



Office of the Ohio Public Defender

Timothy Young, State Public Defender

Writ of Mandamus and Writ of Procedendo Pro Se Packet

*How can I get a trial court to rule on a motion?
How can I make a court or person do something
they have to do when they refuse to do it?*

What is a Writ of Mandamus?

A Writ of Mandamus is an order from one court to a lower court, corporation, or person to do something. The action ordered by the higher court must be something the lower court, corporation, or person has a legal duty to do. A trial court can issue a Writ of Mandamus to a person or corporation, but not to another court.

A Writ of Mandamus is not filed as part of a criminal case. It is a separate civil action and must be filed separately from your criminal case. If you meet the legal requirements, a Writ of Mandamus can be used to order that a hearing be held, that officials follow procedural steps in a process, or that any number of legal and procedural requirements be fulfilled.

For example, you can use a Writ of Mandamus to make a prosecutor provide you with discovery, or a government agency follow through on an action previously ordered by a court.

What is a Writ of Procedendo?

A Writ of Procedendo has only one purpose – it is used to order a court to issue a decision. Even if a Writ of Procedendo is granted, it will not instruct the court *how* to rule on something. The Writ will only instruct the court to issue a decision within a specific time frame or by a specific date.

A Writ of Procedendo has the same legal and filing requirements as a Writ of Mandamus.

For example, if you filed a postconviction petition, and the trial court has not issued a decision within the required timeframe, you can file a Writ of Procedendo to force the trial court to issue a decision on your petition.

What can't I do with a Writ of Mandamus or a Writ of Procedendo?

The most important thing to note is that neither of these writs is the right thing to file if you are being unlawfully imprisoned. Aside from appealing your conviction, the correct writ to challenge unlawful imprisonment is a Writ of Habeas Corpus, which is not covered by this packet.

Neither of these writs is the right thing to file if you are trying to *stop* a court from doing something. Both of these writs are designed to make a court *do something*. To stop a court from doing something, you need to file for a Writ of Prohibition, which is not covered by this packet.

What do I have to prove to get a Writ of Mandamus or a Writ of Procedendo?

In order to be legally eligible for one of these writs, there are three things that you must prove:

- 1) That you have a clear legal right to the relief you are seeking;
- 2) that the other party has a clear legal duty to perform the act you are asking them to perform;
and
- 3) that there is no other “plain and adequate remedy” in the law.

You must prove each of these by “clear and convincing evidence.” Below is additional information on each elements.

Clear Legal Right to Relief AND Clear Legal Duty to Perform

As an example, in the American legal system, judges are given a lot of power to make decisions that they feel are right for a specific case. This is important when considering a Writ of Mandamus or a Writ of Procedendo. If the action you are requesting is something the judge can *choose* to do, then there is not a clear legal duty for them to perform the action. The action you are requesting must be something that the judge is *required* to do. This same idea applies to any other organization or person that you are trying to compel with a Writ. You will not be successful if the action you want them to take is something they *may* do. The action must be something that they are *required* to do.

This also applies to your legal right to relief. You will not be successful if you are asking for something that you *might* get in the course of a criminal case or other legal action. The action you are requesting must be something that you are *entitled* to, something you *must* be given or that *must* happen.

If you are having trouble figuring out whether your requested action is required or optional, you should read the statute, local court rule, or other controlling document. If the language used describes the action in terms of “within the discretion” of the court/organization/person, or as something that the other party “may” do, then the action is very likely optional and your request will not be successful.

If the language used describes the action in terms of something the other party “must” or “shall” do, then it is very likely a requirement and your request is more likely to be successful. Be sure to read the statute or rule completely, especially any “if” or “only if” sections that may limit the situations in which the rule applies.

No Plain and Adequate Remedy at Law

In order for another legal option to qualify as an “adequate remedy in the ordinary course of law,” it must be “complete, beneficial, and speedy.” *State ex rel. Chagrin Falls v. Geauga Cty. Bd. of Commrs.*, 96 Ohio St.3d 400, 2002-Ohio-4906, ¶6, 775 N.E.2d 512. What this means is that if there is another legal remedy you can ask for, then you are not eligible for a Writ of Mandamus or a Writ of Procedendo. Both Mandamus and Procedendo are what is known as “extraordinary writs.” This is because they are meant to address extraordinary issues not covered by other legal remedies.

An important point is that the requirement that there not be any other legal remedy includes remedies you could have asked for, but did not. If you were able to address your issue with an appeal, but did not file an appeal, then you cannot fix that problem by filing for Mandamus or Procedendo at a later date.

How Do I Request a Writ of Mandamus or a Writ of Procedendo?

On the next few pages are samples of documents that you need to complete, instructions on how to complete them, and fill-in-the-blank versions of the documents for you to use.

YOU MUST COMPLETE A PETITION, ALL OF THE AFFIDAVITS, AND THE FINANCIAL CERTIFICATE.

If you do not complete and include each of the affidavits and the financial certificate, your petition will be dismissed and you will need to start over from scratch. Please read the instructions carefully and then fill out your portions of the forms. The Financial Certificate form must be completed by your institution's cashier and not by you.

Relevant Statutes:

Ohio Revised Code Chapter 2731: MANDAMUS

2731.01 Mandamus defined.

Mandamus is a writ, issued in the name of the state to an inferior tribunal, a corporation, board, or person, commanding the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station.

2731.02 Courts authorized to issue writ - contents.

The writ of mandamus may be allowed by the supreme court, the court of appeals, or the court of common pleas and shall be issued by the clerk of the court in which the application is made. Such writ may issue on the information of the party beneficially interested. Such writ shall contain a copy of the petition, verification, and order of allowance.

2731.03 Writ does not control judicial discretion.

The writ of mandamus may require an inferior tribunal to exercise its judgment, or proceed to the discharge of any of its functions, but it cannot control judicial discretion.

2731.04 Application for writ.

Application for the writ of mandamus must be by petition, in the name of the state on the relation of the person applying, and verified by affidavit. The court may require notice of it to be given to the defendant, or grant an order to show cause why it should not be allowed, or allow the writ without notice.

2731.05 Adequacy of law remedy bar to writ.

The writ of mandamus must not be issued when there is plain and adequate remedy in the ordinary course of the law.

2731.06 Peremptory writ in first instance.

When the right to require the performance of an act is clear and it is apparent that no valid excuse can be given for not doing it, a court, in the first instance, may allow a peremptory mandamus. In all other cases an alternative writ must first be issued on the allowance of the court, or a judge thereof.

2731.07 Allowance of writ entered on journal.

The allowance of the writ of mandamus, and an order that the defendant, immediately upon service, do the act required to be performed, or, when an alternative writ is allowed, that he do the act or show cause before the court, at a specified time and place, why he does not do the act, shall be entered on the journal.

2731.08 Service of writ.

The writ of mandamus shall be served upon the defendant personally, by copy, by the sheriff or by a person specially authorized by the court or judge issuing the writ. Such officer or person must report his proceedings therewith to the court. When the service is made by a person not an officer, the return must be verified by his affidavit.

2731.09 Pleadings - effect.

On the return day of an alternative writ of mandamus, or such further day as the court allows, the defendant may answer as in a civil action. If the writ is allowed by a single judge, said defendant may demur. The plaintiff may demur to the answer or reply to new matter therein, and the defendant may demur to the reply, as in a civil action. The pleadings have the same effect, must be construed, may be amended, and issues of fact made by them must be tried, and further proceedings thereon had, in the same manner as in civil actions.

2731.10 Peremptory writ allowed on failure to answer.

If no answer is made to an alternative writ of mandamus, a peremptory mandamus must be allowed against the defendant.

2731.11 Recovery of damages.

If judgment in a proceeding for a writ of mandamus is rendered for the plaintiff, the relator may recover the damages which he has sustained, to be ascertained by the court or a jury, or by a referee or master, as in a civil action, and costs. A peremptory mandamus shall also be granted to him without delay. Such recovery of damages against a defendant is a bar to any other action upon such cause of action.

2731.12 Costs against relator.

If judgment in a proceeding for a writ of mandamus is rendered for the defendant, all costs shall be adjudged against the relator.

2731.13 Failure to obey writ.

When a peremptory mandamus has been directed to a public officer, body, or board commanding the performance of a public duty specially enjoined by law, and the court finds that such officer, or a member of such body or board, without just excuse, refused or neglected to perform the duty so enjoined, such court may impose a fine not exceeding five hundred dollars upon such officer or member. Such fine shall be paid into the county treasury of the county in which the duty should have been performed, and its payment is a bar to an action for any forfeiture or fine incurred by such officer or member by reason of such refusal or neglect.

2731.16 Power of court.

Sections 2731.14 and 2731.15 of the Revised Code do not limit the power of the court to carry its order and judgment into execution, or to punish any officer named therein for contempt or disobedience of its orders or writs.

INSTRUCTIONS

Following this page is a sample copy of the form applications, explaining what needs to be included. After that are blank forms for you to fill out using the sample as a guide.

1. To prepare the cover page of your application, you need certain information. This includes the name and address of the entity you are seeking to compel into action. Leave the case number blank, as this will be filled in by the Clerk of Courts.
2. Your complete petition includes ALL OF THE FOLLOWING:
 - (1) WRIT OF MANDAMUS or WRIT OF PROCEDENDO (whichever applies); and
 - (2) AFFIDAVIT OF INDIGENCY; and
 - (3) AFFIDAVIT OF VERITY; and
 - (4) AFFIDAVIT OF CIVIL FILINGS (with accompanying exhibit(s) for each civil filing);
and
 - (5) FINANCIAL CERTIFICATE.
3. **When you are finished preparing the petition, sign the petition at the end and again after the certificate of service. See sample form.**
4. See your unit staff for notary service. You need to sign each affidavit and have it notarized. Do not sign any affidavits until you see the notary; they must be signed in the notary's presence.
5. You need to get the Financial Certificate completed by your institution's cashier, NOT YOU!
6. Make three (3) copies of the petition/affidavits/certificate. Some courts require more copies, so make sure to check the court's local rules to see how many copies you need to send.

Mail the forms as follows (if the local rules are different than these instructions, follow the local rules):

TO THE CLERK OF COURTS:

- Mail the original application, plus two (2) copies to the clerk of courts for the court where you are filing your writ.
- Mark one copy of each document "time-stamp and return." **Do not** mark the original form.
- If the judge is the person you are filing against, send them a copy of your application and any other documents you may file. Otherwise, **do not** mail anything directly to the judge.
- If you do not know the mailing address of the clerk of courts, you can find it in your prison orientation packet or by visiting your prison's law library.

TO THE OPPOSING PARTY AND COUNSEL:

Mail one (1) copy of the application to whomever you are filing the writ against and their attorney if they have one.

1. I am inmate #123-456 incarcerated in the Chillicothe
(Name of institution where you are incarcerated)

Correctional Institution, Chillicothe, Ohio.
(City)

2. I earn \$7.00 per month, and currently have \$18.45 in my prison commissary account. A statement setting forth the balance of my inmate account for each of the preceding six months, as certified by the institutional cashier, is attached.

3. I am indigent, unable to pay the Court's full filing fees and security deposit and seek a waiver of the payment of the fees and deposit.

Affiant further sayeth naught.

John Smith
RELATOR, PRO SE

Sworn to and subscribed before me this 1st day of August, 2021.

Nancy Notary
NOTARY PUBLIC

John Smith, 123-456, Relator, being duly sworn states that the
Name and Inmate Number

allegations contained in the foregoing complaint are true and accurate as they verily believe.

John Smith
RELATOR, PRO SE

Sworn to and subscribed before me this 1st day of August, 2021.

Nancy Notary
NOTARY PUBLIC

SAMPLE

John Smith, 123-456, Relator, being duly sworn states:
(Name and Inmate Number)

1. My name is John Smith, and I am inmate #123-456.

I am incarcerated at the Chillicothe Correctional Institution located in Chillicothe, Ohio.

2. In the previous five years, I have filed the following civil actions in a court of law (if you have not filed any civil lawsuits, write "NONE"):

John Smith v. Tiffany Jones

If necessary, details of civil filings follow and are incorporated into this Affidavit.

3. I have not filed any other civil actions.

I hereby declare that all the information contained in this affidavit is true and correct.

John Smith
RELATOR, PRO SE

Sworn to and subscribed before me this 1st day of August, 2021.

Nancy Notary
NOTARY PUBLIC

Civil Filing Information

Case Caption: John Smith v. Tiffany Jones
(Name v. Name)

Case Number: 2020-CV-04723

Court Where this Case was Filed: Franklin County, Ohio

Names of all Parties to the Case: John Smith, Tiffany Jones

Brief Description of the Civil Action or Appeal: _____

Filed to modify child support while I'm in prison

Brief Description of Case Outcome/Result: _____

I don't have to pay child support while incarcerated

- | | | |
|-----|----------|---|
| Yes | No | |
| ___ | <u>X</u> | Was the case you listed above dismissed as frivolous or malicious? |
| ___ | <u>X</u> | Did the Court fine or otherwise reprimand you for frivolous conduct? |
| ___ | <u>X</u> | Did the Court fine or otherwise reprimand your attorney (if you had one) for frivolous conduct? |
| ___ | <u>X</u> | Have you ever been labeled a vexatious litigator? |

(Copy this form and complete a separate copy for each civil filing in the last five years.)

FINANCIAL CERTIFICATE

(To be completed by the institution of incarceration)

State of Ohio)
)
County of Ross)

SS:

Cindy Cashier, Cashier for Chillicothe Correctional Institution,
(Name of Institutional Cashier) (Name of Institution)

being duly sworn states as follows:

I certify that John Smith, A 123-456 has the sum of
(Inmate Name and Number)
\$18.45 on account to their credit at Chillicothe Correctional Institution.
(Account Balance) (Name of Institution)

I further certify that John Smith has the following
(Inmate Name)
securities to their credit: None

(List of Inmate Securities)

Further, I certify the balance in John Smith's account for each of
(Inmate Name)
of the previous six months was as follows:

<u>February, 2021</u>	\$ <u>12.37</u>	<u>May, 2021</u>	\$ <u>22.47</u>
(Month, Year)	(Account Balance)	(Month, Year)	(Account Balance)
<u>March, 2021</u>	\$ <u>10.96</u>	<u>June, 2021</u>	\$ <u>19.78</u>
<u>April, 2021</u>	\$ <u>15.23</u>	<u>July, 2021</u>	\$ <u>12.28</u>

8-1-2021
Date

Cindy Cashier
Signature of Authorized Officer

Cindy Cashier
Printed Name of Authorized Officer

Sworn to and subscribed before me this 1st day of August, 2021.

Nancy Notary
NOTARY PUBLIC

IN THE COURT OF Appeals
Third DIVISION/DISTRICT
Ross COUNTY, OHIO

State ex rel.

John Smith,
(Your Name)

#123-456
(Your Inmate Number)

Chillicothe Correctional Institution
(Institution Name)

15802 State Route North 104
(Institution Street Address)

Chillicothe, OH 45601
(Institution City, State, Zip Code)

Relator,

Case No. _____

v.

Charlotte Jenkins, Warden CCI
(Name of Judge/Person/Organization)

15802 OH-104
(Their Street Address)

Chillicothe, OH, 45601
(Their City, State, Zip Code)

Respondent,

PETITION FOR WRIT OF MANDAMUS

I. Facts on Which Claim for Relief is Based

1. On February 7, 2021, Relator placed the following issue before Respondent:
(Date)

SHORT DESCRIPTION OF THE MOTION/CASE/ISSUE. FOR EXAMPLE, YOU

COULD WRITE: My motion for jail time credit was granted on January 12, 2021

I sent a copy of the order granting my motion to the Bureau of Sentence Computation

on February 7, 2021 , but I haven't gotten credit for my days yet.

Relator brought this issue to Respondent's attention by: Sending a copy of the judge's
(Filing a Motion, writing a letter, etc.)
ruling to the Bureau of Sentence Computation on February 7, 2021.

2. After Relator placed this issue before Respondent, an objection/response was was not
(Circle One)
made by the opposing party. Their response was made on: _____
(Date)

3. Relator did did not reply to that response. If a reply was made, it was made on:
(Circle One)

(Date)

4. Respondent is the party solely responsible for reaching a decision and/or taking action on Relator's issue.

II. Discussion

5. "Mandamus is a writ, issued in the name of the state to an inferior tribunal, a corporation, board, or person, commanding the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station." R.C. 2731.01. Essentially, Mandamus compels a party legally obligated to perform a task to perform that task.

6. To be entitled to a writ of mandamus, Relator must establish "by clear and convincing evidence: (A) a clear legal right to the requested relief; (B) a clear legal duty on the part of the respondent to provide it; and (C) the lack of an adequate remedy in the ordinary course of the law." *State ex rel. Olmstead v. Forsthoefel*, Slip Opinion No. 2020-Ohio-4951.

7. Relator has a clear legal right to require Respondent to provide the requested relief. A writ of mandamus will not issue if Relator does not have a clear legal right to the requested relief. *Id.* Here, Relator is entitled to relief based on the following:

HERE YOU SHOULD LIST THE STATUTES/CASES/RULES THAT ENTITLE YOU TO RELIEF. FOR EXAMPLE:

R.C. 2967.191, State ex rel. Corder v. Wilson, 68 Ohio App.3d 567, 589 N.E.2d 113 (1991). State v. Napier, 93 Ohio St.3d 646, 2001-Ohio-1890. State v. Fugate, 117 Ohio St.3d 261, 2008-Ohio-856.

8. Respondent has a clear legal duty to provide the relief requested by Relator. Respondent is in a position that creates a legal obligation for them to perform this action because Respondent is a prison warden with a legal duty to provide Relator with their requested relief.
(Judge, Board Member, Corporation, etc.)

9. Relator has no adequate remedy at law. To find that an alternative remedy exists, “The alternative must be complete, beneficial, and speedy in order to constitute an adequate remedy at law.” *State ex rel. Doe v. Gallia Cty. Common Pleas Court*, 153 Ohio St.3d 623, 2018-Ohio-2168, 109 N.E.3d 1222, ¶ 12, quoting *State ex rel. Ullmann v. Hayes*, 103 Ohio St.3d 405, 2004-Ohio-5469, 816 N.E.2d 245. Adequate remedies in the ordinary course of the law include both equitable and legal remedies and if either remedy exists, Relator is not eligible for a writ of mandamus. *State ex rel. Doe v. Gallia Cty. Common Pleas Court*, 153 Ohio St.3d 623, 2018-Ohio-2168, ¶ 12. In Relator’s case, there is no alternative adequate remedy available as Relator is not able to address this issue through appeal, post-conviction petition, or any other non-extraordinary remedy.

10. EXPLAIN WHY THERE IS NO OTHER WAY TO GET THE REMEDY YOU ARE ASKING FOR *The court already ruled on my motion and said I should get these days. I just need the DRC to add them to my credit. I don't want the decision to change, so I can't appeal.*

11. Relator is entitled to a writ of mandamus because (A) they have a clear right to require Respondent to provide the requested relief; (B) there is a corresponding duty to act on the part of Respondent; and (C) there is no other adequate remedy in the ordinary course of the law for the indicated issues. *Forsthoefel, 2020-Ohio-4951.*

IV. Relief Requested

WHEREFORE, Relator requests the following relief pursuant to Section 3, Article IV of the Ohio Constitution:

- 1) That a writ of mandamus issue to the Respondent directing them to take action as follows: *to credit Relator with 75 days of jail time credit as ordered by the judge in my case* _____; and
- 2) Only if this Court declines to initially grant the first request for relief, that an alternative writ issue; and
- 3) Any other relief to which Relator may be entitled.

Respectfully submitted,

John Smith
RELATOR, PRO SE

#123-456/Chillicothe Correctional Institution
Inmate Number/Institution

15802 State Route North 104
Address

Chillicothe, OH 45601
City, State and Zip Code

CERTIFICATE OF SERVICE

I certify a copy of the foregoing **PETITION FOR WRIT OF MANDAMUS** has been sent by regular U.S. mail to Respondent this 30th day of August, 2021.

Mailed to:

Name: Judge Judy Jones

Street Address: Ross County Courthouse, 2 N. Paint St.

City: Chillicothe State: OH Zip Code: 45601

John Smith
RELATOR, PRO SE

IN THE COURT OF Appeals
Third DIVISION/DISTRICT
Ross COUNTY, OHIO

State ex rel.

John Smith,
(Your Name)

#123-456
(Your Inmate Number)

Chillicothe Correctional Institution
(Institution Name)

15802 State Route North 104
(Institution Street Address)

Chillicothe, OH 45601
(Institution City, State, Zip Code)

Relator,

Case No. _____

v.

Charlotte Jenkins, Warden CCI
(Name of Judge/Person/Organization)

15802 OH-104
(Their Street Address)

Chillicothe, OH, 45601
(Their City, State, Zip Code)

Respondent,

PETITION FOR WRIT OF PROCEDENDO

I. Facts on Which Claim for Relief is Based

1. On February 24, 2020, Relator placed the following motion before Respondent for decision: SHORT DESCRIPTION OF THE MOTION/CASE/ISSUE THAT REQUIRES A DECISION, YOU COULD WRITE:

Motion for Jail Time Credit

2. Respondent is the party solely responsible for ruling on the motion filed by Relator.
3. After Relator placed this issue before Respondent, a response was ~~was not~~ made by the opposing party. The response was filed or otherwise made on: March 8, 2020.
4. Relator did ~~did not~~ reply to that response. If a reply was filed or otherwise made, it was filed or otherwise made on N/A.
5. It has been 6 months ~~years~~ since Relator placed the above motion before Respondent for decision.

II. Discussion

6. A writ of procedendo is proper “when a court has either refused to render a judgment or has unnecessarily delayed proceeding to judgment.” *State ex rel. Dehler v. Sutula*, 74 Ohio St.3d 33, 35, 656 N.E.2d 332, 334 (1995). “Procedendo is merely an order from a court of superior jurisdiction to one of inferior jurisdiction to proceed to judgment. It does not in any case attempt to control the inferior court as to what the judgment should be.” *State ex rel. Sherrills v. Cuyahoga Ct. Court of Common Pleas*, 72 Ohio St.3d 461, 462, 650 N.E.2d 899, 900 (1995).
7. To be entitled to a writ of procedendo, Relator must establish: (A) a clear legal right to require the court to proceed; (B) a clear legal duty on the part of the court to proceed; and

(C) the lack of an adequate remedy in the ordinary course of the law. *State ex rel. Sherrills v. Common Pleas*, 72 Ohio St.3d 461, 462, 650 N.E.2d 899, 900 (1995).

8. Relator has a clear legal right to require Respondent to issue a ruling. Although a writ of procedendo will not issue “when the delay is relatively minimal,” a lower court’s “refusal or failure to timely dispose of a pending action is the ill a writ of procedendo is designed to remedy.” *State ex rel. Rodak v. Betleski*, 104 Ohio St.3d 345, 2004-Ohio-6567, 819 N.E.2d 703, ¶ 14-16, quoting *State ex rel. Levin v. Sheffield Lake*, 70 Ohio St.3d 104, 110, 1994-Ohio-385, 637 N.E.2d 319. In the instant case, Respondent’s delay is lengthy enough that a Writ of Procedendo is necessary to ensure that a decision is reached.

9. ENTER ANY ADDITIONAL INFORMATION THE COURT NEEDS TO KNOW TO GRANT YOUR MOTION:

I filed a motion for jail time credit with the judge, and she’s the only one who can make a decision in my case. I need her to rule on my motion so I can either get my days of credit or figure out what to do next. Since she’s the judge on my case, she’s the one who has to rule on this motion.

10. Respondent has a clear legal duty to issue a ruling as requested by Relator. “All motions shall be ruled upon within one hundred twenty days from the date the motion was filed, except as noted on the report forms.” Sup.R. 40(A)(3). Superior courts will not enforce compliance with this legal duty through the issuance of a writ when the delay is days or weeks. *See, e.g., State ex rel. Nalls v. Russo*, 96 Ohio St.3d 410, 2002-Ohio-4907, 775 N.E.2d 522, at ¶ 31 (writ not issued after three-day delay); *State ex rel. Sherrills v. Cuyahoga Cty. Court of Common Pleas*, 72 Ohio St.3d 461, 462, 1995-Ohio-26, 650 N.E.2d 899 (writ not issued after a two to three-week delay). However, “when a court has unnecessarily delayed proceeding to judgement,” such as when motions have been pending for years, a writ of procedendo will issue. *Rodak*, 2004-Ohio-6567, ¶ 16.
11. Relator has no adequate remedy at law. In order to find that an alternative remedy exists, “The alternative must be complete, beneficial, and speedy in order to constitute an adequate remedy at law.” *State ex rel. Doe v. Gallia Cty. Common Pleas Court*, 153 Ohio St.3d 623, 2018-Ohio-2168, 109 N.E.3d 1222, ¶ 12, quoting *State ex rel. Ullmann v. Hayes*, 103 Ohio St.3d 405, 2004-Ohio-5469, 816 N.E.2d 245. Adequate remedies in the ordinary course of the law include both equitable and legal remedies and if either remedy exists, Relator is not eligible for a writ of mandamus. *State ex rel. Doe v. Gallia Cty. Common Pleas Court*, 153 Ohio St.3d 623, 2018-Ohio-2168, ¶ 12. In Relator’s case, there is no alternative adequate remedy available for Relator.
12. EXPLAIN WHY THERE IS NO OTHER WAY TO GET THE REMEDY YOU ARE ASKING FOR: *I did some research in the law library and all the cases I read told me that this is the only way to get my judge to rule on my case. I don’t have any other issues, I just need to get a ruling on this motion so I can get my days of credit.*

13. Relator is entitled to a writ of procedendo because (A) they have a clear right to require a ruling on their indicated issue(s) and/or proceeding(s); (B) there is a corresponding duty to proceed; and (C) there is no other adequate remedy at law for the above-named issue. *Sherrills*, 72 Ohio St.3d at 462.

IV. Relief Requested

WHEREFORE, Relator requests the following relief pursuant to Section 3, Article IV of the Ohio Constitution:

- 1) That a writ of procedendo issue to Respondent directing them to issue a final ruling on Relator's issue within five business days;
- 2) Only if this Court declines to initially grant the first request for relief, that an alternative writ issue; and;
- 3) Any other relief to which Relator may be entitled.

Respectfully submitted,

John Smith

RELATOR, PRO SE

#123-456/Chillicothe Correctional Institution
Inmate Number/Institution

15802 State Route North 104
Address

Chillicothe, OH 45601
City, State and Zip Code

CERTIFICATE OF SERVICE

I certify a copy of the foregoing **PETITION FOR WRIT OF PROCEDENDO** has been sent by regular U.S. mail to Respondent this 30th day of August, 2021.

Mailed to:

Name: Judge Judy Jones

Street Address: Ross County Courthouse, 2 N. Paint St.

City: Chillicothe State: OH Zip Code: 45601

John Smith
RELATOR, PRO SE

SAMPLE

1. I am inmate # _____ incarcerated in the _____
(Name of institution where you are incarcerated)
Correctional Institution, _____, Ohio.
(City)

2. I earn \$ _____ per month, and currently have \$ _____ in my prison commissary account. A statement setting forth the balance of my inmate account for each of the preceding six months, as certified by the institutional cashier, is attached.

3. I am indigent, unable to pay the Court's full filing fees and security deposit, and seek a waiver of the payment of the fees and deposit.

Affiant further sayeth naught.

RELATOR, PRO SE

Sworn to and subscribed before me this ____ day of _____, 20____.

NOTARY PUBLIC

_____ Relator, being duly sworn states that the
(Name and Inmate Number)
allegations contained in the foregoing complaint are true and accurate as they verily believe.

RELATOR, PRO SE

Sworn to and subscribed before me this ____ day of _____, 20____.

NOTARY PUBLIC

_____, Relator, being duly sworn states:
(Name and Inmate Number)

1. My name is _____, and I am inmate #_____.

I am incarcerated at the _____ Correctional Institution located in _____, Ohio.

2. In the previous five years, I have filed the following civil actions in a court of law (if you have not filed any civil lawsuits, write "NONE"):

If necessary, details of civil filings follow and are incorporated into this Affidavit.

3. I have not filed any other civil actions.

I hereby declare that all the information contained in this affidavit is true and correct.

RELATOR, PRO SE

Sworn to and subscribed before me this ____ day of _____, 20____.

NOTARY PUBLIC

Civil Filing Information

Case Caption: _____
(Name v. Name)

Case Number: _____

Court Where this Case was Filed: _____

Names of all Parties to the Case: _____

Brief Description of the Civil Action or Appeal: _____

Brief Description of Case Outcome/Result: _____

- | | | |
|-----|-----|---|
| Yes | No | |
| ___ | ___ | Was the case you listed above dismissed as frivolous or malicious? |
| ___ | ___ | Did the Court fine or otherwise reprimand you for frivolous conduct? |
| ___ | ___ | Did the Court fine or otherwise reprimand your attorney (if you had one) for frivolous conduct? |
| ___ | ___ | Have you ever been labeled a vexatious litigator? |

(Copy this form and complete a separate copy for each civil filing in the last five years.)

FINANCIAL CERTIFICATE

(To be completed by the institution of incarceration)

State of Ohio)
)
County of _____)

SS:

_____, Cashier for _____,
(Name of Institutional Cashier) (Name of Institution)

being duly sworn states as follows:

I certify that _____ has the sum of
(Inmate Name and Number)
\$ _____ on account to their credit at _____.
(Account Balance) (Name of Institution)

I further certify that _____ has the following
(Inmate Name)
securities to their credit: _____

(List of Inmate Securities)

Further, I certify the balance in _____'s account for each
(Inmate Name)
of the previous six months was as follows:

_____	\$ _____	_____	\$ _____
(Month, Year)	(Account Balance)	(Month, Year)	(Account Balance)
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____

Date

Signature of Authorized Officer

Printed Name of Authorized Officer

Sworn to and subscribed before me this ____ day of _____, 20__.

NOTARY PUBLIC

I. Facts on Which Claim for Relief is Based

1. On _____, Relator placed the following issue before Respondent:
(Date)

Relator brought this issue to Respondent’s attention by: _____
(Filing a Motion, writing a letter, etc.)

2. After Relator placed this issue before Respondent, an objection/response was / was not
(Circle One)
made by the opposing party. Their response was made on: _____
(Date)

3. Relator did / did not reply to that response. If a reply was made, it was made on:
(Circle One)

(Date)

4. Respondent is the party solely responsible for reaching a decision and/or taking action on Relator’s issue.

II. Discussion

5. “Mandamus is a writ, issued in the name of the state to an inferior tribunal, a corporation, board, or person, commanding the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station.” R.C. 2731.01. Essentially, Mandamus compels a party legally obligated to perform a task to perform that task.

6. To be entitled to a writ of mandamus, Relator must establish “by clear and convincing evidence: (A) a clear legal right to the requested relief; (B) a clear legal duty on the part of the respondent to provide it; and (C) the lack of an adequate remedy in the ordinary course of the law.” *State ex rel. Olmstead v. Forsthoefel*, Slip Opinion No. 2020-Ohio-4951.

7. Relator has a clear legal right to require Respondent to provide the requested relief. A writ of mandamus will not issue if Relator does not have a clear legal right to the requested relief. *Id.* Here, Relator is entitled to relief based on the following:

8. Respondent has a clear legal duty to provide the relief requested by Relator. Respondent is in a position that creates a legal obligation for them to perform this action because Respondent is a _____ with a legal duty to provide Relator with their requested relief.
(Judge, Board Member, Corporation, etc.)

9. Relator has no adequate remedy at law. To find that an alternative remedy exists, “The alternative must be complete, beneficial, and speedy in order to constitute an adequate remedy at law.” *State ex rel. Doe v. Gallia Cty. Common Pleas Court*, 153 Ohio St.3d 623, 2018-Ohio-2168, 109 N.E.3d 1222, ¶ 12, quoting *State ex rel. Ullmann v. Hayes*, 103 Ohio St.3d 405, 2004-Ohio-5469, 816 N.E.2d 245. Adequate remedies in the ordinary course of the law include both equitable and legal remedies and if either remedy exists, Relator is not eligible for a writ of mandamus. *State ex rel. Doe v. Gallia Cty. Common Pleas Court*, 153 Ohio St.3d 623, 2018-Ohio-2168, ¶ 12. In Relator’s case, there is no alternative adequate remedy available as Relator is not able to address this issue through appeal, post-conviction petition, or any other non-extraordinary remedy.

10. EXPLAIN WHY THERE IS NO OTHER WAY TO GET THE REMEDY YOU ARE ASKING FOR

11. Relator is entitled to a writ of mandamus because (A) they have a clear right to require Respondent to provide the requested relief; (B) there is a corresponding duty to act on the part of Respondent; and (C) there is no other adequate remedy in the ordinary course of the law for the indicated issues. *Forsthoefel*, 2020-Ohio-4951.

IV. Relief Requested

WHEREFORE, Relator requests the following relief pursuant to Section 3, Article IV of the Ohio Constitution:

- 1) That a writ of mandamus issue to the Respondent directing them to take action as follows: _____

_____ ; and
- 2) Only if this Court declines to initially grant the first request for relief, that an alternative writ issue; and
- 3) Any other relief to which Relator may be entitled.

Respectfully submitted,

RELATOR, PRO SE

Inmate Number/Institution

Address

City, State and Zip Code

CERTIFICATE OF SERVICE

I certify a copy of the foregoing **PETITION FOR WRIT OF MANDAMUS** has been sent by regular U.S. mail to Respondent this ____ day of _____, 20____.

Mailed to:

Name: _____

Street Address: _____

City: _____ State: _____ Zip Code: _____

RELATOR, PRO SE

I. Facts on Which Claim for Relief is Based

1. On _____, Relator placed the following motion before
(Date)
Respondent for decision _____
(Short Description of the Motion/Case/Issue That Requires a Decision)

2. Respondent is the party solely responsible for ruling on the motion filed by Relator.
3. After Relator placed this issue before Respondent, a response was / was not made by
(Circle One)
the opposing party. The response was filed or otherwise made on: _____.
(Date)
4. Relator did / did not reply to that response. If a reply was filed or otherwise made, it was
(Circle One)
filed or otherwise made on _____.
(Date)
5. It has been _____ months / years since Relator placed the above issue before
(Number) (Circle One)
Respondent for decision.

II. Discussion

6. A writ of procedendo is proper “when a court has either refused to render a judgment or has unnecessarily delayed proceeding to judgment.” *State ex rel. Dehler v. Sutula*, 74 Ohio St.3d 33, 35, 656 N.E.2d 332, 334 (1995). “Procedendo is merely an order from a court of superior jurisdiction to one of inferior jurisdiction to proceed to judgment. It does not in any case attempt to control the inferior court as to what the judgment should be.” *State ex rel. Sherrills v. Cuyahoga Ct. Court of Common Pleas*, 72 Ohio St.3d 461, 462, 650 N.E.2d 899, 900 (1995).
7. To be entitled to a writ of procedendo, Relator must establish: (A) a clear legal right to require the court to proceed; (B) a clear legal duty on the part of the court to proceed; and

(C) the lack of an adequate remedy in the ordinary course of the law. *State ex rel. Sherrills v. Common Pleas*, 72 Ohio St.3d 461, 462, 650 N.E.2d 899, 900 (1995).

8. Relator has a clear legal right to require Respondent to issue a ruling. Although a writ of procedendo will not issue “when the delay is relatively minimal,” a lower court’s “refusal or failure to timely dispose of a pending action is the ill a writ of procedendo is designed to remedy.” *State ex rel. Rodak v. Betleski*, 104 Ohio St.3d 345, 2004-Ohio-6567, 819 N.E.2d 703, ¶ 14-16, quoting *State ex rel. Levin v. Sheffield Lake*, 70 Ohio St.3d 104, 110, 1994-Ohio-385, 637 N.E.2d 319. In the instant case, Respondent’s delay is lengthy enough that a Writ of Procedendo is necessary to ensure that a decision is reached.

9. _____

_____.

10. Respondent has a clear legal duty to issue a ruling as requested by Relator. “All motions shall be ruled upon within one hundred twenty days from the date the motion was filed, except as noted on the report forms.” Sup.R. 40(A)(3). Superior courts will not enforce compliance with this legal duty through the issuance of a writ when the delay is days or weeks. *See, e.g., State ex rel. Nalls v. Russo*, 96 Ohio St.3d 410, 2002-Ohio-4907, 775 N.E.2d 522, at ¶ 31 (writ not issued after three-day delay); *State ex rel. Sherrills v. Cuyahoga Cty. Court of Common Pleas*, 72 Ohio St.3d 461, 462, 1995-Ohio-26, 650 N.E.2d 899 (writ not issued after a two to three-week delay). However, “when a court has unnecessarily delayed proceeding to judgement,” such as when motions have been pending for years, a writ of procedendo will issue. *Rodak*, 2004-Ohio-6567, ¶ 16.
11. Relator has no adequate remedy at law. To find that an adequate alternative remedy exists, the alternative must be complete, beneficial, and speedy, or it will not suffice as an adequate remedy at law. *State ex rel. Doe v. Gallia Cty. Common Pleas Court*, 153 Ohio St.3d 623, 2018-Ohio-2168, 109 N.E.3d 1222, ¶ 12. Adequate remedies in the ordinary course of the law include both equitable and legal remedies and if either type of remedy exists, Relator is not eligible for a writ of mandamus. *State ex rel. Doe v. Gallia Cty. Common Pleas Court*, 153 Ohio St.3d 623, 2018-Ohio-2168, ¶ 12. In Relator’s case, there is no alternative adequate remedy available for Relator.
12. _____

-
-
13. Relator is entitled to a writ of procedendo because (A) they have a clear right to require a ruling on their indicated issue(s) and/or proceeding(s); (B) there is a corresponding duty to proceed; and (C) there is no other adequate remedy at law for the above-named issue. *Sherrills*, 72 Ohio St.3d at 462.

IV. Relief Requested

WHEREFORE, Relator requests the following relief pursuant to Section 3, Article IV of the Ohio Constitution:

- 1) That a writ of procedendo issue to Respondent directing them to issue a final ruling on Relator's issue within five business days;
- 2) Only if this Court declines to initially grant the first request for relief, that an alternative writ issue; and;
- 3) Any other relief to which Relator may be entitled.

Respectfully submitted,

RELATOR, PRO SE

Inmate Number/Institution

Address

City, State and Zip Code

CERTIFICATE OF SERVICE

I certify a copy of the foregoing **PETITION FOR WRIT OF PROCEDENDO** has been sent by regular U.S. mail to Respondent this _____ day of _____, 20____.

Mailed to:

Name: _____

Street Address: _____

City: _____ State: _____ Zip Code: _____

RELATOR, PRO SE