

EXTRAORDINARY WRITS: **WRITS OF MANDAMUS AND WRITS OF PROHIBITION**

Extraordinary writs provide an essential alternative to the typical appeal process. Extraordinary writs allow a court to review an issue that could not adequately be addressed through the typical appeals process. There are a variety of circumstances where extraordinary writs are important to battered women due to the urgency and safety concerns of many proceedings involving battered women. The urgency of these issues combined with a legal system that does not always respond appropriately to the needs of battered women, make extraordinary writs a valuable resource. This technical assistance packet explains circumstances when extraordinary writs may be used to get around the lengthy appeals process when that process will not provide an adequate remedy, explains the process for obtaining writs of prohibition or writs of mandamus, and includes the statutes, rules and forms important to petitioning for one of these writs.

Attached: MN §§ 563.01, 586.01-.12; Minn. Rules of Civ. App. Procedure Rules 120, 121; Forms and detailed procedures for petitioning for writs of mandamus, writs of prohibition, and petitioning for emergency (oral) writs of mandamus/prohibition.

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Extraordinary Writs: Writ of Mandamus and Writ of Prohibition

I.) What Are Extraordinary Writs?

Extraordinary writs fall outside the normal appeal process. For a typical appeal, there must be a final judgment in the case, or appeal may be allowed for certain pre-judgment court orders. (Minn. R. Civ. App. P. 103.03). Extraordinary writs allow for a higher court to review a judge's decision or ruling before a final order or judgment has been issued and when the typical appeals process cannot adequately address the problem. Generally extraordinary writs will most likely be issued against a lower court, but case law and statute also allow writs to be used against other bodies that are either compelled by law to fulfill some duty or to prevent them from exceeding their authority.¹

There are four circumstances where either a writ of mandamus or writ of prohibition may be obtained. These include:

- 1.) "when no adequate remedy at law exists or in other words, the issue cannot be reviewed meaningfully on appeal from a final order or judgment[;]"
- 2.) "when the court is about to exceed its jurisdiction resulting in irreparable harm[;]"
- 3.) "when the trial court's action may effectively decide the case[;]" or,
- 4.) "when review of the trial court decision will settle or establish a new rule of practice affecting other litigants."²

Generally, the primary purpose of extraordinary writs is "to allow review by the appellate courts when an ordinary appeal would be meaningless."³ However, unlike your right to appeal, there is no *right* to an extraordinary writ because it is discretionary. In other words, the reviewing court has discretion in whether to consider the extraordinary writ while, in contrast, it *must* consider a proper appeal.

A further restriction for writs of prohibition or mandamus is that the reviewing court **CANNOT** control judicial discretion, it can only force the lower court to perform its duties, exercise its judgment, perform its judicial functions, follow the clear statement of the law, or prevent the lower court from exceeding its authority or jurisdiction. (Minn. Stat. sec 586.01).

II.) Where do Writs Arise for Battered Women?

¹ See Minn. Stat. sec. 586.01 (1996)(enclosed in this packet); *Coyle v. City of Delano*, 526 N.W.2d 205 (Minn. App. 1995)(compelling the Animal Humane Society to follow its statutory duty to disclose to the public the records of animals seized); *Brandhorst v. Special School Dist. No. 1*, 466 N.W.2d 409 (Minn. App. 1991)(stating that mandamus procedure may be appropriate remedy to compel a required school district procedure.).

² David F. Herr and Mary R. Vasaly, *Appellate Practice In Minnesota: A Decade of Experience with the Court of Appeals*, 19 Wm. Mitchell L. Rev. 613, 628 (1993).

³ *Id.*

There are limitless possibilities where extraordinary writs may apply to battered women's situations, ranging from the OFP context to divorce/custody proceedings. The individual situation must be closely examined to determine if seeking a writ of mandamus or prohibition would be appropriate. The appropriate situation to file for an extraordinary writ is when the normal appeal process would not address the problem adequately.

Some examples of how extraordinary writs may be used by battered women include:

- in divorce/custody proceedings, when a family court judge inappropriately orders a family into mediation when domestic abuse is present, a battered woman could seek a writ of prohibition to prevent the family court judge from making the inappropriate order to mediation;
- in OFP or harassment restraining order proceedings, when the court or court administrator inappropriately orders the petitioner to pay filing fees or fees for service of process, the battered woman could seek a writ of prohibition preventing the court from requiring her to pay these fees because they are contrary to what the law clearly states or she may seek a writ of mandamus compelling the court to follow the law which clearly states that petitioners are exempt from these fees. (*See* Minn. Stat. sec. 518B.01 subd. 3a).

III.) What is the Difference Between a Writ of Mandamus and a Writ of Prohibition?

The basic distinction between writs of mandamus and writs of prohibition is that the writ of mandamus *compels* a judicial body to perform “a duty which the law clearly and positively requires,”⁴ while the writ of prohibition *prevents* a judicial body from exercising its power in a manner unauthorized by law.⁵

A.) Writs of Mandamus

The writ of mandamus commands a lower court to do something that it has neglected to do, which is clearly a duty required of them. To obtain a writ of mandamus a petitioner must show:

- (1) the inferior tribunal's failure to fulfill an official duty clearly imposed by law;
- (2) a public wrong specifically injurious to petitioner; and
- (3) there is no other specific legal remedy.⁶

For example, a writ of mandamus could be issued to compel a lower court to waive the filing fees for an OFP petitioner when the court refuses to proceed unless the petitioner pays a filing fee. Minn. Stat. sec. 518B.01 subd. 3a (1996) clearly states that filing fees for OFPs are waived for all petitioners, therefore it is the duty of the judicial body handling the OFP to waive the filing fee. Failure to waive the fee could give rise to a petitioner filing a writ of mandamus to compel the lower court to follow its duty clearly stated in the law. A writ of mandamus may be an appropriate remedy because there is no other specific legal remedy for a petitioner who is prevented from obtaining an OFP because she cannot afford the filing fee.

There are two types of writs of mandamus: peremptory and alternative writs of mandamus.

⁴ Day v. Wright County, 391 N.W.2d 32 (Minn. App. 1986).

⁵ State v. Turner, 550 N.W.2d 622, 625 (Minn. 1996).

⁶ Coyle v. City of Delano, 526 N.W.2d 205, 207 (Minn. App. 1995).

- 1.) **Peremptory writs of mandamus** may be issued “[w]hen the right to require the performance of the act is clear, and it is apparent that no valid excuse for nonperformance can be given.” (Minn. Stat. sec. 586.04 (1996)).
- 2.) **Alternative writs of mandamus** allow for the defendant to answer the petition for the writ of mandamus to show cause why they should not be compelled to comply with the writ.⁷

The basic distinction between the two is that with a peremptory writ, there is no valid excuse for nonperformance of the act clearly required by law, while for an alternative writ of mandamus the law may be unclear and there may be some valid excuse for not complying.

- *The important difference is mainly procedural because if the reviewing court decides the writ is an alternative writ of mandamus, then the body being compelled to comply with the writ may have an opportunity to answer and show cause why it should not have to comply with the writ. If the reviewing court finds that the writ is peremptory, then it will not allow the opposing party to answer and will issue the writ of mandamus because the law so clearly states the duty required by the opposing party.*

B.) Writs of Prohibition

A writ of prohibition is appropriate in the context where a court is ordering something that falls outside the scope of its jurisdiction or authority. There are three requirements for a writ of prohibition to be granted:

- 1.) an inferior court or tribunal must be about to exercise judicial or quasi-judicial power;
- 2.) the exercise of such power must be unauthorized by law; and
- 3.) the exercise of such power must result in injury for which there is no adequate remedy.⁸

The writ of prohibition is used as a preventative, not a corrective measure. In other words the higher court is preventing or prohibiting the lower court from doing something that it has no authority to do.

An example of when petitioning for a writ of prohibition may be appropriate is if a judge is exceeding her/his authority by ordering a couple into mediation in a dissolution proceeding when domestic violence has been found. Since the law clearly states that mediation cannot be ordered for dissolution when the court has found probable cause that domestic abuse has occurred⁹ and there is no available remedy to address the injury to a battered woman caused by ordering her into mediation with her abuser, the court would be exceeding its authority by ordering mediation.

IV.) Process of Petitioning for Extraordinary Writs

⁷ Coyle v. City of Delano, 526 N.W.2d 205, 208 (Minn. App. 1995).

⁸ Minneapolis Star & Tribune Co. v. Schumacher, 392 N.W.2d 197, 208 (Minn. 1986).

⁹ General Rules of Practice for District Courts Title IV. Rules of Family Court Procedure, Rule 310.01(a) (1996).

A.) Two Methods: Written or Oral Petitions (forms and procedures for each of these methods are enclosed in this packet)

There are two methods for petitioning for writs of mandamus or prohibition. The normal process is by written petition to the court with jurisdiction over issuing the writ. (This method is governed by Minnesota Rules of Civil Appellate Procedure Rule 120 enclosed in this packet). The other method is by an emergency mechanism provided in Rule 121 (enclosed) which allows for an “emergency” oral petition for extraordinary writs “when the procedures of Rule 120 would prevent the writs from working to achieve their primary purpose”¹⁰ of granting relief when the ordinary appeals process would not provide a remedy.

B.) Court Jurisdiction: Where Do You Petition for an Extraordinary Writ?

Generally district courts have original jurisdiction over all cases of *mandamus*, unless the writ is to be directed at a district court judge, then the court of appeals has jurisdiction over the mandamus case. (Minn. Stat. sec. 586.11 (1996)). Since there is no statute for writs of prohibition, it is unclear whether this same jurisdiction would govern them. Under Rule 120.01, jurisdiction over extraordinary writs directed toward a “lower court,” falls with the Minnesota court of appeals. Jurisdiction over extraordinary writs directed at the court of appeals falls with the Minnesota supreme court.

C.) Filing Fees

A filing fee of \$250 is required to petition for either an oral or written extraordinary writ. (Minn. R. Civ. App. Pro. Rule 120.04, 121.03). The filing fee is not required if a petition for an oral writ is denied. To proceed without prepaying these fees, a person may apply to proceed “in forma pauperis” which basically allows a person who cannot afford to pay the fees to proceed without paying. (Minn. Stat. sec. 563.01 governs forma pauperis proceedings and is enclosed). It is not clear whether fees for writs of mandamus or prohibition would fall under the statute governing proceeding in forma pauperis.¹¹ However, to prevent denying someone access to these remedies simply because they cannot afford to pay the filing fees, petitioners for extraordinary writs should be allowed to proceed in forma pauperis.

D.) Are There Time Limits for Petitioning for an Extraordinary Writ?

Rule 120, governing the procedure for filing extraordinary writs, does not set any time limits for when to file. The Minnesota supreme court has addressed this issue; their answer was that there is no specific time limitation for a writ of mandamus and the Rule of Civil Appellate Procedure (Rule 104.01) governing time limits for *appeals* is merely a guide for efficiency in the area of writs of mandamus.¹²

¹⁰ Herr and Vasaly, *supra* note 2, at 628.

¹¹ *State v. Adams*, 110 N.W.2d 153 (Minn. 1961)(the issue whether in forma pauperis could be used for writ of mandamus was never reached because the court denied the petition on other grounds).

¹² *Johnson v. Minnesota Farm Bureau Marketing Corporation*, 232 N.W.2d 200 (Minn. 1975).