WEST VIRGINIA CODE CHAPTER 53 ARTICLE 1

WV Legislature

§53-1-1. When writ of prohibition lies as matter of right.

The writ of prohibition shall lie as a matter of right in all cases of usurpation and abuse of power, when the inferior court has not jurisdiction of the subject matter in controversy, or, having such jurisdiction, exceeds its legitimate powers.

WV Legislature

§53-1-2. Jurisdiction of writs of mandamus and prohibition; by whom rule to show cause or peremptory writ issued.

Jurisdiction of writs of mandamus and prohibition (except cases whereof cognizance has been taken by the Supreme Court of Appeals or a judge thereof in vacation), shall be in the circuit court of the county in which the record or proceeding is to which the writ relates. A rule to show cause as hereinafter provided for may be issued by a judge of a circuit court or of the Supreme Court of Appeals in vacation. A writ peremptory may be awarded by a circuit court or a judge thereof in vacation, or by the Supreme Court of Appeals in term.

WV Legislature

§53-1-3. Application for mandamus or prohibition.

Application for a writ of mandamus or a writ of prohibition shall be on verified petition.

WV Legislature

§53-1-4. Contents of petition.

The petition shall state plainly and concisely the grounds of the application, concluding with a prayer for the writ.

WV Legislature

§53-1-5. When rule to show cause issued; copy of petition to accompany service of rule; when rule returnable.

The court or judge to whom the petition in mandamus or prohibition is presented shall, if the petition makes a prima facie case, issue a rule against the defendant to show cause why the writ prayed for should not be awarded. A copy of the petition shall accompany service of the rule. Such rule shall be returnable at a time to be fixed by the court or judge.

WV Legislature

§53-1-6. How defense made; reply; amendments.

If the defendant appear and make defense, such defense may be by demurrer, or answer on oath, to the petition, or both, such answer to be subject to demurrer by the petitioner or relator. Reply may be made when proper. The court or judge may permit amendments as in other cases.

WV Legislature

§53-1-7. Adjournment.

When the case is before the judge of a circuit court in vacation, he may adjourn it from day to day, or from time to time, until finally disposed of.

WV Legislature

§53-1-8. Award or denial of writ; costs.

The writ peremptory shall be awarded or denied according to the law and facts of the case, and with or without costs, as the court or judge may determine.

WV Legislature

§53-1-9. Suspension of proceedings where prohibition applied for.

On petition for a writ of prohibition, the circuit court, or judge in vacation, or the Supreme Court of Appeals, or a judge thereof in vacation, may, at any time before or after the application for the writ is made, if deemed proper, make an order, a copy of which shall be served on the defendant, suspending the proceedings sought to be prohibited until the final decision of the cause.

WV Legislature

§53-1-10. Certification of proceedings in vacation; entry in order book.

When the proceedings on the petition are had before the judge of the circuit court in vacation, he shall certify the same, and any judgment or order made by him in the case, to the clerk of the court, and they shall be entered by the clerk in the order book on the law side of the court, and have the same force and effect as if had or made and entered in term.

WV Legislature

§53-1-11. Service of writ; how obedience to writ enforced.

Service of a copy of the order awarding the writ shall be equivalent to service of the writ, and obedience to the writ or order may be enforced by process of contempt in vacation in like manner as in term.

WV Legislature

§53-1-12. Distribution of levy under mandamus to satisfy judgment against a political subdivision.

Wherever a writ of mandamus, issued to enforce the laying of a levy to satisfy a judgment against a political subdivision of the state, would produce a disturbance in the administration of the financial affairs of the political subdivision not necessary to the protection and enforcement of the right of the creditor, the court may order that the levy be distributed equally over a period of years not to exceed ten, and shall allow the creditor interest, not in excess of the legal rate, upon the installments.

WV Legislature