

CHAPTER 781

EXTRAORDINARY REMEDIES

781.01 Extraordinary remedy as final judgment or provisional remedy
781.02 Temporary relief.

781.03 Transmittal of record.
781.04 Habeas corpus.

781.01 Extraordinary remedy as final judgment or provisional remedy. The remedy available by a writ of mandamus, prohibition, quo warranto, certiorari or habeas corpus may be granted by the final judgment or allowed as a provisional remedy in an action or proceeding. The use of a writ is not necessary. This section does not alter the nature of any extraordinary remedy or the scope of the proceedings, including without limitation the relief available, discovery, the availability of jury trial and the burden of proof.

History: 1981 c. 289

Judicial Council Note, 1981: This section renders the use of the writ procedure unnecessary. It makes the remedy available by one of the extraordinary writs also available by a final judgment or a provisional remedy in an ordinary action in circuit court. This section follows the approach taken in s. 813.01, stats., by which the injunction remedy was made available in an ordinary action, and in s. 809.01 (1), stats., by which the writ of error procedure was made the same as the procedure for appeals. [Bill 613-A]

781.02 Temporary relief. A plaintiff in an action or proceeding seeking an extraordinary remedy may request, by motion, temporary relief pending disposition of the action or proceeding. Procedure on the motion is governed by s. 801.15 (4) unless the plaintiff establishes that an emergency exists, in which event the court may rule on the motion ex parte.

History: 1981 c. 289; 1989 a. 56.

781.03 Transmittal of record. (1) In an action or proceeding seeking an extraordinary remedy for which a record must be reviewed, the defendant shall cause the record to be transmitted to the clerk of court in which the action or proceeding is pending or shall give notice of the pendency of the action to the person in possession of the record. The person in possession of the record shall transmit the record to the clerk upon receipt of the notice.

(2) If the party seeking the extraordinary remedy is incarcerated, whoever transmits the record to the clerk shall forthwith provide a copy of the record so transmitted to the incarcerated party, except as such transmittal may be limited by the court upon motion for good cause. If the incarcerated party is represented by an attorney in the matter, the copy of the record shall be provided to the attorney rather than the incarcerated party. The cost of preparing and forwarding the copy shall not be taxed against a petitioner who has filed and received approval of an affidavit under s. 814.29 (1).

History: 1981 c. 289; Sup. Ct. Order, 149 W (2d) xxiii.

Judicial Council Note, 1981: This rule will be used most often in a certiorari action in which a proceeding in an inferior tribunal or body is reviewed on the record. It puts the ultimate responsibility for transmitting the record on the person in possession of the record. [Bill 613-A]

Judicial Council Note, 1989: Sub. (2) requires that a copy of the record be furnished to incarcerated persons because they cannot examine it at the courthouse. If prisoners have filed affidavits of indigency, the cost of compliance cannot be taxed against them [Re Order effective 7-1-89]

781.04 Habeas corpus. (1) In an action or proceeding seeking the remedy available by habeas corpus, the court may admit the prisoner to bail in accordance with ch. 969.

(2) If the prisoner is detained upon any criminal accusation, no order for discharge may be made until sufficient notice of the time and place of the hearing on the application is given to the district attorney of the county in which the action or proceeding is pending.

History: 1981 c. 289.

Judicial Council Note, 1981: Sub. (1) applies the substance of s. 782.23, stats., to all actions and proceedings for the remedy available by habeas corpus.

Sub. (2) applies the substance of s. 782.26, stats., to all actions and proceedings for the remedy available by habeas corpus. [Bill 613-A]