Writs of Mandate

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

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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?

Agency

Issues
Decision

Challenge
decision in
trial court

Trial Court

Issues
Decision

Challenge
decision in
court of
appeal
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 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 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
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 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
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?
  o Was there a fair trial?
  o 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
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))
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
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

• Check Local Rules

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

• Examples
  • 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