



## California Appellate Writ Guide for Trial Attorneys

June 2, 2023

### General Authorities

#### Statutory Authorities

CCP §§ 1085-1088 (mandate)

CCP §§ 1102, 1104 (prohibition)

CCP §§ 923 (supersedeas)

See also statutory references below in Appendix B to specific statutory writs

#### 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. 6<sup>th</sup>, Ch. XII, Extraordinary Writs (2023)

#### General Case Authority

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



*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171  
[explanation of an alternative writ and issuance of writ in the first instance]

*Brown, Winfield & Canzoneri, Inc. v. Superior Court* (2010) 47 Cal.4th 1233 [“suggestive” *Palma* notice].

## **Outline of Presentation**

### **I. Extraordinary writ relief is rare**

A. Ninety percent of extraordinary writ petitions are summarily denied. (See *Omaha Indemnity Co. v. Superior Court* (1989) 209 Cal.App.3d 1266, 1273–1274.) Never assume, even if the trial court’s ruling is clearly erroneous, that the appellate court will intervene by extraordinary writ.

### **II. Major extraordinary, common law writs over which the courts of appeal have original jurisdiction. (Cal. Const. Art. VI, § 10)**

A. Writ of mandate (CCP § 1085): the most common writ, used to correct an abuse in discretion, typically by the trial court (*State Farm Mut. Auto. Ins. Co. v. Sup.Ct. (Corrick)* (1956) 47 C2d 428, 432), or to compel the performance of a nondiscretionary (ministerial) act by a court, an administrative agency, or officers of a corporate or administrative agency. (*Hendrix v. Sup.Ct.* (2011) 191 CA4th 889, 893.)

B. Writ of prohibition (CCP § 1102): use 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. (*Abelleira v. District Court of Appeal* (1941) 17 C2d 280, 287-291.)



C. Writ of certiorari (writ of review) (CCP §§ 1068, 1071): used to remedy a completed judicial act in excess of jurisdiction (rarely used).

## **II. Statutory Writs**

- A. Writ review (usually by mandate) can be authorized by a specific statute for the specific type of ruling being challenged.
- B. The primary differences between common law and statutory writs: filing deadlines are much shorter for statutory writs, and certain statutory writs are the sole method of review for the ruling at issue.

## **III. Parties to an Appellate Writ Proceeding**

- A. Petitioner: usually the loser in the trial court (but can be anyone with a beneficial interest in the ruling or case; see *Carsten v. Psychology Examining Committee of Board of Med. Quality Assur.* (1980) 27 C3d 793, 796).
- B. Respondent: generally, the Superior Court of the State of California for the particular county
  - 1. The respondent court is a neutral party.
- C. 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.))
  - 1. The real party in interest is one who must respond to the petition.

## **IV. General Requirements of Writ Review**

- A. No adequate remedy at law: meaning in substance that an appeal is not an adequate remedy considering the consequences of the trial court’s ruling.

1. “General policy circumstances” may make an appeal inadequate and writ review appropriate based on the importance of the legal issue involved, including that the issue raised by the writ petition is of widespread importance and should be immediately resolved (*Brandt v. Superior Court* (1985) 37 Cal.3d 813, 816; *Phelan v. Superior Court* (1950) 35 Cal.2d 363, 370-372), or that it presents a significant and novel constitutional issue (*Britt v. Superior Court* (1978) 20 Cal.3d 844, 851-852), or that it can resolve conflicting trial court interpretations of the law. (*Greyhound Corp. v. Superior Court* (1961) 56 Cal.2d 355, 378.)
  2. “Case-specific circumstances” may make an appeal inadequate to address the harm that may flow from the court’s ruling to *this specific* petitioner in *this specific* case, such as that the trial court's order is both clearly erroneous as a matter of law and substantially prejudices petitioner's case ( *Babb v. Superior Court, supra*, 3 Cal.3d at p. 851), or that the trial court's order deprived petitioner of an opportunity to present a substantial portion of his cause of action (*Brandt, supra*, at p. 816; *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 807), or that obtaining a stay pending appeal will require the undue financial burden of posting a bond (*Rondos v. Sup.Ct.* (1957) 151 CA2d 190, 193).
  3. The delay and costs inherent in an appeal are not sufficient to show appeal is not an adequate remedy. (*Baeza v. Sup.Ct. (Castle & Cooke Calif., Inc.)* (2011) 201 CA4th 1214, 1221.)
- B. Irreparable Harm: frequently blends with a showing of the inadequacy of an appeal in that it often involves a showing that the appeal cannot adequately correct the harm to the specific petitioner (e.g., the ruling would require the petitioner to undergo two trials. (*Noe v. Sup.Ct. (Levy*



*Premium Foodservice Limited Partnership*) (2015) 237 CA4th 316, 324.)

- C. The grounds asserted for relief in the petition must have been raised in the trial court or are generally deemed forfeited, akin to the forfeiture rule on appeal. (See *Sayegh v. Superior Court* (1955) 44 Cal.2d 814, 815.)
- D. 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.)

## **V. Commencing a Writ Proceeding**

- A. For details regarding the requirements of the petition, see California Rules of Court, rule 8.486; see also Rutter Group California Practice Guide Civil Appeals & Writs, at § 15.167, et. seq., for a comprehensive treatment.
- B. In brief, a writ petition consists of the petition itself (which must be verified), a memorandum of points and authorities, and an adequate record in support of the petition.
  - 1. The petition should contain the factual allegations setting forth the relevant procedural and factual history, explaining how the trial court erred, describing why there is no adequate remedy at law and why there will be irreparable harm, and containing a prayer that specifies the writ relief desired.
  - 2. The record must include all relevant documents submitted in the trial court and a reporter's transcript of the hearing at which the challenged ruling was made. (CRC 8.486(b)(1)-(3). There is a procedure through which the unavailability of necessary records can be explained by a declaration; it must be strictly followed. (CRC 8.486(b)(2) [documents], (b)(3) [transcript].



- a. “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).)
3. 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.
4. The memorandum of points and authorities discusses the applicable law to demonstrate how the trial court erred and why writ relief is necessary (no adequate remedy at law and irreparable harm).

## **VI. Stay Request**

- A. No automatic stay of a trial court’s pretrial ruling pending writ review.
- B. CRC 8.116 and rule 8.486(a)(7) specify the requirements for requesting a stay in the petition.

## **VII. Opposition to petition**

- A. 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. (See CRC 8.487(a)(1) (preliminary opposition “may” be filed).
- B. However, 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 (the court will generally specify a due date if it asks for a response).
  1. Tactical considerations: given that ninety percent of writ petitions are summarily denied, filing a preliminary opposition without a court request is not generally



necessary, unless the petitioner has mischaracterized the trial court's ruling or the record.

### **VIII. 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 normally, the petitioner may file a reply. The order issuing the order to show usually specifies when these pleadings are due. Absent such specification, the return must be filed within 30 days after the court issues the order to show cause) or notifies the parties that it is considering issuing a peremptory writ in the first instance; and the (CRC 8.487(b)(2) & (3).

### **XI. Supersedeas**

Supersedeas is an “auxiliary writ” suspending the trial court's power to compel execution on an appealed judgment or order (or preventing execution under a writ of execution that has already issued). The sole purpose of the writ is to preserve appellate jurisdiction pending review of the appeal and a ruling on the merits. (*Quiles v. Parent* (2017) 10 CA5th 130, 136, 215 CR3d 858, 861.)

The court of appeal has independent jurisdiction to preserve the status quo with a writ of supersedeas or other stay order while an appeal is pending. (CCP § 923.) The procedures are set forth in CRC 8.112 and 8.116.

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

1. That a notice of appeal was filed (*In re Christy L.* (1986) 187 CA3d 753, 758-759);
2. That appellant sought and was denied a stay of the judgment or order in the trial court (*Nuckolls v. Bank of Calif., Nat'l Ass'n* (1936) 7 C2d 574, 577);

3. That absent a writ of supersedeas, appellant would suffer irreparable harm, meaning appellant would lose the benefits of the appeal if appellant prevailed (*Daly v. San Bernardino County Bd. of Supervisors* (2021) 11 C5th 1030, 1039.); and,
4. That the appeal raises “substantial questions,” which must be explained sufficiently to show that facially the issues have merit. (*Deepwell Homeowners' Protective Ass'n v. City Council of Palm Springs* (1965) 239 CA2d 63, 67.)

## **XII. Trial judge’s philosophy on receiving notice that a petition for a writ has been filed.**

How the trial judge responds when a ruling is made and the lawyer who did not prevail tells the judge: “I am going to file a writ.”

Judges are trained to maintain their impartiality and neutrality. This includes guidance that is given to judges when they attend Judicial College. When told by a lawyer that a ruling will be the subject of a writ, the response is not, “we will see about that.” It is a version of, “Thank you for telling me.”

The trial judge is on the service list for the petition. Some trial judges read the petitions while the matter is pending in the court of appeal; some do not. All read the communications from the court of appeal. How the trial judge responds to the orders from the court of appeal is discussed below for the various notices that the court of appeal may issue in writ proceedings.

Judges have no standing to file a response to a writ petition (*Ng v. Superior Court* (1992) 4 Cal.4<sup>th</sup> 29) except when they might (*Municipal Court v. Superior Court* (1993) 5 Cal.4<sup>th</sup> 1126, 1133-1134 [Kennard J., concurring and dissenting: view of the affected court on challenges to its procedures is in the public interest].)

Trial judges make the best call they can given the issues, the briefing and their acumen. They also rely on the appellate courts,





which have more time and resources to consider issues in depth, aided by briefs focused on the issues on appeal, to correct errors. Most trial judges are appreciative even when they are reversed.

Questions for discussion:

What if the trial judge, wanting to express a view or explain the ruling that is the subject of the writ she or he issued in a case, contacts a member of the court of appeal to which a case has been assigned? (*Roberts v. Commission on Judicial Performance* (1983) 33 Cal.3d 739, 744.)

Is the trial judge a participant in the appellate review of the judge's order?

May the trial judge file a letter brief concerning a writ or an appeal arising from a matter in the judge's court? Government Code section 68070.5 vs. Code of Judicial Ethics canon 3B(7) [prohibition ex parte communication regarding pending cases]) and *Curle v. Superior Court* (2001) 24 Cal.4<sup>th</sup> 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.]

### **XIII. How the trial judge responds to actions of the court of appeal is largely dependent on the type of order that court issues in response to a writ petition.**

#### **A. Summary denial**

The lawyer seeking review has worked hard, yet the court of appeal has issued a summary denial.

#### **B. Palma notice, aka coercive Palma notice**

The court of appeal gives notice that the issue is clear and it is of the view that immediate relief is needed. (See *Palma v. U.S. Industrial Fasteners* (1984) 36 Cal.3d 171.)



Discussion of slide of sample notice, including reference to the need for a hearing before the trial court takes any further action on the issue. (*Brown, Winfield & Canzoneri v. Superior Court* (2010) 476 Cal.4<sup>th</sup> 1233, 1248-1250)

Discussion of *Certainfeed Corp. v. Superior Court* (2014) 222 Cal.App.4<sup>th</sup> 1053:

“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.”

Other examples:

“Our decision shall be final in this court immediately upon the filing of this opinion.” ([Cal. Rules of Court, rule 8.490\(b\)\(3\)](#); [Ng v. Superior Court \(1992\) 4 Cal.4th 29, 33–34 and fn. 1, 13 Cal.Rptr.2d 856, 840 P.2d 961.](#))” (Id. at 1062.)

Discovery matter (*Mitchell v. Superior Court* (2015) 243 Cal.App.4<sup>th</sup> 269).

Trial continuance petitioned for and granted because of illness of a key witness (*Padda v. Superior Court* (2018) 25 Cal.App.5th 25).

The key action for the trial judge is to do as the court of appeal indicates: hold the hearing and then act.



### C. Suggestive *Palma* notice

Gives notice to the trial court that the court of appeal is considering issuing a peremptory writ of mandate and tells the trial court it should consider reversing the ruling which is the subject of the writ. The notice contains a brief explanation of reasons and states that the court of appeal order will become moot if the trial court vacates the order which is the subject of the writ.

The trial court must hold a hearing on the matter before acting. (*Brown, Winfield & Canzoneri, Inc. v. Superior Court* (2010) 47 Cal.4<sup>th</sup> 1233.)

A briefing schedule is set out if the ruling is not reversed.

Must the trial judge reverse the ruling? It depends.

And, if the ruling is reversed, there is nothing to bar the other side from filing its own writ petition.

### D. Alternative Writ

This is an option to the *Palma* notice. It literally presents alternatives, in a less dramatic fashion perhaps than the *Palma* notice.

The court of appeal panel has decided the petition has merit and orders the trial court to reverse its decision or show cause for not doing so at the oral argument that is set or will be set. Although that is how the writ is phrased, the trial court does not appear; it is a nominal party only. The parties in the trial court file briefs and appear and argue.

The trial court is required to hold a hearing but is not required to alter its order.

There are cases in which trial judges did not change their rulings. In that case, as indicated, the parties will file briefs and argue the matter in the appellate court and the court will issue an opinion

See *See's Candy Shops, Inc. v. Superior Court* (2013) 210 Cal.App.4<sup>th</sup> 889.



If the trial court complies with the alternative writ and reverses its ruling, the court of appeal will dismiss the writ petition

#### E. Order to Show Cause

The order to show cause is issued when the court of appeal considers the issue presented one that requires a written opinion to give the trial court direction on how to proceed or to address an important issue of law. There is no direction to the trial court to reverse, or even to consider reversing its order, although that may be the outcome.

The parties brief the matter and appear at an oral argument, after which the court will issue an opinion. In the interim, the trial court suspends proceedings.

Examples: *People ex rel. Feurer v. Superior Court* (2015) 234 Cal.App.4<sup>th</sup> 1360; *Regents v. Superior Court (Katherine Rosen)* 240 Cal.App.4<sup>th</sup> 1296, 4 Cal.5<sup>th</sup> 607 and 29 Cal.App.5<sup>th</sup> 890.

Timing on when the decision of the court of appeal on a petition for writ of mandamus becomes final and the possibility of a second chance at a writ.

G. Example of how the trial court can act -- *Ruegg & Ellsworth v. City of Berkeley* (2023) 67 Cal.App.5<sup>th</sup> 277.

### **IV. How Appellate Writs Are Assigned and Evaluated**

- A. Petitions go through clerks' office first.
- B. Petitions are directly assigned to particular Division if that Division had an appeal or prior writ (and sometimes institutional knowledge re particular case). Otherwise distributed randomly based on case allotment.
- C. Each Division has 2 writ attorneys, which analyze the writ petition and draft a memorandum (or maybe oral presentation)

making a recommendation to a panel of 3 appellate justices. Unless a writ is deemed a “hot” writ, Divisions have different schedules for writ conferences or whether the writ petitions are addressed as they are filed or on a periodic review (i.e., once a week, biweekly, monthly). Writ attorneys typically draft proposed orders to resolve each writ petition. The Justices will approve, alter, or deny the proposed orders.

- D. The first issue a writ attorney addresses when a writ is assigned is the timing. What trial court order is being challenged and how will an appellate decision impact that order and the underlying trial court action? And, more immediately, is there a request for a stay?

## **XV. Temporary Stays and Supersedeas**

- A. If you want a temporary stay, you must file your writ petition in compliance with the rules governing stays, specifically California Rules of Court, rule 8.116 and rule 8.486(a)(7).
1. Both of these rules require that you must **PROMINENTLY DISPLAY** the request for a stay on the cover of your writ petition (i.e. “STAY REQUESTED”). (Rules 8.116(a)(1), 8.486(a)(7)(B).) *Most attorneys comply with this rule.*
- B. Rule 8.116 also requires that you **IDENTIFY THE NATURE** and **DATE** of the proceeding or act to be stayed. (Rule 8.116(a)(2), Rule 8.486(a)(7)(B).) *Most attorneys do not comply with this rule. This is crucial because writ attorneys must put all other work aside if a “hot” writ needs to be decided immediately.*
- C. Rule 8.116 also requires that you put the trial court and department involved as well as the name and telephone number of the trial judge whose order the request seeks to stay on the cover or at the beginning of the test. (Rule 8.116(b), Rule 8.486(a)(7)(B).)



- D. INCLUDING THIS INFORMATION ABOVE IS KEY because, if these requirements are not complied with, the reviewing court “may decline” to consider the request for writ of supersedeas or temporary stay. (Rule 8.116(c), Rule 8.486(a)(7).) Once the request for a stay has been forwarded to the writ attorneys, our job is to assess whether a stay is warranted and then track down three busy appellate justices to either agree or disagree with the recommendation to stay a trial court order or act. Thus, the earlier an attorney files a writ petition with a request for an immediate stay, the better chance the attorney will have in securing a stay if it is warranted.
- E. For example, filing your writ petition at 4:30 p.m. seeking to stay a hearing or act the next day will be difficult, if not impossible. The clerks’ office closes at 4:30 p.m. so any electronic filings after that will come to the writs attorneys the next day (barring any procedural snafus).
- F. Some divisions will only grant a stay if the merits of the petition demonstrate a stay is needed. While some divisions may grant a stay upon receiving a valid request in compliance with Rule 8.116 (before determining the merits of the stay request). Still, it is better to not file a writ petition with 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.
- G. Rule 8.112 governs petitions for writ of supersedeas. Please closely follows those rules, including the format of the caption (i.e., the title bears the same title and docket number as the appeal).
- H. Moreover, 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.)



- I. 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).)

## **XVI. Analysis of Writ Petitions: Procedure**

### **A. In General**

1. With most appellate issues, most courts typically will focus on procedural issues to reverse or overrule a trial court order, rather than the merits. The same is true for writs. Thus, there are a host of procedural issues that warrant summary denial, mentioned previously.

### **B. Timeliness.**

1. While it is more likely than not that a writ petition will be denied if untimely, appellate courts have discretion to review a writ petition and if there is some justification for untimeliness, the panel may consider it and review the writ despite its untimeliness. This is rare, though. I have seen this happen once in my four years as a writ attorney.

### **C. Adequate Record**

1. One of the key reasons a court may reject a writ petition is because it does not have (a) an adequate record OR (2) a declaration that explains the urgency and circumstances making the documents unavailable and fairly summarizing their substance. (Rule 8.486(b)(1), (b)(2).) Same goes for reporter's transcripts. (Rule 8.486(b)(3).)

### **D. Verification and Service**

1. All writs must be verified. (Rule 8.486(a)(4).) Unverified petitions are almost always summarily denied. (Rule 8.380(a).) Verification must encompass petitioner's allegations and authenticity and accuracy of supporting exhibits. (*K.R. v.*





*Superior Court* (2015) 243 Cal.App.4th 495, 499-500.) In other words, verification “on information and belief” is generally insufficient. (*Star Motor Imports v. Superior Court* (1979) 88 Cal.App.3d 201, 204.)

2. When the respondent is the superior court (which is usually the case), 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).) Rule 8.486(e) provides other details as well. Also, depending on the trial court action you are challenging and the allegations you are making in your writ, you must also serve the Attorney General or a nonparty public officer. (Rule 8.29, 8.412(e)(4), 8.486(e)(4); see also Business and Professions Code sections 17209 [re unfair competition actions] and 16750.2 [Cartwright, antitrust actions].)

## **XVII. Tips on Addressing the Merits**

- A. In the argument sections of your petitions, please 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.
- B. Please 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.
- C. *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.







## Appendices

### **A. Typical Rulings Challenged by Common Law Writs (subject to the 60-day rule, and general requirements of writ review)**

#### Discovery orders

Discovery rulings are generally not appropriate for writ review, except where they direct the disclosure of privileged material or where the issue involved is unsettled and writ relief can provide guidance. (*O'Grady v. Superior Ct.* (2006) 139 Cal. App. 4th 1423, 1439.)

#### Sanctions

Discovery sanctions (and other monetary sanctions) of \$5000 or less, may be reviewed by writ in the appellate court's discretion. (CCP § 904.1(a)(11), (12).)

#### Disqualification of Counsel

The granting or denying of a motion to disqualify counsel is reviewable by writ, if there is a showing that appeal is inadequate. (*Apple Computer, Inc. v. Sup.Ct. (Cagney)* (2005) 126 CA4th 1253, 1263-1264.)

#### Pleading Motions

Rulings on pleading motions (demurrers, motions for judgment on the pleadings, motions to strike) are very rarely subject to writ review. (*Curry v. Sup.Ct. (Rialto Unified School Dist.)* (1993) 20 CA4th 180, 183, and fn. 4.) But there are narrow, rarely used exceptions within the appellate court's discretion, namely when: (1) an issue of great public interest is involved (*County of Los Angeles v. Sup.Ct. (Peters)* (1998) 68 CA4th 1166, 1170); (2) the trial court has deprived a party of an opportunity to plead its cause of action or defense such that a reversal on appeal and second trial would be necessary (*Taylor v. Superior Ct.* (1979), 24 Cal. 3d 890, 894; see *Coulter v. Superior Court* (1978) 21 Cal.3d 144, 148, 145 Cal.Rptr. 534, 577 P.2d 669, superseded by statute on another ground as stated in *Sakiyama v. AMF Bowling Centers, Inc.*



(2003) 110 Cal.App.4th 398, 412-413, footnote 6 [writ review appropriate if trial court erred in sustaining demurrer without leave to amend as to some but not all causes of action, thus likely necessitating a future reversal on appeal and a new trial]); and (3) a demurrer to the complaint is erroneously overruled in its entirety, thus resulting in a future needless trial (*Babb v. Sup.Ct. (Huntington)* (1971) 3 C3d 841, 851, 92 CR 179, 185]

#### Denial of Motion to Sever

The denial of a motion to sever causes of action for separate trial may be reviewable by mandate. (*Omaha Indem. Co. v. Sup.Ct. (Greinke)* (1989) 209 CA3d 1266, 1271-1275.)

#### Compelling Arbitration

An order compelling arbitration may be reviewed by writ of mandate in “unusual circumstances” such as where the matters ordered to arbitration clearly appear to be beyond the scope of the arbitration agreement or the arbitration would be unduly time-consuming or expensive). (*Zembsch v. Sup.Ct. (Health Net of Calif., Inc.)* (2006) 146 CA4th 153, 160-162, 53 CR3d 69, 74-76.)

#### Denying Writ of Attachment

Review of an order denying a writ of attachment may be challenged by writ of mandate. [(*Diego Wholesale Credit Men's Ass'n v. Sup.Ct. (International Hotels Const. & Mgmt., Inc.)* (1973) 35 CA3d 458, 462, 110 CR 657, 659.)]

#### Denying Dismissal for Delay

A trial court order denying a motion to dismiss for delay in prosecution (CCP § 583.110 et seq.) may be immediately reviewable by writ of mandate. [See *Moran v. Sup.Ct. (Riccardo)* (1983) 35 C3d 229, 236, 239-240, 197 CR 546, 551, 553.]

#### Denial of Priority



Denial of a statutory motion for a priority trial date (see CCP § 36) is reviewable by writ of mandate (*Rice v. Sup.Ct. (Times-Mirror Co.)* (1982) 136 CA3d 81, 84-85.)

#### Granting Relief from Government Tort Claims Act

An order granting a motion for relief from the claim-filing requirements in suits against public entities (Gov.C. § 946.6), thereby permitting the claimant to proceed with the suit, may be reviewable by writ of mandate (*El Dorado Irrig. Dist. v. Sup.Ct. (Evans)* (1979) 98 CA3d 57, 58.)

#### Ruling on Undertaking

An order granting or denying a motion for an undertaking may be reviewed by extraordinary writ. (*Beaudreau v. Sup.Ct. (Johnston)* (1975) 14 C3d 448, 452; *Yao v. Sup.Ct. (Lovell)* (2002) 104 CA4th 327, 330, fn. 2.)

#### Denial of Settled Statement

The denial of a motion for settled statement may be reviewed by petition for writ of mandate. (*Randall v. Mousseau* (2016) 2 CA5th 929, 935-936, 206 CR3d 526, 530-531.)



## **B. Typical Rulings Challenged by Statutory Writs (subject to statutory time limits and general writ requirements)**

Petitions for statutory writs must be filed within specific time periods following (depending on the specific statute) service of notice of “entry” of the order, or service of notice of the “order” (not notice of the “entry” of the order).

But beware: courts have interpreted the language commencing the deadline upon 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. (*Eldridge v. Sup.Ct. (Sierra View Local Hosp. Dist.)* (1989) 208 CA3d 1350, 1355; *Schmidt v. Sup.Ct. (West)* (1989) 207 CA3d 56, 60; *Sturm, Ruger & Co. v. Sup.Ct. (Smith)* (1985) 164 CA3d 579, 582.)

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

An order denying summary judgment or granting or denying summary adjudication is reviewable by “peremptory writ” (usually mandate). The petition must be filed within 20 days after service of a written notice of entry of the order, and the trial court can extend this period for an additional 10 days for good cause. The initial 20-day period is extended by 5 days if service notice of entry of the order is by mail in California, 10 days if by mail in another state, and 20 days if by mail outside the U.S. If service is by fax, Express Mail or other overnight delivery method, the initial filing period is extended by 2 court days.

### Ruling on Motion to Expunge Lis Pendens (CCP § 405.39)

A petition for writ of mandate is the exclusive method of review of both the granting and denial of a motion to expunge lis pendens. The petition



must be filed within 20 days after service of written notice of the order, and can be extended by the trial court for an additional 10 days.

#### Ruling on Motion for Change of Venue (CCP § 400)

The granting or denying of a motion for change of venue is reviewable by petition for writ of mandate. The petition must be filed no later than 20 days after service of a written notice of the order, subject to extension by the trial court up to 10 days for good cause.

#### Denial of Motion to Quash Service / Inconvenient Forum (CCP § 418.10(c))

An order denying a motion to quash service of summons, or an order denying a motion to stay or dismiss the action on the ground of inconvenient forum, brought before or simultaneously with a responsive pleading, is reviewable by petition for writ of mandate. The petition must be filed within 10 days after service of a written notice of entry of the order, subject to a maximum additional 20-day extension on trial court order for “good cause.”

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

A petition for writ of mandate is the sole method to challenge both the granting and denial of a motion to disqualify a judge. The petition must be filed and served within 10 days after service of written notice of entry of the court's order, which is extended under CCP 1013(a) when the notice of entry is served by mail.

#### Coordinating Actions (CCP § 404.6, CRC 3.505)

An order coordinating actions pending in different courts is reviewable by writ of mandate. The petition must be filed within 20 days after service of written notice of entry of the order. However, before expiration of the 20-day period, the trial court may, for “good cause,” extend the deadline up to 10 more days.

#### Ruling on Motion for Good Faith Settlement (CCP § 877.6)



The granting or denying of a motion for a good faith settlement determination is reviewable by a petition for writ of mandate. (CCP 877.6(e). The petition must be filed within 20 days after service of written notice of the order, which the trial court can extend up to 10 days. The original 20 day period is extended by CCP § 1013(a) when notice of the trial court's determination is served by mail.

Denial of Stay in Unlawful Detainer (CCP § 1176)

The trial court's denial of a request for a stay on appeal by the defendant in an unlawful detainer action is reviewable by "extraordinary writ," usually mandate. The petition must be filed "forthwith. No absolute filing deadlines are imposed by the statute.



## **C. Sample Orders**

Coercive Palma Notice





IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

COURT OF APPEAL – SECOND DIST.

**FILED**

**Feb 11, 2014**

JOSEPH A. LANE, Clerk

Eva McClintock Deputy Clerk

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 Triplett 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




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)



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**

NOV 19 2014

JOSEPH A. LANE Clerk

D. SANDERS Deputy Clerk

GARDEN GROVE  
DENTAL CARE et al.,

B258979

(Super. Ct. No. BC546986)

Petitioners,

(Maureen Duffy-Lewis, Judge)

v.

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

Respondent.

ORDER

BRENDA SORIA et al.,

Real Parties in Interest.

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.

  
WOODS, Acting P. J.,

  
ZELTON, J.,

  
SEGAL, J. (Assigned)



Order to Show Cause



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

COURT OF APPEAL - SECOND DIST.

**FILED**

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.

PERLUSS, P. J.,

WOODS, J.,

SEGAL, J. (Assigned)



## 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.

**FILED**

OCT 22 2014

JOSEPH A. LAHE 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,

(b) in 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

  
PERLUSS, P. J.

  
WOODS, J.

  
SEGAL, J. (Assigned)