

FILED  
June 2, 2010UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUITElisabeth A. Shumaker  
Clerk of Court

In re: WAYNE BRUNSILIUS

Petitioner.

No. 10-1210  
(D.C. No. 1:10-CV-00739-BNB)  
(D. Colo.)

## ORDER

Before **LUCERO, HARTZ**, and **HOLMES**, Circuit Judges.

Wayne Brunsilius has filed a petition for a writ of mandamus. Upon consideration, we deny the petition.

In district court, Mr. Brunsilius filed a pleading titled “Complaint and Petition for Removal of Case Pursuant to Title 28 U.S.C. § 1441(a),(b),(c), (e1) to Federal Jurisdiction.” After reviewing the complaint, the district court determined that Mr. Brunsilius’s claims were properly asserted pursuant to 28 U.S.C. § 2254 because he was challenging his state court conviction. The district court therefore ordered Mr. Brunsilius to correct several deficiencies with his complaint in order to properly file it as a § 2254 petition. Mr. Brunsilius then moved to recuse the magistrate judge that had been assigned to his case and for an extension of time to cure the deficiencies in his filing.

Less than two weeks after he filed the motion to recuse, Mr. Brunsilius filed the instant mandamus petition in this court seeking an order compelling the district court to rule on his motion to recuse the magistrate judge assigned to his case and to set a hearing on his complaint. On May 17, 2010, the district denied his recusal motion. Accordingly, his request for relief with respect to that motion is moot. As for his second request seeking an order to compel the district court to hold a hearing on his complaint, Mr. Brunsilius has failed to demonstrate that he is entitled to the extraordinary remedy of a writ of mandamus. *See In re Cooper Tire & Rubber Co.*, 568 F.3d 1180, 1186-87 (10th Cir. 2009) (describing standard for writ of mandamus and noting petitioner must show “that his right to the writ is clear and indisputable.” (quotation omitted)).

The petition for a writ of mandamus and the motion to proceed in forma pauperis are DENIED.

Entered for the Court,



ELISABETH A. SHUMAKER, Clerk

**UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT  
OFFICE OF THE CLERK**

Byron White United States Courthouse  
1823 Stout Street  
Denver, Colorado 80257  
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Elisabeth A. Shumaker  
Clerk of Court

June 2, 2010

Douglas E. Cressler  
Chief Deputy Clerk

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KCCC-Burlington  
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Wayne Brunsilius  
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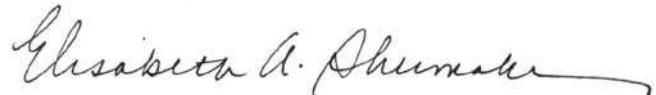
**RE: 10-1210, In re: Wayne Brunsilius**  
Dist/Ag docket: 1:10-CV-00739-BNB

Dear Appellant:

Enclosed please find an order issued today by the court.

Please contact this office if you have questions.

Sincerely,



Elisabeth A. Shumaker  
Clerk of the Court

EAS/sls