

IN THE SUPREME COURT OF INDIANA
NO. _____

STATE OF INDIANA ON THE
RELATION OF _____,
RELATOR

v.

THE _____ COURT AND THE
HONORABLE _____, AS
JUDGE THEREOF,
RESPONDENTS.

VERIFIED PETITION FOR WRIT OF MANDAMUS (AND PROHIBITION)

Comes now the Relator, [insert client's name], by counsel, and respectfully requests this Court's permission to file a Permanent Writ of Mandamus and Prohibition. In support of the request, the Relator would show the Court as follows: [state facts clearly showing]:

1. The Supreme Court has jurisdiction over the application as an original action pursuant to Article Seven, Section 4 of the Indiana Constitution and the Indiana Rules of Procedure for Original Actions, Rule 1(A). [Insert facts showing such].
2. The application is made expeditiously after the jurisdiction of the respondent court became an issue. [Insert facts showing such].
3. The respondent court has exceeded its jurisdiction or the respondent court has failed to act when it was under a duty to act. [Insert facts and basic case law showing such].
4. The absence of jurisdiction of the respondent court or the failure of the respondent court to act when it was under a duty to act has been raised in the respondent court by a written motion filed therein and brought to the attention of the respondent judge, and the written motion has been denied or not ruled on timely; (petitioner need not show this in a change of venue from the judge or county). [Insert facts showing such].
5. The denial of the application will result in extreme hardship. [Insert facts showing such].
6. The remedy available by appeal will be wholly inadequate. [Insert facts showing such].

WHEREFORE, the Relator respectfully requests this Court grant his Petition, and issue a

Permanent Writ of Mandamus [and Prohibition] to [insert trial court and judge] mandating [insert specific relief requested] and/or prohibiting the Respondent Court from performing any further acts in this case, and for all other relief just and proper in the premises.

(Signature)

VERIFICATION

I affirm under the penalties of perjury that the foregoing representations are true to the best of my knowledge and belief.

(Signature)

NOTE

It is strongly recommended that counsel calls the Supreme Court Administrator to discuss the filing of the Petition for Writ(s) prior to doing so.

REFERENCES

CASEBANK Q.3

Rules of Procedure for Original Actions Writs of Mandate and Prohibition

IC 34-27-1 et seq. (mandate and prohibition)

SYNOPSIS OF PROCEDURAL REQUIREMENTS

Orig. Act. R. 2(A) (conditions precedent to making applications for writs)

Orig. Act. R. 2(D) (application dismissed if incomplete, improper form or seeks inappropriate remedy)

Orig. Act. R. 3(A) (original action applications which do not include all of the applicable allegations listed in this paragraph shall be rejected by the Chief Justice or Acting Chief Justice)

Orig. Act. R. 3(B) (petition shall include a separate supporting brief)

Orig. Act. R. 3(C) (certified record of proceedings shall be submitted with original action petition)

Orig. Act. R. 3(D) (requirements for waiver of filing fee in pauper cause)

Orig. Act. R. 3(E) (relator must submit a permanent writ form, and may also submit an alternative writ form)

Orig. Act. R. 3(F) (relator shall file notice of hearing with original action petition)

Orig. Act. R. 3(H) (number of copies)

CASE LAW

State ex rel. Petry v. Madison County Superior Court Div. 3, 573 N.E.2d 884 (Ind. 1991) (request for writ of mandate or prohibition is an appeal to Supreme Court's supervisory and equitable powers, thus litigant must seek such relief as soon as he reasonably can and cannot wait for months or years before pursuing remedy; laches barred Writ where the Defendant waited twenty-two months after trial court denied his first motion for discharge before seeking writ in Supreme Court).

State ex rel. Grecco v. Allen Circuit Ct., 153 N.E.2d 914 (Ind. 1958) (denial of appellate attorney for pauper the Defendant was proper issue for Writ).

State ex rel Camm v. Floyd Circuit Ct., (unpublished Indiana Supreme Court order, issued May 27, 2005, cause number 22S00-0505-OR-00202) (refusal to transfer case back to county to which case was originally venued was proper issue for Writ).

State ex rel. Anderson-Madison County Hospital Development Corporation et al. v. Superior Court of Madison County, Schrenker, Judge. 199 N.E.2d 88 (Ind. 1964) (even where it seems clear that the trial court understands issue and will not correct its own error, a written motion must be filed with the trial

court before a Writ will be accepted).

State ex rel. Henson v. Washington Circuit Ct., 514 N.E.2d 838 (Ind. 1987) (failure to try the Defendant as of date which was clearly outside one year limit, without demonstration of why cause was not tried, required discharge of the Defendant).

State ex rel. Bramley v. Tipton Circuit Ct., 835 N.E.2d 479 (Ind. 2005) (failure to release the Defendant pursuant to CR 4)(C) was a proper issue for writ; while scheduling of a trial date beyond the time limits in Criminal Rule 4(B) and 4(C) may be inconsistent with those rules and results in “acquiescence” when the Defendant does not object at first opportunity, there is nothing about scheduling of a trial for a date beyond the six-month period in Criminal Rule 4(A) that is inconsistent with a Defendant’s assertion of his right to release on his own recognizance once the six months pass).

State ex rel. Woodford v. Marion Superior Ct., 655 N.E.2d 63 (Ind. 1995) (writs of mandate and prohibition will be issued only where the trial court has an absolute duty to act or refrain from acting, not where matter is discretionary with the trial court; the court did not have an absolute duty to consider the Defendant’s successive petition for post-conviction relief).

Williams v. State, 716 N.E.2d 897 (Ind. 1999) (when the clerk failed to withdraw post-conviction case from the trial court for noncompliance with Trial Rule 53.2, the lazy judge rule, the Defendant’s remedy was a Writ; the Defendant was estopped from claiming that the trial court lost jurisdiction to rule on his petition because the Defendant waited until an unfavorable judgment denying him relief instead of seeking writ of mandate).

Wininger v. State, 526 N.E.2d 1216 (Ind.Ct.App. 1988) (proper remedy for challenging appointment of special prosecutor and validity of his acts necessitated direct challenge by filing of application for writ of prohibition in the Supreme Court).

State ex rel. Kirtz v. Delaware Circuit Ct. No. 5, 916 N.E.2d 658 (Ind. 2009) (writ of mandamus was granted where appointment of special prosecutor created an appearance of impropriety under Ind. Code § 33-39-1-6(d) because the special prosecutor and the removed prosecutor were brothers-in-law, defendant had testified against the removed prosecutor in unrelated criminal proceedings, and the special prosecutor had taken a special interest in the case against his brother-in-law, attended the trial in support of his extended family, and was generally supportive of his brother-in-law rather than hostile or indifferent).