

Judicial Council of California

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INVITATION TO COMMENT SPR15-08

Title	Action Requested
Small Claims: Extraordinary Writs under Code of Civil Procedure section 116.798	Review and submit comments by June 17, 2015
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rule 8.930 and 8.950; adopt rules 8.970–8.977; revise forms APP-150-INFO and APP-151, and adopt forms SC-300 and 300 INFO	January 1, 2015
Proposed by	Contact
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Executive Summary and Origin

The Civil and Small Claims Advisory Committee and the Appellate Advisory Committee are proposing new rules and forms to comply with a statutory mandate to develop procedural rules for certain writ proceedings on small claims rulings. The proposal also provides clarifying amendments to current rules and forms that apply to writ proceedings in the appellate division generally to the extent those apply to small claims proceedings relating to postjudgment enforcement actions.

Background

Legislation was enacted in 2013 to clarify the proper jurisdiction for writs in small claims actions given trial court unification (Code Civ. Proc. § 116.798). This legislation makes the jurisdiction dependant on the stage of the small claims case at which the act being challenged took place: (1) in any small claims court action other than a post-judgment enforcement proceeding, (2) in a post-judgment enforcement proceeding, or (3) in a small claims appeal (which is essentially a trial de novo). This new statute provides that writs proceedings in the first set of matters – those challenging an action of the small claims court other than a post-judgment enforcement action – must be heard by a single judge who is assigned to the superior court appellate division. The

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

statute also requires the Judicial Council to promulgate new rules for writ proceedings relating to these rulings.

The new statute was recommended by the California Law Revision Commission (CLRC), as part of its work in recommending statutory amendments to address provisions of the law that were obsolete as a result of trial court unification. As part of this work, the CLRC, with input from the Civil and Small Claims Advisory Committee (CSCAC), developed recommended legislation to clarify small claims writ jurisdiction after unification, which was eventually enacted as Code of Civil Procedure § 116.798.¹

The CLRC comments that accompanied its recommendation noted that the new law is solely to clarify which court has jurisdiction of a writ petition, not to in any way change the circumstances under which a party may seek a writ or a court grant one.² Relief through writs—particularly the common law writs of review, mandate, and prohibition encompassed by the new statute—is deemed extraordinary and is at the discretion of the reviewing court, not available as a matter of course. The finality of small claims judgments makes courts reluctant to consider writs as an alternative means of review, but does not preclude such writs. See *Bricker v. Superior Court*, 133 Cal.App.4th 634 (Cal.App. 1 Dist. 2005).

The Proposal

The Civil and Small Claims Advisory Committee (CSCAC) and the Appellate Advisory Committee (AAC) together developed a set of proposed rule changes designed to fulfill the statutory mandate and a set of proposed form changes to help litigants participating in these proceedings. This proposal has three main parts:

1. A set of proposed new rules for writ proceedings relating to actions by small claims divisions other than postjudgment enforcement orders (rules 8.970–8.977);
2. A set of two new forms for these writ proceedings:
 - A form for the petition – *Petition for Writ (Small Claims)* (form SC-300); and
 - An information sheet explaining these writ proceedings – *Information on Writ Proceedings in Small Claims Cases* (form SC-300-INFO)
3. A set of proposed changes to the existing rules and forms relating to writ proceedings in the superior court appellate division to reflect both the new procedures for writ proceedings relating to actions by small claims divisions other than postjudgment enforcement orders and to clarify jurisdiction in other small claims writ proceedings (rules 8.930 and 8.950 and *Information on Writ Proceedings in Misdemeanor, Infraction, and Limited Civil Cases* (form

¹ All further statutory references are to the Code of Civil Procedure unless otherwise noted.

² See California Law Revision Commission’s *Recommendations on Trial Court Restructuring: Writ Jurisdiction in a Small Claims Case* (August 2011) (CLRC 2011 Report) at p. 340. The report may be found at <http://www.clrc.ca.gov/J1452.html>.

APP-150-INFO) and *Petition for Writ (Misdemeanor, Infraction, and Limited Civil Cases)* (form APP-151)).

The new and amended rules are attached at pages 11–18. The new and revised forms are attached at pages 19–54.

Proposed new rules

In developing the new rules and forms for writ proceedings in initial small claims actions, the advisory committees looked to the current rules applicable to writ proceedings in limited civil cases (rules 8.930 et seq.) and used those as a model for the new rules. The new rules regarding small claims writ proceedings would be added to the division of the rules for the superior court appellate division that currently contain the rules regarding trial of small claims cases on appeal. The primary provisions of the proposed new rules are summarized below.

- **Rule 8.970. Application.** This rule describes which proceedings are governed by the rules, and which are not.
- **Rule 8.971. Definitions.** This rule provided definitions of the terms writ, petition, petitioner, respondent small claims court, and real party in interest. This parallels a rule setting out definitions in the rules regarding small claims appeals.
- **Rule 8.972. Petitions filed by persons not represented by an attorney.** This rule states the rules for petitions filed by self-represented parties, mandating at the start that they use a specific Judicial Council petition form unless a court finds good cause. The petitioner is to attach the court ruling objected to, any documents submitted to the small claims court that supports or opposed the petitioner’s position, or is otherwise necessary for a complete understanding of the matter.

The rule differs from the parallel rule relating to appellate division writs generally with respect to providing a record of what was said at the court proceedings. Rather than requiring a reporter’s transcript (which is not available in small claims proceedings) proposed subpart (a)(2) provides that if the petition raises any issue that would require the judge considering it to understand what was said in the small claims court, the petition must include a fair summary of the proceedings, including the parties’ arguments and any statement by the small claims court supporting its ruling.³

³ The advisory committees request specific comments on this provision in the rule and the corresponding items in the form petition (see proposed *Petition for Writ (Small Claims)* (form SC-300) at items 10.a(4), 10.b(4) and 10.c(4)). The committee has some concerns over whether this item should be required by rule, possibly setting up a trap for unwary self-represented parties who do not understand when it may or may not be required. On the other hand, the committees are also concerned that including such a provision in the rule and form may lead to unnecessary paperwork, as parties may provide detailed summaries of the full proceedings even when unnecessary.

The service requirements provided here are similar to those for other writ proceedings in the appellate division, except for the addition of a requirement that the petitioner serve a copy of the form information sheet along with the petition and supporting documents (rule 8.972(d)).

- **Rule 8.973. Petitions filed by an attorney for a party.** This rule addresses petitions filed by attorneys. The advisory committees, recognizing the complexity of extraordinary writ proceedings, followed the example in the rules on writs to the appellate division generally (cf. rule 8.932) and acknowledge that attorneys will be involved for at least some writ petitions.⁴ Although the petition form must be used by self-represented parties, this rule permits counsel to file individualized pleadings should they choose to do so, so long as all the information requested in the form petition is included.
- **Rule 8.974 (a). Preliminary opposition.** Because parties are permitted by statute to file a preliminary opposition to a petition for writ (see § 1107), this rule provides a procedure for doing so, including a 10-day deadline for filing the opposition, parallel to the rules for appellate division writs generally. In an effort to simplify the procedures, this new rule includes a provision stating that the preliminary opposition is not required unless requested by the court. There is no provision in this rule for a reply brief, which is intended to keep the procedure as simple as possible.
- **Rule 8.974(b). Return or opposition; reply.** This subpart sets out the procedure for filing a return if the court issues an alternative writ or order to show cause, or an opposition if the court provides notice that it is considering a peremptory writ without issuing anything further. The respondent has 30 days to respond if no other date ordered by the court, and the petitioner then has 15 days to reply. This rule is almost identical to the corresponding rule for appellate division writs generally (cf. rule 8.933(b)), with the exception that “return” is defined within the rule as a response. The committees concluded that since the provisions essentially echo the statute (see § 1089) there was no way to make it simpler for small claims parties.
- **Rule 8.976. Filing, finality, and modification of decisions; remittitur.** These provisions parallel the similar rule for appellate division writs but have been modified to reflect that the small claims writs will not be issued by the appellate division, but by a single judge in that division. They also differ in that there are no provisions or cross-references in this new rule regarding rehearings or requests to transfer a proceeding to the Court of Appeal. The committees decided that these were unnecessary for small claims cases, as the extraordinary writ proceeding is already providing a chance for a review not generally permitted in small

⁴ Section 116.530(a) states that “Except as permitted by this section, no attorneys may take part *in the conduct or defense of a small claims action.*” A writ proceeding is not itself a small claims action, but a new proceeding filed in the appellate division. A writ petition is similar to a complaint starting a new civil proceeding, formally against the lower court, which will be decided outside the small claims division. Hence the ban on attorneys in section 116.530(a) does not apply in writ proceedings challenging small claims actions, and some petitioners may well be represented by counsel.

claims, where speedy finality is the norm and a goal of the small claims procedures.

Proposed new forms

Two new forms are being proposed for small claims writ proceedings: *Petition for Writ (Small Claims)* (form SC-300) and *Information on Writ Proceedings in Small Claims Cases* (form SC-300-INFO). These forms parallel the petition and information sheet forms developed by the Appellate Advisory Committee (AAC) several years ago for writs in the appellate division generally.

***Petition for Writ (Small Claims)* (form SC-300)**

This form is based on current form APP-151, the petition for use for writs in limited civil cases, misdemeanors, and infractions. Like that form, it is geared to self-represented litigants and is essentially in the style of plain language forms. It begins with a list of general instructions about when the form is applicable, when⁵ and where it should be filed, and how it should be served.⁶ The party is instructed to read the information sheet before completing the petition.

The first several items request information about the parties and about the court action being challenged. (See items 1–7.) The next ask whether any other writ petition or an appeal has been filed. (Items 8–9.)

The most important item is item 10, which seeks the reasons for the petition. This item, like the others, parallels a similar item in form APP-151. It is divided into four subparts, based on the type of action challenged and writ sought, described in simple language, and each of those subparts is divided into four further subparts.

- The party is first asked to describe what it believes the law requires the court to do that it did not do, or what the court did or said that the party is challenging. (See items 10a(1), 10b(1) and 10c(1).)
- Then the form asks the party to identify the legal basis for the claim. (Items 10a(2), 10b(2) and 10c(2).)
- Third—and this is where it differs from the APP-151 form—it asks the parties to identify any supporting documents that show the objected to action of the court, and to describe what the small claims court did that is being challenged (see item 10a(3), 10b(3) and 10c(1) and (3)).

⁵ This form and the information sheet both note that while there is not a hard deadline for common law writs, the parties should file within 30 days. This is based on the recommended timeline the council approved be included on the general appellate division writ forms.

⁶ Parties are referred to the appellate forms for information about service, form APP-109 and form APP-109-INFO. These are set up for self-represented litigants, so seem reasonable for use in small claims cases going to be heard in the appellate division. There are somewhat similar small claims forms for proof of service (forms SC-104 and SC-104B), but they are set up for service of process, for the service of the claims form and cross-claims form, so are not as directly applicable.

- Finally, because there is no formal record kept of the small claims proceedings, if the petition raises an issue that would require the appellate division judge to consider what was said in the small claims court, the party is asked to write a summary of what was said at the court, by the parties and the judge, that is relevant to the request for a writ.⁷ This item implements the provisions in rule 8.972(a)(1), which requires a summary of the proceedings in certain circumstances. (See footnote 3 above.)

Information on Writ Proceedings in Small Claims Cases (form SC-300-INFO).

This proposed form is based on *Information on Writ Proceedings in Misdemeanor, Infraction, and Limited Civil Cases* (form APP-150-INFO); however, there have been changes made to the content of the form to reflect its application to writ proceedings in small claims cases. The committees considered how the limitations on review available in small claims cases should be reflected in information provided to the parties,⁸ as well as making changes to reflect proposed rules 8.970 et seq. and proposed new form SC-300. The differences in the proposed small claims information form are summarized below:

- Item 1 reflects the limitations on appellate review of small claims judgments and the different jurisdiction and procedures applicable to writs challenging post-judgment actions and actions related to a trial de novo;
- Items 4, 6, and 12 also reflect the limitations on appellate review of small claims judgments, the goal of small claims court in terms of providing a quicker, lower cost resolution, and how that relates to whether a court is likely to grant a petition for a writ;
- Item 7 reflects the provisions of section 116.798 with respect to jurisdiction over writ proceedings relating to small claims cases;

⁷ In the petition used for writs to the appellate division generally, the last subpart in this item asks the parties to identify sections in the transcript or record of the oral proceeding. The supporting documents for those petitions are required to include a reporter's transcript of the oral proceedings or record of some kind (see rules 8.486(b)(1)(D) and 8.931(b)(1)(D)). Because no record exists in small claims proceedings, on form SC-300 this item is used for the parties to provide a fair summary of the proceedings if needed.

⁸ Under the small claims statutory scheme, a plaintiff does not have the right to appeal the small claims court judgment (§ 116.710). Essentially, in selecting to proceed in small claims court, the plaintiff trades off the right to an appeal for a quicker, less expensive dispute resolution process. Within the writ context, this means that the usual alternative of an appeal as an adequate remedy is not available. This does not mean, however, that courts readily grant writ petitions in these cases. The Courts of Appeal have historically been reluctant to review rulings in small claims matters because doing so would undermine the goal of providing a speedy and inexpensive resolution of cases falling within the jurisdiction of small claims court. (Code Civ. Proc., § 116.510.) But while disfavored, it has been held that review of small claims judgments may be available by extraordinary writ where there is "statewide importance of the general issues presented" (*Green v. Superior Court* (1974) 10 Cal.3d 616, 621, 111 Cal.Rptr. 704, 517 P.2d 1168) and "in order to secure uniformity in the operations of the small claims courts and uniform interpretation of the statutes governing them" (*Davis v. Superior Court* (1980) 102 Cal.App.3d 164, 168, 162 Cal.Rptr. 167). The committees tried to reflect this case law in the description of writ proceedings in the proposed information sheet for writ actions in small claims cases.

- Item 13 reflects proposed rule 8.972 in that there is no reference to providing a reporter's transcript of the oral proceedings;
- References to trial court were changed to refer to small claims court and references to small claims advisors have been added; and
- References to action by the appellate division have been changed to refer to action by the appellate division judge.

Changes to current rules and forms

Minor changes to the current rules and forms for writ proceedings in the appellate division are also being proposed to reflect the clarification provided in section 116.798 as to where writs challenging small claims actions are to be heard.

- Rule 3.930 would be amended to clarify that writs relating to postjudgment enforcement orders by the small claims division are governed by the rules pertaining to writ proceedings in the appellate division generally. A provision would also be added to clarify that other acts by the small claims division are not governed by those rules, and an advisory committee comment added as to what rules do govern such proceedings.
- *Information on Writ Proceedings in Misdemeanor, Infraction, and Limited Civil Cases* (form APP-150-INFO) would be revised to note that the procedures described in the information sheet DO apply to writs challenging acts by the small claims division relating to postjudgment enforcement orders, but DO NOT apply to other acts by the small claims division or acts relating to small claims appeals in the superior court. (See new material in items 1 and 7).⁹
- *Petition for Writ (Misdemeanor, Infraction, and Limited Civil Cases)* (form APP-151) the instructions in first paragraph would be revised to refers to those small claims writ proceedings covered by the petition and a full paragraph about small claims writ proceedings would be added at the end. In addition, the current first paragraph would be divided in two, with a separate bullet point now including a stronger instruction not to use the form for appeals and other writs.

Alternatives Considered

Whether the general statutes relating to writs of mandate, prohibition and review should apply to these small claims writ proceedings

Code of Civil Procedure sections 1068, 1085, and 1102 et seq. address extraordinary writs generally. The committees considered whether the proposed new rules, which the California Law

⁹ The form would also be revised to correct an error in item 14, changing the statement that petitions for writ should be filed within 60 days after the court makes the ruling that is being challenged, to within 30 days, as noted in the instructions to the petition on form APP-151.

Review Commission report indicates could be for “relatively quick, inexpensive, and informal” procedures, had to reflect the procedural requirements for writs established by these code sections, or could provide for simpler procedures. Proceedings seeking extraordinary writs under the statutory provisions are complex and somewhat arcane. This will be especially problematic for small claims parties.

The committees concluded, however, that the existing statutory procedures for extraordinary writs were most likely applicable to these small claims writ proceedings. Although the mandate to develop new “procedural rules” was placed within the portion of the Code of Civil Procedure expressly dealing with small claims actions, rather than in the portion dealing with extraordinary writs generally, section 116.798(a) contains a cross-reference to the extraordinary writs section, providing that the small claims division is an inferior tribunal for purposes of Title 1 (commencing with section 1067) of Part 3. The committee therefore concluded that the new rules should comply with the statutory procedures for writs set out in that title of the Code of Civil Procedure.

Whether the new rules should apply only to the writ proceedings for which the statute mandated new rules or should also apply to those relating to postjudgment actions

As noted above, Code of Civil Procedure section 116.798 draws a distinction between writs on small claims division actions relating to postjudgment enforcement, and other actions by the small claims divisions (i.e., judgment at initial hearing and any motions relating to that). The statute only directs the Judicial Council to adopt rules for the latter type of proceeding. The committees considered, however, whether it might also be helpful to apply any new rules to writ proceedings relating to small claims postjudgment proceedings so that there would be a single set of procedures applicable to all writ proceedings challenging actions by the small claims court.

CSCAC had previously considered this issue in a related context, when, at the request of the California Law Revision Commission, it considered whether the new law should provide that writ petitions relating to postjudgment enforcement orders of the small claims division should be considered by a single superior court judge who is assigned to the appellate division rather than by the appellate division, so that all writ petitions relating to acts of the small claims division would be handled in the same way. At the time CSCAC recommended that the distinction be included in the statute, as provided by common law. See *General Electric Capital Auto Financial Service, Inc. v. Appellate Division of the Superior Court*, 88 Cal. App. 4th 136 (2001) (appellate division has writ jurisdiction regarding postjudgment enforcement orders in small claims cases). The Law Revision Commission noted that a “significant advantage to this approach [having postjudgment writs go to the appellate division] is that it treats all judgments in limited civil cases the same way for enforcement purposes.” CLRC 2011 Report at 337.

The committees concluded that, in light of this history, it would be preferable that postjudgment writ proceedings continue to be governed by the existing rules for writ proceedings in limited

civil cases. The committees are recommending minor amendments to those rules and forms to clarify this situation.

How to provide a record of the oral proceedings for the reviewing court

The committees considered whether, in light of the lack of any official record of small claims proceedings and the fact that many parties will be self-represented even on these writ proceedings, the rules should not include any provision requiring a record of what was said at the small claims proceedings. Ultimately, the committees decided that, if the petitioner is raising an issue that can only be understood if there is a record of the oral proceeding, then the petitioner should provide a statement that fairly summarizes the proceedings, including the parties' arguments and any statement by the small claims court supporting its ruling must be provided. As noted above, the committees seek specific comments on whether this provision is needed.

Whether to recommend any forms

Although the statute requires the council to develop new *rules* regarding writs in small claims cases, it does not mandate the development of *forms*. The committees considered the alternative of not developing a petition form, particularly in light of the fact that the existence of the form may lead to more petitions for extraordinary writs being filed in small claims actions. The committees concluded, however, that without such forms petitions that are filed would be difficult for the court to handle because they would be extremely difficult for parties to properly prepare. The petitions would have to either be individually drafted—which would be extremely difficult for self-represented parties—or somehow shoehorned into the current form APP-151. That form would not work well, however, because it assumes the lodging of some version of a record of the proceedings, which record does not exist in small claims actions and is not required under the new rules. The committee concluded that it would be less burdensome for both courts and the parties to have a specific form for these proceedings.

Implementation Requirements, Costs, and Operational Impacts

This proposal will require training of judicial officers and court staff as to the new rules and procedures for certain writs in small claims cases. The number of petitions for writs in small claims cases may be increased due to the existence of the new forms. The rules will clarify what is required of the parties in such cases, which should make it easier in the long-run for courts to adjudicate the petitions. Because the new rules are mandated by statute, the council must adopt them whether or not they place a further burden on the courts.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committees are interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- Should the new rules require that if the petition raises any issue that would require the judge considering it to understand what was said in the small claims court, the petition must include a fair summary of the proceedings, including the parties' arguments and any statement by the small claims court supporting its ruling? (See discussion at footnote 3.)

The advisory committees also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Amended Cal. Rules of Court, rules 8.930 and 8.950 and new rules 8.97—8.977 are at pages 11–18.
2. Revised forms APP-150-INFO and APP-151 are at pages 19–37.
3. New forms SC-300 and SC-300-INFO are at pages 38–54.

California Rules of Court, rules 8.930 and 8.950 would be amended and rules 8.970-8.977 adopted, effective January 1, 2015, as follows:

1 **Division 2. Rules Relating to the Superior Court Appellate Division**

2
3 **Chapter 6. Writ Proceedings**

4
5 **Rule 8.930. Application**

6
7 **(a) Writ proceedings governed**

8
9 Except as provided in (b), the rules in this chapter govern proceedings in the appellate
10 division for writs of mandate, certiorari, or prohibition, or other writs within the original
11 jurisdiction of the appellate division, including writs relating to a postjudgment
12 enforcement order of the small claims division. In all respects not provided for in this
13 chapter, rule 8.883, regarding the form and content of briefs, applies.

14
15 **(b) Writ proceedings not governed**

16 The rules in this chapter do not apply to:

- 17
18 (1) petitions for writs of supersedeas under rule 8.824;
19
20 (2) petitions for writs relating to acts of the small claims division other than a post-
21 judgment enforcement order; or
22
23 (3) petitions for writs not within the original jurisdiction of the appellate division.

24
25 **Advisory Committee Comment**

26
27
28 *Information on Writ Proceedings in Misdemeanor, Infraction, and Limited Civil Cases* (form APP-150-
29 INFO) provides additional information about proceedings for writs in the appellate division of the
30 superior court. This form is available at any courthouse or county law library or online at
31 www.courts.ca.gov/forms.

32
33 **Subdivision (b)(1).** The superior courts, not the appellate divisions, have original jurisdiction in habeas
34 corpus proceedings (see Cal. Const., art. VI, §10). Habeas corpus proceedings in the superior courts are
35 governed by rules 4.550 et. seq.

36
37 **Subdivision (b)(2).** A petition that seeks a writ relating to an act of the small claims division other than a
38 postjudgment enforcement order is heard by a single judge of the appellate division (see Code Civ. Proc.
39 § 116.798(a)) and is governed by rules 8.970 et seq.

1
2 **Rules 8.931—936. ******

3
4
5 **Division 3. Rules Relating to Appeals and Writs in Small Claims Cases**

6
7 **Chapter 1. Trial of Small Claims Cases on Appeal**

8
9 **Rule 8.950. Application**

10
11 The rules in this ~~division~~ chapter supplement article 7 of the Small Claims Act, Code of Civil
12 Procedure sections 116.710 et seq., providing for new trials of small claims cases on appeal, and
13 must be read in conjunction with those statutes.

14
15 **Rule 8.952—966. ******

16
17 **Chapter 2. Writ Petitions**

18
19 **Rule 8.970. Application**

20
21 **(a) Writ proceedings governed**

22
23 Except as provided in (b), the rules in this chapter govern proceedings under Code of Civil
24 Procedure section 116.798(a) for writs of mandate, certiorari, or prohibition, relating to an
25 act of the small claims division, other than a postjudgment enforcement order. In all
26 respects not provided for in this chapter, rule 8.883, regarding the form and content of
27 briefs, applies.

28
29 **(b) Writ proceedings not governed**

30
31 The rules in this chapter do not apply to:

- 32
33 (1) Proceedings under Code of Civil Procedure section 116.798(c) for writs relating to a
34 postjudgment enforcement order of the small claims division, which are governed by
35 rules 8.930—8.936.
36
37 (2) Proceedings under Code of Civil Procedure section 117.798(b) for writs relating to
38 an act of a superior court in a small claims appeal, which are governed by rules
39 8.485—8.493.

40
41 **Advisory Committee Comment**

42
43 Code of Civil Procedure section 116.798 provides where writs in small claims actions may be filed.

44
45 The Judicial Council form *Information on Writ Proceedings in Small Claims Actions* (form SC-300-
46 INFO) provides additional information about proceedings for writs in small claims actions in the appellate

1 division of the superior court. This form is available at any courthouse or county law library or online at
2 www.courts.ca.gov/forms.

3
4
5 **Rule 8.971. Definitions**

6
7 The definitions in rule 1.6 apply to these rules unless the context or subject matter requires
8 otherwise. In addition, the following definitions apply to these rules:

- 9
10 (1) “Writ” means an order telling the small claims court to do something that the law says it
11 must do, or not do something the law says it must not do. The various types of writs
12 covered by this chapter are described in statutes beginning at section 1067 of the Code of
13 Civil Procedure.
14
15 (2) “Petition” means a request for a writ.
16
17 (3) “Petitioner” means the person asking for the writ.
18
19 (4) “Respondent” and “small claims court” mean the court against which the writ is sought.
20
21 (5) “Real party in interest” means any other party in the small claims court case who would be
22 affected by a ruling regarding the request for a writ
23
24

25 **Rule 8.972. Petitions filed by persons not represented by an attorney**

26
27 **(a) Petitions**

- 28
29 (1) A person who is not represented by an attorney and who asks the appellate division
30 for a writ under this chapter must file the petition on *Petition for Writ (Small*
31 *Claims*) (formSC-300). For good cause the court may permit an unrepresented
32 party to file a petition that is not on that form.
33
34 (2) If the petition raises any issue that would require the appellate division judge
35 considering it to understand what was said in the small claims court, it must include
36 a statement that fairly summarizes the proceedings, including the parties’
37 arguments and any statement by the small claims court supporting its ruling.
38

39 **(b) Contents of supporting documents**

- 40
41 (1) The petition must be accompanied by copies of the following:
42
43 (A) The small claims court ruling from which the petition seeks relief;
44
45 (B) All documents and exhibits submitted to the small claims court supporting and
46 opposing the petitioner’s position; and
47

1 (C) Any other documents or portions of documents submitted to the small claims
2 court that are necessary for a complete understanding of the case and the ruling
3 under review; and

4
5 (2) If the petition does not include the required documents or does not present facts
6 sufficient to excuse the failure to submit them, the appellate division judge may
7 summarily deny a stay request, the petition, or both.

8
9 **(c) Form of supporting documents**

10
11 (1) Documents submitted under (b) must comply with the following requirements:

12
13 (A) They must be attached to the petition. The pages must be consecutively
14 numbered.

15
16 (B) They must each be given a number or letter.

17
18 (2) The clerk must file any supporting documents not complying with (1), but the court
19 may notify the petitioner that it may strike or summarily deny the petition if the
20 documents are not brought into compliance within a stated reasonable time of not
21 less than five days.

22
23 **(d) Service**

24
25 (1) The petition and all its attachments, and a copy of *Information on Writ Proceedings*
26 *in Small Claims Cases* (form SC-300-INFO) must be served personally or by mail on
27 all the parties in the case, and the petition must be served on the small claims court.

28
29 (2) The petitioner must file a proof of service at the same time the petition is filed.

30
31 (3) The clerk must file the petition even if its proof of service is defective, but if the
32 party asking for the writ fails to file a corrected proof of service within five days
33 after the clerk gives notice of the defect the court may strike the petition or impose a
34 lesser sanction.

35
36 (4) The court may allow the petition to be filed without proof of service.

37
38 **Advisory Committee Comment**

39
40 **Subdivision (a).** *Petition for Writ (Small Claims)* (form SC-300) and *Information on Writ Proceedings in*
41 *Small Claims Cases* (form SC-300-INFO) are available at any courthouse or county law library or online
42 at www.courts.ca.gov/forms.

43
44
45 **Rule 8.973. Petitions filed by an attorney for a party**

1 **(a) General application of rule 8.972**

2
3 Except as provided in this rule, rule 8.972 applies to any petition for an extraordinary writ
4 filed by an attorney under this chapter.

5
6 **(b) Form and content of petition**

- 7
8 (1) A petition for an extraordinary writ filed by an attorney may, but is not required to
9 be, filed on *Petition for Writ (Small Claims)* (form SC-300). It must contain all the
10 information requested in that form.
- 11
12 (2) The petition must disclose the name of any real party in interest.
- 13
14 (3) If the petition seeks review of small claims court proceedings that are also the
15 subject of a pending appeal, the notice “Related Appeal Pending” must appear on the
16 cover of the petition, and the first paragraph of the petition must state the appeal’s
17 title and any appellate division docket number.
- 18
19 (4) The petition must be verified.
- 20
21 (5) The petition must be accompanied by a memorandum, which need not repeat facts
22 alleged in the petition.
- 23
24 (6) Rule 8.883(b) governs the length of the petition and memorandum, but the
25 verification and any supporting documents are excluded from the limits stated in rule
26 8.883(b)(1) and (2).
- 27
28 (7) If the petition requests a temporary stay, it must explain the urgency.

29
30 **Rule 8.974. Opposition**

31
32 **(a) Preliminary opposition**

- 33
34 (1) The respondent and real party in interest are not required to file any opposition
35 following service unless asked to do so by the appellate division judge.
- 36
37 (2) Within 10 days after the petition is filed, the respondent or any real party in interest
38 may serve and file a preliminary opposition.
- 39
40 (3) A preliminary opposition must contain any legal arguments the party wants to make
41 as to why the appellate division judge should not issue a writ.
- 42
43 (4) Without requesting opposition, the appellate division judge may grant or deny a
44 request for temporary stay, deny the petition, issue an alternative writ or order to
45 show cause, or notify the parties that it is considering issuing a peremptory writ in
46 the first instance.

1
2 **(b) Return or opposition; reply**
3

- 4 (1) If the appellate division judge issues an alternative writ or order to show cause, the
5 respondent or any real party in interest, individually or jointly, may serve and file a
6 return (which is a response to the petition) by demurrer, verified answer, or both. If
7 the appellate division judge notifies the parties that it is considering issuing a
8 peremptory writ in the first instance, the respondent or any real party in interest may
9 serve and file an opposition.
- 10
- 11 (2) Unless the appellate division judge orders otherwise, the return or opposition must be
12 served and filed within 30 days after the appellate division judge issues the
13 alternative writ or order to show cause or notifies the parties that it is considering
14 issuing a peremptory writ in the first instance.
- 15
- 16 (3) Unless the appellate division judge orders otherwise, the petitioner may serve and
17 file a reply within 15 days after the return or opposition is filed.
- 18
- 19 (4) If the return is by demurrer alone and the demurrer is not sustained, the appellate
20 division judge may issue the peremptory writ without granting leave to answer.

21
22 **(c) Form of preliminary opposition, return, or opposition**
23

24 Any preliminary opposition, return, or opposition must comply with rule 8.931(c). If it is
25 filed by an attorney, it must also comply with rule 8.932(b)(3)–(7).
26

27 **Rule 8.975. Notice to small claims court**
28

29 **(a) Notice if writ issues**
30

31 If a writ or order issues directed to any judge, court, or other officer, the appellate division
32 clerk must promptly send a certified copy of the writ or order to the person or entity to
33 whom it is directed.
34

35 **(b) Notice by telephone**
36

- 37 (1) If the writ or order stays or prohibits proceedings set to occur within seven days or
38 requires action within seven days—or in any other urgent situation—the appellate
39 division clerk must make a reasonable effort to notify the clerk of the respondent
40 small claims court by telephone. The clerk of the respondent small claims court must
41 then notify the judge or officer most directly concerned.
- 42
- 43 (2) The appellate division clerk need not give notice by telephone of the summary denial
44 of a writ, whether or not a stay previously issued.
45

1 **Rule 8.976. Filing, finality, and modification of decisions; remittitur**

2
3 **(a) Filing of decision**

4
5 The appellate division clerk must promptly file all opinions and orders in proceedings
6 under this chapter and promptly send copies showing the filing date to the parties and,
7 when relevant, to the small claims court.

8
9
10 **(b) Finality of decision**

11
12 (1) Except as otherwise ordered by the appellate division judge, the following decisions
13 regarding petitions for writs under this chapter are final in the issuing court when
14 filed:

15
16 (A) An order denying or dismissing such a petition without issuance of an
17 alternative writ, order to show cause, or writ of review; and

18
19 (B) An order denying or dismissing such a petition as moot after issuance of an
20 alternative writ, order to show cause, or writ of review.

21
22 (2) Except as otherwise provided in (3), all other decisions in a writ proceeding under
23 this chapter are final 30 days after the decision is filed.

24
25 (3) If necessary to prevent mootness or frustration of the relief granted or to otherwise
26 promote the interests of justice, a judge in the appellate division may order early
27 finality of a decision granting a petition for a writ under this chapter or denying such
28 a petition after issuing an alternative writ, order to show cause, or writ of review.
29 The decision may provide for finality on filing or within a stated period of less than
30 30 days.

31
32 **(c) Modification of decisions**

33
34 Rule 8.888(b) governs the modification of decisions in writ proceedings under this chapter.

35
36 **(d) Remittitur**

37
38 The appellate division must issue a remittitur after the judge issues a decision in a writ
39 proceeding under this chapter except when the judge issues one of the orders listed in
40 (b)(1). The remittitur is deemed issued when the clerk enters it in the record. The clerk
41 must immediately send the parties notice of issuance of the remittitur, showing the date of
42 entry.

43
44 **Advisory Committee Comment**

45
46 **Subdivision (b)(1).** Examples of situations in which the appellate division judge may issue an order
47 dismissing a writ petition include when the petitioner fails to comply with an order, when the judge

1 recalls the alternative writ, order to show cause, or writ of review as improvidently granted, or when the
2 petition becomes moot.

3
4
5 **Rule 8.977. Costs**

6
7 **(a) Entitlement to costs**

8 The prevailing party in an original proceeding is entitled to costs if the appellate division
9 judge resolves the proceeding after issuing an alternative writ, an order to show cause, or a
10 peremptory writ in the first instance.

11
12 **(b) Award of costs**

13
14 (1) In the interests of justice, the appellate division judge may award or deny costs as it
15 deems proper.

16
17 (2) The opinion or order resolving the proceeding must specify the award or denial of
18 costs.

19
20 (3) Rule 8.891(b)–(d) governs the procedure for recovering costs under this rule.
21

GENERAL INFORMATION

1 What does this information sheet cover?

This information sheet tells you about **writ proceedings**—proceedings in which a person is asking for a writ of mandate, prohibition, or review—in **misdemeanor, infraction, and limited civil cases, and in certain small claims cases.** Please read this information sheet before you fill out *Petition for Writ (Misdemeanor, Infraction, or Limited Civil Case)* (form APP-151). This information sheet does not cover everything you may need to know about writ proceedings. It is only meant to give you a general idea of the writ process. To learn more, you should read rules 8.930–8.936 of the California Rules of Court, which set out the procedures for writ proceedings in the appellate division. You can get these rules at any courthouse or county law library or online at www.courtinfo.ca.gov/rules.

This information sheet does NOT provide information about appeals or proceedings for writs of supersedeas or habeas corpus, **or for writs in certain small claims cases.**

- For information about appeals, please see the box on the right side of this page.
- For information about writs of habeas corpus, please see rules 4.550–4.552 of the California Rules of Court and *Petition for Writ of Habeas Corpus* (form MC-275).
- For information about writs of supersedeas, please see rule 8.824 of the California Rules of Court.

- **This information sheet applies to writs relating to *postjudgment enforcement actions* of the small claims division. For information about writs relating to other actions by the small claims division, see rules 8.930-937 of the California Rules of Court and *Petition for Writ (Small Claims)* (form SC-300).**
- **For information about writs relating to actions of the superior court on small claims appeals, see rules 8.485-8.493 of the California Rules of Court.**

You can get these rules and forms at any courthouse or county law library or online at www.courtinfo.ca.gov/rules for the rules or www.courtinfo.ca.gov/forms for the forms.

2 What is a writ?

A writ is an order from a higher court telling a lower court to do something the law says the lower court must do or not to do something the law says the lower court does not have the power to do. In writ proceedings in the appellate division, the lower court is the superior court that took the action or issued the order being challenged.

For information about appeal procedures, see:

- *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO)
- *Information on Appeal Procedures for Infractions* (form CR-141-INFO)
- *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO)

You can get these forms at any courthouse or county law library or online at www.courtinfo.ca.gov/forms.

In this information sheet, we call the lower court the “trial court.”

3 Are there different kinds of writs?

Yes. There are three main kinds of writs:

- Writs of mandate (sometimes called “mandamus”), which are orders telling the trial court to do something.
- Writs of prohibition, which are orders telling the trial court not to do something.
- Writs of review (sometimes called “certiorari”), which are orders telling the trial court that the appellate division will review certain kinds of actions already taken by the trial court.



There are laws (statutes) that you should read concerning each type of writ: see California Code of Civil Procedure sections 1084–1097 about writs of mandate, sections 1102–1105 about writs of prohibition, and sections 1067–1077 about writs of review. You can get copies of these statutes at any county law library or online at www.leginfo.ca.gov/calaw.html.

4 Is a writ proceeding the same as an appeal?

No. In an **appeal**, the appellate division *must* consider the parties' arguments and decide whether the trial court made the legal error claimed by the appealing party and whether the trial court's decision should be overturned based on that error (this is called a "decision on the merits"). In a **writ proceeding**, the appellate division is *not* required to make a decision on the merits; even if the trial court made a legal error, the appellate division can decide not to consider that error now, but to wait and consider the error as part of any appeal from the final judgment. Most requests for writs are denied without a decision on the merits (this is called a "summary denial"). Because of this, appeals are the ordinary way that decisions made by a trial court are reviewed and writ proceedings are often called proceedings for "extraordinary" relief.

Appeals and writ proceedings are also used to review different kinds of decisions by the trial court. Appeals can be used only to review a trial court's final judgment and a few kinds of orders. Most rulings made by a trial court before it issues its final judgment cannot be appealed right away; they can only be appealed after the trial court case is over, as part of an appeal of the final judgment. Unlike appeals, writ proceedings can be used to ask for review of certain kinds of important rulings made by a trial court before it issues its final judgment.

5 Is a writ proceeding a new trial?

No. A **writ proceeding is NOT a new trial**. The appellate division will not consider new evidence, such as the testimony of new witnesses. Instead, if it does not summarily deny the request for a writ, the appellate division reviews a record of what happened in the trial court and the trial court's ruling to see if the trial court made the legal error claimed by the person asking for the

writ. When it conducts its review, the appellate division presumes that the trial court's ruling is correct; the person who requests the writ must show the appellate division that the trial court made the legal error the person is claiming.

6 Can a writ be used to address any errors made by a trial court?

No.

Writs can only address certain legal errors: Writs can only address the following types of legal errors made by a trial court:

- The trial court has a legal duty to act but:
 - Refuses to act
 - Has not done what the law says it must do
 - Has acted in a way the law says it does not have the power to act
- The trial court has performed or says it is going to perform a judicial function (like deciding a person's rights under law in a particular case) in a way that the court does not have the legal power to do.

There must be no other adequate remedy: The trial court's error must also be something that can be fixed only with a writ. The person asking for the writ must show the appellate division that there is no adequate way to address the trial court's error other than with the writ (this is called having "no adequate remedy at law"). As mentioned above, appeals are the ordinary way that trial court decisions are reviewed. If the trial court's ruling can be appealed, the appellate division will generally consider an appeal to be good enough (an "adequate remedy") unless the person asking for the writ can show the appellate division that he or she will be harmed in a way that cannot be fixed by the appeal if the appellate division does not issue the writ (this is called "irreparable" injury or harm).

Statutory writs: There are laws (statutes) that provide that certain kinds of rulings can or must be challenged using a writ proceeding. These are called "statutory writs." Here is a list of some of the most common rulings that a statute says can or must be challenged using a writ:



- A ruling on a motion to disqualify a judge (see California Code of Civil Procedure section 170.3(d))
- Denial of a motion for summary judgment (see California Code of Civil Procedure section 437c(m)(1))
- A ruling on a motion for summary adjudication of issues (see California Code of Civil Procedure section 437c(m)(1))
- Denial of a stay in an unlawful detainer matter (see California Code of Civil Procedure section 1176)
- An order disqualifying the prosecuting attorney (see California Penal Code section 1424)

You can get copies of these statutes at any county law library or online at www.leginfo.ca.gov/calaw.html. You will need to check whether there is a statute providing that the specific ruling you want to challenge can or must be reviewed using a writ proceeding. (Note that just because there is a statute requiring or allowing you to ask for a writ to challenge a ruling does not mean that the court must grant your request; the appellate division can still deny a request for a statutory writ.)

Common law writs: Even if there is not a statute specifically providing for a writ proceeding to challenge a particular ruling, most trial court rulings other than the final judgment can potentially be challenged using a writ proceeding if the trial court made the type of legal error described above and the petitioner has no other adequate remedy at law. These writs are called “common law” writs.

7 Can the appellate division consider a request for a writ in *any* case?

No. Different courts have the power (called “jurisdiction”) to consider requests for writs in different types of cases. The appellate division can only consider requests for writs in limited civil, misdemeanor, and infraction cases, and certain small claims cases. A limited civil case is a civil case in which the amount claimed is \$25,000 or less (see California Code of Civil Procedure sections 85 and 88). Misdemeanor cases are cases in which a person has been charged with or convicted of a crime for which the punishment can

include jail time of up to one year but not time in state prison (see California Penal Code sections 17 and 19.2). (If the person was also charged with or convicted of a felony in the same case, it is considered a felony case, not a misdemeanor case.) Infraction cases are cases in which a person has been charged with or convicted of a crime for which the punishment can be a fine, traffic school, or some form of community service but cannot include any time in jail or prison (see California Penal Code sections 17 and 19.8). Examples of infractions include traffic tickets or citations for violations of some city or county ordinances. (If a person was also charged with or convicted of a misdemeanor in the same case, it is considered a misdemeanor case, not an infraction case.) You can get copies of these statutes at any county law library or online at www.leginfo.ca.gov/calaw.html. **The appellate division can consider requests for writs in small claims actions relating to postjudgment enforcement orders.**

The appellate division does NOT have jurisdiction to consider requests for writs in either unlimited civil cases (civil cases in which the amount claimed is more than \$25,000) or felony cases (cases in which a person has been charged with or convicted of a crime for which the punishment can include time in state prison). Requests for writs in these cases can be made in the Court of Appeal. The appellate division also does NOT have the jurisdiction to consider requests for writs of habeas corpus; requests for these writs can be made in the superior court.

Requests for writs relating to actions of the small claims division other than postjudgment enforcement orders are considered by a single judge in the appellate division. (See form SC-300-INFO.) Requests for writs relating to superior court actions in small claims cases on appeal may be made to the Court of Appeal.

8 Who are the parties in a writ proceeding?

If you are asking for the writ, you are called the PETITIONER. You should read “Information for the Petitioner,” beginning on page 4.

The court the petitioner is asking to be ordered to do or not to do something is called the RESPONDENT. In appellate division writ proceedings, the trial court is the respondent.



Any other party in the trial court case who would be affected by a ruling regarding the request for a writ is a **REAL PARTY IN INTEREST**. If you are a real party in interest, you should read “Information for a Real Party in Interest,” beginning on page 9.

9 Do I need a lawyer to represent me in a writ proceeding?

You do not *have* to have a lawyer; you are allowed to represent yourself in a writ proceeding in the appellate division. But writ proceedings can be very complicated and you will have to follow the same rules that lawyers have to follow. If you have any questions about the writ procedures, you should talk to a lawyer. In limited civil cases and infraction cases, you must hire a lawyer at your own expense if you want one (the court cannot provide one). You can get information about finding a lawyer on the California Courts Online Self-Help Center at www.courtinfo.ca.gov/selfhelp/lowcost.

INFORMATION FOR THE PETITIONER

This part of the information sheet is written for the petitioner—the party asking for the writ. It explains some of the rules and procedures relating to asking for a writ. The information may also be helpful to a real party in interest. There is more information for a real party in interest starting on page 9 of this information sheet.

10 Who can ask for a writ?

Only a party in the trial court proceeding—the plaintiff or defendant in a civil case or the defendant or prosecuting agency in a misdemeanor or infraction case—can ask for a writ challenging a ruling on a motion to disqualify a judge (see California Code of Civil Procedure section 170.3(d)). Parties are also usually the only ones that ask for writs challenging other kinds of trial court rulings. However, in most cases, a person who was not a party does have the legal right to ask for a writ if that person has a “beneficial interest” in the trial court’s ruling. A “beneficial interest” means that the person has a specific right or interest affected by the ruling that goes beyond the general rights or interests the public may have in the ruling.

11 How do I ask for a writ?

To ask for a writ you must serve and file a petition for a writ (see below for an explanation of how to “serve and file” a petition). A petition is a formal request that the appellate division issue a writ. A petition for a writ explains to the appellate division what happened in the trial court, what legal error you (the petitioner) believe the trial court made, why you have no other adequate remedy at law, and what order you are requesting the appellate division to make.

12 How do I prepare a writ petition?

If you are represented by a lawyer, your lawyer will prepare your petition for a writ. If you are not represented by a lawyer, you must use *Petition for Writ (Misdemeanor, Infraction, or Limited Civil Case)* (form APP-151) to prepare your petition. You can get form APP-151 at any courthouse or county law library or online at www.courtinfo.ca.gov/forms. This form asks you to fill in the information that needs to be in a writ petition.

a. Description of your interest in the trial court’s ruling

Your petition needs to tell the appellate division why you have a right to ask for a writ in the case. As discussed above, usually only a person who was a party in the trial court case—the plaintiff or defendant in a civil case or the defendant or prosecuting agency in a misdemeanor or infraction case—asks for a writ challenging a ruling in that case. If you were a party in the trial court case, say that in your petition. If you were not a party, you will need to describe what “beneficial interest” you have in the trial court’s ruling. A “beneficial interest” means that you have a specific right or interest affected by the ruling that goes beyond the general rights or interests the public may have in the ruling. To show the appellate division that you have a beneficial interest in the ruling you want to challenge, you must describe how the ruling will affect you in a direct and negative way.

b. Description of the legal error you believe the trial court made



Your petition will need to tell the appellate division what legal error you believe the trial court made. Not every mistake a trial court might make can be addressed by a writ. You must show that the trial court made one of the following types of legal errors:

- The trial court has a legal duty to act but:
 - Refuses to act
 - Has not done what the law says it must do
 - Has acted in a way the law says it does not have the power to act
- The trial court has performed or says it is going to perform a judicial function (like deciding a person's rights under law in a particular case) in a way that the court does not have the legal power to do.

To show the appellate division that the trial court made one of these legal errors, you will need to:

- Show that the trial court has the legal duty or the power to act or not act in a particular way. You will need to tell the appellate division what legal authority—what constitutional provision, statute, rule, or published court decision—establishes the trial court's legal duty or power to act or not act in that way.
- Show the appellate division that the trial court has not acted in the way that this legal authority says the court is required to act. You will need to tell the appellate division exactly where in the record of what happened in the trial court it shows that the trial court did not act in the way it was required to.

c. Description of why you need the writ

One of the most important parts of your petition is explaining to the appellate division why you need the writ you have requested. Remember, the appellate division does not have to grant your petition just because the trial court made an error. You must convince the appellate division that it is important for it to issue the writ.

Your petition needs to show that a writ is the only way to fix the trial court's error. To convince the court you need the writ, you will need to show the appellate division that you have no way to fix the trial court's

error other than through a writ (this is called having “no adequate remedy at law”).

This will be hard if the trial court's ruling can be appealed. If the ruling you are challenging can be appealed, either immediately or as part of an appeal of the final judgment in your case, the appellate division will generally consider this appeal to be a good enough way to fix the trial court's ruling (an “adequate remedy”). To be able to explain to the appellate division why you do not have an adequate remedy at law, you will need to find out if the ruling you want to challenge can be appealed, either immediately or as part of an appeal of the final judgment.

Here are some trial court rulings that can be appealed.

There are laws (statutes) that say that certain kinds of trial court rulings (“orders”) can be appealed immediately. In limited civil cases, California Code of Civil Procedure section 904.2 lists orders that can be appealed immediately, including orders:

- Changing or refusing to change the place of trial (venue)
- Granting a motion to quash service of summons
- Granting a motion to stay or dismiss the action on the ground of inconvenient forum
- Granting a new trial
- Denying a motion for judgment notwithstanding the verdict
- Granting or dissolving an injunction or refusing to grant or dissolve an injunction
- Appointing a receiver
- Made after final judgment in the case

In misdemeanor and infraction cases, orders made after the final judgment that affect the substantial rights of the defendant can be appealed immediately (California Penal Code section 1466).



In misdemeanor cases, orders granting or denying a motion to suppress evidence can also be appealed immediately (California Penal Code section 1538.5(j)).

You can get copies of these statutes at any county law library or online at www.leginfo.ca.gov/calaw.html. You should also check to see if there are published court decisions that indicate whether you can or must use an appeal or a writ petition to challenge the type of ruling you want to challenge in your case.

If the ruling can be appealed, you will need to show that an appeal will not fix the trial court's error. If the trial court ruling you want to challenge can be appealed, you will need to show the appellate division why that appeal is not good enough to fix the trial court's error. To do that, you will need to show the appellate division how you will be harmed by the trial court's error in a way that cannot be fixed by the appeal if the appellate division does not issue the writ (this is called "irreparable" injury or harm). For example, because of the time it takes for an appeal, the harm you want to prevent may happen before an appeal can be finished.

d. Description of the order you want the appellate division to make

Your petition needs to describe what you are asking the appellate division to order the trial court to do or not do. Writ petitions usually ask that the trial court be ordered to cancel ("vacate") its ruling, issue a new ruling, or not take any steps to enforce its ruling.

If you want the appellate division to order the trial court not to do anything more until the appellate division decides whether to grant the writ you are requesting, you must ask for a "stay." If you want a stay, you should first ask the trial court for a stay. You should tell the appellate division whether you asked the trial court for a stay. If you did not ask the trial court for a stay, you should tell the appellate division why you did not do this.

If you ask the appellate division for a stay, make sure you also fill out the "Stay requested" box on the first page of the *Petition for Writ (Misdemeanor, Infraction, or Limited Civil Case)* (form APP-151).

e. Verifying the petition

Petitions for writs must be "verified." This means that either the petitioner or the petitioner's attorney must declare under penalty of perjury that the facts stated in the petition are true and correct, must sign the petition, and must indicate the date that the petition was signed. On the last page of the *Petition for Writ (Misdemeanor, Infraction, or Limited Civil Case)* (form APP-151), there is a place for you to verify your petition.

13 Is there anything else that I need to serve and file with my petition?

Yes. Along with the petition, you must serve and file a record of what happened in the trial court (see below for an explanation of how to serve and file the petition). Since the appellate division judges were not there in the trial court, a record of what happened must be sent to the appellate division for its review. The materials that make up this record are called "supporting documents."

What needs to be in the supporting documents: The supporting documents must include:

- A record of what was said in the trial court about the ruling that you are challenging (this is called the "oral proceedings") and
- Copies of certain important documents from the trial court.

Read below for more information about these two parts of the supporting documents.

Record of the oral proceedings: There are several ways a record of what was said in the trial court may be provided to the appellate division:

- **A transcript**—A transcript is a written record (often called the "verbatim" record) of the oral proceedings in the trial court. If a court reporter was in the trial court and made a record of the oral proceedings, you can have the court reporter prepare a transcript of those oral proceedings, called a "reporter's transcript," for the appellate division. If a reporter was not there, but the oral proceedings were officially recorded on approved electronic recording equipment, you can have a transcript prepared for the appellate division from the official electronic



recording of these proceedings. You (the petitioner) must pay for preparing a transcript, unless the court orders otherwise.

- **A copy of an electronic recording**—If the oral proceedings were officially recorded on approved electronic recording equipment, the court has a local rule for the appellate division permitting this recording to be used as the record of the oral proceedings, and all the parties agree (“stipulate”), a copy of the official electronic recording itself can be used as the record of the oral proceedings instead of a transcript. You (the petitioner) must pay for preparing a copy of the official electronic recording, unless the court orders otherwise.
- **A summary**—If a transcript or official electronic recording of what was said in the trial court is not available, your petition must include a declaration (a statement signed by the petitioner under penalty of perjury) either:
 - Explaining why the transcript or official electronic recording is not available and providing a fair summary of the proceedings, including the petitioner’s arguments and any statement by the court supporting its ruling or
 - Stating that the transcript or electronic recording has been ordered, the date it was ordered, and the date it is expected to be filed.

Copies of documents from the trial court: Copies of the following documents from the trial court must also be included in the supporting documents:

- The trial court ruling being challenged in the petition
- All documents and exhibits submitted to the trial court supporting and opposing the petitioner’s position
- Any other documents or portions of documents submitted to the trial court that are necessary for a complete understanding of the case and of the ruling being challenged

What if I cannot get copies of the documents from the trial court because of an emergency? Rule 8.931 of the California Rules of Court provides that in extraordinary

circumstances the petition may be filed without copies of the documents from the trial court. If the petition is filed without these documents, you must explain in your petition the urgency and the circumstances making the documents available.

Format of the supporting documents: Supporting documents must be put in the format required by rule 8.931 of the California Rules of Court. Among other things, there must be a tab for each document and an index listing the documents that are included. You should carefully read rule 8.931. You can get a copy of rule 8.931 at any courthouse or county law library or online at www.courtinfo.ca.gov/rules.

14 Is there a deadline to ask for a writ?

Yes. For statutory writs, the statute usually sets the deadline for serving and filing the petition. Here is a list of the deadlines for filing petitions for some of the most common statutory writs (you can get copies of these statutes at any county law library or online at www.leginfo.ca.gov/calaw.html).

Statutory Writ	Filing Deadline
Writ challenging a ruling on a motion to disqualify a judge (see California Code of Civil Procedure section 170.3(d))	10 days after notice to the parties of the decision
Writ challenging the denial of a motion for summary judgment (see California Code of Civil Procedure section 437c(m)(1))	20 days after service of written notice of entry of the order
Writ challenging a ruling on a motion for summary adjudication of issues (see California Code of Civil Procedure section 437c(m)(1))	20 days after service of written notice of entry of the order

For common law writs or statutory writs where the statute does not set a deadline, you should file the petition as soon as possible and not later than 60 days after the court makes the ruling that you are challenging in the petition. While there is no absolute deadline for



filing these petitions, writ petitions are usually used when it is urgent that the trial court's error be fixed. Remember, the court is not required to grant your petition even if the trial court made an error. If you delay in filing your petition, it may make the appellate division think that it is not really urgent that the trial court's error be fixed and the appellate division may deny your petition. If there are extraordinary circumstances that delayed the filing of your petition, you should explain these circumstances to the appellate division in your petition.

15 How do I “serve” my petition?

Rule 8.931(d) requires that the petition and one set of supporting documents be served on any named real party in interest and that just the petition be served on the respondent trial court. “Serving” a petition on a party means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver (“serve”) the petition to the real party in interest and the respondent court in the way required by law.
- Make a record that the petition has been served. This record is called a “proof of service.” *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. The proof of service must show who served the petition, who was served with the petition, how the petition was served (by mail or in person), and the date the petition was served.

You can get more information about how to serve court documents and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at www.courtinfo.ca.gov/selfhelp/lowcost/getready.htm#serving.

16 How do I file my petition?

To file a petition for a writ in the appellate division, you must bring or mail the original petition, including the supporting documents, and the proof of service to the clerk for the appellate division of the superior court that made the ruling you are challenging. If the superior court has more than one courthouse location, you should call the clerk at the courthouse where the ruling you are challenging was made to ask where to file your petition.

You should make a copy of all the documents you are planning to file for your own records before you file them with the court. It is a good idea to bring or mail an extra copy of the petition to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

17 Do I have to pay to file a petition?

There is no fee to file a petition for a writ in a misdemeanor or infraction case, but there is a fee to file a petition for a writ in a limited civil case. You should ask the clerk for the appellate division where you are filing the petition what this fee is. If you cannot afford to pay this filing fee, you can ask the court to waive this fee. To do this, you must fill out an *Application for Waiver of Court Fees and Costs* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at www.courtinfo.ca.gov/forms. You can file this application either before you file your petition or with your petition. The court will review this application and decide whether to waive the filing fee.

18 What happens after I file my petition?

Within 10 days after you serve and file your petition, the respondent or any real party in interest can serve and file preliminary opposition to the petition. Within 10 days after an opposition is filed, you may serve and file a reply to that opposition.

The appellate division does not have to wait for an opposition or reply before it can act on a petition for a writ, however. Without waiting, the appellate division can:

- a. Issue a stay
- b. Summarily deny the petition
- c. Issue an alternative writ or order to show cause
- d. Notify the parties that it is considering issuing a preemptory writ in the first instance

Read below for more information about these options.



a. Stay of trial court proceedings

A stay is an order from the appellate division telling the trial court not to do anything more until the appellate division decides whether to grant your petition. A stay puts the trial court proceedings on temporary hold.

b. Summary denial

A “summary denial” means that the appellate division denies the petition without deciding whether the trial court made the legal error claimed by the petitioner or whether the writ requested by the petitioner should be issued based on that error. Remember, even if the trial court made a legal error, the appellate division can decide not to consider that error now but to wait and consider the error as part of any appeal from the final judgment. No reasons need to be given for a summary denial. Most petitions for writs are denied in this way.

c. Alternative writ or order to show cause

An “alternative writ” is an order telling the trial court either to do what the petitioner has requested in the petition (or some modified form of what the petitioner requested) or to show the appellate division why the trial court should not be ordered to do what the petitioner requested. An “order to show cause” is similar; it is an order telling the trial court to show the appellate division why the trial court should not be ordered to do what the petitioner requested in the petition (or some modified form of what the petitioner requested). The appellate division will issue an alternative writ or an order to show cause only if the petitioner has shown that he or she has no adequate remedy at law and the appellate division has decided that the petitioner may have shown that the trial court made a legal error that needs to be fixed.

If the appellate division issues an alternative writ and the trial court does what the petitioner requested (or a modified form of what the petitioner requested as ordered by the appellate division), then no further action by the appellate division is needed and the appellate division may dismiss the petition.

If the trial court does not comply with an alternative writ, however, or if the appellate division issues an order to show cause, then the respondent court or a real party in interest can file a response to the appellate division’s

order (called a “return”) that explains why the trial court should not be ordered to do what the petitioner requested. The return must be served and filed within the time specified by the appellate division or, if no time is specified, within 30 days from the date the alternative writ or order to show cause was issued. The petitioner will then have an opportunity to serve and file a reply within 15 days after the return is filed. The appellate division may set the matter for oral argument. When all the papers have been served and filed (or the time to serve and file them has passed) and oral argument is completed, the appellate division will decide the case.

d. Peremptory writ in the first instance

A “peremptory writ in the first instance” is an order telling the trial court to do what the petitioner has requested (or some modified form of what the petitioner requested) that is issued without the appellate division first issuing an alternative writ or order to show cause. It is very rare for the appellate division to issue a peremptory writ in the first instance, and it will not do so without first notifying the parties and giving the respondent court and any real party in interest a chance to file an opposition.

The respondent court or a real party in interest can file a response to the appellate division’s notice (called an “opposition”) that explains why the trial court should not be ordered to do what the petitioner has requested. The opposition must be served and filed within the time specified by the appellate division or, if no time is specified, within 30 days from the date the notice was issued. The petitioner will then have a chance to serve and file a reply within 15 days after the opposition is filed. The appellate division may then set the matter for oral argument. When all the papers have been served and filed (or the time to serve and file them has passed) and oral argument is completed, the appellate division will decide the case.

19 What should I do if the court denies my petition?

If the court denies your petition, it may be helpful to talk to a lawyer. In a limited civil or infraction case, you must hire a lawyer at your own expense if you want one (the court cannot provide one). You can get information about finding an attorney on the California Courts Online Self-Help Center at www.courtinfo.ca.gov/selfhelp/lowcost.



INFORMATION FOR A REAL PARTY IN INTEREST

This part of the information sheet is written for a real party in interest—a party from the trial court case other than the petitioner who will be affected by a ruling on a petition for a writ. It explains some of the rules and procedures relating to responding to a petition for a writ. The information may also be helpful to the petitioner.

20 I have received a copy of a petition for a writ in a case in which I am a party. Do I need to do anything?

You do not *have* to do anything. The California Rules of Court give you the right to file a preliminary opposition to a petition for a writ within 10 days after the petition is served and filed, but you are not required to do this. The appellate division can take certain actions without waiting for any opposition, including:

- Summarily denying the petition
- Issuing an alternative writ or order to show cause
- Notifying the parties that it is considering issuing a peremptory writ in the first instance

Read the response to question 18 for more information about these options.

Most petitions for writs are summarily denied, often within a few days after they are filed. If you have not already received something from the appellate division saying what action it is taking on the petition, it is a good idea to call the appellate division to see if the petition has been denied before you decide whether and how to respond.

This would also be a good time to talk to a lawyer. You do not *have* to have a lawyer; you are allowed to represent yourself in a writ proceeding in the appellate division. But writ proceedings can be very complicated and you will have to follow the same rules that lawyers have to follow. If you have any questions about writ proceedings or about whether and how you should

respond to a writ petition, you should talk to a lawyer. In a limited civil case or infraction case, you must hire a lawyer at your own expense if you want one (the court cannot provide one). You can get information about finding an attorney on the California Courts Online Self-Help Center at www.courtinfo.ca.gov/selfhelp/lowcost.

If the petition has not already been summarily denied, you may, but are not required to, serve and file a preliminary opposition to the petition within 10 days after the petition was served and filed. In general, it is a good idea to consider filing a preliminary opposition if the petition misstates the facts or if you think the petition shows that the trial court made a legal error that may need to be fixed. However, the appellate division will not grant a writ without first issuing an alternative writ, an order to show cause, or a notice that it is considering issuing a peremptory writ. In all these circumstances, you will get notice from the court and have a chance to file a response. A preliminary opposition is therefore typically used to explain to the appellate division why you believe it should not grant an alternative writ or order to show cause.

If you decide to file a preliminary opposition, you must serve that preliminary opposition on all the other parties to the writ proceeding. “Serving and filing” an opposition means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver (“serve”) the preliminary opposition to the other parties in the way required by law.
- Make a record that the preliminary opposition has been served. This record is called a “proof of service.” *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. The proof of service must show who served the preliminary opposition, who was served with the preliminary opposition, how the preliminary opposition was served (by mail or in person), and the date the preliminary opposition was served.
- File the original preliminary opposition and the proof of service with the appellate division. You should make a copy of the preliminary opposition you are planning to file for your own records before you file it with the court. It is a good idea to bring or



mail an extra copy of the preliminary opposition to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court documents and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at www.courtinfo.ca.gov/selfhelp/lowcost/getready.htm#serving.

21 I have received a copy of an alternative writ or an order to show cause issued by the appellate division. Do I need to do anything?

Yes. Unless the trial court has already done what the alternative writ told it to do, you should serve and file a response called a “return.”

As explained above, the appellate division will issue an alternative writ or an order to show cause only if the appellate division has decided that the petitioner may have shown that the trial court made a legal error that needs to be fixed. An “alternative writ” is an order telling the trial court either to do what the petitioner has requested in the petition (or some modified form of what the petitioner requested) or to show the appellate division why the trial court should not be ordered to do what the petitioner requested. An “order to show cause” is similar; it is an order telling the trial court to show the appellate division why the trial court should not be ordered to do what the petitioner requested in the petition (or some modified form of what the petitioner requested).

If the appellate division issues an alternative writ and the trial court does what the petitioner requested (or a modified form of what the petitioner requested as ordered by the appellate division), then no further action by the appellate division is needed and the appellate division may dismiss the petition. If the trial court does not comply with an alternative writ, however, or if the appellate division issues an order to show cause, then the respondent court or the real party in interest may serve and file a response to the appellate division’s order, called a “return.”

A return is your argument to the appellate division about why the trial court should not be ordered to do what the petitioner has requested. If you are represented by a lawyer in the writ proceeding, your lawyer will prepare your return. If you are not represented by a lawyer, you will need to prepare your own return. A return is usually a legal response called an “answer.” An answer is used to admit or deny the facts alleged in the petition, to add to or correct the facts, and to explain any legal defenses to the legal arguments made by the petitioner. You should read California Code of Civil Procedure sections 430.10–430.80 for more information about answers. You can get copies of these statutes at any county law library or online at www.leginfo.ca.gov/calaw.html. A return can also include additional supporting documents not already filed by the petitioner.

If you do not file a return when the appellate division issues an alternative writ or order to show cause, it does not mean that the appellate division is required to issue the writ requested by the petitioner. However, the appellate division will treat the facts stated by the petitioner in the petition as true, which makes it more likely the appellate division will issue the requested writ. Unless the appellate division sets a different filing deadline in its alternative writ or order to show cause, you must serve and file your return within 30 days after the appellate division issues the alternative writ or order to show cause. The return must be served on all the other parties to the writ proceeding. “Serving and filing” the return means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver (“serve”) the return to the other parties in the way required by law.
- Make a record that the return has been served. This record is called a “proof of service.” *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. The proof of service must show who served the return, who was served with the return, how the return was served (by mail or in person), and the date the return was served.
- File the original return and the proof of service with the appellate division. You should make a copy of the return you are planning to file for your own records before you file it with the court. It is a good



idea to bring or mail an extra copy of the return to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court documents and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at www.courtinfo.ca.gov/selfhelp/lowcost/getready.htm#serving.

22 I have received a copy of a notice from the appellate division indicating it is considering issuing a peremptory writ in the first instance. Do I need to do anything?

Yes. You should serve and file a response called an “opposition.”

As explained in the answer to question **18**, a “peremptory writ in the first instance” is an order telling the trial court to do what the petitioner has requested (or some modified form of what the petitioner requested as ordered by the appellate division) that is issued without the appellate division first issuing an alternative writ or order to show cause. The appellate division will not issue a peremptory writ in the first instance without first giving the parties notice and a chance to file an opposition. However, when the appellate division issues such a notice, it means that the appellate division is strongly considering granting the writ requested by the petitioner.

An opposition is your argument to the appellate division about why the trial court should not be ordered to do what the petitioner has requested. If you are represented by a lawyer in the writ proceeding, your lawyer will prepare your opposition. If you are not represented by a lawyer, you will need to prepare your own opposition. Like a return discussed above, an opposition is usually a legal response called an “answer.” An answer is used to admit or deny the facts alleged in the petition, to add to or correct the facts, and to explain any legal defenses to the legal arguments made by the petitioner. You should read California Code of Civil Procedure sections 430.10–430.80 for more information about answers. You

can get copies of these statutes at any county law library or online at www.leginfo.ca.gov/calaw.html.

Unless the appellate division sets a different deadline in its notice that it is considering issuing a peremptory writ, you must serve and file your opposition within 30 days after the appellate division issues the notice. The opposition must be served on all the other parties to the writ proceeding. “Serving and filing” the opposition means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver (“serve”) the opposition to the other parties in the way required by law.
- Make a record that the opposition has been served. This record is called a “proof of service.” *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. The proof of service must show who served the opposition, who was served with the opposition, how the opposition was served (by mail or in person), and the date the opposition was served.
- File the original opposition and the proof of service with the appellate division. You should make a copy of the opposition you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the opposition to the clerk when you file your original, and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court documents and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at www.courtinfo.ca.gov/selfhelp/lowcost/getready.htm#serving.

23 What happens after I serve and file my return or opposition?

After you file a return or opposition, the petitioner has 15 days to serve and file a reply. The appellate division may also set the matter for oral argument. When all the papers have been filed (or the time to file them has passed) and oral argument is completed, the appellate division will decide the case.

Petition for Writ (Misdemeanor, Infraction, or Limited Civil Case)

Clerk stamps date here when form is filed.

**DRAFT
04.04.15
NOT APPROVED BY
THE JUDICIAL COUNCIL**

Clerk will fill in the number below:

Appellate Division Case Number:_____
Petitioner
(fill in the name of the person asking for the writ)

v.

Superior Court of California, County of __________
Respondent
(fill in the name of the court whose action or ruling you are challenging)_____
Real Party in Interest
(fill in the name of any other parties in the trial court case) **Stay requested**
(see item **12** c. on page 6)**Instructions**

- This form is only for requesting a **writ** in a misdemeanor, infraction, or limited civil case, or a writ challenging a postjudgment enforcement order in a small claims case (see below*).
- Do *not* use this form for other writs and for appeals. You can get forms to use for those at any courthouse or county law library or online at www.courts.ca.gov/forms
- Before you fill out this form, read *Information on Writ Proceedings in Misdemeanor, Infraction, and Limited Civil Cases* (form APP-150-INFO) to know your rights and responsibilities. You can get form APP-150-INFO at any courthouse or county law library or online at www.courts.ca.gov/forms.
- Unless a special statute sets an earlier deadline, you should file this form no later than **30 days** after the date the trial court took the action or issued the ruling you are challenging in this petition (see form APP-150-INFO, page 7, for more information about the deadline for filing a writ petition). It is your responsibility to find out if a special statute sets an earlier deadline. If your petition is filed late, the appellate division may deny it.
- Fill out this form and make a copy of the completed form for your records and for the respondent (the trial court whose action or ruling you are challenging) and each of the real parties in interest (the other party or parties in the trial court case).
- Serve a copy of the completed form on the respondent and on each real party in interest and keep proof of this service. *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. You can get information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at www.courts.ca.gov/selfhelp-serving.htm.
- Take or mail the completed form and your proof of service on the respondent and each real party in interest to the clerk's office for the appellate division of the superior court that took the action or issued the ruling you are challenging.
- Small Claims cases. If you are a party in a small claims case, this form is only to be used for requesting a writ relating to a postjudgment enforcement order of a small claims division. For writs relating to other acts of a small claims division, the form to use is the *Petition for Writ (Small Claims)* (form SC-300). See also Cal. Rules of Court, rules 8.970-8.977. For writs relating to acts of a superior court in a small claims appeal see Cal. Rules of Court, rules 8.485-8.493.



Appellate Division Case Name: _____

1 Your Information

a. Petitioner (the party who is asking for the writ):

Name: _____

Street address: _____
Street City State Zip

Mailing address (if different): _____
Street City State Zip

Phone: _____ E-mail (if available): _____

b. Petitioner's lawyer (skip this if the petitioner does not have a lawyer for this petition):

Name: _____ State Bar number: _____

Street address: _____
Street City State Zip

Mailing address (if different): _____
Street City State Zip

Phone: _____ E-mail (if available): _____

Fax (if available): _____

The Trial Court Action or Ruling You Are Challenging

2 I am/My client is filing this petition to challenge an action taken or ruling made by the trial court in the following case:

a. Case name (fill in the trial court case name): _____

b. Case number (fill in the trial court case number): _____

3 The trial court action or ruling I am/my client is challenging is (describe the action taken or ruling made by the trial court): _____

4 The trial court took this action or made this ruling on the following date (fill in the date): _____

5 If you are filing this petition more than 30 days after the date that you listed in **4**, explain the extraordinary circumstances that caused the delay in filing this petition: _____



Appellate Division Case Name: _____

The Parties in the Trial Court Case

- 6 I/My client (check and fill in a or b):
 - a. was a party in the case identified in 2.
 - b. was not a party in the case identified in 2 but will be directly and negatively affected in the following way by the action taken or ruling made by the trial court (describe how you/your client will be directly and negatively affected by the trial court’s action or ruling):

- 7 The other party or parties in the case identified in 2 was/were (fill in the names of the parties):

Appeals or Other Petitions for Writs in This Case

- 8 Did you or anyone else file an appeal about the same trial court action or ruling you are challenging in this petition? (Check and fill in a or b):

- a. No
- b. Yes (fill in the appellate division case number of the appeal): _____

- 9 Have you filed a previous petition for a writ challenging this trial court action or ruling? (Check and fill in a or b):

- a. No
- b. Yes (Please provide the following information about this previous petition).

- (1) Petition title (fill in the title of the petition): _____
- (2) Date petition filed (fill in the date you filed this petition): _____
- (3) Case number (fill in the case number of the petition): _____

If you/your client filed more than one previous petition, attach another page providing this information for each additional petition. At the top of each page, write “APP-151, item 9.”

Reasons for This Petition

- 10 The trial court made the following legal error or errors when it took the action or made the ruling described in 3 (check and fill in at least one):

- a. The trial court has not done or has refused to do something that the law says it must do.

- (1) Describe what you believe the law says the trial court must do: _____
- _____
- _____

- (2) Identify the law (the section of the Constitution or statute, published court decision, or other legal authority) that says the trial court must do this: _____
- _____
- _____



Appellate Division Case Name: _____

10 (continued)

(3) *Identify where in the supporting documents (the record of what was said in the trial court and the documents from the trial court) it shows that the court did not do or refused to do this:*

Check here if you need more space to describe the reason for your petition and attach a separate page or pages describing it. At the top of each page, write "APP-151, item 10a."

b. The trial court has done something that the law says the court *cannot or must not* do.

(1) *Describe what the trial court did:* _____

(2) *Identify where in the supporting documents (the record of what was said in the trial court and the documents from the trial court) it shows that the court did this:* _____

(3) *Identify the law (the section of the Constitution or statute, published court decision, or other legal authority) that says the trial court cannot or must not do this:* _____

Check here if you need more space to describe the reason for your petition and attach a separate page or pages describing it. At the top of each page, write "APP-151, item 10b."

c. The trial court has performed or said it is going to perform a judicial function (like deciding a person's rights under law in a particular situation) in a way the court does not have the legal power to do.

(1) *Describe what the trial court did or said it is going to do:* _____

(2) *Identify where in the supporting documents (the record of what was said in the trial court and the documents from the trial court) it shows that the court did or said it was going to do this:*



Appellate Division Case Name: _____

10 (continued)

(3) *Identify the law (the section of the Constitution or statute, published court decision, or other legal authority) that says the trial court does not have the power to do this:*

- Check here if you need more space to describe this reason for your petition and attach a separate page or pages describing it. At the top of each page, write "APP-151, item 10c."*
- Check here if there are more reasons for this petition and attach an additional page or pages describing these reasons. At the top of each page, write "APP-151, item 10d."*

11 This petition will be granted only if there is no other adequate way to address the trial court’s action or ruling other than by issuing the requested writ.

a. *Explain why there is no way other than through this petition for a writ—through an appeal, for example—for your arguments to be adequately presented to the appellate division:*

b. *Explain how you/your client will be irreparably harmed if the appellate division does not issue the writ you are requesting:* _____

Order You Are Asking the Appellate Division to Make

12 I request that this court (*check and fill in all that apply*):

a. order the trial court to do the following (*describe what, if anything, you want the trial court to be ordered to do*): _____

b. order the trial court not to do the following (*describe what, if anything, you want the trial court to be ordered NOT to do*): _____

Appellate Division Case Name: _____

12 (continued)

c. issue a stay ordering the trial court not to take any further action in this case until this court decides whether to grant or deny this petition (*describe below why it is urgent that the trial court not take any further action and check the Stay requested box on page 1 of this form*):

I/My client:

(1) asked the trial court to stay these proceedings, but the trial court denied this request (*include in your supporting documents a copy of the trial court's order denying your request for a stay*).

(2) did not ask the trial court to stay these proceedings for the following reasons (*describe below why you did not ask the trial court to stay these proceedings*):

d. take other action (*describe*): _____

e. grant any additional relief that the appellate division decides is fair and appropriate.

Supporting Documents

13 Is a record of what was said in the trial court about the action or ruling you are challenging attached as required by rule 8.931(b)(1)(D) of the California Rules of Court?

a. Yes, a transcript or an official electronic recording of what was said in the trial court is attached.

b. No, a transcript or official electronic recording is not attached, but I have attached a declaration (a statement signed under penalty of perjury) (*Check (1) or (2)*):

(1) stating the transcript or electronic recording has been ordered, the date it was ordered, and the date it is expected to be filed.

(2) explaining why the transcript or official electronic recording is not available and providing a fair summary of what was said in the trial court, including the petitioner's arguments and any statement by the trial court supporting its ruling.



Appellate Division Case Name: _____

14 Are the following documents attached as required by rule 8.931(b)(1)(A)–(C):

- The trial court ruling being challenged in this petition
- All documents and exhibits submitted to the trial court supporting and opposing the petitioner’s position
- Any other documents or portions of documents submitted to the trial court that are necessary for a complete understanding of the case and the ruling being challenged? (Check a or b):

a. Yes, these documents are attached.

b. No, these documents are not attached for the following reasons (explain why these documents are not attached and give a fair summary of the substance of these documents. Note that rule 8.931 provides that, in extraordinary circumstances, the petition may be filed without these documents, but the petitioner must explain the urgency and the circumstances making the documents unavailable):

Verification

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____
Type or print your name

 _____
Signature of petitioner or attorney

GENERAL INFORMATION

1 What does this information sheet cover?

This information sheet tells you about **writ proceedings**—proceedings in which a person is asking for a writ of mandate, prohibition, or review—in small claims cases. Please read this information sheet before you fill out *Petition for Writ (Small Claims)* (form SC-300). This information sheet does not cover everything you may need to know about writ proceedings. It is only meant to give you a general idea of the writ process. To learn more, you should read rule the California Rules of Court identified below, which set out the procedures for writ proceedings in the different courts that consider request for writs in small claims cases.

This information sheet does NOT provide information about motions to vacate a judgment or appeals in small claims cases, or about request for writs on all types of rulings in a small claims case.

- For information about making a motion to cancel or correct a judgment in small claims court, please see Code of Civil Procedure sections 116.720–116.745 and *Notice of Motion to Vacate Judgment and Declaration* (form SC-135).
- For information about appealing a small claims judgment, which you can only do if you disagree with a judgment ordering you to pay money, please see Code of Civil Procedure sections 116.710, 116.750-795, rules 8.950-966 of the California Rules of Court and *What to Do After the Court Decides Your Small Claims Case* (form SC-200-INFO).

While this information sheet provides general information about writs and writ procedures, the procedures it describes do NOT all apply to writs in all small claims cases. These procedures only apply to requests for writs relating to actions of the small claims court *other* than postjudgment enforcement actions. These requests will be considered by a single judge from the appellate division of the superior court. The procedures are set out in more detail in rules 8.970–8.977 of the California Rules of Court.

- For information about requests for writs relating to postjudgment enforcement actions, see rules 8.930–

936 of the California Rules of Court and *Information on Writ Proceedings in Misdemeanor, Infraction, and Limited Civil Cases* (form APP-150-INFO). Matters relating to enforcement of small claims judgments are treated in the same manner as enforcement of judgments in limited (smaller) civil cases.

- For information about requests for writs relating to actions of the superior court on small claims appeals, see rules 8.485–8.493 of the California Rules of Court. Those requests should be made to the Court of Appeal.

You can get these rules and forms at any courthouse or county law library or online at www.courts.ca.gov/rules for the rules or www.courts.ca.gov/forms for the forms. You can get copies of statutes at any county law library or online www.leginfo.ca.gov/calaw.html.

2 What is a writ?

A writ is an order from a higher court telling a lower court to do something the law says the lower court must do, or not to do something the law says the lower court does not have the power to do. In writ proceedings in the appellate division, the lower court is the small claims court that took the action or issued the order being challenged.

In this information sheet, we call the lower court the “small claims court.”

3 Are there different kinds of writs?

Yes. There are three main kinds of writs:

- Writs of mandate (sometimes called “mandamus”), which are orders telling the small claims court to do something.
- Writs of prohibition, which are orders telling the small claims court *not* to do something.
- Writs of review (sometimes called “certiorari”), which are orders telling the small claims court that a judge in the appellate division will review certain kinds of actions already taken by the small claims court.



There are laws (statutes) that you should read concerning each type of writ: see California Code of Civil Procedure sections 1084–1097 about writs of mandate, sections 1102–1105 about writs of prohibition, and sections 1067–1077 about writs of review.

4 Is a writ proceeding the same as an appeal?

No. Generally, in an **appeal**, the higher court *must* consider the parties' arguments and decide whether the trial court made the legal error claimed by the appealing party and whether the trial court's decision should be overturned based on that error (this is called a "decision on the merits"). In choosing to go to small claims court, the party filing a claim agreed to give up the right to an appeal in exchange for a less formal and less expensive way of proceeding. The defendant in a small claim case does have the right to an appeal, in the form of a new trial, and if the defendant asks for one, the higher court *must* allow a new trial on all the claims in the case, with each side presenting evidence.

In a **writ proceeding**, the appellate division is *not* required to make a decision on the merits or hold a new trial. Even if the small claims court made a legal error, the appellate division can decide not to consider that error, and usually will not. Most requests for writs are denied without a decision on the merits (this is called a "summary denial"). Because of this, a writ proceeding is often called a proceeding for "*extraordinary*" relief, while a judgment by the small claims court, or possibly a new trial at superior court for the defendant, is the *ordinary* way that small claims court cases end.

5 Is a writ proceeding a new trial?

No. A **writ proceeding is NOT a new trial**. The appellate division judge will not consider new evidence, such as the testimony of new witnesses. Instead, if it does not summarily deny the request for a writ, the appellate division judge reviews what happened in the small claims court and the small claims court's ruling to see if the small claims court made the legal error claimed by the person asking for the writ. In conducting its review, the appellate division judge presumes that the small claims court's ruling is correct; the person who requests the writ must show the appellate division judge that the small claims court made the legal error the person is claiming.

6 Can a writ be used to address any errors made by a small claims court?

No.

Writs can only address certain legal errors: Writs can only address the following types of legal errors made by a small claims court:

- The small claims court has a legal duty to act but:
 - Refuses to act
 - Has not done what the law says it must do
 - Has acted in a way the law says it does not have the power to act
- The small claims court has performed or says it is going to perform a judicial function (like deciding a person's rights under law in a particular case) in a way that the court does not have the legal power to do.

Writs are not generally granted regarding small claims cases. The small claims courts exists to provide a speedy and inexpensive way for a party to obtain a judgment. This works in part by limiting what a party can do after the small claims court makes its rulings.

When a person or business chooses to make a claim in small claims court, rather than filing in a different level of the superior court, that party—the plaintiff—gives up the right to ask for an appeal of the small claims court's rulings. This is a trade-off for the faster, less formal, and and less expensive court proceedings. As a result, appellate courts have been reluctant to consider requests for writs on small claims cases.

A defendant in a small claims case does have the right to appeal the initial small claims court decisions and get a new trial in the superior court. Because the defendant already has this right, to have the case heard again, including putting on the evidence and being represented by an attorney if defendants wants to hire one, appellate courts are unlikely to see any need for a writ instead.

However, the appellate division judge does have the discretion to consider a request for an extraordinary writ challenging a ruling in a small claims case. For example, it may do so if it considers the issue raised to be of statewide importance, or in order to make sure that the

small claims division is generally being consistent in how it is acting under the law.

7 Can the appellate division consider a request for a writ in *any* small claims case?

No. Different courts have the power (called “jurisdiction”) to consider requests for writs in different types of cases. Requests for writs in small claims cases may be considered in one of three different ways, depending on the stage of the case:

- Requests for writs relating to actions of the small claims division *other* than postjudgment enforcement orders are considered by a single judge in the appellate division. This covers requests for writs on any rulings relating to the initial small claims trial, including the judgment.
- Requests for writs relating to superior court actions in small claims cases on appeal are not considered by the appellate division, but by the Court of Appeal.
- Requests for writs relating to the enforcement of a judgment in a small claims case, whether the judgment was issued at the small claims hearing or at a new trial in the superior court, are considered by the small claims division.

8 Who are the parties in a writ proceeding?

If you are asking for the writ, you are called the PETITIONER. You should read “Information for the Petitioner,” beginning on the right side of this page.

The court the petitioner is asking to be ordered to do or not to do something is called the RESPONDENT. In writ proceedings challenging rulings in small claims cases, the small claims court is the respondent.

Any other party in the small claims court case who would be affected by a ruling regarding the request for a writ is a REAL PARTY IN INTEREST. If you are a real party in interest, you should read “Information for a Real Party in Interest,” beginning on page 8.

9 Do I need a lawyer to represent me in a writ proceeding?

You do not *have* to have a lawyer; you are allowed to represent yourself in a writ proceeding in the appellate division. But writ proceedings can be very complicated and you will have to follow the same rules that lawyers have to follow. If you have any questions about the writ procedures, you should talk to a lawyer. In limited civil cases and infraction cases, you must hire a lawyer at your own expense if you want one (the court cannot provide one). You can get information about finding a lawyer on the California Courts Online Self-Help Center at www.courts.ca.gov/selfhelp-lowcosthelp. You may also get help from the small claims advisors in your county if available. Ask the court how to contact them or look for contact information at www.courts.ca.gov/selfhelp-advisors.

INFORMATION FOR THE PETITIONER

This part of the information sheet is written for the petitioner—the party asking for the writ. It explains some of the rules and procedures relating to asking for a writ. The information may also be helpful to a real party in interest. There is more information for a real party in interest starting on page 8 of this information sheet.

10 Who can ask for a writ?

Parties—the plaintiff or defendant— are usually the only ones that ask for writs challenging small claims court rulings. However, in most cases, a person who was not a party does have the legal right to ask for a writ if that person has a “beneficial interest” in the small claims court’s ruling. A “beneficial interest” means that the person has a specific right or interest affected by the ruling that goes beyond the general rights or interests the public may have in the ruling.

11 How do I ask for a writ?

To ask for a writ you must serve and file a petition for a writ (see below for an explanation of how to “serve and file” a petition). A petition is a formal request that the appellate division issue a writ. A petition for a writ explains to the appellate division what happened in the small claims court, what legal error you (the petitioner) believe the small claims court made, why you have no other adequate remedy at law, and what order you are requesting the appellate division to make.

12 How do I prepare a writ petition?

If you are represented by a lawyer, your lawyer will prepare your petition for a writ. If you are not represented by a lawyer, you must use *Petition for Writ (Small Claims Case)* (form SC-300) to prepare your petition. You can get it at any courthouse or county law library or online at www.courts.ca.gov/forms. This form asks you to fill in the information that needs to be in a writ petition.

a. Description of your interest in the small claims court's ruling

Your petition needs to tell the appellate division judge why you have a right to ask for a writ in the case. As discussed above, usually only a person who was a party in the small claims court case asks for a writ challenging a ruling in that case. If you were a party in the small claims court case, say that in your petition. If you were not a party, you will need to describe what “beneficial interest” you have in the small claims court’s ruling. A “beneficial interest” means that you have a specific right or interest affected by the ruling that goes beyond the general rights or interests the public may have in the ruling. To show the appellate division judge that you have a beneficial interest in the ruling you want to challenge, you must describe how the ruling will affect you in a direct and negative way.

b. Description of the legal error you believe the small claims court made

Your petition will need to tell the appellate division judge what legal error you believe the small claims court made. Not every mistake a small claims court might make can be addressed by a writ. You must show that the small claims court made one of the following types of legal errors:

- The small claims court has a legal duty to act but:
 - Refuses to act
 - Has not done what the law says it must do
 - Has acted in a way the law says it does not have the power to act
- The small claims court has performed or says it is going to perform a judicial function (like deciding a person’s rights under law in a particular case) in a

way that the court does not have the legal power to do.

To show the appellate division judge that the small claims court made one of these legal errors, you will need to:

- Show that the small claims court has the legal duty or the power to act or not act in a particular way. You will need to tell the appellate division judge what legal authority—what constitutional provision, statute, rule, or published court decision—establishes the small claims court’s legal duty or power to act or not act in that way.
- Show the appellate division judge that the small claims court has not acted in the way that this legal authority says the court is required to act. You will need to tell the appellate division judge what happened in the small claims court that shows that the small claims court did not act in the way it was required to. You can do that at item 10 of the petition and, as instructed there, you can add additional pages if more room is needed. Note that you will be providing this information, and everything in the petition, under penalty of perjury.
- Because there is no formal record kept of the small claims proceedings, if the petition raises an issue that would require the appellate division judge to consider what was said in the small claims court, you will need to write a complete and accurate summary of what was said by you and others, including the court, that is relevant to your request for a writ. You may add extra pages if you need more space.

c. Description of why you need the writ

One of the most important parts of your petition is explaining to the appellate division why you need the writ you have requested. Remember, the appellate division judge does not have to grant your petition just because the small claims court made an error. You must convince the appellate division that it is important for it to issue the writ.

Your petition needs to show that a writ is the only way to fix the small claims court’s error. To convince the court you need the writ, you will need to show the appellate division that you have no way to fix the small

claims court's error other than through a writ (this is called having "no adequate remedy at law").

This will be hard to show if the small claims court's ruling can be appealed and a new trial held. If you are a defendant and the ruling you are challenging can be appealed, the appellate division will generally consider this new trial to be a good enough way to fix the small claims court's ruling (an "adequate remedy"). You will need to show the appellate division judge how you will be harmed by the small claims court's error in a way that cannot be fixed by the new trial if the appellate division judge does not issue the writ (this is called "irreparable" injury or harm). For example, the harm you want to prevent may happen before the new trial can be held.

Even if you cannot appeal the ruling you are objecting to, the court still does not have to grant the petition. As described above, small claims decisions are meant to be speedy and inexpensive, so appellate review is generally not granted in these cases. You will need to explain why your case should be treated differently.

d. Description of the order you want the appellate division to make

Your petition needs to describe what you are asking the appellate division judge to order the small claims court to do or not do. Writ petitions usually ask that the small claims court be ordered to cancel ("vacate") its ruling, issue a new ruling, or not take any steps to enforce its ruling.

If you want the appellate division judge to order the small claims court not to do anything more until the appellate division judge decides whether to grant the writ you are requesting, you must ask for a "stay." If you want a stay, you should first ask the small claims court for a stay. You should tell the appellate division judge whether you asked the small claims court for a stay. If you did not ask the small claims court for a stay, you should tell the appellate division why you did not do this. This information is requested in the petition form.

If you ask the appellate division for a stay, make sure you also fill out the "Stay requested" box on the first page of the *Petition for Writ (Small Claims Case)* (form SC-300).

e. Verifying the petition

Petitions for writs must be "verified." This means that the petitioner (or in certain circumstances the petitioner's attorney) must declare under penalty of perjury that the facts stated in the petition are true and correct, must sign the petition, and must indicate the date that the petition was signed. On the last page of the *Petition for Writ (Small Claim Case)* (form SC-300), there is a place for you to verify your petition.

13 Is there anything else that I need to serve and file with my petition?

Yes. Along with the petition, you must serve and file a documents showing what happened in the small claims court (see below for an explanation of how to serve and file the petition). Since the appellate division judge was not there in the small claims court, copies of certain documents from that court that show what happened must be sent to the appellate division. These are called "supporting documents." You must also serve any other party in this case, the real party in interest, with a copy of this form *Information on Writ Proceedings in Small Claims Cases* (form SC-300).

Copies of documents from the small claims court:

Copies of the following documents from the small claims court must also be included in the supporting documents:

- The small claims court ruling or judgment being challenged in the petition
- All documents and exhibits submitted to the small claims court supporting and opposing your position
- Any other documents or portions of documents submitted to the small claims court that are necessary for a complete understanding of the case and of the ruling being challenged

What if I cannot get copies of the documents from the small claims court because of an emergency?

Rule 8.972 of the California Rules of Court provides that in extraordinary circumstances the petition may be filed without copies of the documents from the small claims court. If the petition is filed without these documents, you must explain in your petition the urgency and the circumstances making the documents unavailable.

Format of the supporting documents: Supporting documents must be put in the format required by rule 8.972 of the California Rules of Court. You should carefully read rule 8.972. You can get a copy of rule 8.972 at any courthouse or county law library or online at www.courts.ca.gov/rules.

14 Is there a deadline to ask for a writ?

Yes. There are laws (statutes) that require that certain kind of rulings may only be challenged using a writ proceeding. These are called “statutory writs” and the statute usually sets the deadline for serving and filing the petition. For example, a writ challenging a ruling on a motion to disqualify a judge (see California Code of Civil Procedure section 170.3(d)) must be filed within 10 days after notice to the parties of the decision. You will need to check whether there is a statute providing a deadline for filing a challenge to the specific ruling you are challenging. (You can find copies of statutes at any county law library or online at www.leginfo.ca.gov/calaw.html).

If there is not a statute specifically providing for a writ proceeding to challenge a particular ruling, or if the statute does not set a deadline, you should file the petition as soon as possible and not later than 30 days after the court makes the ruling that you are challenging in the petition. While there is no absolute deadline for filing these petitions, writ petitions are usually used when it is urgent that the small claims court’s error be fixed. Remember, the court is not required to grant your petition even if the small claims court made an error. If you delay in filing your petition, it may make the appellate division judge think that it is not really urgent that the small claims court’s error be fixed and the appellate division judge may deny your petition. If there are extraordinary circumstances that delayed the filing of your petition, you should explain these circumstances to the appellate division judge in your petition.

15 How do I “serve” my petition?

Rule 8.972(d) requires that the petition with the attached supporting documents, along with a copy of this form, be served on any named real party in interest and that the petition be served on the respondent small claims court. “Serving” a petition on a party means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver (“serve”)

the petition to the real party in interest and the respondent court in the way required by law.

- Make a record that the petition has been served. This record is called a “proof of service.” *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. The proof of service must show who served the petition, who was served with the petition, how the petition was served (by mail or in person), and the date the petition was served.

You can get more information about how to serve court documents and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at <http://www.courts.ca.gov/selfhelp-serving.htm>.

16 How do I file my petition?

To file a petition for a writ in the appellate division, you must bring or mail the original petition, including the supporting documents, and the proof of service to the clerk for the appellate division of the superior court that made the ruling you are challenging. If the superior court has more than one courthouse location, you should call the clerk at the courthouse where the ruling you are challenging was made to ask where to file your petition.

You should make a copy of all the documents you are planning to file for your own records before you file them with the court. It is a good idea to bring or mail an extra copy of the petition to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

17 Do I have to pay to file a petition?

Yes. You should ask the clerk for the appellate division where you are filing the petition what this fee is. If you cannot afford to pay this filing fee, you can ask the court to waive this fee. To do this, you must fill out a *Request to Waive Court Fees* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at www.courts.ca.gov/forms. You can file this application either before you file your petition or with your petition. The court will review this application and decide whether to waive the filing fee.

18 What happens after I file my petition?

Within 10 days after you serve and file your petition, the respondent or any real party in interest can serve and file preliminary opposition to the petition.

The appellate division judge does not have to wait for an opposition before it can act on a petition for a writ, however. Without waiting, the appellate division judge can:

- a. Issue a stay.
- b. Summarily deny the petition.
- c. Issue an alternative writ or order to show cause.
- d. Notify the parties that it is considering issuing a preemptory writ in the first instance.

Read below for more information about these options.

a. Stay of small claims court proceedings

A stay is an order from the appellate division judge telling the small claims court not to do anything more until the appellate division judge decides whether to grant your petition. A stay puts the small claims court proceedings on temporary hold.

b. Summary denial

A “summary denial” means that the appellate division judge denies the petition without deciding whether the small claims court made the legal error claimed by the petitioner or whether the writ requested by the petitioner should be issued based on that error. No reasons need to be given for a summary denial. Most petitions for writs are denied in this way.

c. Alternative writ or order to show cause

An “alternative writ” is an order telling the small claims court either to do what the petitioner has requested in the petition (or some modified form of what the petitioner requested) or to show the appellate division judge why the small claims court should not be ordered to do what the petitioner requested. An “order to show cause” is similar; it is an order telling the small claims court to show the appellate division judge why the small claims court should not be ordered to do what the petitioner

requested in the petition (or some modified form of what the petitioner requested). The appellate division judge will issue an alternative writ or an order to show cause only if the petitioner has shown that he or she has no adequate remedy at law and the appellate division has decided that the petitioner may have shown that the small claims court made a legal error that needs to be fixed.

If the appellate division judge issues an alternative writ and the small claims court does what the petitioner requested (or a modified form of what the petitioner requested as ordered by the appellate division), then no further action by the appellate division is needed and the appellate division may dismiss the petition.

If the small claims court does not comply with an alternative writ, however, or if the appellate division judge issues an order to show cause, then the respondent court or a real party in interest can file a response to the appellate division judge’s order (called a “return”) that explains why the small claims court should not be ordered to do what the petitioner requested. The return must be served and filed within the time specified by the appellate division or, if no time is specified, within 30 days from the date the alternative writ or order to show cause was issued. The petitioner will then have an opportunity to serve and file a reply within 15 days after the return is filed. The appellate division judge may set the matter for oral argument. When all the papers have been served and filed (or the time to serve and file them has passed) and any oral argument is completed, the appellate division will decide the case.

d. Preemptory writ in the first instance

A “preemptory writ in the first instance” is an order telling the small claims court to do what the petitioner has requested (or some modified form of what the petitioner requested) that is issued without the appellate division judge first issuing an alternative writ or order to show cause. It is very rare for the appellate division judge to issue a preemptory writ in the first instance, and it will not do so without first notifying the parties and giving the respondent court and any real party in interest a chance to file an opposition.

The respondent court or a real party in interest can file a response to the appellate division judge’s notice (called an “opposition”) that explains why the small claims

court should not be ordered to do what the petitioner has requested. The opposition must be served and filed within the time specified by the appellate division judge or, if no time is specified, within 30 days from the date the notice was issued. The petitioner will then have a chance to serve and file a reply within 15 days after the opposition is filed. The appellate division judge may then set the matter for oral argument. When all the papers have been served and filed (or the time to serve and file them has passed) and any oral argument is completed, the appellate division will decide the case.

**INFORMATION FOR A REAL PARTY
IN INTEREST**

This part of the information sheet is written for a real party in interest—a party from the small claims court case other than the petitioner who will be affected by a ruling on a petition for a writ. It explains some of the rules and procedures relating to responding to a petition for a writ. The information may also be helpful to the petitioner.

19 I have received a copy of a petition for a writ in a case in which I am a party. Do I need to do anything?

You do not *have* to do anything. The Code of Civil Procedure and California Rules of Court give you the right to file a preliminary opposition to a petition for a writ within 10 days after the petition is served and filed, but you are not required to do this. The appellate division judge can take certain actions without waiting for any opposition, including:

- Summarily denying the petition
- Issuing an alternative writ or order to show cause
- Notifying the parties that it is considering issuing a peremptory writ in the first instance

Read the response in section **18** for more information about these options.

Most petitions for writs are summarily denied, often within a few days after they are filed. If you have not already received something from the appellate division judge saying what action it is taking on the petition, it is

a good idea to call the appellate division to see if the petition has been denied before you decide whether and how to respond.

This would also be a good time to talk to a lawyer. You do not *have* to have a lawyer; you are allowed to represent yourself in a writ proceeding in the appellate division. But writ proceedings can be very complicated and you will have to follow the same rules that lawyers have to follow. If you have any questions about writ proceedings or about whether and how you should respond to a writ petition, you should talk to a lawyer. You must hire a lawyer at your own expense if you want one (the court cannot provide one). You can get information about finding an attorney on the California Courts Online Self-Help Center at www.courtinfo.ca.gov/selfhelp/lowcost. You may also get help from the small claims advisors in your county if available. Ask the court how to contact them or look for contact information at www.courts.ca.gov/selfhelp-advisors.htm.

If the petition has not already been summarily denied, you may, but are not required to, serve and file a preliminary opposition to the petition within 10 days after the petition was served and filed. The appellate division judge will not grant a writ without first issuing an alternative writ, an order to show cause, or a notice that it is considering issuing a peremptory writ. In all these circumstances, you will get notice from the court and have a chance to file a response.

If you decide to file a preliminary opposition, you must serve that preliminary opposition on all the other parties to the writ proceeding. “Serving and filing” an opposition means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver (“serve”) the preliminary opposition to the other parties in the way required by law.
- Make a record that the preliminary opposition has been served. This record is called a “proof of service.” *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. The proof of service must show who served the preliminary opposition, who was served with the preliminary opposition, how the preliminary opposition was served (by mail or in person), and the date the preliminary opposition was served.

- File the original preliminary opposition and the proof of service with the appellate division. You should make a copy of the preliminary opposition you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the preliminary opposition to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court documents and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at www.courts.ca.gov/selfhelp-serving.htm.

20 I have received a copy of an alternative writ or an order to show cause issued by the appellate division judge. Do I need to do anything?

Yes. Unless the small claims court has already done what the alternative writ told it to do, you should serve and file a response called a “return.”

As explained above, the appellate division will issue an alternative writ or an order to show cause only if the appellate division judge has decided that the petitioner may have shown that the small claims court made a legal error that needs to be fixed. An “alternative writ” is an order telling the small claims court either to do what the petitioner has requested in the petition (or some modified form of what the petitioner requested) or to show the appellate division judge why the small claims court should not be ordered to do what the petitioner requested. An “order to show cause” is similar; it is an order telling the small claims court to show the appellate division why the judge small claims court should not be ordered to do what the petitioner requested in the petition (or some modified form of what the petitioner requested).

If the appellate division judge issues an alternative writ and the small claims court does what the petitioner requested (or a modified form of what the petitioner requested as ordered by the appellate division judge), then no further action by the appellate division judge is needed and the appellate division judge may dismiss the petition. If the small claims court does not comply with

an alternative writ, however, or if the appellate division judge issues an order to show cause, then the small claims court or the real party in interest may serve and file a response to the appellate division judge’s order, called a “return.”

A return is your argument to the appellate division judge about why the small claims court should not be ordered to do what the petitioner has requested. If you are represented by a lawyer in the writ proceeding, your lawyer will prepare your return. If you are not represented by a lawyer, you will need to prepare your own return. A return is a legal response either your argument about why the writ is legally inadequate, or an “answer.” An answer is used to admit or deny the facts alleged in the petition, to add to or correct the facts, and to explain any legal defenses to the legal arguments made by the petitioner. You should read California Code of Civil Procedure sections 430.10–431.30 for more information about responses and answers. You can get copies of these statutes at any county law library or online at www.leginfo.ca.gov/calaw.html. A return can also include additional supporting documents not already filed by the petitioner.

If you do not file a return when the appellate division judge issues an alternative writ or order to show cause, it does not mean that the appellate division judge is required to issue the writ requested by the petitioner. However, the appellate division judge will treat the facts stated by the petitioner in the petition as true, which makes it more likely the appellate division judge will issue the requested writ.

Unless the appellate division judge sets a different filing deadline in its alternative writ or order to show cause, you must serve and file your return within 30 days after the appellate division judge issues the alternative writ or order to show cause. The return must be served on all the other parties to the writ proceeding. “Serving and filing” the return means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver (“serve”) the return to the other parties in the way required by law.
- Make a record that the return has been served. This record is called a “proof of service.” *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. The proof of service must show who served the return, who was served with the

return, how the return was served (by mail or in person), and the date the return was served.

- File the original return and the proof of service with the appellate division. You should make a copy of the return you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the return to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court documents and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at www.courts.ca.gov/selfhelp-serving.htm.

21 I have received a copy of a notice from the appellate division judge indicating it is considering issuing a peremptory writ in the first instance. Do I need to do anything?

Yes. You should serve and file a response called an “opposition.”

As explained in the answer to question **18**, a “peremptory writ in the first instance” is an order telling the small claims court to do what the petitioner has requested (or some modified form of what the petitioner requested as ordered by the appellate division judge) that is issued without the appellate division judge first issuing an alternative writ or order to show cause. The appellate division judge will not issue a peremptory writ in the first instance without first giving the parties notice and a chance to file an opposition. However, when the appellate division judge issues such a notice, it means that the appellate division judge is strongly considering granting the writ requested by the petitioner.

An opposition is your argument to the appellate division judge about why the small claims court should not be ordered to do what the petitioner has requested. If you are represented by a lawyer in the writ proceeding, your lawyer will prepare your opposition. If you are not represented by a lawyer, you will need to prepare your own opposition. An opposition is a response to the legal arguments made by the petitioner.

Unless the appellate division sets a different deadline in its notice that it is considering issuing a peremptory writ, you must serve and file your opposition within 30 days after the appellate division issues the notice. The opposition must be served on all the other parties to the writ proceeding. “Serving and filing” the opposition means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver (“serve”) the opposition to the other parties in the way required by law.
- Make a record that the opposition has been served. This record is called a “proof of service.” *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. The proof of service must show who served the opposition, who was served with the opposition, how the opposition was served (by mail or in person), and the date the opposition was served.
- File the original opposition and the proof of service with the appellate division. You should make a copy of the opposition you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the opposition to the clerk when you file your original, and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court documents and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at <http://www.courts.ca.gov/selfhelp-serving.htm>.

23 What happens after I serve and file my return or opposition?

After you file a return or opposition, the petitioner has 15 days to serve and file a reply. The appellate division judge may also set the matter for oral argument. When all the papers have been filed (or the time to file them has passed) and any oral argument is completed, the appellate division judge will decide the case.

Clerk stamps date here when form is filed.

DRAFT
 04/06/15
 Not approved
 by the Judicial Council

<hr/> <p>Petitioner <i>(fill in the name of the person asking for the writ)</i></p>
<p>v.</p>
<p>Superior Court of California, County of _____</p>
<hr/> <p>Respondent <i>(fill in the name of the court whose action or ruling you are challenging)</i></p>
<hr/> <p>Real Party in Interest <i>(fill in the name of any other parties in the trial court case)</i></p>

Clerk will fill in the number below:

Appellate Division Case Number:
--

Stay requested
(see item 12 c. on page 6)

Instructions

- This form is only for requesting a **writ** in a small claims case which does *not* relate to an action enforcing the small claims judgment.
- Do not use this form for the appeal or trial de novo of a small claims matter or for writs on the appeal of a small claims matter. Other forms or pleadings should be used for those kinds of actions.
- For requesting a writ relating to a court action regarding *enforcement* of a small claims judgment, you should use form APP-151, *Petition for Writ (Misdemeanor, Infraction, or Limited Case)*. You can get that form and other forms for other writs and for appeals at any courthouse or county law library or online at www.courts.ca.gov/forms.
- Before you fill out this form, read *Information on Writ Proceedings in Small Claims* (form SC-300-INFO) to know your rights and responsibilities. You can get form SC-300-INFO at any courthouse or county law library or online at www.courts.ca.gov/forms.
- Generally, you should file this form no later than **30 days** after the date the small claims court took the action or issued the ruling you are challenging in this petition (see form SC-300-INFO for more information about the deadline for filing a writ petition). It is your responsibility to find out if a special statute sets an earlier deadline. If your petition is filed late, the appellate division may deny it.
- Fill out this form and make a copy of the completed form for your records and for the small claims court whose action or ruling you are challenging (called the respondent) and each of the other party or parties in the small claims case (called real party in interest).
- Serve a copy of the completed form on the small claims court and serve a copy of the form and a copy of form SC-301-INFO on each real party in interest and keep proof of this service. *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. You can get information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at www.courts.ca.gov/selfhelp/selfhelp-serving.htm.
- Take or mail the completed form and your proof of service to the clerk's office for the appellate division of the court that took the action or issued the ruling you are challenging.



Appellate Division Case Name: _____

1 Your Information

a. Petitioner (the party who is asking for the writ):

Name: _____

Street address: _____
Street City State Zip

Mailing address (if different): _____
Street City State Zip

Phone: _____ E-mail (if available): _____

b. Petitioner's lawyer (skip this if the petitioner does not have a lawyer for this petition):

Name: _____ State Bar number: _____

Street address: _____
Street City State Zip

Mailing address (if different): _____
Street City State Zip

Phone: _____ E-mail (if available): _____

Fax (if available): _____

The Small Claims Court Action or Ruling You Are Challenging

2 I am/My client is filing this petition to challenge an action taken or ruling made by the small claims court in the following case:

a. Case name (fill in the small claims court case name): _____

b. Case number (fill in the small claims court case number): _____

3 The small claims court action or ruling I am/my client is challenging is (describe the action taken or ruling made by the small claims court): _____

4 The small claims court took this action or made this ruling on the following date (fill in the date): _____

5 If you are filing this petition more than 30 days after the date that you listed in **4**, explain the extraordinary circumstances that caused the delay in filing this petition: _____



Appellate Division Case Name: _____

The Parties in the Small Claims Court Case

- 6 I/My client (check and fill in a or b):
 - a. was a party in the case identified in 2.
 - b. was not a party in the case identified in 2 but will be directly and negatively affected in the following way by the action taken or ruling made by the small claims court (describe how you/your client will be directly and negatively affected by the small claims court’s action or ruling):

- 7 The other party or parties in the case identified in 2 was/were (fill in the names of the parties):

Appeals or Other Petitions for Writs in This Case

- 8 Did you or anyone else file an appeal about the same small claims court action or ruling you are challenging in this petition? (Check and fill in a or b):
 - a. No
 - b. Yes (fill in the date the appeal/new trial is set for): _____

- 9 Have you filed a previous petition for a writ challenging this action or ruling? (Check and fill in a or b):
 - a. No
 - b. Yes (Please provide the following information about this previous petition).

- (1) Petition title (fill in the title of the petition): _____
- (2) Date petition filed (fill in the date you filed this petition): _____
- (3) Case number (fill in the case number of the petition): _____

If you/your client filed more than one previous petition, attach another page providing this information for each additional petition. At the top of each page, write “SC-300, item 9.”

Reasons for This Petition

- 10 The small claims court made the following legal error or errors when it took the action or made the ruling described in 3 (check and fill in at least one):
 - a. The small claims court has not done or has refused to do something that the law says it must do.

- (1) Describe what you believe the law says the small claims court must do: _____

- (2) Identify the law (the section of the Constitution or statute, published court decision, or other legal authority) that says the small claims court must do this: _____



Appellate Division Case Name: _____

10 (continued)

(3) *Identify the supporting documents (the documents from the small claims case) and describe what the judge said or did that shows that the court did not do or refused to do this:*

(4) *If something was said at the small claims court that is relevant to your request for a writ, provide a fair summary of what was said by you and others, including the court, that is relevant to your request for writ.*

Check here if you need more space to describe the reason for your petition and attach a separate page or pages describing it. At the top of each page, write "SC-300, item 10a."

b. The small claims court has done something that the law says the court *cannot or must not do*.

(1) *Describe what the small claims court did:* _____

(2) *Identify the law (the section of the Constitution or statute, published court decision, or other legal authority) that says the small claims court cannot or must not do this:* _____

(3) *Identify the supporting documents (the documents from the small claims case) and describe what the judge said or did that shows that the court did not do or refused to do this:* _____

(4) *If something was said at the small claims court that is relevant to your request for a writ, provide a fair summary of what was said by you and others, including the court, that is relevant to your request for writ.*

Check here if you need more space to describe the reason for your petition and attach a separate page or pages describing it. At the top of each page, write "SC-300, item 10b."



Appellate Division Case Name: _____

10 (continued)

c. The small claims court has performed or said it is going to perform a judicial function (like deciding a person’s rights under law in a particular situation) in a way the court does not have the legal power to do.

(1) Describe what the small claims court did or said it is going to do: _____

(2) Identify the law (the section of the Constitution or statute, published court decision, or other legal authority) that says the small claims court does not have the power to do this:

(3) Identify the supporting documents (the documents from the small claims case) that shows that the court did or said it was going to do this:

(4) If something was said at the small claims court that is relevant to your request for a writ, provide a fair summary of what was said by you and others, including the court, that is relevant to your request for writ.

Check here if you need more space to describe this reason for your petition and attach a separate page or pages describing it. At the top of each page, write “SC-300, item 10c.”

d. Check here if there are more reasons for this petition and attach an additional page or pages describing these reasons. At the top of each page, write “SC-300, item 10d.”

11 This petition will be granted only if there is no other adequate way to address the small claims court’s action or ruling other than by issuing the requested writ.

a. Explain why there is no way other than through this petition for a writ—through an appeal, for example—for your arguments to be adequately presented to the appellate division:

b. Explain how you/your client will be irreparably harmed if the appellate division does not issue the writ you are requesting: _____



Appellate Division Case Name: _____

Order You Are Asking the Appellate Division to Make

12 I request that this court (*check and fill in all that apply*):

a. order the small claims court to do the following (*describe what, if anything, you want the court to be ordered to do*): _____

b. order the small claims court not to do the following (*describe what, if anything, you want the court to be ordered NOT to do*): _____

c. issue a stay ordering the small claims court not to take any further action in this case until this court decides whether to grant or deny this petition (*describe below why it is urgent that the small claims court not take any further action and check the Stay requested box on page 1 of this form*):

I/My client:

(1) asked the small claims court to stay these proceedings, but the small claims court denied this request (*include in your supporting documents a copy of the small claims court's order denying your request for a stay*).

(2) did not ask the small claims court to stay these proceedings for the following reasons (*describe below why you did not ask the small claims court to stay these proceedings*):

d. take other action (*describe*): _____

e. grant any additional relief that the appellate division decides is fair and appropriate.



Appellate Division Case Name: _____

Supporting Documents

- 13 Are the following documents attached as required by rule 8.972(b)(1) (Check a or b):
- The small claims court ruling being challenged in this petition
 - All documents and exhibits submitted to the small claims court supporting and opposing you/your client's position
 - Any other documents or portions of documents submitted to the trial court that are necessary for a complete understanding of the case and the ruling being challenged?

- a. Yes, these documents are attached.
- b. No, these documents are not attached for the following reasons (*explain why these documents are not attached and give a fair summary of what is in these documents. Note that rule 8.972 provides that, in extraordinary circumstances, the petition may be filed without these documents, but the petitioner must explain the urgency and the circumstances making the documents unavailable*):

14 Number of pages attached to this form, if any: _____

Date: _____

Lawyer's name (if any)

▶ _____
Lawyer's signature

I declare under penalty of perjury under the laws of the State of California that the information above and on all attachments is true and correct.

Date: _____

Type or print petitioner's name

▶ _____
Petitioner's signature