

UNLOCKING THE MYSTERIES OF APPELLATE WRIT PETITIONS



Hon. Thomas L. Willhite, Jr. (Ret.)

Seeking writ review by the California Court of Appeal of pre-judgment trial court orders is an important aspect of litigation practice. True, 90 percent or more of writ petitions are summarily denied, with little or no explanation. However, this does not mean that writ review is a waste of time. Rather, it illustrates why attorneys must fully understand the practicalities and technicalities of appellate writ petitions to identify

appropriate cases and maximize the chances of success. The potential benefits are worth the challenge: writ relief overturning an adverse lower court ruling can tilt the entire remaining litigation in your client's favor.

Practicalities of Writ Review

We first need to understand what writ review is and is not. It is not an appeal, in which review of trial court rulings is a matter of right. It is extraordinary relief, discretionary with the court. In this light, perhaps the most important practical consideration is understanding how writ proceedings are processed in the Court of Appeal.

A writ petition is first thoroughly evaluated by a writ attorney who specializes in writ procedure. The writ attorney will prepare a recommended course of action: summary denial, an informal response from the real party in interest, an order to show cause, or other possibilities beyond the scope of this article. The job of a writ attorney is not to be forgiving. It is triage: eliminate the vast majority of cases that do not deserve consideration for extraordinary relief, and isolate the few that do.

This is not to say that the justices do not review writ petitions—they do, and conference together before deciding what action to take. It is also not to say that the justices always adopt the

writ attorney's recommendation—they don't. But if your writ petition fails to meet the procedural requirements, the writ attorney will call it to the justices' attention, and you will have provided an easy, proper ground to deny the petition outright. The great bulk of the appellate workload is post-judgment appeals. Always remember that a writ petition is "a device . . . to 'cut into line' ahead of those [appellate] litigants." (*Omaha Indemnity Co. v. Superior Court* (1989) 209 Cal.App.3d 1266, 1273.) You have to justify cutting in line, and you better do it right.

Common Law and Statutory Writs

The first thing to know is the categories of writs over which the Court of Appeal has original jurisdiction. There are two: "common law writs" and "statutory writs." (Cal. Const., art. VI, § 10.) Common law writs are those that are available at common law to review certain trial court orders. For our purposes, the two major common law writs are the writ of mandate and the writ of prohibition.

The writ of mandate (Code of Civ. Proc., § 1085),¹ the most common, is used to correct an abuse of discretion by the trial court. (See *State Farm Mut. Auto. Ins. Co. v. Superior Court, In and For City and County of San Francisco* (1956) 47 Cal.2d 428, 432.) The writ of prohibition (§ 1102), by contrast, is used to prohibit the superior court from carrying out a threatened act that is in excess the court's power to act. (*Abelleira v. District Court of Appeal, Third Dist.* (1941) 17 Cal.2d 280, 287–291.) Over time, this distinction has blurred, and writ petitions frequently seek in the alternative the issuance of a writ of mandate or prohibition.

The designation "statutory writ" is not a separate type of writ per se. Rather, it describes writ review (usually by mandate) that is authorized by a specific statute for the specific type of ruling.

The distinction between common law and statutory writs is important, because the filing deadlines are much shorter for statutory writs, and certain statutory writs are the sole method of review for the particular ruling at issue. Thus, knowing the different filing deadlines, and the different types of rulings covered by common law and statutory writs, is essential.

The Filing Deadline for Common Law Writs

For common law writs, the court-created “60-day rule” applies: a writ petition may be dismissed as untimely if it is filed later than 60 days after service of notice of entry of the challenged order. The rule is discretionary: the doctrine of laches may justify denying a petition filed within the 60-day period, and a showing justifying the delay and the absence of prejudice to the other party may justify forgiving a violation of the 60-day rule. (See *Labor & Workforce Development Agency v. Superior Court* (2018) 19 Cal.App.5th 12, 24.) The best practical advice, however, is don’t rely on the 60-day rule. File your writ petition as early as reasonably possible.

Typical Rulings Challenged by Common Law Writs

Here is a non-exclusive list of superior court rulings subject to the 60-day rule for common law writs (usually mandate). Some cautionary notes are added.

- Discovery orders. (Caution: discovery orders are generally appropriate for writ review only if they direct the disclosure of privileged material or the issued involved is unsettled and writ relief can provide guidance. (*O’Grady v. Superior Court* (2006) 139 Cal.App.4th 1423, 1439.))
- Monetary Sanctions of \$5,000 or less. (§ 904.1, subd. (a)(11), (12).)
- Grant or Denial of Disqualification of Counsel. (*Apple Computer, Inc. v. Superior Court* (2005) 126 Cal.App.4th 1253, 1263–1264.)
- Rulings on Pleading Motions (Demurrers, Motions for Judgment on the Pleadings, and Motions to Strike). (Caution: Rulings on pleading motions are rarely reviewable (*Curry v. Superior Court* (1993) 20 Cal.App.4th 180, 183, & fn. 4), unless the ruling: (1) involves an issue of great public interest (*County of Los Angeles v. Superior Court* (1998) 68 Cal. App.4th 1166, 1170); or, (2) is clearly erroneous and would necessitate a new trial if review were delayed for the appeal (see *Taylor v. Superior Court* (1979) 24 Cal.3d 890, 894; *Babb v. Superior Court* (1971) 3 Cal.3d 841, 851 (*Babb*)).)
- Compelling Arbitration. (*Zembsch v. Superior Court* (2006) 146 Cal.App.4th 153, 160–162.)
- Denying Writ of Attachment. (*San Diego Wholesale Credit Men’s Assn. v. Superior Court* (1973) 35 Cal.App.3d 458, 462.)

- Denying Dismissal for Delay in Prosecution (§ 583.110 et seq.). (*Moran v. Superior Court* (1983) 35 Cal.3d 229, 236.)
- Denial of Priority (§ 36). (*Rice v. Superior Court* (1982) 136 Cal.App.3d 81, 84–85.)
- Granting Relief from Government Tort Claims Act (Gov. Code, § 946.6). (*El Dorado Irrigation Dist. v. Superior Court* (1979) 98 Cal.App.3d 57, 58–59.)
- Grant or Denial of an Undertaking. (*Beaudreau v. Superior Court* (1975) 14 Cal.3d 448, 452.)

Deadlines for Specific Statutory Writs

Petitions for statutory writs must be filed within the specified statutory deadline following service of notice of “entry” of the challenged order, or sometimes service of notice of the “order.” Regardless, beware that courts have interpreted 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. Superior Court* (1989) 208 Cal.App.3d 1350, 1355; *Schmidt v. Superior Court* (1989) 207 Cal.App.3d 56, 60; *Sturm, Ruger & Co. v. Superior Court* (1985) 164 Cal.App.3d 579, 582.) It is critically important to calculate the filing deadline accurately. Unlike the 60-day rule for common law writs, the deadline for statutory writs is mandatory: the court cannot consider an untimely statutory writ petition.

The following is a non-exhaustive list of important statutory writs and filing deadlines.

- Denial of Summary Judgment/Summary Adjudication (§ 437c, subd. (m)(1)): 20 days after service of a written notice of entry of the order; can be extended by the trial court for 10 days on good cause, and also by the means of service. (*Ibid.*; § 1010.6, subd. (a)(3).)
- Grant or Denial of Motion to Expunge Lis Pendens (§ 405.39): 20 days after service of written notice of the order; can be extended by the trial court for an additional 10 days.
- Grant or Denial of Motion for Change of Venue (§ 400): 20 days after service of a written notice of the order; can be extended by the trial court up to 10 days for good cause.
- Denial of Motion to Quash Service / Denial of Motion to Dismiss or Stay Based on Inconvenient Forum (§ 418.10, subd. (c)): 10 days after service of a written notice of entry of the order, subject to a maximum additional 20-day extension by trial court order for good cause.
- Granting or Denial of Motion to Disqualify a Judge (§ 170.3, subd. (d)): 10 days after service of written notice of entry of the order; can be extended depending on the means

of service. (§ 1013, subd. (a).)

- Granting Motion to Coordinate Actions (§ 404.6; Cal. Rules of Court, rule 3.505): 20 days after service of written notice of entry of the order; can be extended by the trial court for 10 days on good cause.
- Grant or Denial of Motion for Good Faith Settlement (§ 877.6): 20 days after service of written notice of the order; can be extended up to 10 days (§ 877.6, subd. (e)), as well as by the means of service. (§ 1013, subd. (a).)

Parties to an Appellate Writ Proceeding

Understanding the filing deadlines for writ petitions, let's examine the procedural requirements for initiating a writ proceeding. The procedure is the same for common law and statutory writs.

There are three parties to a writ proceeding. The first is the petitioner, usually the loser in the trial court (but it can be anyone with a beneficial interest in the case (see *Carsten v. Psychology Examining Com.* (1980) 27 Cal.3d 793, 796)). The second is the respondent, the Superior Court of the State of California for the particular county in which the challenged ruling was made. The respondent court is a neutral party.

The third is the real party in interest, usually the party that prevailed in the superior court, but it can be anyone that has an interest that "will be directly affected by writ proceedings." (*Manfredi & Levine v. Superior Court* (1998) 66 Cal.App.4th 1128, 1132.) The real party in interest is the one who must respond to the petition if the appellate court requests a response.

Commencing a Writ Proceeding

A writ proceeding is commenced by the filing of a writ petition by the petitioner. The 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.

Because writ review is extraordinary relief, the writ petition must establish the necessary justification. It should contain the factual allegations setting forth the relevant procedural and factual history; it should explain how the trial court erred; it should describe why there is no adequate remedy at law and why there will be imminent harm if writ review is not granted; and it should contain a prayer that specifies the relief desired (usually a request that the writ issue to set aside the challenged ruling).

No Adequate Remedy at Law

The requirement of no adequate remedy at law means, in

substance, that an appeal is not an adequate remedy considering the consequences of the trial court's ruling. General policy considerations may make appeal inadequate based on the importance of the legal issue involved, including that the issue is of widespread importance and should be immediately resolved (*Brandt v. Superior Court* (1985) 37 Cal.3d 813, 816 (*Brandt*); *Phelan v. Superior Court in and for the City and County of San Francisco* (1950) 35 Cal.2d 363, 370–372), that it presents a significant and novel constitutional question (*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 In and For Merced County* (1961) 56 Cal.2d 355, 378).

Also, case-specific circumstances may make an appeal inadequate to address the harm 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, supra*, 3 Cal.3d at p. 851), that the trial court's order deprived petitioner of an opportunity to present a substantial portion of the petitioner's cause of action (*Brandt, supra*, 37 Cal.3d 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. Superior Court, Solano County* (1957) 151 Cal.App.2d 190, 193).

Irreparable Harm

The element of irreparable harm frequently blends with a showing of the inadequacy of an appeal. That is, it 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. Superior Court* (2015) 237 Cal.App.4th 316, 324.)

Memorandum of Points and Authorities

The memorandum of points and authorities serves the same function as in other procedural contexts. It discusses the applicable law to demonstrate how the trial court erred and why writ relief is necessary. Significantly, the grounds asserted for relief in the petition must have been raised in the trial court; if not, they will generally be deemed forfeited. (See *Sayegh v. Superior Court of Los Angeles County* (1955) 44 Cal.2d 814, 815.) Also, 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 Cal.App.4th 1562, 1588.)

The Necessary Record

The most technical requirement of the writ petition, and the one with the most potential pitfalls, is the presentation of an adequate record. In support of the petition, the petitioner

must present a record that includes the challenged ruling, all documents and exhibits presented to the trial court, any other trial court submissions necessary for a complete understanding of the issues, and a reporter's transcript of the hearing at which the challenged ruling was made. (See Cal. Rules of Court, rule 8.486(b)(1)(A)–(D).)

If required documents are not available, the petition “must include a declaration that explains the urgency and the circumstances making the documents unavailable and fairly summarizes their substance.” (Cal. Rules of Court, rule 8.486(b)(2).) If a transcript is not available, “the record must include a declaration: [¶] (A) Explaining why the transcript is unavailable and fairly summarizing the proceedings, including the parties' arguments and any statement by the court supporting its ruling . . . or [¶] (B) Stating that the transcript has been ordered, the date it was ordered, and the date it is expected to be filed, which must be a date before any action requested of the reviewing court other than issuance of a temporary stay supported by other parts of the record.” (*Id.*, rule 8.486(b)(3)(A)–(B).) Further, there are specific requirements for the form in which the records must be submitted. (See *id.*, rules 8.486(c)(1)(A)–(C), 8.74 [electronic documents format].)

Follow all the record requirements to the letter. The failure to provide an adequate record justifies a summary denial of the petition (Cal. Rules of Court, rule 8.486(b)(4)), as does the failure to comply with proper submission form after notice of noncompliance (*id.*, rule 8.486(c)(2)).

Stay Request

A writ petition does not stay the trial court's ruling. A stay must be requested by the petition. If a stay is requested, California Rules of Court, rule 8.486(a)(7) requires: “(A) The petition must explain the urgency. [¶] (B) The cover of the petition must prominently display the notice ‘STAY REQUESTED’ and identify the nature and date of the proceeding or act sought to be stayed. [¶] (C) The trial court and department involved and the name and telephone number of the trial judge whose order the request seeks to stay must appear either on the cover or at the beginning of the text.”

As with the requirements for the record, follow these stay-request requirements to the letter, or the court may decline to consider the request. (Cal. Rules of Court, rule 8.486(a)(7).) As a practical matter, understand that evaluation of a

stay request will require the writ attorney's and justices' immediate consideration. It will interrupt the work flow not only of post-judgment appeals, but also of other writs. One sure way to make a self-defeating, bad first impression is to request a stay where it is not urgent. Another is to hide the stay request or the nature and date of the proceeding to be stayed in the petition rather than displayed on the cover. And still another is to fail to identify the relevant court on the cover or immediately in the petition text. If you want your request timely considered, treat it like it is urgent enough to do right.

Conclusion

Writ practice is technical and full of traps for the unwary. But with consideration of the points highlighted in this article, you can better the chances of obtaining writ review of a challenged ruling, which is the first, and most difficult, step in ultimately obtaining writ relief.

For further guidance, refer to the following authorities.

California Rules of Court

Rule 8.486 Petitions for writs of mandate, certiorari, and prohibition in the Supreme Court and Court of Appeal

Rule 8.112 Petition for writ of supersedeas

Secondary Authorities

Eisenberg, Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2025) ¶¶ 15, 15.1 et seq.

8 Witkin, Cal. Procedure. (6th ed. 2026), Ch. XII, Extraordinary Writs

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]

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