

Presented at:
2023 Robert O. Dawson
Conference on Criminal Appeals

May 10–12, 2023
Austin, TX

Anatomy of a Mandamus

Rosa Theofanis

Rosa Theofanis
Third Court of Appeals
Austin, TX

The University of Texas School of Law Continuing Legal Education • 512.475.6700 • utcle.org

1

Anatomy of a Mandamus



2

What is Mandamus?

A writ of mandamus is “[a] writ issued by a court to compel performance of a particular act by a lower court or a governmental officer or body, usu[ally] to correct a prior action or failure to act.” *Mandamus*, *Black’s Law Dictionary* 973 (11th ed. 2019).



Henri de Toulouse-Lautrec, *Equestrienne (At the Cirque Fernando)*, 1882–1892, The Art Institute of Chicago.

3

What is Prohibition?

“The writ of prohibition appropriately issues to ‘prevent the commission of a future act and not to undo, nullify, or review an act already performed; it will not be granted when the act sought to be prevented is already done, but will lie when such act is not a full, complete, and accomplished judicial act.’”

Garcia v. Dial, 596 S.W.2d 524, 529 (Tex. Crim. App. 1980) (citations omitted)



Francisco José de Goya y Lucientes, *Be Careful with that Step!* 1816–1820, The Art Institute of Chicago.

4

Substance not Denomination

“It has long been our practice with respect to pleadings in extraordinary matters to look to the substance of the pleading, not its denomination.”

In re Daniel, 396 S.W.3d 545, 549 (Tex. Crim. App. 2013)



Jean Louis André Théodore Géricault. Two Boxers Facing Left. 1818–1824. The Art Institute of Chicago.

5

Limits on Prohibition in the Courts of Appeals

“[T]he courts of appeals lack original jurisdiction [over a petition for writ of prohibition] other than to enforce their jurisdiction.”

In re State ex rel. Best, 616 S.W.3d 594, 599 (Tex. Crim. App. 2021)



Winslow Homer. Jurors Listening to Counsel, Supreme Court, New City Hall, New York. Published 1869. The Art Institute of Chicago.

6

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Anatomy of a Mandamus

Also available as part of the eCourse

[Writ Practice in Criminal Appeals: Requirements and Best Practices \(2023\)](#)

First appeared as part of the conference materials for the
2023 Robert O. Dawson Conference on Criminal Appeals session
"Mandamus"