

7 GCA CIVIL PROCEDURE  
CH. 31 WRITS OF REVIEW, MANDATE AND PROHIBITION

**CHAPTER 31**  
**WRITS OF REVIEW, MANDATE AND PROHIBITION**

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**§ 31101. Writ of Review.**

The writ of certiorari may be denominated the *writ of review*.

**SOURCE:** CCP § 1067.

**§ 31102. When and by What Courts Granted.**

A writ of review may be granted by any court, when an inferior tribunal, board, or officer, exercising judicial functions, has exceed the jurisdiction of such tribunal, board, or officer, and there is no appeal, nor, in the judgment of the court, any plain, speedy, and adequate remedy.

**SOURCE:** CCP § 1068.

**CROSS-REFERENCE:** See 4 GCA, *Public Officers and Employees*, for provisions granting some unspecified form of review to the Superior Court. Also, the *Administrative Adjudication Law*, 5 GCA Chapter 5, provides for review of certain agency actions, both in rule-making and in adjudicating.

**§ 31103. Application for Writ.**

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The application must be made in the verified petition of the party beneficially interested, and the court may require a notice of the application to be given to the adverse party, or may grant an order to show cause why it should not be allowed, or may grant the writ without notice.

SOURCE: CCP § 1069.

**§ 31104. To Whom the Writ is to be Directed.**

The writ may be directed to the inferior tribunal, board or officer, or to any other person having the custody of the record or proceedings to be certified. When directed to a tribunal, the clerk, if there be one, must return the writ with the transcript required.

SOURCE: CCP § 1070.

**§ 31105. Contents of Writ.**

The writ of review must command the party to whom it is directed to certify fully to the court issuing the writ, at a specified time and place, a transcript of the record and proceedings (describing or referring to them with convenient certainty), that the same may be reviewed by the court, and requiring the party, in the meantime, to desist from further proceedings in the matter to be reviewed.

SOURCE: CCP § 1071.

**§ 31106. Inferior Court Proceedings may be Stayed, or Not.**

If a stay of proceedings be not intended, the words requiring the stay must be omitted from the writ; those words may be inserted or omitted, in the sound discretion of the court, but if omitted, the power of the inferior court or officer is not suspended or the proceedings stayed.

SOURCE: CCP § 1072.

**§ 31107. Service of the Writ.**

The writ must be served in the same manner as a summons in civil action, except when otherwise expressly directed by the court.

SOURCE: CCP § 1073.

CROSS-REFERENCE: See GRCP Rule 4.

**§ 31108. Extent of Review.**

The review upon this writ cannot be extended further than to determine whether the inferior tribunal, board, or officer has regularly pursued the authority of such tribunal, board, or officer.

SOURCE: CCP § 1074.

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**§ 31109. Perfecting a Defective Return.**

If the return of the writ be defective, the court may order a further return to be made. When a full return has been made, the court must hear the parties, or such of them as may attend for that purpose, and may thereupon give judgment, either affirming or annulling, or modifying the proceedings below.

**SOURCE:** CCP § 1075.

**§ 31110. Copy of Judgment Must be Sent.**

A copy of the judgment, signed by the clerk, must be transmitted to the inferior tribunal, board, or officer having the custody of the record or proceedings certified up.

**SOURCE:** CCP § 1076.

**§ 31111. Judgment Rolls.**

A copy of the judgment, signed by the clerk, entered upon or attached to the writ and return, constitutes the judgment roll.

**SOURCE:** CCP § 1077.

**CROSS-REFERENCE:** § 21603 of this Title, relating to the Judgment Roll of the Superior Court, was amended by P.L. 13-156:2 (7/9/76).

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**ARTICLE 2  
WRIT OF MANDATE**

- § 31201. Writ of Mandate.
- § 31202. When and by What Court Issued.
- § 31203. When and Upon What Writ to Issue.
- § 31204. Writ: Alternative or Peremptory.
- § 31205. When Application is Made Without Notice.
- § 31206. Adverse Party May Answer Under Oath.
- § 31207. Trial Held if Fact Questions Raised.
- § 31208. Motions Permitted.
- § 31209. Motion for New Trial.
- § 31210. Transmittal of Trial Decision.
- § 31211. Hearings by Court.
- § 31212. Recovery of Damages by Applicant.
- § 31213. Service of the Writ.
- § 31214. Writ of Mandate: Penalty.

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§ 31215. Additional Powers of Court

**§ 31201. Writ of Mandate.**

The writ of mandamus may be de-nominated a *writ of review*.

**SOURCE:** CCP § 1084.

**§ 31202. When and by What Court Issued.**

It may be issued by any court, [except a commissioner's court or police court,] 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; or to compel the admission of a party to the use and enjoyment of a right or office to which he is entitled, and from which he is unlawfully precluded by such inferior tribunal, corporation, board, or person.

**SOURCE:** CCP § 1085.

**NOTE:** Neither a *Commissioner's Court* nor a *Police Court* exist, both having been absorbed into the Superior court before 1970. Commissioners (now Mayors) no longer have any judicial functions.

**§ 31203. When and Upon What Writ to Issue.**

The writ must be issued in all cases where there is not a plain, speedy, and adequate remedy in the ordinary course of law. It must be issued on the verified petition of the party beneficially interested.

**SOURCE:** CCP § 1086.

**§ 31204. Writ: Alternative or Peremptory.**

The writ may be either alternative or peremptory. The alternative writ must command the party to whom it is directed, immediately after the receipt of the writ, or at some other specified time, to do the act required to be performed or to show cause before the court at a specified time and place why he has not done so. The peremptory writ must be in a similar form, except that the words requiring the party to show cause why he has not done as commanded must be omitted and a return day inserted.

**SOURCE:** CCP § 1087.

**§ 31205. When Application is Made Without Notice.**

When the application is made to the court without notice to the adverse party, and the writ is allowed, the alternative must be first issued; but if the application is upon due notice and the writ is allowed, the peremptory may be issued in the first instance. With the alternative writ and also with any notice of an intention to apply for the writ, there must be served on each person against whom the writ is sought a copy of the petition. The notice of the application, when given, must be at least ten (10) days. The writ cannot

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be granted by default. The case must be heard by the court, whether the adverse party appears or not.

**SOURCE:** CCP § 1088

**§ 31206. Adverse Party may Answer Under Oath.**

On the return of the alternative, or the day on which the application for the writ is noticed, the party on whom the writ or notice has been served may answer the petition under oath, in the same manner as an answer to a complaint in a civil action.

**NOTE:** See GRCP Rule 11. This section would seem not to be that sort which specially requires a verified petition, but rather permits one in the same manner as in regular actions. In such cases, verification is not required.

**§ 31207. Trial Held if Fact Questions Raised.**

If an answer be made, which raises a question as to a matter of fact essential to the determination of the motion, and affecting the substantial rights of the parties, and upon the supposed truth of the allegation upon which the application for the writ is issued, the court may, in its discretion, try the question or order the question to be tried, and postpone the argument until such trial can be had, and the decision certified to the court unless the trial is held in the court before which the writ is pending. The question to be tried must be distinctly stated in any order for trial, and the court must be designated in which the same shall be had. The order may also direct the judge to assess any damages which the applicant may have sustained, in case they find for him.

**SOURCE:** CCP § 1090.

**§ 31208. Motions Permitted.**

On the trial, the applicant is not precluded by the answer from any valid objection to its sufficiency, and may countervail it by proof either in direct denial or by way of avoidance.

**SOURCE:** CCP § 1091.

**§ 31209. Motion for New Trial.**

The motion for new trial must be made in the court in which the issue of fact is tried.

**SOURCE:** CCP § 1092.

**§ 31210. Transmittal of Trial Decision.**

If no notice of a motion for a new trial be given, or if given, the motion be denied, the clerk, within five days after rendition of the decision or

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denial of the motion, must transmit to the court in which the application for the writ is pending, a certified copy of the decision attached to the order of trial; after which either party may bring on the argument of the application, upon reasonable notice to the adverse party.

SOURCE: CCP § 1093.

**§ 31211. Hearings by Court.**

If no answer be made, the case must be heard on the papers of the applicant. If the answer raises only questions of law, or puts in issue immaterial statements, not affecting the substantial rights of the parties, the court must proceed to hear or fix a day for hearing the argument of the case.

SOURCE: CCP § 1094.

**§ 31212. Recovery of Damages by Applicant.**

If judgment be given for the applicant, he may recover the damages which he has sustained, as may be determined by the court, together with costs; and for such damages and costs an execution may issue; and a peremptory mandate must also be awarded without delay.

SOURCE: CCP § 1095.

**§ 31213. Service of the Writ.**

The writ must be served in the same manner as a summons in a civil action, except when otherwise expressly directed by order of the court. Service upon the majority of the members of any board or body is service upon the board or body, whether at the time of the service the board or body was in session or not.

SOURCE: CCP § 1096.

**§ 31214. Writ of Mandate: Penalty.**

When a peremptory mandate has been issued and directed to any inferior tribunal, corporation, board or person, if it appears to the court that any member of such tribunal, corporation, or board, or such person upon whom the writ has been personally served, has without just excuse refused or neglected to obey the same, the court may, upon motion, impose a fine not exceeding One Hundred Dollars. In case of persistence in a refusal of obedience, the court may order the party to be imprisoned until the writ is obeyed, and may make any orders necessary and proper for the complete enforcement of the writ.

**§ 31215. Additional Powers of Court.**

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In the event that a Court has issued a mandate to any inferior tribunal, corporation, board or person, and the inferior tribunal, corporation, board or person refuses to comply with the Court's mandate, the Court, in addition to its other powers contained within this Chapter and under law, may take such action that was mandated by the Court, including, but not limited to, making appointments, whether those appointments are ministerial or discretionary. This Section shall also apply to any Court issued mandates existing at the time of enactment of this Section.

**SOURCE:** Added by P.L. 26-126:1.

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**ARTICLE 3  
WRIT OF PROHIBITION**

- § 31301. Writ of Prohibition Defined.
- § 31302. When and Where Writ Issued.
- § 31303. Writ: Either Alternative or Peremptory.
- § 31304. Certain Provisions of Preceding Article Apply.

**§ 31301. Writ of Prohibition Defined.**

The writ of prohibition is the counterpart of the writ of mandate. It arrests the proceedings of any tribunal, corporation, board, or person exercising judicial functions, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board, or person.

**SOURCE:** CCP § 1102.

**§ 31302. When and Where Writ Issued.**

It may be issued by any court except police or commissioner's courts, 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 the verified petition of the person beneficially interested.

**SOURCE:** CCP § 1103.

**§ 31303. Writ: Either Alternative or Peremptory.**

The writ must be either alternative or peremptory. The alternative writ must command the party to whom it is directed 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, and to show cause before such

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court, at a specified time and place, why such party should not be absolutely restrained from 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.

**SOURCE:** CCP § 1104.

**§ 31304. Certain Provisions of Preceding Article Apply.**

The provisions of the preceding Article, except the first four sections thereof, [§ 31201 - § 31204], apply to this proceeding.

**SOURCE:** CCP § 1105.

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**ARTICLE 4  
COURTS HAVING JURISDICTION**

§ 31401. Writs may Issue and be Heard at Any Time.

**§ 31401. Writs may Issue and be Heard at Any Time.**

Writs of review, mandate and prohibition issued by the Supreme Court or by the Superior Court may in the discretion of the court issuing the writ, be made returnable, and a hearing thereon be had at any time.

**SOURCE:** CCP § 1108; amended by P.L. 12-85; reenacted without change by P.L. 21-147 as part of creation of the Supreme Court of Guam.

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**ARTICLE 5**  
**RULES OF PRACTICE AND APPEALS**

§ 31501. Certain Provisions of Part 2 Applicable.

§ 31502. Provisions Applicable to Appeals.

**§ 31501. Certain Provisions of Part 2 Applicable.**

Except as otherwise provided in this Chapter, the provisions of Part 2 of this Title are applicable to and constitute the rules of practice in the proceedings mentioned in this Chapter.

**SOURCE:** CCP § 1109.

**NOTE:** Part 2 of this Title commences with Chapter 10, but the procedure referred to also includes the Guam Rules of Civil Procedure because those Rules have replaced much of this Code.

**§ 31502. Provisions Applicable to Appeals.**

The provisions of Part 2 of this Title relative to new trials and appeals, except in so far as they are inconsistent with the provisions of this Chapter, apply to the proceedings mentioned in this Chapter.

**SOURCE:** CCP § 1110

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