

# **WHEN TO TAKE A WRIT**

*By*

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## WHAT IS A WRIT?

A writ is an extraordinary order from an appellate court to a lower court in which the higher court compels the lower court to follow the law or otherwise do a justice in the course of a proceeding in the lower court. It is taken outside the course of a regular appeal. In other words, it is an unusual appellate intervention in the conduct of lower court proceedings.

## SPECIAL STATUTORILY AUTHORIZED WRITS

In certain circumstances, the legislature has provided for the writ process to serve as a means of obtaining expedited appellate review of certain trial court rulings, most notably motions for summary judgment and/or summary adjudication and motions to certify the good faith of a settlement. These writ statutes have *special*, inflexible time limits and special procedures to be followed. It is advisable therefore, to consult appellate counsel **at the trial level** to be sure that the record is adequately prepared and that the writ can be speedily taken.

## WHEN TO CONSIDER WRIT RELIEF

- In cases of flagrant injustice, and/or
- If there are issues of widespread import;
- In cases raising new questions of law previously undecided in California, so-called questions of first impression;
- In cases where there is an imminent threat to public safety;
- In cases where there is clear and present threat individual rights.

## THE NATURE OF WRIT RELIEF

- Writ relief is *discretionary*, i.e., the higher court does not *have* to get involved.
- Writ relief is *equitable* and thus should be asked for and used only in cases where there is demonstrable injustice being done.

## WHAT ARE THE CHANCES OF WRIT SUCCESS

Writ petitions are rarely granted and so should be used sparingly. Because of the risk of making bad law whenever a higher court is involved, the wisdom of seeking writ relief should be carefully analyzed in advance by an appellate specialist. If a writ is sought, it is advisable to solicit and obtain as much support from *amici curiae* as possible. Friend-of-the-court briefs help persuade the court that the issues presented by the writ petition are important and should be extraordinarily reviewed.

## THE WRIT PROCESS

The writ process is governed by highly technical rules. To commence the writ proceeding, the higher court must receive a verified petition with points and authorities. That petition must be served like a complaint (e.g., personal service) on the parties. The filing of the petition does not halt or stay the lower court proceedings, so if the petitioner wants a stay, a separate application for stay must be filed.

Under the California Rules of Court, a response must be filed within five days of service of the petition. As a practical matter, many appellate courts do not adhere to that time line and the response time varies not only from appellate district to district, but from division to division of the same court of appeal. Since the various courts and divisions for not publish these policies, anyone

served with a writ petition is best advised to consult an appellate specialist promptly to determine when the response is due. Responses are important because the court may grant a peremptory writ directing the lower court to act without any further briefing or argument. In most cases, however, there is an opportunity at least for oral argument if not additional briefing. Review of an appellate writ is handled like any petition for review before the California Supreme Court.

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In sum, writ proceedings are very technical and should be used judiciously and should only be confided to the hands of an appellate expert.

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