PUBLIC LAW

CALIFORNIA LAWYERS ASSOCIATION

presents

Public Law 101 Conference

Writs

Wednesday, November 15, 2023
3:30 p.m. – 4:30 p.m.

Speakers:

Patricia Ursea, Of Counsel
BB&K Law, LLP

Conference Reference Materials

Attorney	A. Patricia Ursea, Of Counsel Best Best & Krieger LLP	
Practice Areas	Public Agency Litigation Municipal Law Constitutional Law Class Actions & Mass Torts Environmental Law & Natural Resources Writs of Mandate	
Education	Southwestern University School of Law, J.D., *magna cum laude* University of California San Diego, B.A. in Communication	

Patricia Ursea serves as Of Counsel in BB&K's Municipal Law and Litigation practice groups. She has over 20 years of litigation experience, nine of which she spent almost exclusively serving public agency clients both in-house and as outside counsel. Patricia currently represents numerous counties, cities, and other public entities in a wide array of legal challenges involving, e.g., civil rights issues, prevailing wage laws, environmental contamination liability, class action litigation, writs of mandate, and appeals.

Before joining BB&K, Patricia most recently served as Deputy City Attorney for the City of Los Angeles in the Business & Complex Litigation Department, where she defended the City in high-stakes disputes involving constitutional challenges to the City's ordinances, policies, and practices; civil rights class actions; disability suits; qui tam actions; election challenges; and contract disputes.

Before pivoting to public entity work, Patricia was Counsel at O'Melveny & Myers LLP, where she represented private clients nationwide on a variety of litigation and business matters, including class actions and mass torts, antitrust, insurance coverage disputes, and healthcare. Patricia's diverse experiences litigating in both the private and public sector have provided her with an expansive understanding of a wide range of legal issues, as well corporate and public agency priorities, challenges, and unique interests. Consequently, Patricia advises clients with a big-picture perspective of the legal, socio-economic, and political issues that may be in play in any given case. Patricia's broad spectrum of experiences also aids her in shaping innovative arguments in cases that raise novel issues and developing creative approaches to resolve disputes outside of the courtroom.

In addition to her litigation practice, Patricia is passionate about her role as a board member of the Volunteers of America Los Angeles, where she chairs the Governance Committee. This work gives Patricia the opportunity to be involved in community efforts to develop services for rehabilitated gang members, unhoused persons, and victims of intimate partner battering. She has also handled pro bono matters involving the rights of veterans and abuse victims, and assisted low-income families with a variety of legal needs. Patricia is also a gratified wife and mom, and a lover of animals, books, hiking, and travel.

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The “Why” Behind Writs of Mandate

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What's a "Writ of Mandate"?

What's a "Writ of Mandate"?

- "Writ" means a written order
- "Mandate" means an order that "commands performance"
- A "writ of mandate" is an order to an "inferior tribunal, corporation, board, or person" that commands performance of a specified act required by law
- Procedural vehicle by which to obtain judicial review of an action or decision by a public entity or officer
- "Writ of mandate" may also be called "writ of mandamus" Civ. Proc. Code § 1084

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Appellate vs. Superior Court Writs of Mandate

Appellate Writs

- Supreme Court and Court of Appeal issue a writ of mandate ordering a lower court to do something the law requires
- Interlocutory appeal
- Common law writs (*e.g.,* The law gives a party the right to a jury trial, but the trial court denied a jury trial)
- Statutory writs (*e.g.,* Civ. Proc. Code § 170.3 subd. (d): "The determination of the question of the disqualification of a judge is not an appealable order and may be reviewed only by a writ of mandate from the appropriate court of appeal sought only by the parties to the proceeding.")
- ***Not*** what this presentation is about

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Appellate vs. Superior Court Writs of Mandate

Superior Court Writs

- Superior Court issues a writ of mandate ordering a government, public agency, or officer to do something the law requires
- **Two types of superior court writs of mandate, governed by two different statutes**
  - **"Traditional" or "Ordinary" Mandamus - Civ. Proc. Code § 1085**
  - **"Administrative" Mandamus - Civ. Proc. Code § 1094.5**
- This ***is*** what this presentation is about

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Types of Public Entity "Actions" and "Decisions"

"The applicable type of mandate is determined by

the nature of the [public entity's] action or decision."

Tielsch v. City of Anaheim (1984) 160 Cal.App.3d 570, 574 (emphasis added)

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Types of Public Entity "Actions" and "Decisions"

Legislative vs. Quasi-Legislative Acts

"[T]he formulation of a rule to be applied to all future cases." *Strumsky v. San Diego County Employees Ret. Ass'n*. (1974) 11 Cal.3d 28, 34-35, fn. 2.

- **Legislative Actions** – actions by counties and cities under authority granted to them by the California Constitution to protect public health, safety and welfare, *aka* "police powers" Cal. Const., art. XI, § 7; *see Gross v. Superior Court* (1985) 171 Cal.App.3d 265, 273
- **Quasi-Legislative Actions** – actions by counties, cities, or other agencies under authority delegated to them from the Legislature. *Ramirez v. Yosemite Water Co.* (1999) 20 Cal.4th 785, 799

Courts often fail to distinguish between legislative and quasi-legislative acts, but the distinction is important! (More on this later)

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Types of Public Entity "Actions" and "Decisions"

Adjudicatory (aka Quasi-Judicial) Decisions vs. Legislative/Quasi-Legislative Actions

"[A]n adjudicatory act involves the actual application of [] a rule [formulated by legislative or quasi-legislative action] to a specific set of existing facts." *Strumsky v. San Diego County Employees Ret. Ass'n*. (1974) 11 Cal.3d 28, 34-35, fn. 2

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Types of Public Entity "Actions" and "Decisions"

Ministerial vs. Discretionary Actions

- Ministerial acts are "act[s] that a public [entity] [or] officer is required to perform in a prescribed manner in obedience to the mandate of legal authority and without regard to [their] own judgment or opinion concerning such act's propriety or impropriety, when a given set of facts exists." *People ex rel. Fund American Companies v. California Ins. Co.* (1974) 43 Cal.App.3d 423, 431
    - *e.g.,* County X's ordinance requires the County to negotiate in good faith with an employee union; the County has ministerial duty to meet and confer
- Discretionary acts are performed pursuant to "the power conferred on public functionaries to act officially according to the dictates of their own judgment." *People ex rel. Fund American Companies v. California Ins. Co.* (1974) 43 Cal.App.3d 423, 431
    - *e.g.*, County X does not have to agree to any specific terms during the meet and confer

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Why does it matter what kind of Action or Decision is being challenged?

By their very nature, writs of mandate implicate the **Separation of Powers Doctrine**

> "A court has no authority to issue a writ of mandate that interferes with powers exclusively committed to the other branches of government…The California Constitution's separation of powers doctrine forbids the judiciary from issuing writs that direct the Legislature to take specific action, including to…pass legislation. Under these principles, a court is prohibited from using its writ power to require [to take action within its authority and discretion] even if the Legislature is statutorily required to [take such action]." *California School Bds. Assn. v. State of California* (2011) 192 Cal.App.4th 770, 799

The nature of the Action or Decision **matters** because the Court's **standard of review** (how much it may scrutinize and judge the agency's action or decision) depends on how much authority and discretion the public agency has to perform the act or make the decision.

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Back to the Two Types of Writs of Mandate

Traditional (aka Ordinary) Mandamus (Civ. Proc. Code § 1085)

- Used to challenge legislative or quasi-legislative acts. *California Water Impact Network v. Newhall County Water Dist.* (2008) 161 Cal.App.4th 1464, 1482

- Also used to challenge adjudicatory/quasi-judicial acts if evidentiary hearing is not required. *Stone v. Regents of University of California* (1999) 77 Cal.App.4th 736, 745

Administrative Mandamus (Civ. Proc. Code § 1094.5)

- Used to challenge a final adjudicatory decision resulting from an administrative proceeding in which by law a hearing is required to be given, evidence is required to be taken and discretion in the determination of facts is vested in a public agency. *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 566-567

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Why Two Writ of Mandate Statutes? A Brief History Lesson

- In 1851, the state legislature enacted the California Practice Act, which later became the Code of Civil Procedure. In 1872, the California Practice Act became the California Code of Civil Procedure, and the sections on these writs largely remained the same
- The CPA and CCP included three kinds of writs:
    - **Writ of certiorari (review)**, which allows a court to review the decision of an inferior tribunal or person exercising judicial functions to determine whether it has exceeded its jurisdiction (Civ. Proc. Code § 1068);
    - **Writ of prohibition (restraint)**, which allows a court to stop the proceedings of an inferior tribunal or person exercising judicial functions when they are in excess of the tribunal's jurisdiction (Civ. Proc. Code § 1102); and
    - **Writ of mandamus (mandate)**, which allows a court to compel an inferior tribunal, government, or officer to perform some duty required by law (Civ. Proc. Code § 1085)

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Why Two Writ of Mandate Statutes? A Brief History Lesson

In the early 1900s, there was an explosion of delegation of powers to administrative agencies.

> "Possibly the most significant structural change in our government since the date of its founding has occurred in the twentieth century development of a huge administrative bureaucracy. To deal with the manifold problems of modern society these administrators have been delegated substantial quasi-legislative and quasi-adjudicative powers. Initially, the courts reacted to this executive expansion with the suspicion and fear that the burgeoning bureaucracy would endanger the prevailing concepts of individual rights." *Bixby v. Pierno* (1971) 4 Cal.3d 130, 142 (citations omitted)

- *Standard Oil Co. v. State Bd. of Equalization* (1936) 6 Cal.2d 557– writs of certiorari could not be used to review administrative agency decisions
- *Whitten v. State Bd. of Optometry* (1937) 8 Cal.2d 444 – writs of prohibition could not be used to review administrative agency decisions

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Why Two Writ of Mandate Statutes? A Brief History Lesson

That just left writs of mandamus…

And the Court made it work.

- *Drummey v. State Bd. of Funeral Directors and Embalmers* (1939) 13 Cal.2d 75, 82-85– Agency decisions that implicate constitutional property rights ***must*** be reviewed by the judiciary; the separation of powers doctrine would be violated if courts could not review such alleged deprivations. Particularly since writs of certiorari and prohibition had been foreclosed by prior decisions, "mandate is the only possible remedy available to those aggrieved by administrative rulings" of this kind.

The Legislature helped out too.

- In 1945, the legislature codified *Drummey* with the Administrative Procedure Act ("APA"), which adopted administrative mandamus as the appropriate avenue for reviewing agency decisions under Code of Civil Procedure section 1094.5.

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Why Two Writ of Mandate Statutes? A Brief History Lesson

The Court of Appeal summarized this history as follows:

> "The traditional method of reviewing the quasi-judicial determinations of an administrative agency was by certiorari. Prior to the enactment of Code of Civil Procedure section 1094.5, judicial review of these decisions followed an erratic course of development due to the application of the separation of powers doctrine to legislatively-derived agencies, as distinguished from constitutionally-derived agencies. To add to the confusion, local agencies were allowed to exercise quasi-judicial functions because they were outside the reach of the constitutional mandate of separation of powers at the state level. The use of certiorari was subsequently replaced by mandamus and trial de novo reviews of administrative agency decisions, creating serious procedural problems not solved by statute or rule. Code of Civil Procedure was enacted in 1945. The purpose of the new section, according to the Judicial Council's comments, was to clarify the situation with respect to the procedures for judicial review of adjudicatory decisions by administrative agencies."

Eureka Teachers Assn. v. Board of Education (1988) 199 Cal.App.3d 353, 365

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Now Everything Makes Sense

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Now Everything Makes Sense

Writ relief under cannot be utilized "to compel a public agency to exercise discretionary powers in a particular manner ...". *AIDS Healthcare Foundation v. Los Angeles County Dept. of Public Health* (2011) 197 Cal.App.4th 693, 700-701

Although a court may order a government entity to exercise its discretion in the first instance when it has refused to act at all, the court cannot "compel the exercise of that discretion in a particular manner or to reach a particular result." *Daily Journal Corp. v. County of Los Angeles* (2009) 172 Cal.App.4th 1550, 1555

"Even if mandatory language appears in [a] statute creating a duty, the duty is discretionary if the [public entity] must exercise significant discretion to perform the duty." *Sonoma AG Art v. Dept. of Food & Agriculture* (2004) 125 Cal.App.4th 122, 127

Where the facts "demonstrate[] the respondent's willingness to perform without coercion, the writ of mandate may be denied as unnecessary; and if the respondent shows actual compliance, the proceeding will be dismissed as moot. No purpose would be served in directing the respondent to do what has already been done." *TransparentGov Novato v. City of Novato* (2019) 34 Cal.App.5th 140, 147

A writ of mandamus will not issue to compel performance of an impossible act. *In re Wilkes* (1908) 8 Cal. App. 659

A writ of mandate is not available to enforce abstract rights, to command futile acts with no practical benefits. *California High-Speed Rail Authority v. Superior Court* (2014) 228 Cal. App. 4th 676

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Thank you!

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