



WRIT OF MANDAMUS AND WRIT OF PROCEDENDO PRO SE PACKET

Summary

What is a writ?

A writ is an order from a court, directing someone to either do something or abstain from doing something. A writ is an extraordinary remedy, only applicable when there are no other avenues for relief.

Which pro se writ packet do I need?

OPD has three pro se writ packets: (1) habeas, (2) procedendo and mandamus, and (3) prohibition. Below is a quick summary of each packet’s use. Read each packet for more information.

If you . . .	then you should use the . . .
think your pre-trial bail is too high	Habeas Petition Pro Se Packet (Excessive Bail)
think you should be immediately released from custody	Habeas Petition Pro Se Packet (General Habeas Petition)
want to make someone do something they are legally bound to do in your case	Writ of Mandamus and Writ of Procedendo Pro Se Packet (Writ of Mandamus)
want to make a court issue a decision in your case	Writ of Mandamus and Writ of Procedendo Pro Se Packet (Writ of Procedendo)
want to stop a court from doing something in your case	Writ of Prohibition Pro Se Packet

Writ of Mandamus and Writ of Procedendo

*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 a legal filing of last resort. It is an order from one court to a lower court, corporation, or person to do something it has a legal duty to do. It can be filed in a trial court, appellate court, or in the Ohio Supreme Court. A trial court cannot issue a Writ of Mandamus to another court, but it can issue a Writ of Mandamus to a person or corporation.

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 is also a legal filing of last resort. It 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 after the time limit for deciding postconviction petitions, you can file a Writ of Procedendo to force the trial court to issue a decision on your petition.

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 element.

Clear Legal Right to Relief

You must show that you have a clear right to the legal relief you are requesting. For example, if you are charged with a violation of your parole or post-release control, you have a clear legal entitlement to a hearing before you are found in violation of your parole or post-release control. As discussed below, if you are filing a Writ of Mandamus, you will be able to show both that you were entitled to a hearing, and that the Parole Board was required to give you a hearing. Often, but not always, if you can show one requirement, you have also met the other.

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. Using the above example, if you are found in violation of your parole or post-release control, you *might* have your parole or post-release control revoked, or you *might* only be placed on more intensive supervision. You are not legally entitled to one sanction over the other. Therefore, you would not be able to show a legal entitlement to the relief of a specific sanction. The action you are requesting must be something that you are *entitled* to, something you *must* be given or that *must* happen.

Clear Legal Duty to Perform

You must show that the other party has a clear legal duty to perform the action you are seeking. In the American legal system, judges, prisons, and parole boards 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 a decision maker 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 decision maker is *required* to do.

For example, if you are charged with a violation of your parole or post-release control, the Ohio Parole Board is *required* to give you a hearing where you can defend yourself against the allegation (unless you decide to waive the hearing). If you are not given a hearing, you can file a Writ of Mandamus to compel the Parole Board to hold a hearing. On the other hand, if you have a hearing and the Parole Board believes the violation has been proven, the Parole Board *chooses* what the penalty will be. In this case, you cannot file a Writ of Mandamus to make the Parole Board to give you a specific sentence.

This same idea applies to any other organization or person that you are trying to compel with a Writ, including courts. 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.

While these examples discuss post-release control or parole, Writs of Mandamus and Writs of Procedendo can be used in a wide variety of cases to require courts, agencies, and other authorities to take legally required actions.

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. For example, if you were able to file an appeal from a decision, but you missed the deadline, you usually will not be able to file a Writ of Mandamus. The appeal was an “adequate remedy.” Both Mandamus and Procedendo are what are known as “extraordinary writs.” This is because they are meant to address extraordinary issues not covered by other legal remedies.

RELEVANT STATUTES AND CONSTITUTIONAL SECTIONS

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.

Ohio Constitution

Article IV, Section 2

(B)(1) The Supreme Court shall have original jurisdiction in the following:

...

(b)Mandamus;

...

(e) Procedendo;

INSTRUCTIONS

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.

If you fail to complete any of these documents, your petition may be dismissed. This packet includes forms for each of the above documents that you can use to complete your petition.

3. When you are finished preparing the petition, **you will need to sign the petition and all affidavits in the presence of a notary.** See your unit staff for notary service. Do not sign any affidavits until you see the notary; they must be signed in the notary's presence.
4. You will also need to sign the certificate of service. The certificate of service is a promise that you have sent copies to the clerk of court and the opposing party as stated below. Your petition may be dismissed if you do not sign this certificate and serve the paperwork to the appropriate parties.
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.

_____, Relator, being duly sworn says:
(Your Name)

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 Cty. 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, 637 N.E.2d 319 (1994). 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, 650 N.E.2d 899 (1995) (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. _____

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-
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