

CIVIL PROCEDURE

CHAPTER FOURTEEN

MANDAMUS

Section 1401. Functions of Mandamus

The writ of mandamus may be issued by the Supreme Court or the District Court, or any justice or judge thereof to any inferior tribunal, corporation, board or person, to compel the performance of any act which the law specially enjoins as a duty, resulting from an office, trust or station; but though it may require an inferior tribunal or offer to exercise its judgment or proceed to the discharge of any of its functions, it cannot control judicial discretion, or discretion committed to a Tribal Agency by law unless exercised in violation of law.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

Section 1402. Writ Not Issued Where Remedy at Law

This writ may not be issued in any case where there is a plain and adequate remedy in the ordinary course of the law. It may be issued on the information of the party beneficially interested.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

Section 1403. Forms and Contents of Writs

The writ is either alternative or peremptory. The alternative writ must state, concisely, the fact showing the obligation of the defendant to perform the act, and his omission to perform it, and command him that immediately upon the receipt of the writ, or at some other specified time, he do the act required to perform or show cause before the Court at a specified time and place, why he has not done so; and that he then and there return the writ with his certificate of having done as he is commanded. The peremptory writ must be in a similar form, except that the words requiring the defendant to show cause why he has not done as commanded, must be omitted.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

Section 1404. When Peremptory Writ to Issue

When the right to require the performance of the act is clear, and it is apparent that no valid excuse can be given for not performing it, a peremptory mandamus may be allowed in the first instance; in all other cases, the alternative writ must be issued. The peremptory writ should not be issued if there is any doubt that a valid excuse may exist.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

CIVIL PROCEDURE

Section 1405. Petition Upon Affidavit

_____The petition for the writ must be made upon affidavit, and the Court may require a notice of the application to be given to the adverse party, or may grant an order to show cause why it should not be allowed, or may grant the writ without notice.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

Section 1406. Allowance and Service of Writ

The allowance of the writ must be endorsed thereon, signed by the Judge of the Court granting it, and the writ must be served personally upon the defendant; if the defendant, duly served, neglect to return the same, he shall be proceeded against as for contempt.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

Section 1407. Answer

On the return day of the alternative writ, or such further day as the Court may allow, the party on whom the writ shall have been served may show cause, by answer made in the same manner as an answer to a complaint in a civil action.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

Section 1408. Failure to Answer

If no answer be made, a peremptory mandamus must be allowed against the defendant; if answer be made, containing new matter, the same shall not, in any respect, conclude the plaintiff, who may, on the trial or other proceeding, avail himself of any valid objections to its sufficiency, or may countervail it by proof, either in direct denial or by way of avoidance.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

Section 1409. Similarity to Civil Action

No other pleading or written allegation is allowed than the writ and answer; these are the pleadings in the case, and have the same effect, and are to be construed and may be amended in the same manner, as pleadings in a civil action; and the issues thereby joined must be tried, and the further proceedings thereon had, in the same manner as in a civil action.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

CIVIL PROCEDURE

Section 1410. Recovery by Plaintiff

If judgment be given for the plaintiff, he shall recover the damages which he shall have sustained, to be ascertained by the Court, or by referees, as in a civil action, and costs; and a peremptory mandamus shall also be granted to him without delay.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

Section 1411. Damages Bar Further Actions

A recovery of damages, by virtue of this Chapter against a party who shall have made a return to a writ of mandamus, is a bar to any other action against the same party for the making of such return.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

Section 1412. Penalty for Refusal or Neglect to Perform

(a) Whenever a peremptory mandamus is directed to any public officer, body or board, commanding the performance of any public duty specially enjoined by law, if it appear to the Court that such officer, or any member of such body or board, has, without just excuse, refused or neglected to perform the duty so enjoined, the Court may impose a fine, not exceeding Five Hundred Dollars (\$500.00), upon every such officer or members of such body or board. Such fine, when collected, shall be paid into the Tribal treasury,

(b) Whenever the peremptory writ of mandamus is directed to any private person commanding the performance of any private duty specifically enjoined by law, if it appear to the Court that such person has, without just excuse, refused or neglected to perform the duty so enjoined, the Court may impose a civil fine, not exceeding Five Hundred Dollars (\$500.00) upon such person and may commit him to the custody of the Tribal Police for a term of sixty (60) days or until he shall perform or agree to perform such duty or otherwise purge his contempt. The Court may, in an appropriate case, order the Chief of the Tribal Police to perform the act required which performance shall have the same effect as if performed by the person the person to whom the peremptory writ was issued.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]