

TITLE 7
SPECIAL PROCEEDINGS

CHAPTER 4
WRITS OF PROHIBITION

7-401. DEFINITION. The writ of prohibition is the counterpart of the writ of mandate. It arrests the proceedings of any tribunal, corporation, board or person, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board or person.

[(7-401) C.C.P. 1881, sec. 751; R.S., R.C., & C.L., sec. 4994; C.S., sec. 7267; I.C.A., sec. 13-401.]

7-402. WHEN AND HOW ISSUED. It may be issued by the supreme court or any district court to an inferior tribunal, or to a corporation, board or person in all cases where there is not a plain, speedy and adequate remedy in the ordinary course of law. It is issued upon affidavit on the application of the person beneficially interested.

[(7-402) C.C.P. 1881, sec. 752; R.S., R.C., & C.L., sec. 4995; C.S., sec. 7268; I.C.A., sec. 13-402; am. 1996, ch. 224, sec. 3, p. 736.]

7-403. ALTERNATIVE AND PEREMPTORY WRITS. The writs must be either alternative or peremptory. The alternative writ must state generally the allegation against the party to whom it is directed, and command such party to desist or refrain from further proceedings in the action or matter specified therein until the further order of the court from which it is issued, or to show cause before such court, at a specified time and place, why such party should not be absolutely restrained from any further proceedings in such action or matter. The peremptory writ must be in a similar form, except that the words requiring the party to show cause why he should not be absolutely restrained, etc., must be omitted and a return day inserted.

[(7-403) C.C.P. 1881, sec. 753; R.S., R.C., & C.L., sec. 4996; C.S., sec. 7269; I.C.A., sec. 13-403; am. 1996, ch. 224, sec. 4, p. 736.]

7-404. APPLICATION OF MANDAMUS PROCEDURE. The provisions of the preceding sections from 7-305 to 7-314, both inclusive, apply to the proceedings for writ of prohibition.

[(7-404) C.C.P. 1881, sec. 754; R.S., R.C., & C.L., sec. 4997; C.S., sec. 7270; I.C.A., sec. 13-404.]

CHAPTER 5
PROVISIONS APPLICABLE TO WRITS IN GENERAL -- [REPEALED]