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2023 Public Sector Conference

Putting on the Writs: Bringing and Defending Traditional and Administrative Writs

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Conference Reference Materials

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Putting on the Writs: Bringing and Defending Traditional and Administrative Writs

April 28, 2023

Panel

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Agenda

- Overview
- Traditional Writ of Mandate
 - Requirements
 - Review of Quasi-Legislative Acts
 - Procedural Issues & Tactical Considerations
 - Examples
- Administrative Writs
 - Requirements
 - Grounds for Inquiry
 - Standard of Review
 - Procedural Issues & Tactical Considerations
 - Examples
- Resources



Traditional Writs v. Administrative Writs - Overview

Traditional Writs

- Governed by Code of Civil Procedure § 1085
- Used to review legislative or quasi-adjudicatory acts or omissions
 - E.g., actions by city, county, state agencies including boards, commissions, and school districts
- Asks the court to compel an inferior tribunal to perform a legally required duty

Administrative Writs

- Governed by Code of Civil Procedure § 1094.5
- Used to review decisions by administrative agencies
 - e.g., SPB, OAH decisions
- Asks the court to set aside the decision of the administrative agency

Traditional Writ of Mandate - Requirements

1. Respondent's Clear and Present Duty (CCP § 1085)

- “[P]erformance of an act which the law specially enjoins”
- Ministerial duty, or
- Refusal or failure to exercise discretion, or
- “Admission of a party to the use and enjoyment of a right or office to which the party is entitled”

2. Petitioner's Beneficial Interest in the Outcome (CCP §1086)

3. No Plain, Speedy, or Adequate Remedy at Law (CCP §1086)

- Requires exhaustion of administrative remedies.

Traditional Writ of Mandate - Review of Quasi-Legislative Acts

California differentiates between “legislative” and “adjudicatory” actions. (*Saleeby v. State Bar* (1985) 39 Cal.3d 547, 560; *Bollengier v. Doctors Med. Ctr.* (1990) 222 Cal.App.3d 1115, 1123.)

Traditional writs, declaratory relief and injunction or a combination of these remedies is the appropriate form of judicial review for legislative decisions involving the adoption of a “broad, generally applicable rule of conduct on the basis of general public policy.” (*Saleeby v. State Bar.*)

Adjudicatory determinations, not quasi-legislative actions, are reviewable by administrative mandamus. (CCP § 1094.5; *Id.*)

Traditional Writ of Mandate

- Procedural Issues & Tactical Considerations

- Claims notices: Gov. Code §§ 810-996.6; generally, not required for traditional mandamus claims but recommended.
- Confirming filing deadline: specific statutes of limitations (the gravamen of the claim) controls over general provisions, requiring filing within shortest applicable period.
- Compliance with local and department rules: e.g., San Diego Local Rule 2.4.8, entitled Extraordinary Writ, says that petitions are filed in the civil business office and that the noticed motion procedure should be used whenever possible; but Department Rules vary re briefing schedule and hearings.

Traditional Writ of Mandate

- Procedural Issues & Tactical Considerations

- Injunctive relief / provisional remedies: generally not available ahead of hearing/trial [CCP §526(b)(4) and Civ. C. §3423(d)] but limited circumstances may warrant, e.g. constitutional challenge or public officials action exceeds power.
- Answer: generally due 30 days after service of petition.
- Stipulated vs. court ordered briefing schedules: summary judgment superfluous.
- Statements of Decision (CCP §632) and judgments prescribing relief and addressing costs and fees: At court's discretion, often prepared by prevailing party with submittal and objection timelines prescribed by (CRC Rule 232).

Traditional Writ of Mandate - Examples

Non-employment traditional writs

- Environmental, e.g. CEQA, Air Resources Board, Coastal Commissions
- Zoning Ordinances
- Government Contracting
- Enforcing Corporate Rights



Traditional Writ of Mandate

- Examples

Employment & professional licensure writs

- Petitions to mandate due process (Skelly, administrative hearing)
- Challenging compensation / benefit suspensions pending disposition
- Enforcing reinstatement and reimbursement of compensation / benefits
- Cross-petitions to §1094.5 appeals (when offense is a good defense)
- Petitions to mandate issuance of licenses

Traditional Writ of Mandate - Examples

CPRA writ litigation

- Petitions to enforce CPRA requests
- “Reverse CPRA” writs to block disclosure of confidential information
- Procedural considerations (TROs, protective orders, lodging records)

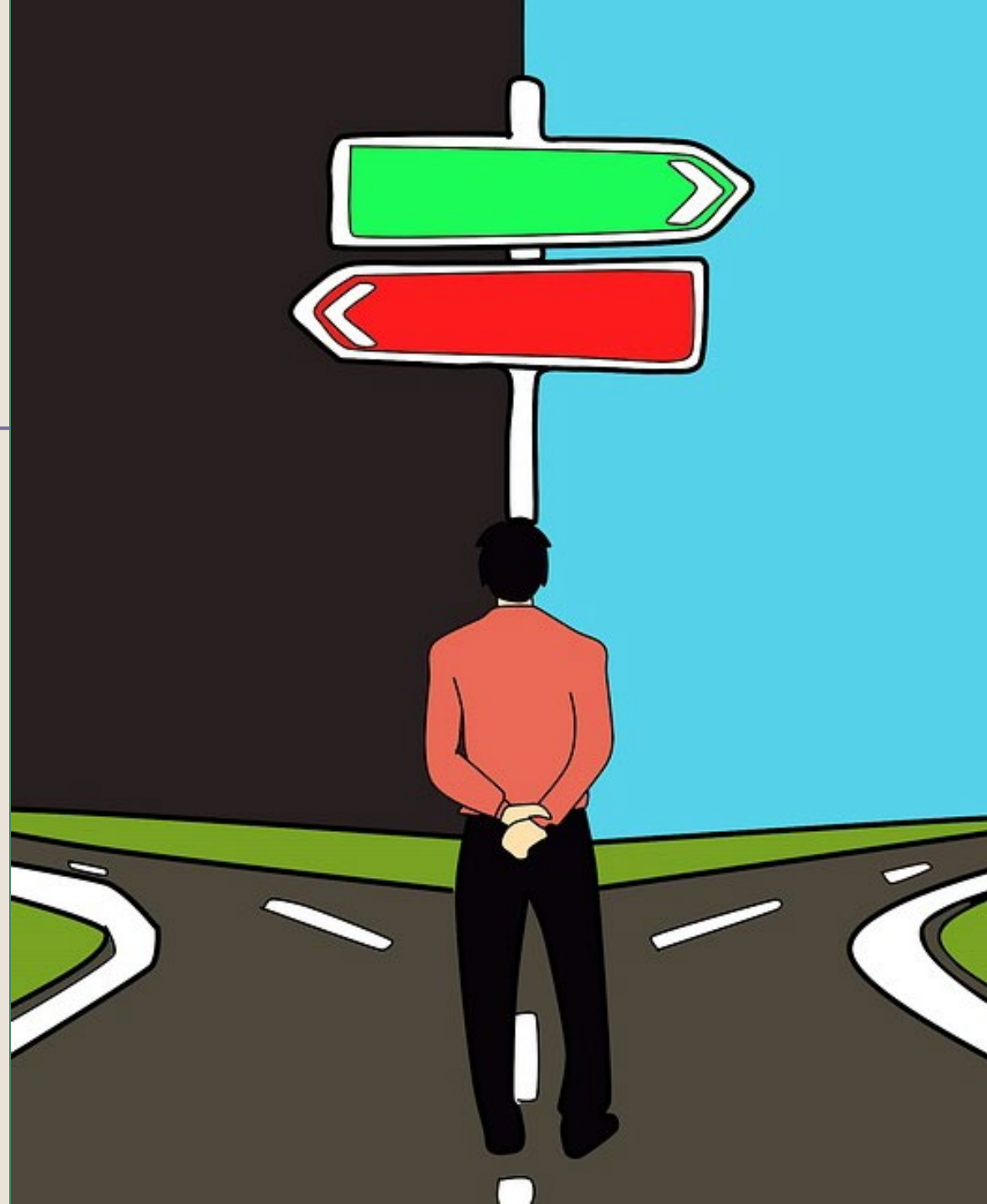


Traditional Writ of Mandate - Examples

Pension benefits

- Challenging CalPERS or CalSTRS benefit overpayment demands
 - SB 278 (CalPERS, eff. Jan 2022)
 - AB 1667 (CalSTRS, eff. Jan 2023)
- Contracting agencies or “the system” responsibility for compensation reporting errors

Administrative Writs



Administrative Writs - Requirements

Used to review the validity of any final administrative order or decision pertaining to proceedings in which:

1. Hearing is legally required to be given;
2. Evidence is required to be taken; and
3. Discretion in the determination of facts is vested in the inferior tribunal, board or officer.

(CCP § 1094.5, subd. (a))

Administrative Writs - Grounds for Inquiry

1. Did the administrative agency proceed without, or in excess of, jurisdiction?
2. Was there a fair trial?
3. Was there a prejudicial abuse of discretion?

(CCP § 1094.5, subd. (b))

Administrative Writs - Standards of Review

Independent Judgment

v.

Substantial Evidence



Administrative Writs

- Independent Judgment

- Applies when required by statute or when a vested right is at stake.
Examples:
 - Grant or denial of motion to disqualify judge (CCP § 170.3(d))
 - Order denying summary judgment / adjudication (CCP § 437c(m)(1))
 - Revocation of license, termination of employment
- Abuse of discretion is established if the court determines that the findings are not supported by the weight of the evidence. (CCP § 1094.5(c).)

Administrative Writs

- Substantial Evidence Test

- Applies in all other cases.
- Abuse of discretion is established if the court determines that the decision is not supported by the findings, or the findings are not supported by substantial evidence in light of the whole administrative record. (CCP § 1094.5(c).)
- Substantial evidence exists where the administrative record provides any reasonable factual basis for the findings. (*Topanga Ass'n for a Scenic Community v. County of Los Angeles* (1989) 214 Cal.App.3d 1348, 1356-57.)
- The findings and actions of the agency are presumed to be supported by substantial evidence. (*Desmond v. County of Contra Costa* (1993) 21 Cal.App.4th 330, 335-36.)

Administrative Writs

- Procedural Issues & Tactical Considerations

File Verified Petition

- Must be filed within 90 days of the agency's "final" action. (CCP § 1094.6(b).)

Request Administrative Record

- Respondent agency prepares certified record. (CCP § 1094.6(c).)
- Petitioner pays for cost of record.

Consider Whether To Seek Temporary Stay of Administrative Decision

- Ex Parte Application under CCP § 1094.5 (g) or (h).
- Likelihood of prevailing on merits.

Hearing by Noticed Motion

- Hearing date will determine briefing schedule. Review Local Rules.

Administrative Writs

- Procedural Issues & Tactical Considerations

- Court may:
 - Deny the writ; or
 - Command administrative agency to set aside the order or decision and reconsider the case in light of the court's opinion.
- Court may not limit or control in any way the discretion legally vested in the administrative agency. (CCP § 1094.5(f).)

Administrative Writs

- Examples

Challenge decisions of administrative agencies, including:

- State Personnel Board
- Public Employment Relations Board
- Medical Board and other licensing boards
- Department of Real Estate
- DMV license suspensions / revocations

Resources

- Code of Civil Procedure §§ 1084-1097
- Sacramento County Writ Procedural Guide
<https://www.saccourt.ca.gov/civil/docs/writ-procedural-guide.pdf>
- Court of Appeal Handout on Writs
<https://www.courts.ca.gov/documents/4DCA-Div1-Handout-on-Writs.pdf>

Questions?



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