some of the inconsistencies and problems in the case law.

Requirements for the writ:

As mentioned above, the mandamus petitioner must show a clear right and a clear, nondiscretionary duty on the part of the respondent. Even though these elements are treated as independent, a little reflection will suffice to show that when the duty is nondiscretionary, it is easy to demonstrate its clarity, and when the duty is clear, so is the right of the person to whom the duty is owed. Thus, all the elements of the writ somehow seem to coalesce into one: is there a clear right?.

A few examples may be illustrative. In a case where the plaintiffs sought the writ to require the clerk to certify their names for placement on the ballot for a municipal election, the court held that the clerk did not have any clear duty to certify the names because the nominating papers did not contain the statements of candidacy required by the Election Code.12 In other words, there was no clear right to have a noncomplying petition accepted. Similarly, where plaintiffs requested a writ of mandamus ordering the Village of Antioch to enforce its nuisance ordinance to force railroads to stop sounding their train horns, the court held that the duty to enforce ordinances was subject to the prosecutor's discretion and therefore the plaintiffs were not entitled to the writ.13 In other words, the right to have ordinances enforced was not clear because the matter was discretionary. And, in a situation where prison inmates sought mandamus to order the Director of the Department of Corrections to consider them for good conduct credits, the court found no clear right (and concomitantly, no clear duty) because the award of good conduct credits was discretionary.14

Several Illinois courts have stated that to sustain a mandamus action, the duty breached must be ministerial.15 Yet there exist cases holding that writs of mandamus can issue where discretion has been abused. For example, in a case where the plaintiff challenged the award of a public contract, which is clearly subject to discretion, the Illinois Supreme Court held that mandamus is proper where the plaintiff alleges fraud, unfair dealing or other similarly arbitrary conduct, because the purpose of the public contracting statutes is to guard against exactly those evils.16 In a similar vein, the Third District held that mandamus would issue to compel the City to give the plaintiff a site approval and a building permit, even though awarding of such permits is generally a matter of discretion, as long as the plaintiff made a showing that the discretionary power was being exercised with manifest injustice or that there was a palpable abuse of discretion.17 Given these and other similar cases, it is difficult to predict exactly when the courts will agree to issue writs of mandamus when the duty breached is in fact not ministerial.

One of the interesting aspects of the Illinois mandamus statutes is that unlike in the case of their federal counterpart, the petitioner is not required to show that "no other adequate means [exist] to attain the relief"18 sought. But while that aspect is advantageous for the petitioner, a vexing question exists as to whether the clear right that has to be shown should be lawfully vested at the outset or whether it can be determined via the mandamus proceeding. Once again, Illinois case law is not entirely consistent in its approach to that question. For example, in a case where the petitioner orally tendered his resignation as alderman but then unsuccessfully sought to withdraw it, the Second District held that a where a factual question existed as to his intent when he offered the resignation, mandamus was an improper remedy.19 But in another situation where plaintiffs requested mandamus to direct a public body to pay for accumulated vacation pay and overtime when the plaintiffs left their jobs, the First District undertook an extensive finding of fact before concluding that there existed no clear policy on the part of the public body to pay its employees for the total number of accumulated work hours and thus no clear right to receive such payments.20 Once again, the petitioner is left with no direction as to his rights under the Illinois law regarding writs of mandamus.

Perhaps the most unclear issue in the context of mandamus petitions is whether they may be used to compel public officials to uphold the petitioner's constitutional rights. Common sense seems to suggest that most duties involving constitutional rights of the public involve some discretion, and thus should not be the subject of mandamus. Yet Illinois courts have had no hesitation in using mandamus when constitutional rights are at stake.21 Perhaps one could say that

there exists no discretion to violate clearly established constitutional rights. In the context of qualified immunities, however, an action that violates clearly established rights can be ministerial or discretionary. The United States Supreme Court has defined ministerial duties as those where statutes or regulations "specify the precise action that the official must take in each instance."22 Any action that is not taken pursuant to specific orders or spelt out in minute detail is generally considered discretionary.23 If one imports that definition into the area of mandamus petitions, such petitions may be severely restricted, as most duties involving constitutional rights will involve some amount of discretion.

Conclusion:

Illinois case law leaves many questions unanswered regarding petitions for mandamus. But even though the contours of the writ are not entirely clear, we do know that it is a recognized vehicle to ensure that public officials abide by their duties.

1 See 735 ILCS 5/14-101 et seq. (1998) (entitled "Mandamus"); 28 U.S.C.A. § 1361 (West 1993) ("[t]he district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff").

2McClaughry v. Village of Antioch, 296 Ill. App. 3d 636, 695 N.E.2d 492, 498 (2nd Dist. 1998) (emphasis in original) (internal quotations omitted).

3 People v. Latona, 184 Ill. 2d 260, 703 N.E.2d 901, 909-10 (1998).

4 Waterfront Estates Development, Inc.v. The City of Palos Hills, 232 Ill. App. 367, 597 N.E.2d 641, 650 (1st Dist. 1992) (citing People ex rel. Endicott v. Huddleston, 34 Ill. App. 3d 799, 340 N.E.2d 662, 665 (5th Dist. 1975). Where the right involved is a public rather than a private right, however, no demand is necessary. People ex rel. Meyer v. Kerner, 35 Ill. 2d 33, 219 N.E.2d 617, 619 (1966).

5 O'Connell Home Builders v. City of Chicago, 99 Ill. App. 3d 1054, 425 N.E.2d 1339, 1342 (1st Dist. 1981) (holding that the demand requirement was satisfied where the plaintiff met with the Deputy Commissioner and was told that the building permit would not issue).

6 Noyola v. Bd. of Educ., 179 Ill. 2d 121, 688 N.E.2d 81 (1997).

7 Carroll v. Miller, 116 Ill. App. 3d 311, 451 N.E.2d 1034 (5th Dist. 1983).

8 Weisberg v. Byrne, 92 Ill. App. 3d 780, 416 N.E.2d 298 (1st Dist. 1981).

9 Farmer v. McClure, 172 Ill. App. 3d 246, 526 N.E.2d 486 (1st Dist. 1988).

10 People ex rel. Mathes v. Foster, 67 Ill. 2d 496, 367 N.E.2d 1320 (1977).

11 Rock v. Thompson, 85 Ill. 2d 410, 426 N.E.2d 891 (1981).

12 North v. Hinkle, 295 Ill. App. 3d 84, 692 N.E.2d 352, 354 (2nd Dist. 1998).

13 McClaughry, 695 N.E.2d at 499.

14 Brewer v. Peters, 262 Ill. App. 3d 610, 633 N.E.2d 17, 19 (5th Dist. 1994).

15 See, e.g., Daley v. Hett, 113 Ill. 2d 75, 495 N.E.2d 513, 515-16 (1986) (no ministerial act alleged where the trial judge accepted waivers of the right to be sentenced by a jury from defendants subject to the death penalty); Crump v. Illinois Prisoner Review Bd., 181 Ill. App. 3d 58, 536 N.E.2d 875, 877 (1st Dist. 1989) (holding that the decision to deny parole is discretionary and thus not a proper subject for mandamus); Rochon v. Rodriguez, 293 Ill. App. 3d 952, 689 N.E.2d 288, 291 (1st Dist. 1997) (probationary police officers who were discharged did not allege a ministerial duty);

16 Court St. Steak House v. County of Tazewell, 163 Ill. 2d 159, 643 N.E.2d 781, 785 (1994).

17 Kermeen v. City of Peoria, 65 Ill. App. 3d 969, 382 N.E.2d 1374, 1376 (3rd Dist. 1978).

18 Allied Chemical Corp. v. Daiflon, Inc., 449 U.S. 33, 35 (1980) (per curiam); Holmes v. United States Bd. of Parole, 541 F.2d 1243, 1249 (7th Cir. 1976).

In Illinois, the rule was the same as the federal rule before July 1, 1874, but after that date, Illinois statutes have ensured that mandamus can be granted without any analysis as to other remedies. People ex rel. Waber v. Wells, 255 Ill. 450, 99 N.E. 606, 607-08 (1912); 735 ILCS 5/14-108 (1998).

19 City of Highwood v. Obenberger, 605 N.E.2d 1079, 1086 (2nd Dist. 1992).

20 Machinis v. Bd. of Election Comm'rs, 164 Ill. App.3d 763, 518 N.E.2d 270, 274 (1st Dist. 1987). See also Doe v. Carlson, 250 Ill. App. 3d 570, 619 N.E.2d 906, 908-09 (2nd Dist. 1993) (holding that because the petitioner did not have a court order to allow him to view certain closed files, no mandamus could issue). In Noyola, the Illinois Supreme Court directed that mandamus issue against the city and state boards of education because they had no right to sanction expenditures contrary to statute. 688 N.E.2d at 85. Justice Bilandic dissented on the ground that mandamus was not a proper vehicle to enforce rights that were not already established. Noyola, 688 N.E.2d at 89-90 (Bilandic, J., dissenting).

21 See, e.g., Overend v. Guard, 98 Ill. App.3d 441, 424 N.E.2d 731, 733 (4th Cir. 1981) (holding that mandamus was the appropriate means to compel public officials to comply with statutory or constitutional duties); Crump, 536 N.E.2d at 878 ("in certain cases, allegations of constitutional violations. . .can state a cause of action for mandamus relief"); Clayton-El v. Lane, 203 Ill. App. 3d 895, 561 N.E.2d 183 (5th Dist. 1990) (analyzing the prisoner's constitutional claims in the context of a mandamus petition and finding no deprivation of due process).

22 Davis v. Scherer, 468 U.S. 183, 196 n. 14 (1984).

23 Tamez v. City of San Marcos, 118 F.3d 1085, 1092 (5th Cir. 1997). See also Berkovitz v. United States, 486 U.S. 531, 536 (1988) ("conduct cannot be discretionary unless it involves an element of judgment or choice"). The decision of the United States Supreme Court in Harlow v. Fitzgerald, 457 U.S. 800 (1982) clearly contemplates discretionary functions that violate clearly established constitutional or statutory rights. Id. at 818. Qualified immunity is not afforded to the official actor in those situations or in cases involving ministerial actions. Sellers v. Baer, 28 F.3d 895, 902 (8th Cir. 1994).

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