

CALIFORNIA APPELLATE WRIT GUIDE

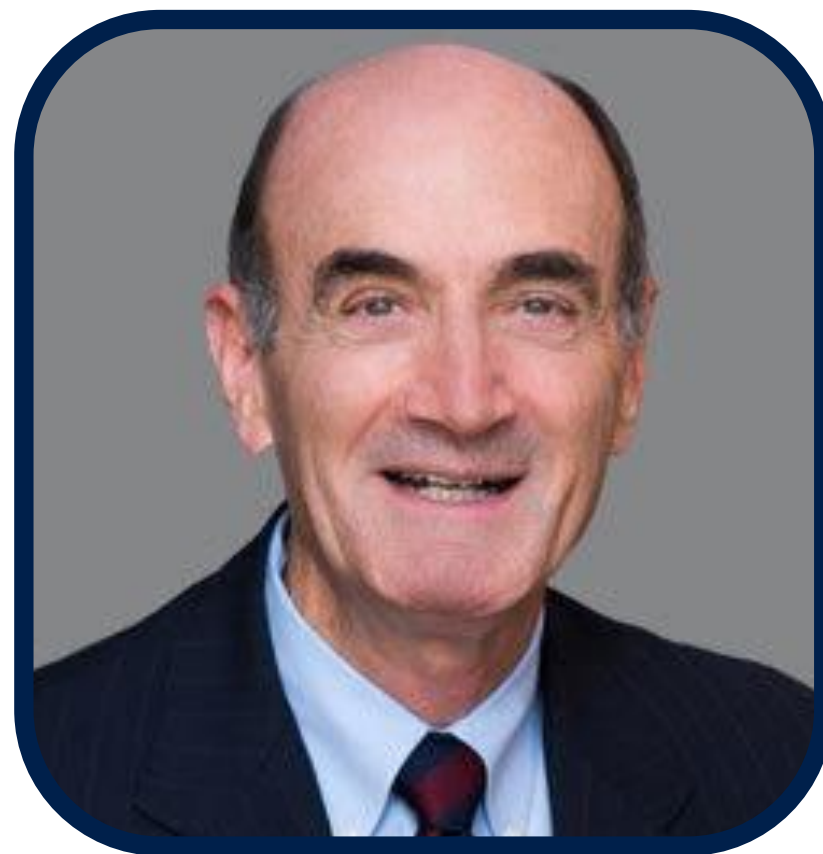
FOR



TRIAL ATTORNEYS

HON. ALLAN GOODMAN (RET.)
ANDREA FIGLER VENTURA, ESQ.
HON. THOMAS WILLHITE, JR. (RET.)

SPEAKING TODAY



HON. ALLAN GOODMAN (RET.)

ADR Services, Inc.



ANDREA FIGLER VENTURA, ESQ.

Court of Appeal, Second District



HON. THOMAS WILLHITE, JR. (RET.)

ADR Services, Inc.

APPELLATE WRIT PRACTICE FOR THE CIVIL TRIAL LITIGATOR

GENERAL AUTHORITIES



California Rules of Court

- Rule 8.486. Petitions
- Rule 8.487. Opposition and amicus curiae briefs
- Rule 8.112. Petition for writ of supersedeas
- Rule 8.116. Request for writ of supersedeas or temporary stay



Secondary Authorities

- Rutter Group California Practice Guide Civil Appeals & Writs, Ch. 15, §§ 15.1, et seq. (extraordinary writs), Ch. 7, §§ 7:260, et seq (supersedeas)
- 8 Witkin, Cal. Proc. 6th, Ch. XII, Extraordinary Writs (2023)

THE CHANCES OF RECEIVING WRIT RELIEF

Extraordinary writ relief is rare.

Ninety percent of extraordinary writ petitions are summarily denied.

(See Omaha Indemnity Co. v. Superior Court (1989) 209 Cal.App.3d 1266, 1273–1274. [general requirements for granting writ petitions].)



90%

MAJOR EXTRAORDINARY COMMON LAW WRITS

The most important extraordinary common law writs over which the Court of Appeal has original jurisdiction are:

MANDATE

The most common writ, used to correct an abuse of discretion, typically by the trial court, or to compel the performance of a nondiscretionary (ministerial) act.

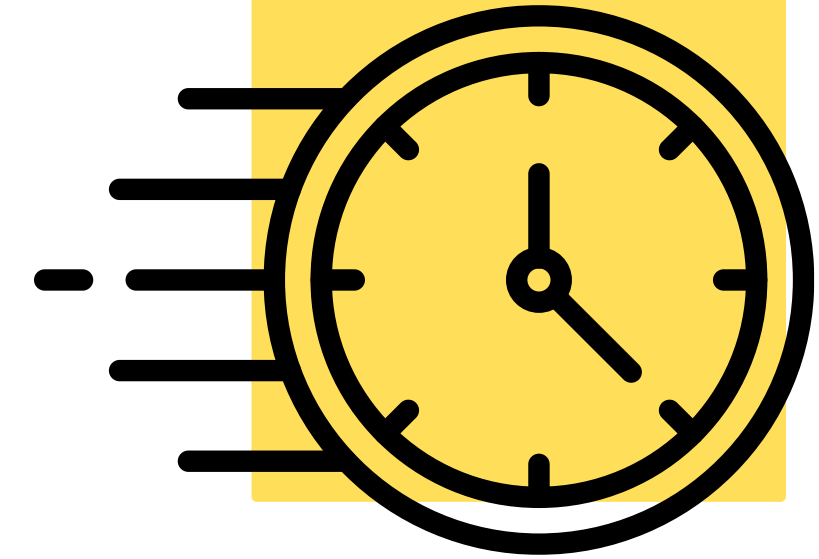
PROHIBITION

Used to prohibit the superior court from carrying out a threatened act that is in excess subject matter or personal jurisdiction, or in excess of its power to act.

CERTIORARI

(Writ of review): used to remedy a completed judicial act in excess of jurisdiction (not important for our purposes).

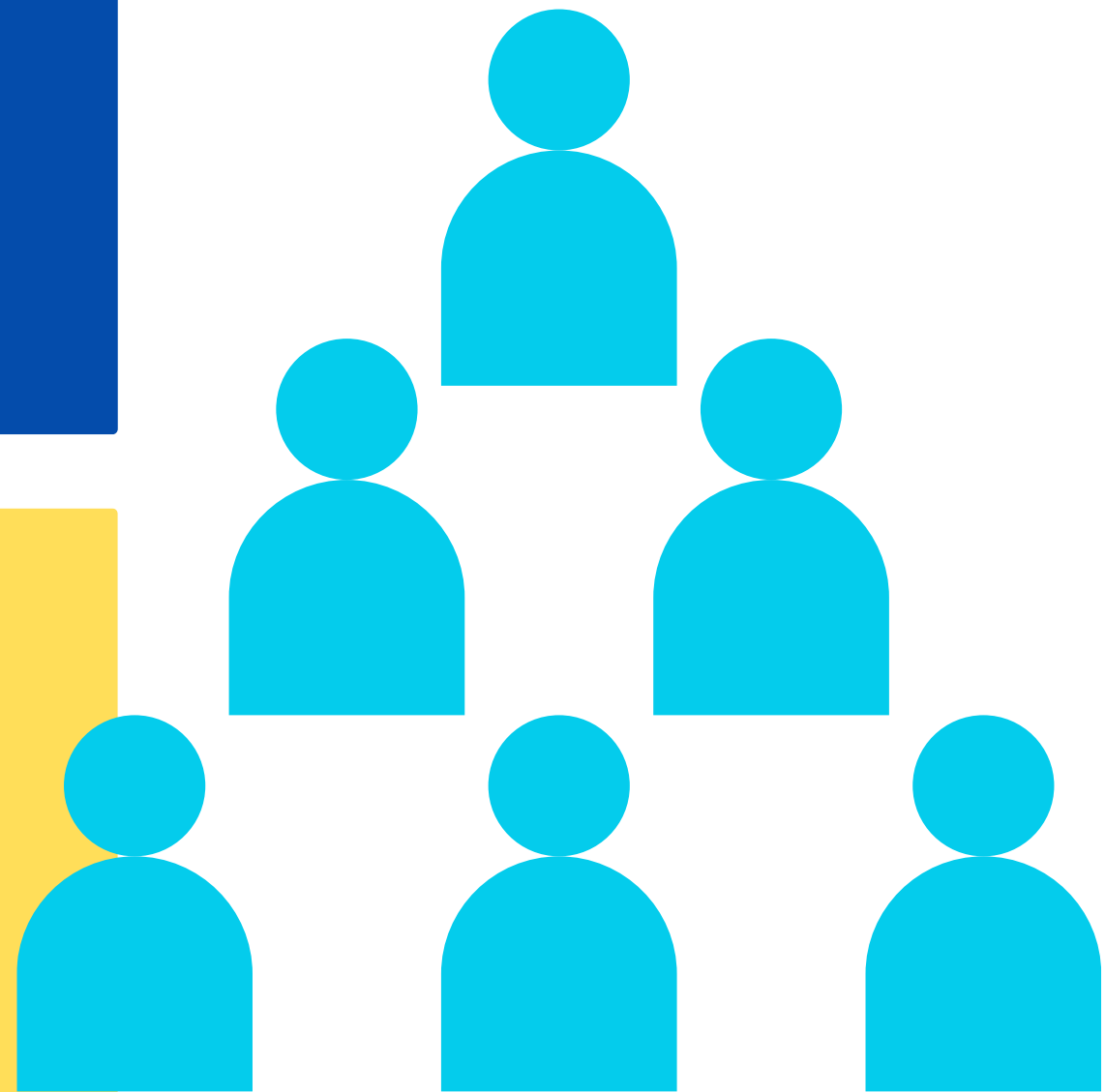
IN THE FUTURE TECHNOLOGY IS DEVELOPING VERY FAST



Statutory writs (usually mandate) are authorized by a specific statute for the specific type of ruling being challenged.

The filing deadlines are much shorter for statutory writs than for common law writs, and certain statutory writs are the sole method of review for the ruling at issue.

Appendices A and B in the written materials list typical rulings challenged by common law and statutory writs and the filing deadlines.



THE PARTIES TO AN APPELLATE WRIT PROCEEDING

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PETITIONER

Usually the loser in the trial court (but can be anyone with a beneficial interest in the ruling or case).



RESPONDENT

Usually the Superior Court of the State of California for the particular county.



REAL PARTY IN INTEREST

Usually the party that prevailed in the superior court (but can be anyone that has an interest that “will be directly affected by writ proceedings.” (Manfredi & Levine v. Sup.Ct. (Barnes) (1998) 66 CA4th 1128, 1132.)

The real party in interest is one who must respond to the petition.

GENERAL REQUIREMENTS OF WRIT REVIEW

1 NO ADEQUATE
REMEDY AT LAW

2 IRREPARABLE HARM

**NOTE: THESE TWO ELEMENTS TEND TO BLEND TOGETHER IN PRACTICE
(SEE *OMAHA INDEM. CO. V. SUPERIOR CT.* (1989) 209 CAL. APP. 3D 1266.)**

INADEQUATE REMEDY AT LAW

You must show that an appeal is not an adequate remedy based on special circumstances unique to your case, which fall into two general categories.



"General policy circumstances"

- The issue is of widespread importance. (*Brandt v. Superior Court* (1985) 37 Cal.3d 813, 816.)
- The issue is a novel constitutional question. (*Britt v. Superior Court* (1978) 20 Cal.3d 844, 851-852.)
- A decision will resolve conflicting trial court interpretations. (*Greyhound Corp. v. Superior Court* (1961) 56 Cal.2d 355, 378.)

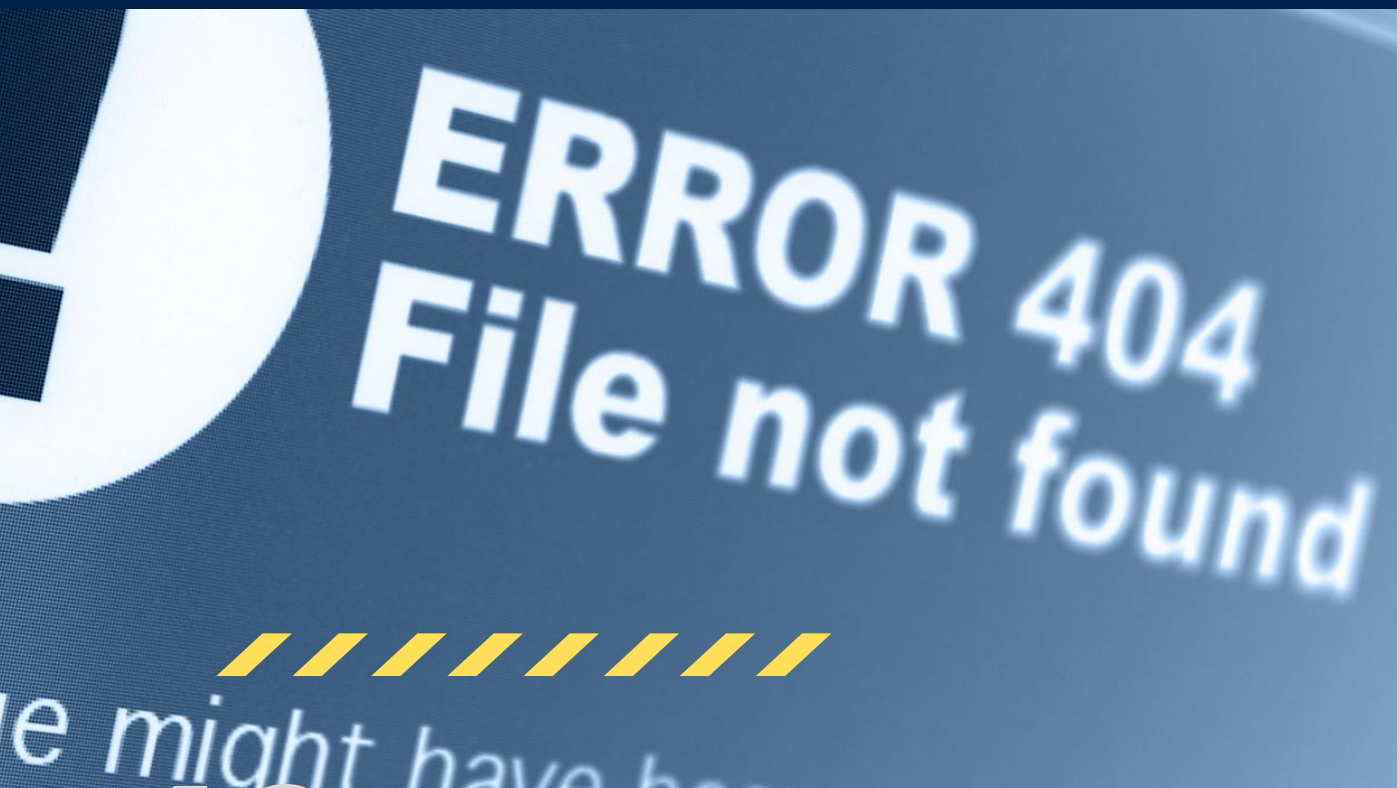


"Case-specific circumstances"

- The trial court's order is both clearly erroneous and substantially prejudices petitioner's case. (*Babb v. Superior Court* (1971) 3 Cal.3d 841, 851).
- The ruling deprived petitioner of an opportunity to present a substantial portion of his cause of action. (*Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 807.)
- Petitioner cannot afford a bond for a stay pending appeal. (*Rondos v. Sup.Ct.* (1957) 151 CA2d 190, 193.)

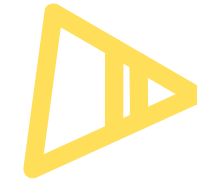
IRREPARABLE HARM

Irreparable harm frequently blends with no adequate remedy at law. It, too, often involves a showing that the appeal cannot adequately correct the harm to the petitioner.

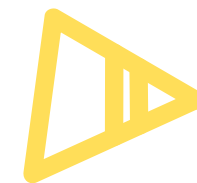


For example, a showing of irreparable harm might exist if the trial court's ruling is clearly erroneous and would require the petitioner to undergo two trials. (*Noe v. Sup.Ct.* (Levy Premium Foodservice Limited Partnership) (2015) 237 CA4th 316, 324.)

OTHER PREREQUISITES



THE GROUNDS FOR RELIEF MUST HAVE BEEN RAISED IN THE TRIAL COURT OR ARE DEEMED FORFEITED. (SEE *SAYEGH V. SUPERIOR COURT* (1955) 44 CAL.2D 814, 815.)



THE ISSUE MUST BE **RIPE** (THAT IS, MUST BE OF IMMEDIATE NECESSITY) AND MUST NOT HAVE BECOME MOOT BY THE OCCURRENCE OF LATER CIRCUMSTANCES. (SEE *GRIDLEY V. GRIDLEY* (2008) 166 CA4TH 1562, 1588.)

COMMENCING A WRIT PROCEEDING

CRC 8.486; Rutter Group California Practice Guide Civil Appeals & Writs, at § 15.167, et. seq.

A writ proceeding is commenced by the filing of:

- A petition for writ relief (which must be verified)
- A memorandum of points and authorities in support of the petition
- An adequate record for review.

The writ petition should include:

- Factual allegations explaining the procedural and factual history and how the trial court erred,
- Factual allegations describing why there is no adequate remedy at law and why there will be irreparable harm, and
- A prayer that specifies the writ relief desired.



PROVIDING AN ADEQUATE RECORD

- The record must include all relevant documents submitted in the trial court and a reporter's transcript of the hearing. (CRC 8.486(b)(1)-(3).)
- The absence of any necessary record or a transcript must be explained by a declaration. (CRC 8.486(b)(2) [documents], (b)(3) [transcript].)

“If the petition does not include the required record or explanations or does not present facts sufficient to excuse the failure to submit them, the court may summarily deny a stay request, the petition, or both.” (CRC 8.846(b)(4).)

- The exhibits must be designated by letter or number, pages of the exhibits must consecutively numbered, and the petition must cite to the record by exhibit number or letter, page number, and (if applicable) volume number.

MEMORANDUM OF POINTS AND AUTHORITIES

The memorandum of points and authorities must discuss the applicable law to demonstrate:

How the trial court erred

Why writ relief is necessary (no adequate remedy at law and irreparable harm)

STAY REQUEST: CRC 8.116 AND 8.486(A)(7)

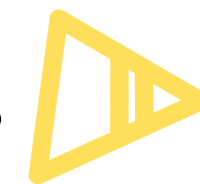
- **There is no automatic stay of a trial court's pretrial ruling pending appellate writ review.**
- **Before requesting a stay from the appellate court, you should generally first ask the trial court for a stay. If that is denied, you then include a request for a stay from the appellate court in the writ petition.**
- **A temporary stay may be denied if the petition fails to comply with CRC 8.116 and CRC 8.486(a)(7), which require, among other things, that the petition:**
 - **Prominently display on the cover "STAY REQUESTED" and identify the nature and date of the proceeding or act sought to be stayed, and**
 - **Explain the urgency.**

COMMON LAW WRIT PETITION FILING DEADLINES

Absent a statutory deadline (which applies to statutory writs), a writ petition should be filed no later than 60 days after service of notice of entry of the challenged order.



This is a court-made general rule, and absent exceptional circumstances the appellate court will generally deny a writ as untimely if it's filed after expiration of the 60-day period.




Appendix A of the written material lists typical rulings challenged by common law writs subject to the 60-day rule.

DEADLINES FOR FILING PETITIONS FOR STATUTORY WRITS

The filing deadlines for statutory writs are much shorter, and are deemed jurisdictional.

For some rulings (such as a ruling on a motion to disqualify a judge or a ruling on a motion to expunge lis pendens), statutory writ review is the only method of review.

Depending on the specific statutory writ, the petition must be filed within the specified time period following either service of notice of “entry” of the order (some statutes) or service of notice of the “order” (other statutes).



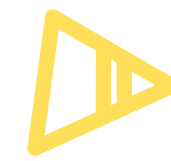
BEWARE: courts have interpreted the language commencing the deadline upon service of notice of “entry” of the order to mean that the filing period commences not only by service of a formal notice of entry, but also by the clerk's mailing of a minute order.

Appendix B of the written materials lists common statutory writs and their deadlines.



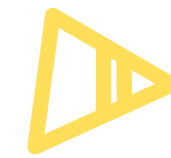
TYPICAL STATUTORY WRITS AND DEADLINES

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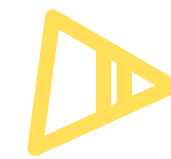
Denial of Summary Judgment/Grant or Denial of Summary Adjudication (CCP § 437c(m)(1))

- Reviewable by “peremptory writ” (usually mandate).
- 20 days after service of a written notice of entry of the order.



Ruling on Motion to Disqualify a Judge (CCP § 170.3(d))

- Mandate is the sole method of review.
- 10 days after service of written notice of entry of the order.



Ruling on Motion for a Good Faith Settlement (CCP 877.6(e))

- Reviewable by mandate.
- 20 days after service of written notice of the order.

PRELIMINARY OPPOSITION TO THE PETITION

Preliminary opposition to a writ petition (i.e., an opposition filed before the court takes any action on the writ) is required only if specifically requested by the court. (CRC 8.487(a)(1))

If counsel elects to present a preliminary opposition it must be filed within 10 days after filing of the petition (CRC 8.487(a)(1); CCP § 1107), unless the court specifies otherwise.

RETURN AND REPLY



If the court issues an order to show cause, the real party in interest files a response (or “return”) to the court's order, and the petitioner may file a reply. The case is then set for oral argument and formal decision.

The order to show cause specifies when these pleadings are due.

SUPERSEDEAS

Supersedeas is an “auxiliary writ” (not an extraordinary writ) which preserves the status quo while an appeal is pending. (CCP § 923; CRC 8.112 and 8.116)).

Appellant must show four things to obtain a writ of supersedeas:

- That a notice of appeal was filed;
- That appellant sought and was denied a stay of the judgment or order in the trial court;
- That absent a writ of supersedeas, appellant would suffer irreparable harm, meaning appellant would lose the benefits of the appeal if appellant prevailed; and,
- That the appeal raises “substantial questions,” which must be explained sufficiently to show that the issues have facial merit.

TRIAL JUDGE'S PHILOSOPHY WHEN A WRIT PETITION IS FILED

When the losing attorney declares “I’m going to file writ petition,” the trial court’s reaction is not defiant, but philosophical: “Thanks for telling me.”

WHY?

- The judge has made the best call he or she can and understands that the court of appeal may see the issue differently.
- The judge has no standing to file a response to a writ petition.
- The judge cannot contact the court of appeal (Roberts v. Commission on Judicial Performance (1983) 33 Cal.3d 739, 744.)
- The judge is not a participant in writ review.
- The judge may not file a letter brief concerning a writ or an appeal arising from a matter in the judge’s court. (Govt. Code sect. 68070.5; Code of Judicial Ethics canon 3B(7) [prohibition on ex parte communication regarding pending cases]). Curle v. Superior Court (2001) 24 Cal.4th 1057, 1059 [The trial judge is not a party to a petition for writ, even if it is regarding a disqualification. The judge is--and must remain--impartial even if the judge thinks the petition is frivolous.]

Summary Denial

A summary denial order is often as follows:

“The petition for writ of mandate is denied for failure to state entitlement to extraordinary relief.”



MORRY BROOKLER and JOHNNY
TRIPLETT,

Petitioners,

v.

SUPERIOR COURT OF THE STATE
OF CALIFORNIA FOR THE COUNTY
OF LOS ANGELES,

Respondent.

RADIOSHACK CORPORATION,

Real Party in Interest.

B254102

(Super. Ct. No. BC313383)

(Michael L. Stern, Judge)

ORDER

THE COURT:

By petition for a writ of mandate, petitioners Morry Brookler and Johnny Triplet challenge the respondent's order of January 16, 2014 sustaining real party's demurrer to petitioners' second amended complaint, without leave to amend.

The record provided in support of the petition establishes petitioners' new complaint properly defines classes not previously considered by the respondent.

Under these circumstances, the respondent was required to overrule real party's demurrer to the complaint.

In view of the clear legal error apparent in the respondent's order, and this court's determination the matter should be expedited, the parties are notified of our

Coercive Palma Notice

(See *Brown, Winfield & Canzoneri v. Superior Court* (2010) 47 Cal.4th 1233, 1248-1250 [discussing need for a hearing in the trial court before the trial court can change its ruling.]

intention to issue a peremptory writ of mandate in the first instance compelling the respondent to vacate its order sustaining the demurrer, and to issue a new and different order overruling the demurrer. (See *Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 177-183; *Alexander v. Superior Court* (1993) 5 Cal.4th 1218, 1222-1223.)

The respondent may avoid issuance of a peremptory writ by vacating its order sustaining the demurrer, and issuing a new order overruling the demurrer. **In taking this action, the respondent shall comply with the requirements outlined in *Brown, Winfield & Canzoneri v. Superior Court* (2010) 47 Cal.4th 1233, 1248-1250.**

If the respondent proceeds as we have suggested, it shall, prior to February 24, 2014, transmit a copy of its new order to this court. In the event respondent does not vacate its January 16, 2014 order, the real party in interest shall serve and file opposition to the petition, on or before February 28, 2014, with a view to expeditious disposition of this matter. (See *Ng v. Superior Court* (1992) 4 Cal.4th 29, 35.)


PERLUSS, P. J.,


ZELON, J.,


SEGAL, J. (Assigned)

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

CHRISTOPHER BAKER,

Petitioner,

v.

THE SUPERIOR COURT OF
LOS ANGELES COUNTY,

Respondent;

AIRGAS USA, LLC, et al.,

Real Parties in Interest.

B315118

(Super. Ct. No.
20STCV42063/JCCP4674)

(David S. Cunningham,
Judge)

NOTICE OF INTENTION TO
GRANT PEREMPTORY
WRIT OF MANDATE IN
THE FIRST INSTANCE

THE COURT:

We have read and considered the petition for writ of mandate filed September 20, 2021.

Based on the record before this court, it appears that the respondent court erred in its order of September 13, 2021, vacating the September 27, 2021 trial date, having denied on September 10, 2021, the ex parte application to continue the trial date.

When, as here, a preference motion pursuant to Code of Civil Procedure section 36 has been granted, “the court shall set the matter for trial not more than 20 days from that date and *there shall be no continuance beyond 120 days* from the granting of the motion for preference except for physical

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Suggestive *Palma* Notice



disability of a party or a party’s attorney, *or upon a showing of good cause stated in the record.*” (Code Civ. Proc., § 36, subd. (f), italics added.)

... [Further explanation of controlling law.]

In light of the above, the parties are notified of our intention to issue a peremptory writ in the first instance (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171; *Ng v. Superior Court* (1992) 4 Cal.4th 29, 35), requiring the respondent court to vacate its order of September 13, 2021, to the extent it vacated the September 27, 2021 trial date.

The respondent court may avoid the issuance of a peremptory writ by vacating its order of September 13, 2021, and thereafter issuing an order reinstating the September 27, 2021, trial date. This order should not be construed, however, as preventing the trial court from otherwise enforcing its trial preparation orders.

Before doing so, however, the respondent court “must inform the parties that it is considering taking such action and provide them with an opportunity to be heard,” as required by the Supreme Court in *Brown, Winfield & Canzoneri, Inc. v. Superior Court* (2010) 47 Cal.4th 1233, 1247—1250. If the respondent court elects to vacate its order, it is requested to transmit to this court a copy of the minute order reflecting its action on or before September 24, 2021.

If the trial court elects not to change its order in response to this notice, real parties in interest would be permitted to serve and file a plenary response on or before 4:30 p.m., September 24, 2021.

SAMPLE PALMA ORDER FROM THE COURT OF APPEAL

(Certainteed Corp. v. Superior Court (2014) 222 Cal.App.4th 1053, 1063)

“The petitions for writ of mandate are granted. Let a peremptory writ of mandate issue directing the trial court (1) to vacate its order of December 10, 2013, denying the motion for additional time to depose plaintiff and (2) to reconsider [fn omitted] and enter a new order on, defendants' motion on such terms as the court, in its discretion, finds appropriate, taking into full consideration (a) the present health and physical condition of plaintiff, (b) plaintiff's statutory right to a preferential trial date, (c) the need of defendants for further examination of plaintiff as that need may be determined by the trial court upon its reconsideration of defendants' motion and (d) any other relevant circumstances that the interests of justice may require.”

NOV 19 2014

GARDEN GROVE
DENTAL CARE et al.,

Petitioners,

v.

SUPERIOR COURT OF THE STATE
OF CALIFORNIA FOR THE COUNTY
OF LOS ANGELES,

Respondent.

BRENDA SORIA et al.,

Real Parties in Interest.

B258979

JOSEPH A. LANE Clerk

D. SANDERS Deputy Clerk

(Super. Ct. No. BC546986)

(Maureen Duffy-Lewis, Judge)

ORDER

THE COURT:

It appears from a minute order dated November 10, 2014 that the respondent superior court has vacated its order of September 2, 2014 denying petitioners' motion to transfer the action to the Orange County Superior Court, and has made a new and different order granting the motion. The captioned petition is therefore moot. The alternative writ issued on October 22, 2014 is discharged and the petition is dismissed.


WOOD, S. Acting P. J.,


ZELON, J.,


SEGALL, J. (Assigned)

ORDER DISCHARGING PETITION as Moot

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

COURT OF APPEAL - SECOND DIST.

F I L E D

OCT 22 2014

THE REGENTS OF THE
UNIVERSITY OF CALIFORNIA et al.,

Petitioners,

v.

SUPERIOR COURT OF THE STATE
OF CALIFORNIA FOR THE COUNTY
OF LOS ANGELES,

Respondent.

KATHERINE ROSEN,

Real Party in Interest.

B259424

(Super. Ct. No. SC108504)

(Gerald Rosenberg, Judge)

JOSEPH A. LANE

Clerk

D. SANDERS

Deputy Clerk

ORDER TO SHOW CAUSE

TO THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES:

Good cause appearing, you are hereby ordered to show cause before this court, in its courtroom at 300 South Spring Street, Los Angeles, California when this matter is ordered on calendar, why you should not be compelled to vacate your order of October 7, 2014 denying petitioners' motion for summary judgment, and thereafter issue a new and different order granting the motion.

The written return shall be served and filed by the real party in interest on or before November 12, 2014. The court will set a due date for petitioners' reply to the written return, taking into account any amicus briefs filed in support of real party's position.

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LUSS, P. J.,


WOODS, J.,


SEGAL, J. (Assigned)

**ORDER TO
SHOW CAUSE**

ORDER AND ALTERNATIVE WRIT OF MANDATE

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

COURT OF APPEAL - SECOND DIST.

F I L E D

OCT 22 2014

JOSEPH A. LANE Clerk
D. SANDERS Deputy Clerk

GARDEN GROVE
DENTAL CARE et al.,

Petitioners,

v.

SUPERIOR COURT OF THE STATE
OF CALIFORNIA FOR THE COUNTY
OF LOS ANGELES,

Respondent.

BRENDA SORIA et al.,

Real Parties in Interest.

B258979

(Super. Ct. No. BC546986)

(Maureen Duffy-Lewis, Judge)

ORDER AND ALTERNATIVE WRIT OF MANDATE

TO THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES:

You are commanded, immediately upon receipt of this writ, either to:

(a) vacate your order of September 2, 2014 denying petitioners' motion to transfer the action to the Orange County Superior Court, and thereafter make a new and different order granting the motion,

or,
29 (b) on the alternative,

SHOW CAUSE before this court, in its courtroom at 300 South Spring Street, Los Angeles, California when the matter is ordered on calendar, why you have not done so and why a peremptory writ of mandate requiring you to do so should not issue. (See *Brown v. Superior Court* (1984) 37 Cal.3d 477; *Ford Motor Credit Co. v. Superior Court* (1966) 50 Cal.App.4th 306, 309-310.)

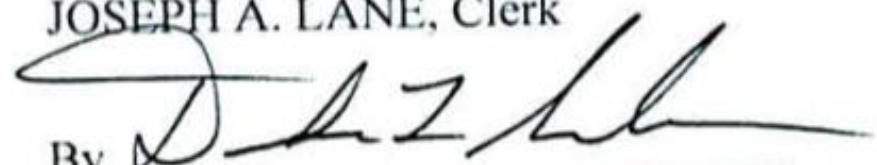
If the respondent intends to comply with alternative (a) above, before doing so it "must give the . . . parties notice and an opportunity to be heard," as required by the Supreme Court in *Brown, Winfield & Canzoneri v. Superior Court* (2010) 47 Cal.4th 1233, 1250, 1251, fn. 10. Petitioners shall inform this court, on or before November 17, 2014, whether the respondent has complied with alternative (a), and shall serve and file any new order issued by the respondent.

If the respondent complies with alternative (a) above, this court will promptly discharge the alternative writ and dismiss the petition as moot. In the event the respondent court fails to comply with alternative (a) above, a written return to this writ shall be served and filed on or before November 21, 2014. Petitioners' reply to the return shall be filed on or before December 5, 2014.

By order of this court.

ATTEST my hand and the seal of this court this 22nd day of October, 2014.

JOSEPH A. LANE, Clerk

By 
Deputy Clerk

ASSIGNMENT AND EVALUATION OF APPELLATE WRIT PETITIONS

Writ petitions are randomly assigned to a specific Division of the Court of Appeal, except:

- If the petition arises from a case in which a particular Division has already handled an appeal or prior writ, the petition will be assigned to the same Division, and
- If a particular division has been designated to receive particular types of cases (e.g., coordinated asbestos cases) based on institutional knowledge, that Division will receive all writ petitions in such cases.

Each Division has 2 writ attorneys who analyze the writ petition and draft a memorandum (or maybe make an oral presentation) with a recommendation and proposed order for consideration by the panel of 3 appellate justices.

Divisions have different schedules for writ conferences (i.e., once a week, biweekly, monthly).


In evaluating a writ petition, the first issues are: “What trial court order is being challenged?” “How will an appellate decision impact that order?” “What is the nature of underlying lawsuit?” “Is there a request for a stay?”

TEMPORARY STAYS (CRC 8.116 AND 8.486(A)(7))

To obtain a temporary stay, your petition must comply with the applicable rules above, meaning:

 **You must prominently display on the cover “STAY REQUESTED” and THE NATURE and DATE of the proceeding or act to be stayed.**

- Most attorneys do not comply with this latter requirement, but it is crucial because writ attorneys must put all other work aside if a “hot” writ needs to be decided immediately.

 **On the cover or at beginning of the text, you must state the trial court, the department involved, and the name and telephone number of the trial judge.**

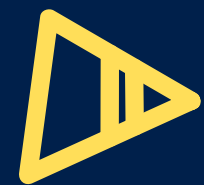
WHY IS THIS INFORMATION IMPORTANT?

- The reviewing court “may decline” to consider the request for writ of supersedeas or temporary stay if the information is not provided. (Rule 8.116(c), Rule 8.486(a)(7).)
- The writ attorney must assess whether a stay is warranted and then track down three busy appellate justices to either agree or disagree with the recommendation to issue a stay.
- The earlier a stay request is filed with the required information, the better the chance that the attorney will secure a stay if it is warranted.
- Don’t file your writ petition at 4:30 p.m. seeking to stay a hearing or act the next day, and don’t file a frivolous stay request just to buy some time in trial court. Some research attorneys may keep lists of attorneys and/or parties that abuse the “stay” process.

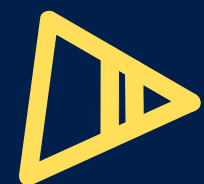
SUPERSEDEAS



CRC 8.112 governs petitions for writ of supersedeas. Closely follow the rule, including the caption format (i.e., the title bears the same title and docket number as the appeal).



A writ of supersedeas will likely be denied without prejudice if the appellant did not ask the lower court for a discretionary stay first. (Code of Civ. Proc., §§ 918, 918.5, 919.)



A writ of supersedeas will not be granted until the respondent has had the opportunity to oppose, which is 15 days after the petition is filed. (Rule 8.112(b).)

PROCEDURAL EVALUATION OF WRIT PETITIONS

TIMELINESS

ADEQUATE RECORD

VERIFICATION AND SERVICE

- Verification must encompass petitioner's allegations and authenticity and accuracy of supporting exhibits. Verification "on information and belief" is insufficient.
- The petition and one set of supporting documents need to be served on the Real Party in Interest but ONLY the petition needs to be served on the respondent court. (Rule 8.486(e)(1).)
- Depending on the nature of the underlying lawsuit (e.g., B & P Code sections 17209 [unfair competition actions] and 16750.2 [Cartwright, antitrust actions]), you must also serve the Attorney General.

TIPS ON ADDRESSING THE MERITS

-  **In the argument section of your petitions, focus on why a writ should be granted.**

The more you reiterate the arguments for the underlying trial court order or act that you challenge, the less emphasis you put on justifying why immediate appellate intervention is justified.

-  **Address negative case law or authority that makes writ review less likely.**

If you fail to address clearly relevant law that is unfavorable to you, it makes your argument (as well as you) less credible. This includes the standard of review of the issue in the trial court order/act. If you have persuasive arguments to the contrary, you still may prevail.

-  ***Omaha Indemnity Co. v. Superior Court* (1989) 209 Cal.App.3d 1266 is a great case to get an understanding of what makes or breaks an appellate writ petition.**

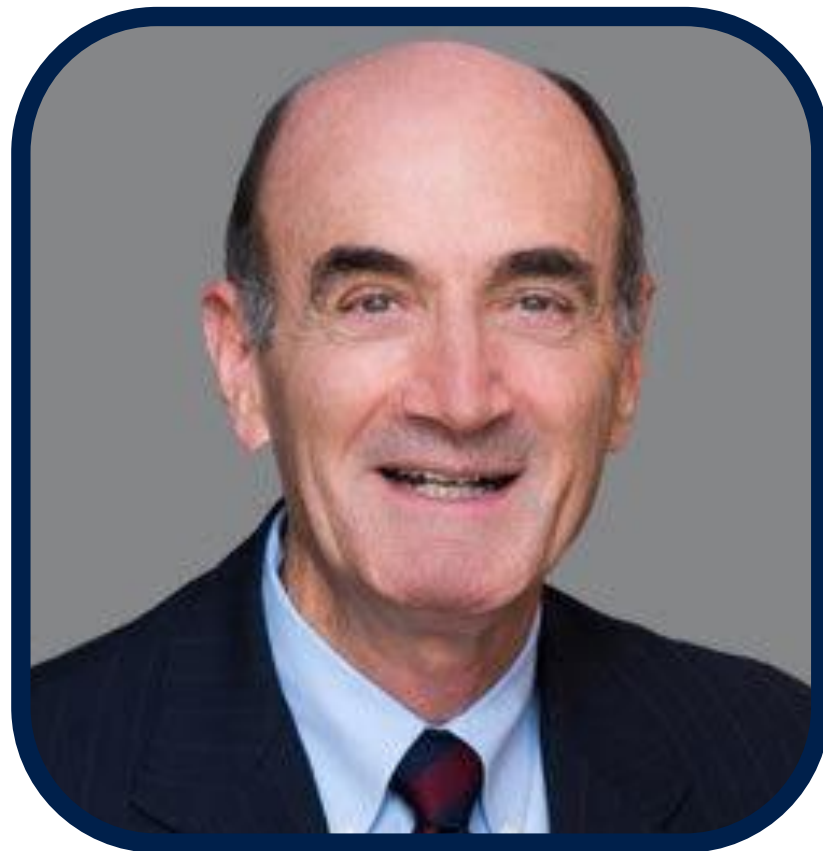
CONCLUSION

Appellate writ practice requires careful adherence to the required formats and procedures, and can be a fatal trap for the unwary.

Refer to our written materials for more detail, and to the authorities we have cited for guidance.

With attention to the requirements, you will maximize your chances of obtaining writ relief.

THANK YOU



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