

## **CHAPTER 32-34 WRIT OF MANDAMUS**

### **32-34-01. By and to whom writ of mandamus issued.**

The writ of mandamus may be issued by the supreme and district courts to any inferior tribunal, corporation, board, or person to compel the performance of an act which 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 precluded unlawfully by such inferior tribunal, corporation, board, or person.

### **32-34-01.1. Supreme court sua sponte may issue writ to judges of inferior courts.**

The supreme court sua sponte may issue a writ of mandamus to any district court judge or other inferior court judge to compel such judge to act upon any judicial matters which have been properly placed before such judge's court. Should such judge fail to act as directed by the writ, such judge shall be liable for the punishment provided by this chapter.

### **32-34-02. When issued.**

The writ must be issued in all cases when there is not a plain, speedy, and adequate remedy in the ordinary course of law. It must be issued upon affidavit upon the application of the party beneficially interested except those writs issued sua sponte by the supreme court.

### **32-34-03. Alternative or peremptory.**

The writ may be either alternative or peremptory. The alternative writ must state generally the allegation against the party to whom it is directed and must command such party immediately upon the receipt of the writ, or at some other specified time, to do the act required to be performed or to show cause before the court at a specified time and place why the party has not done such act. The peremptory writ must be in a similar form except that the words requiring the party to show cause why the party has not obeyed the command must be omitted and a return day inserted.

### **32-34-04. When each may issue.**

When the application to the court is made without notice to the adverse party and the writ is allowed, the alternative writ must be issued first, but if the application is upon due notice and the writ is allowed, the peremptory writ may be issued in the first instance. The notice of the application, when given, must be at least ten days. The writ cannot be granted by default. The case must be heard by the court whether the adverse party appears or not.

### **32-34-05. Answer.**

On the return of the alternative writ, or the day on which the application for the writ is noticed, the party on whom the writ or notice has been served may show cause by answer under oath made in the same manner as an answer to a complaint in a civil action.

### **32-34-06. Jury may assess damages.**

If an answer is made which raises a question as to a matter of fact essential to the determination of the motion and affecting the substantial rights of the parties and upon the supposed truth of which allegation the application for the writ is based, the court in its discretion may order the question to be tried before a jury, and may postpone the argument until such trial can be had and the verdict certified to the court. The question to be tried must be stated distinctly in the order for trial, and the county must be designated in which the same shall be had. The order also may direct the jury to assess any damages which the applicant may have sustained in case the jury finds for the applicant.

### **32-34-07. Latitude of proof.**

On the trial the applicant is not precluded by the answer from any valid objection to its sufficiency and may countervail it by proof either in direct denial or by way of avoidance.

**32-34-08. New trial - Where motion made.**

A motion for new trial must be made in the court in which the issue of fact is tried.

**32-34-09. Transmission of verdict.**

If no notice of a motion for a new trial is given, or, if given, the motion is denied, the clerk within five days after rendition of the verdict or denial of the motion must transmit to the court in which the application for the writ is pending a certified copy of the verdict attached to the order of trial after which either party may bring on the argument of the application upon reasonable notice to the adverse party.

**32-34-10. Hearing.**

If no answer is made, the case must be heard on the papers of the applicant. If the answer raises only questions of law or puts in issue only immaterial statements not affecting the substantial rights of the parties, the court must proceed to hear or fix a day for hearing the argument of the case.

**32-34-11. Damages - Peremptory writ.**

If judgment is given for the applicant, the applicant may recover the damages which the applicant has sustained as found by the jury, or as may be determined by the court, or referee upon a reference to be ordered, together with costs, and for such damages and costs execution may issue, and a peremptory mandamus also must be awarded.

**32-34-12. How writ served.**

The writ must be served in the same manner as a summons in a civil action except when otherwise expressly directed by order of the court. Service upon a majority of the members of any board or body is service upon the board or body whether at the time of the service the board was in session or not.

**32-34-13. Disobedience - Punishment.**

When a peremptory mandamus has been issued and directed to any inferior tribunal, corporation, board, or person, if it appears to the court that any member of such tribunal, corporation, board, or such person upon whom the writ has been served personally has refused or neglected to obey the same without just excuse, the court upon motion may impose a fine not exceeding one thousand dollars. In case of persistence in a refusal of obedience, the court may order the party to be imprisoned until the writ is obeyed and may make any orders necessary and proper for the complete enforcement of the writ.