

**Title 9.**

**Special Proceedings.**

- Chap. 1. Declaratory Judgments, § 1.  
2. Conciliation Proceedings, § 51.  
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**CHAPTER 1.**

**DECLARATORY JUDGMENTS.**

Sec.

1. Authority of courts to render.

**§ 1. Authority of courts to render.** — In a case of actual controversy within its jurisdiction, the high court or a district court, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such. Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment. (Code 1966, § 118; Code 1970, tit. 9, § 1.)

## CHAPTER 2.

## CONCILIATION PROCEEDINGS.

Sec.

51. Conciliation jurisdiction.

**§ 51. Conciliation jurisdiction.** — (1) District and community courts may, at the request of a party to any civil controversy (other than annulment, divorce and adoption), endeavor to effect an amicable settlement of the controversy, and to that end, may invite the other party or parties to the controversy to appear before the judge for an informal hearing.

(2) Such a request shall be made in the district or community court within whose territorial jurisdiction the other party or the largest number of the other parties live or have their usual places of business or employment.

(3) If an agreement in settlement of the controversy is reached, the judge shall reduce it to writing and his report of the settlement agreement, when signed by the parties, shall have the force and effect of a judgment even though the subject matter of the controversy may be beyond the jurisdiction of the court for purposes other than conciliation. (Code 1966, § 164; Code 1970, tit. 9, § 51.)

**District and community courts — Agreements in writing.** — District and community courts may assist in settlement of controversies and reduce agreements to writing which, when signed by parties, have effect of judgments. Philip v. Carl, 3 TTR 97 (1966).

If agreement of settlement of land

controversy is reached, even though subject matter of controversy may be beyond jurisdiction of court, community court or district court judge may reduce it to writing, and his report of settlement agreement, when signed by parties, has force and effect of judgment. Aty v. Sieuo, 2 TTR 303 (1961).

## CHAPTER 3.

## HABEAS CORPUS.

Sec.	Sec.
101. Power to grant writs of habeas corpus.	105. Preliminary examination and recommendation by district court judge.
102. Application for writ.	106. Issuance or denial of writ.
103. Action by clerk of courts upon application for writ.	107. Evidence.
104. Show cause order.	108. Appeals.

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**Cross reference.** — Writ of habeas corpus, 1 TTC 11.

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**§ 101. Power to grant writs of habeas corpus.** — Writs of habeas corpus may be granted by the trial division of the high court or any judge authorized to be assigned by the chief justice in the appellate division of the high court. Every person unlawfully imprisoned or restrained of his liberty under any pretense whatsoever, or any person on behalf of an unlawfully imprisoned individual, may apply for a writ of habeas corpus to inquire into the cause of such imprisonment or restraint. (Code 1966, § 300; Code 1970, tit. 9, § 101.)

**Habeas corpus — Scope and purpose.** — The scope and purpose of the writ of habeas corpus is to inquire into the cause of a person's imprisonment and restraint. In re Singeru Techur (App. Div., April, 1976); In re Yusim Minor (App. Div., April, 1976).

**Determination as to guilt not the function.** — Determination of the guilt or innocence of the prisoner is not the function of habeas corpus. Figir v. Trust Territory, 4 TTR 368 (1969).

**Jurisdiction is proper subject of inquiry.** — Jurisdiction of court or judge to make order, judgment or sentence by which a person is imprisoned is always the proper subject of inquiry on habeas corpus. Purako v. Efou, 1 TTR 236 (1955).

**Consideration of facts by court without issuing the writ.** — It is the usual procedure on

an application for a writ of habeas corpus under this chapter for the court to issue the writ and on the return to hear and dispose of the case. However, the court may, without issuing the writ, consider and determine whether the facts alleged, if proved, would warrant discharge of the prisoner. Figir v. Trust Territory, 4 TTR 368 (1969).

**Application for writ refused where orderly procedures are present.** — Application for writ of habeas corpus would be refused where orderly procedures, including the right to appeal, were present, since a challenge to the constitutionality of a statute can best be determined by full orderly appellate consideration, not by a petition for a writ of habeas corpus. In re Application of HSU, 6 TTR 27 (1972).

**§ 102. Application for writ.** — Application for the writ of habeas corpus shall be made to a court or judge authorized to issue the same, or to a judge of a district court or a clerk of courts, by a written statement under oath signed by the party for whose relief it is intended, or by some person in his behalf. It shall set forth the facts concerning the imprisonment or restraint of the person for whose relief it is intended, and, if known, the name of the person who has custody over him, and by virtue of what claim or authority the restraint or imprisonment is being practiced. (Code 1966, § 301; Code 1970, tit. 9, § 102.)

**§ 103. Action by clerk of courts upon application for writ.** — If the application for a writ of habeas corpus is made to a clerk of courts, the clerk

shall immediately bring the application to the personal attention of a court or judge authorized to issue the writ, or a judge of the district court. (Code 1966, § 302; Code 1970, tit. 9, § 103.)

**§ 104. Show cause order.** — A court or judge entertaining an application for a writ of habeas corpus shall issue an order directing the person against whom the writ is requested to show cause why the writ should not be granted, unless it appears from the application that the person detained is not entitled thereto. The order to show cause shall be directed to the person having custody of the person detained. The order shall set the time and place for hearing, which shall be as early as the court or judge issuing the order deems practicable, preferably within three days. The person to whom the order is directed shall at or before the time set for hearing make a return certifying the true cause of the detention and unless the application for the writ and the return present only issues of law, the person to whom the order is directed shall produce at the hearing the person detained, unless the person is so sick or so weak that this cannot with safety be done. The applicant, or the person detained may, under oath, deny any of the facts set forth in the return, or declare any other material facts. The application, the return, and any suggestions made against either of them may be amended by leave of the court or judge. If the person to whom the order is directed does not make a return as above required, or does not appear at the time and place set for hearing, the court or judge may proceed without him. (Code 1966, § 303; Code 1970, tit. 9, § 104.)

**§ 105. Preliminary examination and recommendation by district court judge.** — If the application for a writ of habeas corpus is heard by a judge of a district court, he shall, without delay or formality, make preliminary findings of fact and recommendations as to the issuance or denial of the writ, and the disposition of the person detained, and submit these by dispatch or other speedy method to the chief justice or to the most accessible court or judge authorized to issue the writ. (Code 1966, § 304; Code 1970, tit. 9, § 105.)

**§ 106. Issuance or denial of writ.** — A court or judge hearing the application for a writ of habeas corpus, and authorized to issue the writ, shall, without delay or formality, determine the facts, grant the writ unconditionally, deny the writ, or grant the writ on terms fixed by the court and discharge the person for whose relief the application has been brought or make any order as to his disposition that law and justice may require. The court or judge authorized to issue the writ and receiving the report and recommendations of a judge of a district court as provided in section 105 of this chapter, may act upon the matter, by dispatch or other speedy method, on the basis of the district court judge's report, or may order such further hearing or the submission of such further evidence as he deems law and justice require, and the clerk of courts of the district in which the matter is pending shall take such action in the matter as the judge or court may direct. (Code 1966, § 305; Code 1970, tit. 9, § 106.)

**Court cannot dismiss charges pending in criminal case on appeal.** — Although a defendant may be discharged from custody if the court finds, after a hearing, that a writ should issue, the court cannot reach over into the criminal proceedings and dismiss charges pending in the criminal case on appeal. In re Singeru Techur (App. Div., April, 1976); In re

Yusim Minor (App. Div., April, 1976).

**Correction of defect in due process before discharge on habeas corpus.** — Where a party is denied due process of law in the revocation of his parole, his discharge on habeas corpus will be delayed so that the defect may be corrected. *Ichiro v. Bismark*, 1 TTR 57 (1953).

**§ 107. Evidence.** — On application for a writ of habeas corpus, evidence may be taken orally or by deposition, or in the discretion of the court or judge, by written statement under oath. If written statements under oath are admitted, any party shall have the right to propound written interrogatories to the person who made such statements or to file answering written statements under oath. On application for a writ of habeas corpus, documentary evidence, transcripts of proceedings upon arraignments, plea, sentence, and a transcript of the oral testimony introduced on any previous similar application by or on behalf of the same person shall be admissible in evidence. The declarations of a return to an order to show cause in a habeas corpus proceeding, if not formally denied, shall be accepted as true, except to the extent that the court or judge finds from the evidence that they are not true. (Code 1966, § 306; Code 1970, tit. 9, § 107.)

**§ 108. Appeals.** — In a habeas corpus proceeding in which the final order is made by the trial division of the high court or a judge thereof, the final order shall be subject to appeal to the appellate division of the high court, provided notice of appeal is filed within thirty days after entry of the final order. The court or judge issuing the final orders may in its or his discretion stay execution of the order, admit the person imprisoned or restrained to bail pending action by the appellate division of the high court, or direct that the final order take effect pending such action or without waiting for the time for filing such notice of appeal to expire. (Code 1966, § 307; Code 1970, tit. 9, § 108.)

**Denial of preliminary examination not a ground for habeas corpus.** — There was no right to preliminary examination of arrested person brought before court competent to try him for offense charged, and habeas corpus was properly denied where denial of preliminary

examination was alleged as the ground for seeking it; thus court properly denied motion to dismiss based on alleged denial of right of habeas corpus. *Borja v. Trust Territory*, 6 TTR 584 (1974).