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# 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

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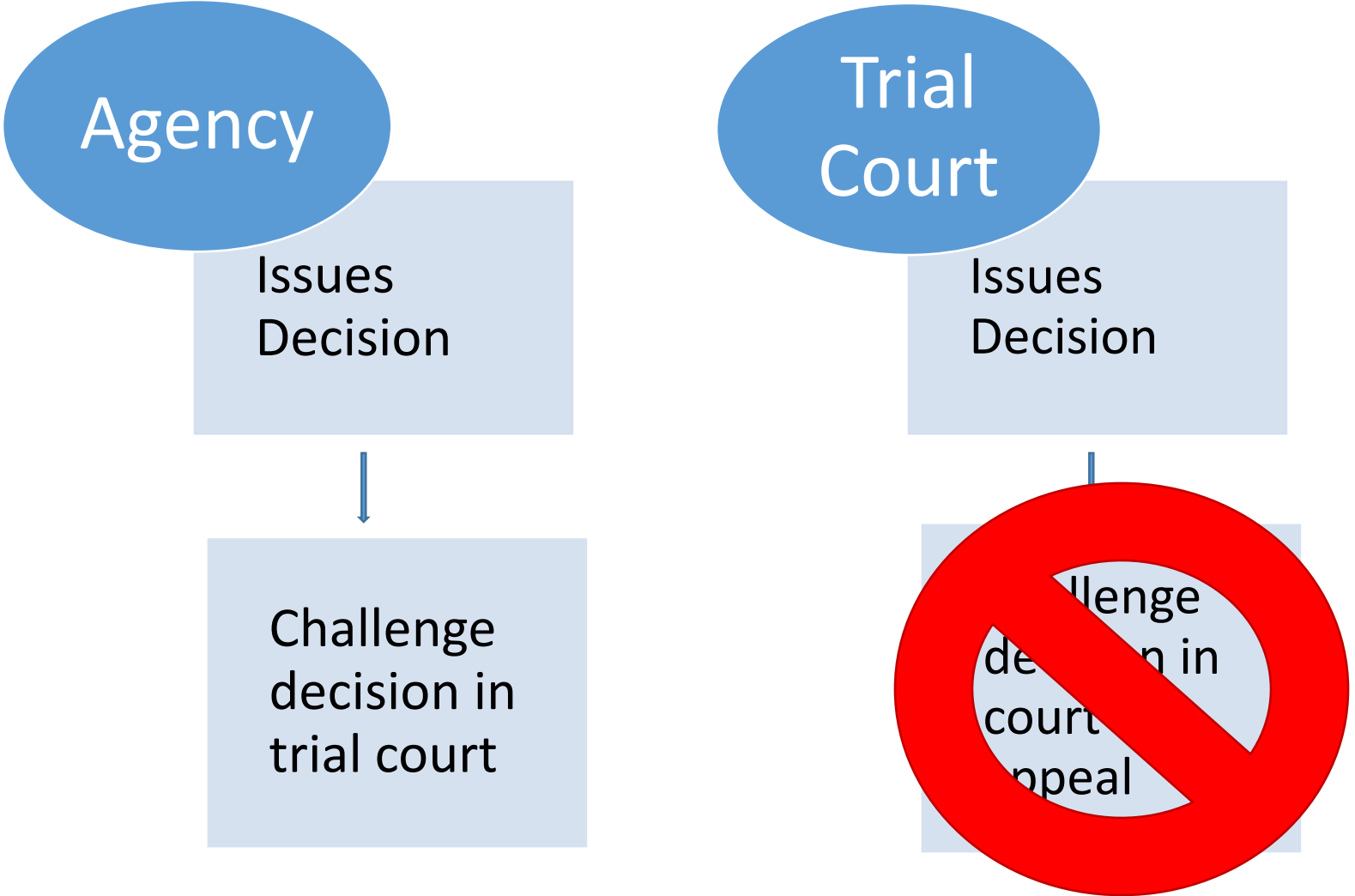
# What We Won't Cover

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

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# 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 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

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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

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# 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)

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# Statute of Limitations for Administrative

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

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# Procedure for Administrative Writs (Con't)

- Once record is filed, proceed via noticed motion

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# 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?

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# Administrative Excess Jurisdiction

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

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# Administrative Fair Trial

- Procedural fairness
- Examples:
  - Adequate notice
  - 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))

# 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

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# 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

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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

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# 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 3<sup>rd</sup> 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

- 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

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# 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

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# 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

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# 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

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# Procedure for Records— Administrative

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

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# 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

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# 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

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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
- Within California Procedure

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# Questions



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