

WRITS OF MANDATE
A PRIMER ON
TRADITIONAL AND
ADMINISTRATIVE WRITS

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WHAT WE'LL COVER

- Traditional vs. Administrative
- Standards of Review
- Basic Procedural Steps
- Preparation of Administrative Records

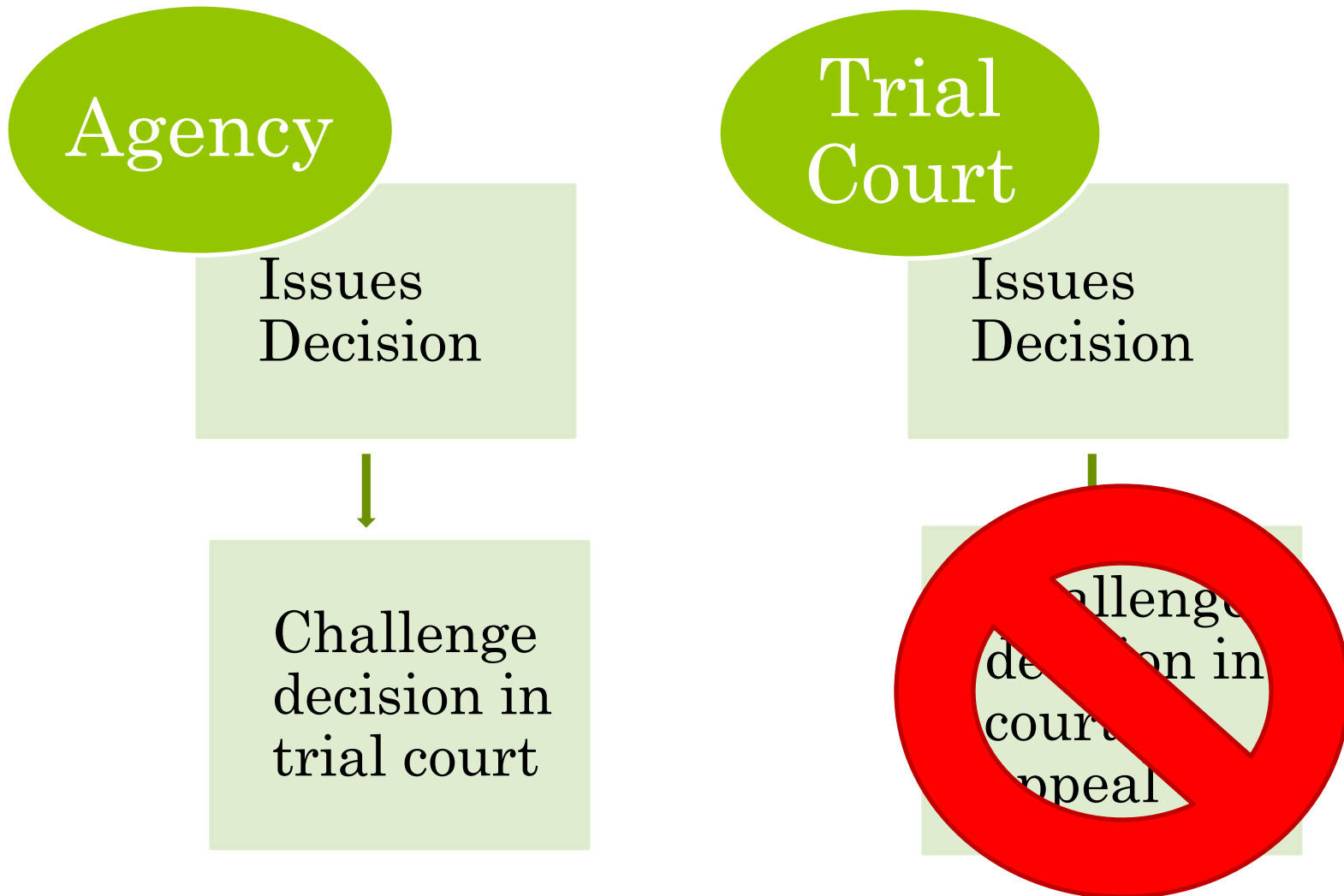


WHAT WE WON'T COVER

- Appellate writs that challenge a trial court's decision.

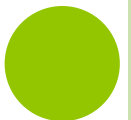


WHAT DOES THAT MEAN?



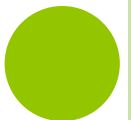
WHAT IS A WRIT?

- Order from court to lower tribunal or officer to:
 - Set aside decision
 - To reconsider decision
 - To take other action as directed



EXAMPLES

- Challenge DMV decision to suspend license
- Challenge planning commission approval/denial for development project
- Challenge local officer's failure to perform ministerial act



WHAT DOES A WRIT TRIAL LOOK LIKE?

- Administrative writ trial
 - Very much like a hearing on an MSJ
- Traditional Mandamus trial
 - Varies



TRADITIONAL OR ADMINISTRATIVE?



- CCP § 1085
Traditional Mandate
- CCP § 1094.5
Administrative
Mandate



CCP § 1094.5

“ADMINISTRATIVE” APPLIES WHEN:

- Hearing is required by law; and
- Evidence is required to be taken; and
- Discretion to decide facts rests with administrative tribunal or officer



EXCEPTIONS

- Statute may provide for administrative review
 - E.g., Welf. & Inst. Code § 14171(j)
- Statute may provide other exclusive method for review
 - E.g. Certain PUC decisions; WCAB decisions; Certain PERB decisions



PARTIES FOR ADMINISTRATIVE WRIT

- “Petitioner” is the aggrieved person or entity
- “Respondent” is typically agency, officer or board who issued final decision



PROCEDURE FOR ADMINISTRATIVE WRITS

- File Petition
 - Must be verified
- Serve Petition like complaint and summons
- Decide whether to ask agency for record or prepare it yourself



STATUTE OF LIMITATIONS FOR ADMINISTRATIVE

- For most local agencies, 90 days after decision is final (CCP 1094.6(b))
- But if APA applies, then it's 30 days after last day for agency to order reconsideration. (Gov. Code § 11523)

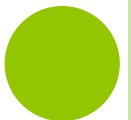
STATUTE OF LIMITATIONS FOR ADMINISTRATIVE

- ALWAYS check substantive area of law for other possible statutes of limitation



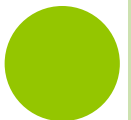
PROCEDURE FOR ADMINISTRATIVE WRITS (CON'T)

- Once record is filed, proceed via noticed motion



PROCEDURE FOR ADMINISTRATIVE WRITS (CON'T)

- what to include in brief:
 - Description of decision
 - Standard of review trial court should follow
 - why decision was wrong under that standard



ADMINISTRATIVE—GROUNDS

- Did Agency act without or in excess of jurisdiction?
- Was there a fair trial?
- Was there prejudicial abuse of discretion?



ADMINISTRATIVE EXCESS JURISDICTION

- Body or officer exceeded jurisdiction
 - E.g., acted on application not before it



ADMINISTRATIVE FAIR TRIAL

- Procedural fairness
- Examples:
 - Adequate notice
 - was decision maker biased



ADMINISTRATIVE ABUSE OF DISCRETION

- Did not proceed in the manner required by law; OR
- The decision is not supported by findings; OR
- The findings are not supported by evidence. (CCP § 1094.5(b))



STANDARDS OF REVIEW FOR ADMINISTRATIVE

- Independent Judgment Test
 - Provided for by statute or if fundamental vested right involved
 - Abuse of discretion is established if findings are not supported by the weight of evidence (CCP § 1094.5(c))



STANDARD OF REVIEW FOR ADMINISTRATIVE

- Substantial Evidence Test
 - Abuse of discretion is established if findings are not supported by substantial evidence in light of the whole record.

(CCP § 1094.5(c))



STANDARD OF REVIEW FOR ADMINISTRATIVE

- Substantial Evidence Test
 - Exists when the record provides any reasonable factual basis for the findings
 - whether evidence *might* support another decision is irrelevant



STANDARD OF REVIEW FOR ADMINISTRATIVE

- Substantial Evidence Test
 - Petitioner must present ALL evidence in the record and explain why it does not support the decision
 - Petitioner cannot present only evidence favorable to it



TRADITIONAL MANDAMUS— ELEMENTS

- Clear and present legal duty
- Petitioner has beneficial interest
- Other remedies inadequate



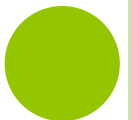
CLEAR AND PRESENT DUTY

- A duty “resulting from an office, trust or station . . .” (CCP § 1085(a))
- Often ministerial, but not always
- Duty must be owed now
- Cannot control discretion



BENEFICIAL INTEREST

- Petitioner must be “beneficially interested” (CCP § 1086)
- That interest must be over and above public at large
- Such interest be lost over time



OTHER REMEDIES INADEQUATE

- Exhaust any available administrative remedies
- Petition may include claims for declaratory and injunctive relief



STATUTE OF LIMITATIONS FOR TRADITIONAL

- No “one size fits all” statute of limitation
- MUST consult governing statutory law at issue to identify applicable period



PROCEDURE FOR TRADITIONAL

- Petition must be verified
- If Petition is verified,
Answer must be verified
- Exceptions
 - Public agencies



PARTIES FOR TRADITIONAL

- “Petitioner” is the aggrieved person or entity
- “Respondent” is typically, agency or officer whose conduct is challenged
 - Double check statutory scheme



PARTIES FOR TRADITIONAL (CON'T)

- “Real Parties in Interest” must be named where appropriate
 - If relief sought would affect the interest of 3rd persons, they must be named



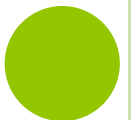
TWO METHODS FOR TRADITIONAL MANDAMUS

- Alternative writ
 - C.C.P. § 1088-1089
- Standard service of Petition
 - C.C.P. 1089.5



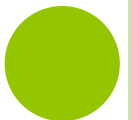
SERVICE OF PETITION STEPS

- Serve Petition (and summons if required) on Respondent and Real Parties in Interest
- File proof of service with court



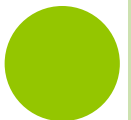
RESPONSE TO PETITION

- Response due 30 days after service (CCP 1089.5)
- EXCEPT, if administrative record must be filed, response is due 30 days after record is lodged or received



IF WRIT ISSUES

- Serve it on Respondent
like summons and complaint
- Courts often require the
agency to file a “Return”
- Petitioner can object to
Return

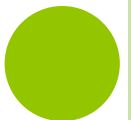


WHAT CONSTITUTES THE RECORD



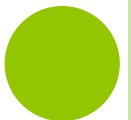
ADMINISTRATIVE MANDAMUS RECORDS

- Materials before the decision maker
- Certain extra-record evidence in limited cases



ORDINARY MANDAMUS RECORDS

- No general statutory rule
- Use declarations or witnesses as needed



PROCEDURE FOR RECORDS

- For Administrative Mandate, either:
 - Request in writing agency prepare record
 - C.C.P. § 1094.6(c)
 - Agency has 190 days to prepare it



PROCEDURE FOR RECORDS

○Or,

- Petitioner may elect to prepare the record



PROCEDURE FOR RECORDS— ADMINISTRATIVE

- Agency can recover costs to prepare record from Petitioner
- Agency must certify the record regardless of who prepares it



CORRECTING THE RECORD

- Either Petitioner or Respondent may move to augment or strike portions of the record
- Done via noticed motion
 - Often judges defer decision until time of trial



FINAL TIPS

- Some courts that see lots of writs have dedicated departments and procedures
- Examples
 - L.A.
 - Sacramento



ALWAYS CHECK LOCAL RULES

- Some courts that see lots of writs have dedicated departments and procedures
 - L.A.
 - Sacramento



L.A. COUNTY WRIT PRACTICE

- Assigned to one of the dedicated writ departments
- Typically, a status conference is held to discuss record preparation and briefing schedule



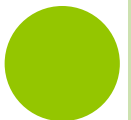
L.A. COUNTY WRIT PRACTICE

- Common in L.A. to agree to briefing schedule, but not required
- In absence of agreed or ordered schedule, standard notice provisions apply



RESOURCES

- CEB Guide: California Administrative Mandamus
- CEB Guide: Civil Writ Practice
- Witkin California Procedure



QUESTIONS

