



Writs of Mandate

A Primer on Traditional and
Administrative Writs
for Los Angeles Law Library

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(c) Colantuono, Highsmith & Whatley, PC

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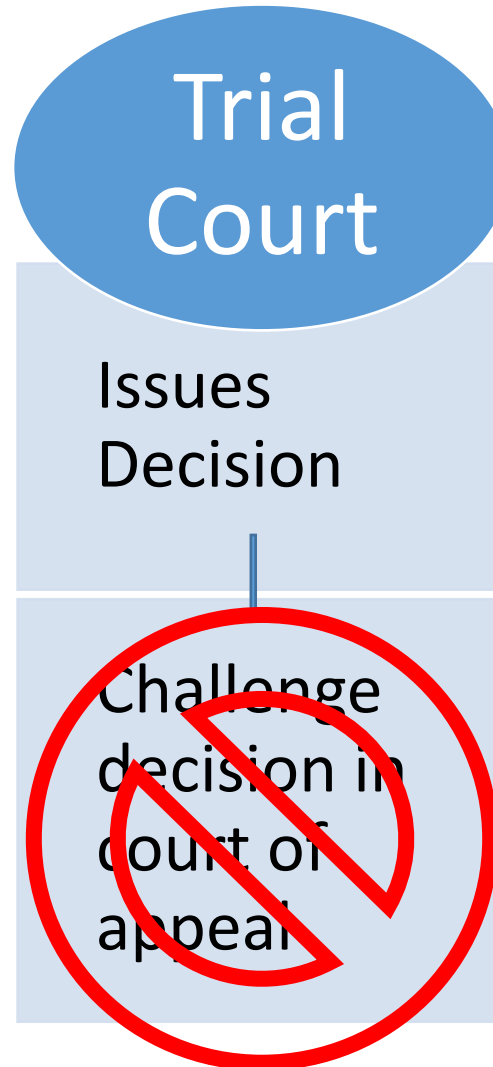
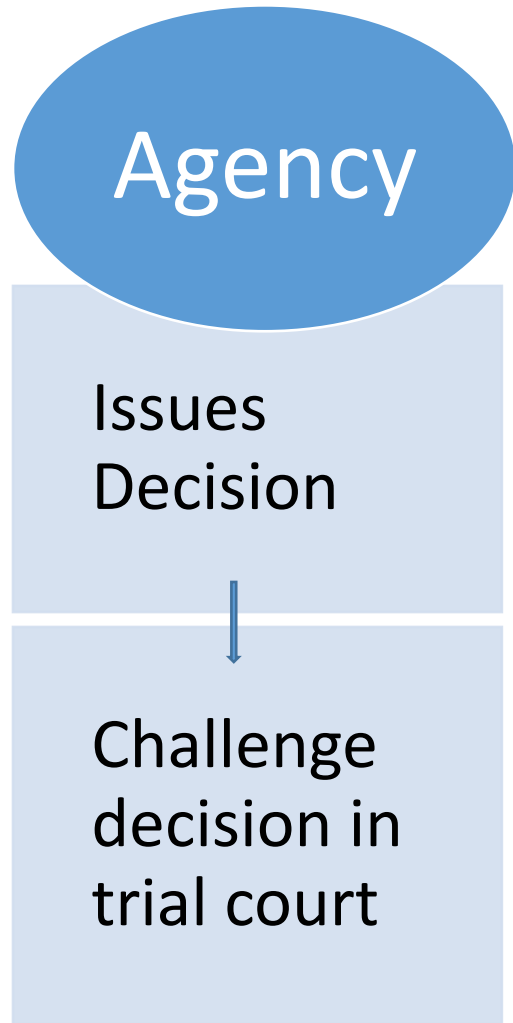
What We'll Cover

- 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?

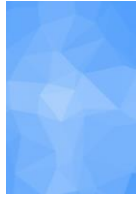


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What is a Writ?

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



Examples

Challenge

- Challenge DMV decision to suspend license

Challenge

- Challenge planning commission approval/denial for development project

Challenge

- 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 Summary Judgment Motion

Traditional Mandamus trial

- Varies

Starts with a Petition for Writ, followed by briefing and a trial or hearing

Traditional or Administrative?



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

NB: CCP means Code of Civil Procedure

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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**

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Statute of Limitations for Administrative



FOR MOST LOCAL AGENCIES,
90 DAYS AFTER DECISION IS
FINAL (CCP 1094.6(B))



BUT IF ADMINISTRATIVE
PROCEDURES ACT 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

Some statutes have
significantly shorter
limitations periods

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Procedure for Administrative Writs (Con't)

- Once record is filed, proceed via noticed motion and written briefs
- Hearing on merits typical

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
- Adequate opportunity to present case
- Was decision maker biased

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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))

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Standard 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.
 - Default rule
(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

- Agency or official has clear and present legal duty & failed to comply
- 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 may be lost over time

Other Remedies Inadequate

Exhaust any available
administrative remedies

Petition may include claims for
declaratory and injunctive relief

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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

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Service of Petition Steps

1. Serve

Serve Petition (and
summons if required)
on Respondent and
Real Parties in
Interest

2. File

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 is Issued

- 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



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Administrative Mandamus Records

Materials before the
decision maker

Certain extra-record
evidence in limited cases

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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



Check Local Rules



Some courts that see lots of writs have dedicated departments and procedures



Examples L.A.
Sacramento

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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

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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

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Resources

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

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Questions



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