

CHAPTER 781

EXTRAORDINARY REMEDIES

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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 Wis. 2d xv (1989).

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]

781.10 Certiorari review of certain local decisions.

(1) DEFINITIONS. In this section:

(a) “Approval” means a permit or authorization for building, zoning, driveway, stormwater, or other activity related to residential development.

(b) “Political subdivision” means a city, village, town, or county or a board of appeals or board of adjustment.

(c) “Residential development” means the development or redevelopment of land or buildings for the primary purpose of providing housing.

(2) JUDICIAL REVIEW. (a) Except as provided in s. 66.10016 (4), a final decision of a political subdivision or an agency of a political subdivision on an application for an approval may be reviewed only by an action for certiorari as provided under this section.

NOTE: Par. (a) is shown as amended eff. 1–1–25 by 2023 Wis. Act 16. Prior to 1–1–25 it reads:

(a) A final decision of a political subdivision or an agency of a political subdivision on an application for an approval may be reviewed only by an action for certiorari as provided under this section.

(b) No action under this section may be filed more than 30 days after the final decision by a political subdivision or agency of a political subdivision on an application for an approval.

(c) An action under this section may be filed only by any of the following:

1. The person who submitted the application for an approval.

2. A person that has an ownership interest in the real property that is the subject of the application for an approval.

3. A person that, as a result of the final decision on the application for an approval, sustains actual damages or will imminently sustain actual damages that are personal to the person and distinct from damages that impact the public generally. A person under this subdivision may not seek review under this section unless, prior to the final decision on the approval, the person provided a statement in writing on the approval to the political subdivision or agency of the political subdivision or appeared and provided an oral statement at a public proceeding held by the political subdivision or agency of the political subdivision at which the approval was considered.

4. A person, other than an individual, that satisfies all of the following conditions:

a. The person has as a member, partner, or stockholder at least one person described under subd. 1., 2., or 3.

b. The person was not organized or incorporated in response to the application.

5. A local governmental unit, as defined in s. 66.0131 (1) (a).

6. To the extent authorized by law, a state agency, as defined in s. 20.931 (1) (c), that is aggrieved by the final decision on the application for approval.

(d) 1. The person seeking review under this section shall file pleadings, which shall be served in the manner provided in ch. 801 for service in civil actions. The pleadings shall specify facts demonstrating that the person has standing under par. (c) and shall identify the specific errors the person claims justify the requested relief. The political subdivision shall have 45 days to file an

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answer or other responsive pleading to the complaint. The political subdivision shall transmit the record under s. 781.03 (1) no later than 30 days after an answer or other responsive pleading is filed.

2. The court shall require that any additional pleadings and any motions and supporting papers be filed no later than 90 days after the expiration of the latest deadline under subd. 1. for filing answers or other responsive pleadings. The court may supplement the record on review only upon motion of a party for good cause.

3. The court shall give the action under this paragraph preference over all other civil actions and proceedings.

4. The court shall decide the action under this paragraph upon the return made by the political subdivision. The court may reverse or affirm the determination brought up for review or remand to the political subdivision for further proceedings consistent with the court's decision or take any other action that the court deems appropriate in the interests of justice that is consistent with judicial review of an action in certiorari. The court shall issue a decision in writing no later than 60 days after the deadline under subd. 2.

5. Any appeal of a decision issued under subd. 4. shall be taken within the time period specified in s. 808.04 (1s).

History: 2023 a. 16.