CHAPTER 586

MANDAMUS

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586.01 ISSUANCE OF WRIT, JUDICIAL DISCRETION NOT CONTROLLED.

The writ of mandamus may be issued 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. It 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.

History: *(9722) RL s 4556*

586.02 ISSUANCE ON INFORMATION.

The writ shall issue on the information of the party beneficially interested, but it shall not issue in any case where there is a plain, speedy, and adequate remedy in the ordinary course of law.

History: *(9723) RL s 4557*

586.03 ALTERNATIVE OR PEREMPTORY WRIT, CONTENTS.

The writ of mandamus is either alternative or peremptory. The alternative writ shall state concisely the facts showing the obligation of the defendant to perform the act, and the defendant's omission so to do, and command the defendant that immediately after the receipt of a copy of the writ, or at some other specified time, the defendant do the required act, or show cause before the court out of which the writ issued, at a specified time and place, why the defendant has not done so, and that the defendant then and there make a return to the writ, with a certificate thereon of having done as commanded. The peremptory writ shall be in similar form, except that the words requiring defendant to show cause shall be omitted.

History: *(9724) RL s 4558; 1986 c 444*

586.04 PEREMPTORY WRIT.

When the right to require the performance of the act is clear, and it is apparent that no valid excuse for nonperformance can be given, a peremptory writ may be allowed in the first instance. In all other cases the alternative writ shall first issue.

History: *(9725) RL s 4559*

586.05 WRIT; COURT ORDER; SERVICE.

Writs of mandamus shall be issued upon the order of the court or judge, which shall designate the return day, and direct the manner of service thereof, and service of the same shall be by copies of the writ, order allowing the same, and petition upon which the writ is granted.

History: *(9726) RL s 4560; 1909 c 408 s 1*

586.06 ANSWER.

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

History: *(9727) RL s 4561*

586.07 DEFAULT; NEW MATTER IN ANSWER; DEMURRER.

If no answer is made, a peremptory mandamus shall be allowed against the defendant. If an answer is made, containing new matter, the plaintiff may demur thereto, or, on the trial or other proceedings, may make any valid objection to its sufficiency, or may rebut it by evidence either in direct denial or by way of avoidance.

History: *(9728) RL s 4562; 1986 c 444*

586.08 PLEADINGS, ISSUES, TRIAL.

No pleading or written allegation, other than the writ, answer, and demurrer, shall be allowed. They shall be construed and amended, and the issues tried, and further proceedings had, in the same manner as in a civil action. The demurrer need not be noticed for argument, but the issues raised thereby may be disposed of as are other objections to the pleadings.

History: *(9729) RL s 4563*

586.09 JUDGMENT FOR PLAINTIFF; APPEAL.

A plaintiff who is given judgment, shall recover the damage sustained, together with costs and disbursements, and a peremptory mandamus shall be awarded without delay. An appeal from the district court shall lie to the court of appeals in mandamus as in other civil cases.

History: *(9730) RL s 4564; 1983 c 247 s 195; 1986 c 444*

586.10 FINES FOR NEGLECT OF DUTY.

When a peremptory mandamus is directed to a public officer, body, or board, commanding the performance of any public duty specially enjoined by law, if it shall appear to the court that such officer, or any member of such body or board, without just excuse, has refused or neglected to perform the duty so enjoined, it may impose a fine of not more than $250, which fine, when collected, shall be paid into the state treasury; and the payment thereof shall be a bar to an action for any penalty incurred by such officer or member, by reason of the refusal or neglect.

History: *(9731) RL s 4565; 1986 c 444*

586.11 JURISDICTION OF DISTRICT AND APPELLATE COURTS.

The district court has exclusive original jurisdiction in all cases of mandamus, except where the writ is to be directed to a district court or a judge thereof in the judge's official capacity, in which case the court of appeals has exclusive original jurisdiction, or except where the writ is to be directed to the court of appeals or a judge thereof in the judge's official capacity. If the writ is to be directed to the court of appeals or a judge thereof in the judge's official capacity, the supreme court or a judge thereof has original jurisdiction. The Rules of Civil Appellate Procedure shall apply in all proceedings on the writ.

History: *(9732) RL s 4566; 1983 c 216 art 2 s 8; 1983 c 247 s 196; 1986 c 444*

586.12 ISSUES OF FACT; TRIAL.

Issues of fact in proceedings commenced in a district court shall be tried in the county in which the defendant resides, or in which the material facts stated in the writ are alleged to have taken place. Either party shall be entitled to have any issue of fact tried by a jury, as in a civil action. In any case commenced in the supreme court or court of appeals, where there is an issue of fact, upon request of either party, that court shall transmit the record to the proper district court, which shall try the issue in the same manner as if the proceeding had been commenced there. A change of venue may be granted as in other cases.

History: *(9733) RL s 4567; 1983 c 247 s 197*