

**Court of Appeal**  
FOURTH APPELLATE DISTRICT  
Division One  
750 B Street, Suite 300  
San Diego, CA 92101

## **HANDOUT ON WRITS**

### *Preliminary Note*

This handout is intended to assist an attorney or a layperson who may be contemplating filing or responding to a petition for writ of mandate, writ of prohibition or writ of supersedeas. It does not address petitions for writs of review, petitions for writs of habeas corpus or other specialized writ petitions.

The court recognizes writ petitions are frequently prepared in a hurry by attorneys or parties with limited experience in writ procedure and therefore takes a relatively informal approach to processing writ petitions. For example, the court will treat your petition as having the proper label (e.g., deem it to be a petition for writ of mandate if you mistakenly prayed for a writ of prohibition) and may call you if a critical part of the record is missing.

There are, however, certain requirements that are crucial to success in obtaining writ relief. This handout focuses on these requirements.

### *Prefiling Considerations*

A writ is a directive from this court to a trial court, an administrative agency, or a person to do something or to stop doing something. Unlike appeals, which are heard as a matter of right, writ petitions are generally heard as a matter of discretion, and they are governed by equitable principles. Appellate courts generally grant writ relief only when the petitioner (1) has no other plain, speedy and adequate remedy in the ordinary course of law; and (2) will suffer irreparable injury if such relief is not granted.

If the order, judgment or decision you intend to challenge is directly appealable, you are considered to have an adequate remedy in the ordinary course of law unless you can show extraordinary circumstances (e.g., a need for immediate relief). Check Code of Civil Procedure section 904.1 to see what orders and judgments are directly appealable; for rulings not covered by that section, you may also wish to look at the cases dealing

with the ruling in question to see if the issue was resolved by an appellate opinion or a writ opinion.

The irreparable injury requirement is more difficult to define. It is not established by the mere facts that the challenged ruling is wrong and because of it you will have to spend time and money on unnecessary further litigation. Loss of money damages generally also is not considered irreparable injury. The threatened destruction of one's home or business may constitute irreparable injury, although the threatened foreclosure of unimproved commercial property may not. An order directing release of privileged information, disclosure of attorney work product, or invasion of a protected privacy interest ordinarily will qualify as irreparable injury. You need to judge the circumstances and the severity of the consequences to determine whether you are likely to qualify for extraordinary writ relief.

### ***Types of Writs and Time Limits for Filing a Petition***

#### ***1. Statutory Writs***

The Legislature has enacted statutes specifying certain rulings may be reviewed by writ petition — hence the term “statutory writ.” (A non-exhaustive list of statutory writs is set out in Attachment A to this Handout.) Statutory writ petitions are often required to be filed within a time prescribed by the statute itself, which is usually short (e.g., 10 or 20 days). If you fail to meet the statutory deadline, the appellate court will not have jurisdiction to grant your petition. If a statute authorizes review by writ petition but does not specify a time for filing the petition, the filing period is subject to general principles of laches described in the discussion of “Common Law Writs” below.

Just because the Legislature has authorized review by writ petition does not necessarily mean you have to file a petition to challenge a ruling. In most cases, you may pass on the writ petition and still challenge the ruling on an appeal from the final judgment in your case. Some rulings, however, may only be reviewed in a writ proceeding. Examples include a denial of a motion to quash service of summons for lack of personal jurisdiction (Code Civ. Proc., § 418.10, subd. (c)); a ruling on the disqualification of a judge (Code Civ. Proc., § 170.3, subd. (d)); a ruling on the expungement of a notice of *lis pendens* (Code Civ. Proc., § 405.39); a ruling in a Public Records Act case (Gov. Code, § 6259, subd. (c)); and a ruling regarding revocation, suspension or restriction of a medical license (Bus. & Prof. Code, § 2337).

#### ***2. Common Law Writs***

Writs other than those prescribed by statute are called “common law writs.” There is no set time limit for filing a petition for a common law writ. Instead, general principles

of laches apply, and 60 days is the rule of thumb. (See, e.g., *Volkswagen of America, Inc.* (2001) 94 Cal.App.4th 695, 701.) In other words, you should file your petition within 60 days of the date of entry of the judgment, order or decision you are challenging. If you file your petition after the 60 days have run, you must explain the reason for the delay and show the absence of any prejudice to the opposing party. A petition may be denied as untimely even if it is filed within the 60-day period under certain circumstances (e.g., the petition was not filed until the eve of trial even though the challenged order was made some time before the trial date).

### ***What You Must Submit***

If you decide to file a petition for writ relief, it is very important to submit all the necessary components: petition, verification, memorandum of points and authorities, exhibits, a certificate of interested entities or persons, a certificate of word count and any applicable filing fee. (See Cal. Rules of Court, rules 8.76, 8.485, 8.486 & 8.488 for details.) It is also important to protect personal privacy rights by excluding or redacting such personal identifying information as Social Security numbers, financial account numbers, and driver license numbers. (*Id.*, rules 1.201, 8.41.) All submissions must be made through the court's electronic filing system at <http://www.courts.ca.gov/4dca-efile.htm> unless you qualify for (e.g., as a self-represented litigant) or obtain (e.g., for undue hardship) an exemption from the electronic filing requirements. (*Id.*, rule 8.71.)

#### ***1. Petition***

The petition must set forth the name and status of each party,<sup>1</sup> the challenged action of the respondent, the grounds for the petition, and the relief requested. You should include an explanation of how the respondent erred, why relief by appeal or other means is inadequate, and how the harm you will suffer without writ relief is irreparable. Your petition must be signed and verified (i.e., attested as true under penalty of perjury). For the requirements concerning signature and verification of electronically filed documents, see rule 8.75 of the California Rules of Court.

If you are exempt from the electronic filing requirements, you must file the original plus four copies of the writ petition and companion points and authorities. (Cal. Rules of Court, rule 8.44(b)(3).) The color of the cover for all paper filings in a writ proceeding is

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<sup>1</sup> The parties to an original writ proceeding are designated differently from the way they are designated in the underlying action or proceeding. The party filing the petition is called the *petitioner*; the person, court or administrative agency that issued the challenge judgment, order or decision and against whom or which writ relief is sought is called the *respondent*; and the party, if any, that prevailed against the petitioner in the underlying action or proceeding is called the *real party in interest*. In a petition for a writ of supersedeas, which is not an original proceeding, the parties are designated the same way they are designated in the corresponding appeal (e.g., *plaintiff and appellant* or *defendant and respondent*).

red. (*Id.*, rule 8.40(b)(1).)

## 2. *Memorandum of Points and Authorities*

A memorandum of points and authorities must set out the legal arguments that support your petition. The memorandum must include citations to specific pages of the exhibits that support factual assertions, and citations to statutes, cases or other authorities that support legal assertions. (Cal. Rules of Court, rules 204(a)(1)(B), (C), 485(a), 486(a)(5).)

## 3. *Exhibits*

Your petition must include as exhibits all relevant filings presented to the court, administrative agency or other entity whose ruling you are challenging. The exhibits generally should include copies of initial moving papers, opposition papers, reply papers, relevant pleadings (e.g., the operative complaint), and the challenged ruling. (Cal. Rules of Court, rule 8.486(b)(1)(A)-(C).) You must also submit a copy of the reporter's transcript of the hearing that led to the challenged ruling. (*Id.*, rule 8.486(b)(1)(D).) If you do not have a transcript, include a declaration that explains why the transcript is unavailable and fairly summarizes what happened at the hearing or that states the transcript has been ordered and when it will be available. (*Id.*, rule 8.486(b)(3).) If you do not submit all required exhibits, the court may summarily deny your petition. (*Id.*, rule 8.486(b)(4).)

All exhibits must be submitted in portable document format (PDF), or in a format readily convertible to PDF, so that the exhibits may be searched electronically. No single electronic volume of exhibits may exceed 25 megabytes (see *Electronic Formatting Requirements of the 4th District Pursuant to California Rules of Court, Rule 8.72(a) and 8.74(b)*), and the pages of all exhibits must be numbered consecutively using only Arabic numerals. (Cal. Rules of Court, rule 8.74(b).)

If you are exempt from the electronic filing requirements, you must index-tab each document in your exhibits by number or letter and consecutively number the pages of your exhibits from beginning to end. If you submit noncompliant exhibits, the court may strike or deny your petition unless, within five days of notification of noncompliance, you submit a corrected volume of exhibits that has been properly tabbed and paginated. (Cal. Rules of Court, rule 8.486(c)(1), (2).) You need to file only one set of exhibits if your exhibits are bound separately from your petition; but if the exhibits are bound together with your petition, you must file the original and four copies. (*Id.*, rules 8.44(b)(5) & 8.486(c)(1)(A), (3).)

#### 4. *Certificate of Interested Entities or Persons*

Parties to writ proceedings are required to file a certificate of interested entities or persons to give the court information to avoid conflicts of interest. If you are petitioning for writ relief, you must include your certificate in the petition. If you are responding to a petition, you must include your certificate in your first filing. If you do not file a certificate after the clerk notifies you that you must do so, the court may strike your filing. (Cal. Rules of Court, rules 8.208 & 8.488.)

#### 5. *Certificate of Word Count*

Your petition must contain a certificate verifying the total number of words in the petition and points and authorities (excluding tables, verification and certificate). The maximum length permitted is 14,000 words including footnotes if the petition and points and authorities are produced by computer and 50 pages if they are typewritten. (Cal. Rules of Court, rules 8.204(c) & 8.486(a)(6).)

#### 6. *Filing Fee*

You are required to pay a filing fee or to complete an application for a waiver of fees in connection with filing a writ petition. (Gov. Code, §§ 68926, subd. (a)(3), 68634.5; Cal. Rules of Court, rule 8.76.)

### ***Stays***

In connection with seeking writ relief, you may ask the Court of Appeal to stay (1) the enforcement of the challenged ruling or further proceedings in the underlying case while it is reviewing the writ petition or (2) the enforcement of a judgment or order until the appeal from the judgment or order is resolved.

#### 1. *Temporary Stay*

In general, if you need a stay while you pursue writ relief, you should first request a stay from the court or other entity whose ruling you are challenging. If you are requesting a stay from the Court of Appeal, you must indicate whether you requested a stay from that court or entity (and, if not, why not) and attach any orders granting or denying the request. Be specific about the need for and timing of your request: state exactly what should be stayed and why, when the stay should go into effect, how the denial of the stay will prejudice you, and whether granting the stay will prejudice any other party.

If you request a stay or other immediate action, you must place the words “STAY REQUESTED,” “IMMEDIATE RELIEF REQUESTED” or words of similar effect prominently on the cover of your writ petition and identify the nature of the ruling, proceeding or act to be stayed and the date by which the stay is requested. (Cal. Rules of Court, rules 8.116(a), 8.486(a)(7)(B).) If you are seeking a stay of an order of, or further proceedings in, a trial court, you must also include on the cover of your petition or at the beginning of the text the trial court and department involved and the name and telephone number of the trial judge whose order or proceedings you want stayed. (*Id.*, rules 8.116(b), 8.486(a)(7)(C).) Failure to include this required information may result in the denial of your stay request. (Cal. Rules of Court, rule 8.116(c).) You are also required to serve a petition that requests an immediate stay by personal delivery or by an expeditious method consented to in advance by the real party in interest. If you do not do so, the court will not act on the stay request for five days, except to deny it summarily, unless you show good cause for your failure to comply. (Ct. App., Fourth Dist., Div. One, Local Rule 1(a).)

The Court of Appeal may issue a stay without first soliciting or receiving a response. (Ct. App., Fourth Dist., Div. One, Local Rule 1(a).) Therefore, if you want to oppose a stay request, telephone the Clerk’s Office immediately to advise you will be filing opposition.

## *2. Stay of Judgment or Order Pending Appeal (Petition for Writ of Supersedeas)*

The writ of supersedeas is essentially a stay issued by an appellate court in aid of its jurisdiction to preserve the status quo pending an appeal from a judgment or order of a trial court. Before filing a petition for writ of supersedeas, you should request a stay from the trial court. To obtain a writ of supersedeas, you must have an appeal pending in the Court of Appeal; and you must show you will raise a substantial issue on appeal, you will suffer irreparable injury without a stay, and that injury will be greater than the injury to your litigation adversary if the stay issues. (See, generally, Cal. Rules of Court, rule 8.112.)

The same information that must be included on the cover or at the beginning of the text of a petition for writ of mandate or prohibition seeking a temporary stay must also be included in a petition for writ of supersedeas. (Cal. Rules of Court, rule 8.116.) Before filing the petition, you must file a notice of appeal and pay the filing fee for the appeal. There is no additional fee for filing the petition.

### ***Responding to the Petition***

You do not have to do anything when you are served with a writ petition. Except in

extraordinary circumstances requiring immediate action, the Court of Appeal will not take any action other than to issue a stay or to deny the petition summarily without first affording you an opportunity to respond to the petition. (Ct. App., Fourth Dist., Div. One, Local Rule 1(b); Ct. App., Fourth Dist., Div. One, Internal Operating Practices & Proc., II(A), Original Proceedings (Writs); see also Cal. Rules of Court, rule 8.487(a)(4).) Unless the court orders otherwise, you will be required to pay a filing fee or to complete an application for a waiver of fees in connection with filing a response to the petition. (Gov. Code, §§ 68634.5, 68926, subd. (b)(3); Cal. Rules of Court, rule 8.76.)

If the court wants you to respond to the petition, it will notify you and all other parties and specify a due date for your response. If you need more time to respond, you must state how much additional time you are requesting and why you need that time in a written request to the court.

### ***Disposition of Writ Petitions***

The Court of Appeal may summarily deny a petition with or without first obtaining a response. It ordinarily will not grant writ relief unless it has first given the respondent or the real party in interest an opportunity to respond to the petition. (Cal. Rules of Court, rule 8.487(a)(4); Ct. App., Fourth Dist., Div. One, Local Rule 1(b).)

The court may grant writ relief by issuing what is called a peremptory writ in the first instance. A peremptory writ directs the respondent to do, or to stop doing, something. If the court is considering issuing a peremptory writ in the first instance, it will provide notice to the parties and then decide the matter by opinion without hearing oral argument. (See *Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 177-180.) Issuance of a peremptory writ in the first instance is very rare and is limited to situations where (1) the petitioner's entitlement to relief is clear (e.g., the real party in interest concedes the propriety of relief) and there has been clear error under well-settled principles of law and undisputed facts or (2) there is some urgency that requires acceleration of the normal writ review process.

Except in those limited circumstances, if the court is considering granting writ relief, it will issue an order to show cause. Issuance of an order to show cause converts the matter into a cause and requires the court to hear argument (if requested) and to issue an opinion with reasons stated.

### ***Review of Writ Decisions***

The Court of Appeal immediately loses jurisdiction once it issues an order summarily denying a writ petition and has no power to entertain a petition for rehearing or

reconsideration. If you want to challenge a summary denial order, you must file a petition for review in the Supreme Court of California within 10 days of the date this court denied the petition. (Cal. Rules of Court, rules 8.490(b)(1)(A) & 8.500(e)(1).)

If the Court of Appeal issues an order to show cause or a peremptory writ in the first instance, it prepares an opinion. In such cases, unless the court provides for early finality under California Rules of Court, rule 8.490(b)(2)(A), the time limits and procedures for rehearing and review are the same as those for appeals.

### *Tips*

1. The Court of Appeal typically handles 50 to 60 writ petitions a month, often under time constraints. To improve your chances of obtaining writ relief, help the court understand why you need relief. Explain the background and issues in your case as clearly and succinctly as possible, and focus your argument on why you need writ relief. Make your exhibits user-friendly: include only relevant documents, insert bookmarks if filing electronically, and submit manageable volumes if filing in paper.
2. Provide a complete presentation of your case in the petition. Make sure the petition accurately and completely describes the proceedings that resulted in the challenged ruling and includes citations to the exhibits. Also make sure the exhibits contain the challenged ruling and the relevant submissions from both sides in those proceedings.
3. Generic stay requests are extremely unlikely to be granted. Be particular in any stay request: identify exactly what you want stayed (e.g., the trial, a document production, a notice to vacate the premises) and the day by which you want the stay.
4. Eleventh-hour writ petitions and stay requests rarely succeed. If you obtain an adverse ruling and require a stay so the matter can be reviewed, do not wait until the eve of the proceeding you want stayed but instead file your petition as soon as possible.
5. If you intend to file a petition that requires action by the court that same day or the next day, telephone the Clerk's Office to advise you will be filing the petition, when you anticipate filing it, and what you will be asking the court to do. If the urgency dissipates or you decide not to file the petition, let the court know.

## **Attachment A**

The following are examples of orders reviewable by statutory writ petitions:

### ***Civil Cases***

Grant or denial of motion to disqualify judge (Code Civ. Proc., § 170.3, subd. (d))

Grant or denial of motion to change venue (Code Civ. Proc., § 400)

Grant or denial of motion to expunge *lis pendens* (Code Civ. Proc., § 405.39)

Denial of motion to quash service of process (Code Civ. Proc., § 418.10, subd. (c))

Grant or denial of motion for summary adjudication or denial of motion for summary judgment (Code Civ. Proc., § 437c, subd. (m)(1))

Grant or denial of motion for good faith settlement determination (Code Civ. Proc., § 877.6, subd. (e))

### ***Criminal Cases***

Grant or denial of motion to disqualify judge (Code Civ. Proc., § 170.3, subd. (d))

Denial of motion to set aside indictment or information (Pen. Code, § 999a)

Denial of motion to suppress evidence in felony case (Pen. Code, § 1538.5, subd. (i))