

CHAPTER 32-33

WRIT OF CERTIORARI

32-33-01. When and by whom writ of certiorari granted. A writ of certiorari shall be granted by the supreme court or district court when an officer, board, tribunal, or inferior court has exceeded the jurisdiction of such officer, board, tribunal, or inferior court, as the case may be, and there is no appeal, nor, in the judgment of the court, any other plain, speedy, and adequate remedy, and also when, in the judgment of the court, it is deemed necessary to prevent miscarriage of justice.

32-33-02. How application made. The application must be made on affidavit by 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.

32-33-03. To whom directed. The writ may be directed to the inferior court, tribunal, board, or officer, or to any other person having the custody of the records or proceedings to be certified.

32-33-04. Requisites of writ. The writ of certiorari shall command the party to whom it is directed to certify fully to the court issuing the writ, at a specified time and place, and to annex to the writ a transcript of the record and proceedings, describing or referring to them with convenient certainty, and a statement of other matter specified in and required by the writ, 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.

32-33-05. To officer whose term has expired. A writ of certiorari may be issued to and a return to a writ of certiorari may be made by an officer whose term of office has expired. Such an officer may be punished for a failure to make a return to the writ as required thereby, or to make a further return as required by an order for that purpose.

32-33-06. Stay of proceedings. If a stay of proceedings is not intended, the words requiring the stay must be omitted from the writ. These 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 nor the proceedings stayed.

32-33-07. Other proofs permitted if officer dies or return incomplete. If the officer or other person whose duty it is to make a return dies, absconds, or moves from the state, or becomes insane after the writ is issued and before making a return, or after making an insufficient return, and it appears that there is no other officer or person from whom a sufficient return can be procured by means of a new writ, the court in its discretion may permit affidavits or other written proofs relative to the matters not sufficiently returned to be produced and may hear the case accordingly. The court also in its discretion may permit either party to produce affidavits or other written proofs relative to any alleged error of fact or any other question of fact which is essential to the jurisdiction of the body or officer to make the determination to be reviewed, when the facts in relation thereto are not stated sufficiently in the return and the court is satisfied that they cannot be made to appear by means of an order for a further return.

32-33-08. How served. The writ must be served in the same manner as a summons in a civil action except when otherwise expressly directed by the court.

32-33-09. Extent of review. Except as otherwise provided by law, the review upon a writ of certiorari cannot be extended further than to determine whether the inferior court, tribunal, board, or officer has pursued regularly the authority of such court, tribunal, board, or officer.

32-33-10. Return of writ and hearing. If the return to the writ is defective, the court may order a further return to be made. Any record made by the inferior court, officer, board, or tribunal may be impeached by the return to the writ, or in the cases mentioned in section

32-33-07, by affidavits or other written proof. Upon the final hearing the court must hear the parties, or such of them as may attend for that purpose, and thereupon may give judgment either affirming, annulling, or modifying the proceedings below.

32-33-11. Judgment sent below. A copy of the judgment signed by the clerk must be transmitted to the inferior court, tribunal, board, or officer having custody of the record or proceedings certified.

32-33-12. Judgment roll. A copy of the judgment signed by the clerk, entered upon or attached to the writ and return, constitutes the judgment roll.