

# **Sixth District Outline of Original Proceedings and Relief Ancillary to Appeal**

Court of Appeal, Sixth Appellate District  
333 West Santa Clara Street, Suite 1060  
San Jose, CA 95113

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INTRODUCTION .....	1
CHECKLIST FOR COUNSEL .....	2
WRIT TIME LIMITS – EXAMPLES.....	3
MANDATE AND PROHIBITION.....	4
ELEMENTS OF WRITS .....	6
PROCEDURAL REQUIREMENTS FOR WRIT PETITIONS.....	6
PROCESSING A WRIT PETITION .....	8
HABEAS CORPUS .....	10
PROCEDURAL REQUIREMENTS FOR HABEAS PETITIONS .....	10
PROCESSING A HABEAS PETITION.....	12
OTHER ORIGINAL PROCEEDINGS .....	12
RELIEF ANCILLARY TO APPEAL.....	13

### INTRODUCTION

In the Court of Appeal, Sixth Appellate District (hereafter Court of Appeal), petitions for *writs of mandate, prohibition, certiorari, and habeas corpus, statutory review petitions, other miscellaneous applications to the original jurisdiction of the court, applications for supersedeas or other relief pending appeal under Code of Civil Procedure section 923 or other statutory provisions, applications for bail pending appeal, and transfers of appeals from the superior court appellate division* are addressed to the Court of Appeal's discretion and are usually handled independently of the Court of Appeal's appeal caseload.

The following is a simplified outline of such proceedings. It addresses primarily the two most common extraordinary writs (mandate and prohibition) and the writ of habeas corpus. For a discussion of the criteria for writ relief, see *Omaha Indemnity Co. v. Superior Court* (1989) 209 Cal.App.3d 1266. For a comprehensive discussion, see the following writ practice guides:

Eisenberg et al., California Practice Guide: Civil Appeals and Writs (The Rutter Group 2010) Chapter 15, Writs

8 Witkin, California Procedure (5th ed. 2008 & 2010 supp.) Chapter 12, Extraordinary Writs

Abbott et al., California Civil Writ Practice (Cont.Ed.Bar 4th ed. 2010)

Bonneau et al., Appeals and Writs in Criminal Cases (Cont.Ed.Bar 3d ed. 2010) Chapters 7-11, Writs in California State Courts

The Court of Appeal will be glad to respond to procedural questions. Call the clerk's office at (408) 277-1004.

General information about the Court of Appeal, Sixth Appellate District is available on the California Courts web site, [www.courts.ca.gov/6dca.htm](http://www.courts.ca.gov/6dca.htm).

## **CHECKLIST FOR COUNSEL**

**Time Limits:** Is this a petition for one of the statutory writs with time limits, and, if so, is it timely?

If this is a Penal Code section 999a or section 1538.5 writ petition in a felony case, was the motion made in the trial court within 60 days of the arraignment? (Pen. Code, § 1510.)

Is this a petition for a nonstatutory writ? If so, and if more than 60 days have passed since the order to be reviewed was filed, explain the delay in filing.

**Record:** Does your record include, at a minimum, the order challenged, the pleadings pro and con leading up to the order, the transcript of the hearing if any, anything else needed to give a full understanding of what the trial court did and its reasons for doing so, and the identity of the trial judge? (Cal. Rules of Court, rule 8.486(b).)<sup>1</sup> Account for any omissions.

Exhibits must begin with a table of contents, must be index-tabbed by number or letter, must be paginated consecutively, and must be bound together at the end of the petition or in separate volumes not to exceed 300 pages each. (Rule 8.486(c)(1).)

**Service:** Be sure to include a proof of service on all interested parties. If you are asking for a temporary stay within five days after you file the petition, serve all adverse parties by hand delivery and show in your proof of service you have done so.

**Sealing:** Rule 8.46 governs the procedures for the filing or lodging of sealed records, records proposed to be sealed, and the procedure for unsealing a record.

**Other Remedies Inadequate:** If this is a nonstatutory writ petition, you must justify it by showing why appellate or other remedies are inadequate. Explain the absence of other adequate remedies and the irreparable harm if the writ is not granted.

**Opposition:** Preliminary opposition may be requested by the court, but it is not required. No affirmative relief other than a temporary stay will be granted without asking for opposition. If you are asked to file preliminary opposition, you will be given 15 days in most circumstances.

**Lowest Court:** Petitions should be filed in the lowest available court. (Rule 8.486(a)(1).) Start in the superior court if the underlying case formerly would have been

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<sup>1</sup> All further references are to the California Rules of Court unless otherwise indicated.

## **Outline of Original Proceedings and Relief Ancillary to Appeal**

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filed in municipal court. Stays that the superior court has discretion to grant should be requested there first.

**Verification:** Petitions must be verified and essential facts should not be stated on information and belief. It is essential to support a stay request with a verified showing of need.

**Petition for Review:** Time to file a petition in the Supreme Court for review of a summary denial without opinion is 10 days from the date of the denial. (Rule 8.500(e).)

There is no power in the Court of Appeal to reconsider a summary denial. A summary denial order is final immediately upon filing in the Court of Appeal. (Rule 8.490(b)(1).) If the writ petition is accepted for review and decided by opinion, then unless the Court of Appeal shortens time under rule 8.490(b)(3), the normal time for finality (30 days from filing of the opinion) will apply and the 10 days will not run until the opinion is final as to the Court of Appeal. (Rule 8.490(b).)

**Related Matters:** Disclose all related matters pending in the Court of Appeal (rule 8.486(a)(3)) and any prior petitions you have filed in the Court of Appeal related to the same subject matter.

**Questions:** The clerk's office is glad to answer procedural, but not substantive questions. Call the clerk's office at (408) 277-1004.

## **WRIT TIME LIMITS – EXAMPLES**

### **STATUTORY Time Limits:**

10 days after service of written notice of order	• Disqualification/challenge of a judge	Code Civ. Proc., § 170.3(d)
	• Quash service denied	Code Civ. Proc., § 418.10(c)
20 days after service of written notice of order	• Coordination	Code Civ. Proc., § 404.6
	• Expunge lis pendens	Code Civ. Proc., § 405.39
	• Good faith settlement	Code Civ. Proc., § 877.6(e)
	• Inspection of public records	Gov. Code, § 6259(c)
	• Reclassify civil action	Code Civ. Proc., § 403.080
	• Summary judgment denied or summary adjudication	Code Civ. Proc., § 437c(m)(1)
	• Venue	Code Civ. Proc., § 400

## Outline of Original Proceedings and Relief Ancillary to Appeal

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20 days after first arraignment	• Juvenile unfitness	Rule 5.770(i)
15 days after entry of order denying motion to dismiss	• Set aside information or indictment	Pen. Code, §§ 995, 999a
30 days after entry of order granting or denying motion to suppress evidence	• Suppression of evidence	Pen. Code, §§ 1538.5 (i), (o)
30 days after issuance of final ALRB order	• Agricultural Labor Relations Board (ALRB)	Lab. Code, § 1160.8
30 days after PUC decision on rehearing	• Public Utilities Commission (PUC)	Pub. Util. Code, § 1756
45 days after denial or disposition of reconsideration	• Workers' Compensation Appeals Board (WCAB)	Lab. Code, § 5950

### NONSTATUTORY 60-Day Rule:

60 days after entry of order	• Nonstatutory writ petition	<i>Popelka, Allard, McCowan &amp; Jones v. Superior Court</i> (1980) 107 Cal.App.3d 496
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## MANDATE AND PROHIBITION

Review by extraordinary writ, unlike review by appeal, is within the discretion of the reviewing court, and statewide statistics suggest that writ relief will be denied nine times out of ten. Civil pleading (see *Babb v. Superior Court* (1971) 3 Cal.3d 841, 851) and discovery (see *Oceanside Union School Dist. v. Superior Court* (1962) 58 Cal.2d 180, 185-186, fn. 4) are examples of areas in which it is particularly difficult to get writ review. To succeed, a writ petition must not only meet technical requirements but also persuade the reviewing court that its intervention is necessary. The petition should show that the decision below was clearly and prejudicially wrong and that effective relief can be given by writ and is not available (at least as a practical matter) in any other way. (See, e.g., *Hogya v. Superior Court* (1977) 75 Cal.App.3d 122, 128-130.) It may also be effective to show that the petition is supported by a strong judicial policy such as the preference for trial on the merits and that writ relief would save time and judicial resources. There are several statutory provisions for writ review. If a statute is

## **Outline of Original Proceedings and Relief Ancillary to Appeal**

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applicable, it should be prominently cited early in the petition, as in the following examples.

Coordination	Code of Civil Procedure section 404.6
Denial of motion to set aside information or indictment made on specified grounds	Penal Code section 999a
Good faith settlement determination	Code of Civil Procedure section 877.6, subdivision (e)
In personam jurisdiction (quash service of summons), inconvenient forum, delay in prosecution	Code of Civil Procedure section 418.10, subdivision (c)
Inspection of public records	Government Code section 6259, subdivision (c)
Judicial disqualification	Code of Civil Procedure section 170.3, subdivision (d)
Lis pendens	Code of Civil Procedure section 405.39
Reclassify civil action	Code of Civil Procedure section 403.080
Stay pending appeal in unlawful detainer	Code of Civil Procedure section 1176, subdivision (a)
Summary judgment or adjudication	Code of Civil Procedure section 437c, subdivision (m)(1)
Superior court appellate division judgment granting or denying a writ petition directed to a superior court	Code of Civil Procedure section 904.3
Suppression motions	Penal Code section 1538.5, subdivisions (i) and (o)
Venue	Code of Civil Procedure section 400

### ELEMENTS OF WRITS

**Mandate** is made available primarily “to compel the performance of an act which the law specially enjoins.” (Code Civ. Proc., § 1085.) This narrow definition has been broadened by usage, and mandate is now regularly used not only to compel performance of “ministerial acts” but also to correct “manifest abuses of discretion” by lower courts. As its name implies, mandate is used to order the respondent court to take some affirmative action, although that action may be to vacate an erroneous previous action.

**Prohibition** is made available to prevent judicial action that would be without or in excess of jurisdiction. (Code Civ. Proc., § 1102.) Excess of jurisdiction is defined broadly. (Cf. 8 Witkin, Cal. Procedure (5th ed. 2008 & 2010 supp.) Extraordinary Writs, § 52, pp. 929-930.) On the other hand, the lower court is said to have “power to make an incorrect decision;” therefore, prohibition will not lie to prevent “mere error.” (*Abelleira v. District Court of Appeal* (1941) 17 Cal.2d 280, 287.)

It is not a fatal mistake to request an incorrect writ in the initial petition, so long as the petition alleges facts sufficient to show that the petitioner is prima facie entitled to one of the writs. The reviewing court can save a formally defective petition by construing it to cure the defects. However, it is good practice to ask for the correct writ if the petition is based on a statute that expressly identifies the writ. (See, e.g., Code Civ. Proc., § 400.) Note: Code of Civil Procedure section 437c, subdivision (m)(1), does not identify the writ – request a writ of mandate.

### PROCEDURAL REQUIREMENTS FOR WRIT PETITIONS

This is a quick review of procedural requirements for writ petitions. Many specific requirements are compiled in California Rules of Court, rule 8.486. Rule 8.486 is accessible on the Internet at [www.courts.ca.gov/rules.htm](http://www.courts.ca.gov/rules.htm).

**Standing:** The petitioner must be beneficially interested in the outcome of the proceeding.

**Proper Court:** In general, the writ petition should be filed in the lowest available court. If a higher court is selected, the petition must explain why. (Rule 8.486(a)(1).)

**Timeliness:** A writ petition should be filed promptly. While there is no firm general time limit for a nonstatutory writ petition, the accepted rule is that the petition should be filed within 60 days. (See *Popelka, Allard, McCowan & Jones v. Superior Court* (1980) 107 Cal.App.3d 496, 499.) There are specific time limits in most of the express statutory provisions for writ review, and these specific limits are usually deemed jurisdictional (see, e.g., *Sturm, Ruger & Co. v. Superior Court* (1985) 164 Cal.App.3d



## Outline of Original Proceedings and Relief Ancillary to Appeal

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579). Refer to the examples of Writ Time Limits above, and always research the applicable code sections. Usually a statutory time runs from notice, and if notice was given only by mail, then the statutory extensions apply. (Cf. Code Civ. Proc., § 1013; *Shearer v. Superior Court* (1977) 70 Cal.App.3d 424, 428.) A filing is not timely unless the clerk of the court receives it before the time to file expires. (See rule 8.25(b).)

**Form:** Generally follow the reproduction and binding rules applicable to appellate briefs. See rule 8.486 for rules specific to writ petitions.

- **Petition:** The petition is analogous to a civil pleading. It should state facts sufficient to warrant writ relief. The petition must be verified. (Rule 8.486(a)(4).) Avoid alleging essential facts “on information and belief.” (*Star Motor Imports, Inc. v. Superior Court* (1979) 88 Cal.App.3d 201, 204.) Form petitions are available in the writ practice guides.
- **Memorandum of Points and Authorities:** The petition must be accompanied by a memorandum of points and authorities (rule 8.486(a)(5)), which is normally bound immediately following the petition. Use appellate brief format with index, table of cases, headings, and citations to the record. The memorandum of points and authorities is very important for informed review. If any argument made in the petition was not made in the lower court, the petitioner should justify making a new argument for the first time in the reviewing court. (See *Civil Service Employees Ins. Co. v. Superior Court* (1978) 22 Cal.3d 362, 374-375, fn. 6.)
- **Record:** The petitioner must provide a record adequate to permit informed review. (*Sherwood v. Superior Court* (1979) 24 Cal.3d. 183, 186-187.) Include every relevant document. (Cf. rule 8.486(b).) The most common mistake is to omit the opposing party’s trial court papers. If the record is insufficient, the reviewing court can summarily deny the petition or decline to act until the petitioner has served and filed the missing documents. Per rule 8.486(c), exhibits may be bound together at the end of the petition or in separate volumes not to exceed 300 pages each. The pages must be consecutively numbered. Each exhibit must be index-tabbed by number or letter, and the exhibits must begin with a table of contents listing the exhibits by document title and corresponding index-tab. Include a comprehensive table of contents covering all volumes.
- **Certificate of Interested Entities or Persons (certificate):** Each party in a civil case, other than family, juvenile, guardianship, and conservatorship cases, and any entity that is a defendant in a criminal case must serve and file a certificate at the time of filing their first document in the Court of Appeal in accordance with rules 8.488 and 8.208. The certificate form is available on the Court of Appeal’s web site.

- **Packaging:** Writ documents should be bound in red. (Rule 8.40(b)(1).) Do not use acetate or clear plastic. Bind firmly at the left margin and tape any staples or other sharp fasteners (spiral binding is discouraged). If relief is needed immediately, or if you are requesting a stay in the petition (see rules 8.116, 8.486(a)(7)), or if there is a related appeal pending (see rule 8.486(a)(3)), or if there is a trial date, note these facts prominently on the front cover of the petition and advise the court clerk if the petition is urgent when it is filed.

Prepare an original and four copies of the petition and anything bound with it plus one copy of all separately-bound exhibits for the court, copies of everything (including all exhibits) for all parties who are to be served, and any file and comeback copies you need. (Rules 8.486(c)(3), 8.44(b).) Be sure to include with your originals a proof of service on all interested parties including the respondent court (rule 8.486(e)). If you serve attorneys, indicate their telephone numbers and show their clients' name on the proof of service. If you are asking for a temporary stay within five days after you file the petition, serve all adverse parties by hand delivery and show in your proof of service that you have done so.

**Filing and Fees:** All documents to be filed in the Court of Appeal should be sent or delivered to the Office of the Clerk of the Court, 333 West Santa Clara Street, Suite 1060, San Jose, CA 95113. There is no provision in the court rules for filing by FAX or other forms of electronic transmission. Your documents will not be accepted for filing unless they comply with the California Rules of Court and, in civil matters, are accompanied by either a \$655 filing fee or a signed Application for Waiver of Court Fees and Costs. An interactive application (fee waiver form) is available on the California Courts web site.

**Repeat Applications:** The general rule is that an extraordinary writ petition previously filed and denied in the same or a lower court will not be entertained a second time. (See *Hagan v. Superior Court* (1962) 57 Cal.2d 767, 769-771.) There are exceptions, both by statute (cf. Code Civ. Proc., § 904.3) and within the reviewing court's discretion.

## PROCESSING A WRIT PETITION

**Preliminary Opposition:** Rule 8.487(a) permits any adverse party to file preliminary opposition within 10 days and thereafter permits a petitioner to file a reply within 10 days, but the Court of Appeal may act on the petition without waiting for a preliminary opposition or a reply. The Court of Appeal will not grant relief beyond a temporary stay until opposition has been requested and (if timely submitted) considered. Usually the Court of Appeal's request for preliminary opposition will allow the real party in interest 15 calendar days to respond.

**Preliminary Order:** Upon consideration of the petition and any opposition submitted, the Court of Appeal normally will either (1) deny the petition summarily or (2) order issuance of a peremptory or alternative writ of mandate or prohibition (or issue an order to show cause in lieu of the alternative writ).

- **Summary Denial:** A summary denial order need not be accompanied by a statement of reasons or citation of authority, and it is final immediately.
- **Affirmative Relief:** If affirmative relief is to be granted, the Court of Appeal will issue an alternative writ of mandate or prohibition which directs the relief prayed for in the petition or, in the alternative, that the respondent appear and show cause why the relief should not be granted. An order to show cause may be issued without the alternative writ. In limited circumstances, the Court of Appeal may issue a peremptory writ in the first instance without allowing oral argument and without first issuing an alternative writ or order to show cause. (See *Lewis v. Superior Court* (1999) 19 Cal.4th 1232, 1252-1253; *Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 180.)

**Stays:** At any stage of the proceedings on an extraordinary writ, the reviewing court may issue stay orders to maintain the status quo pending review or for any other reason in the interest of justice. An application for stay order bound with the petition must be noted separately on the front cover (rules 8.116, 8.486(a)(7)), and any application for a stay must be supported by an adequate, verified showing of need. The nature and date of the proceeding or act sought to be stayed must be identified on the cover of the document.

**Return; Reply:** Technically, a “return” in writ practice is a document similar in form and function to the answer in civil pleadings. It admits or denies the allegations of the petition. The alternative writ or order to show cause will usually specify a return date distinct from the oral argument date. Failure to file a return will enable the reviewing court to deem the factual allegations of the petition admitted but will not result in a default. The legal issues must still be heard and decided. The return should be accompanied with a memorandum of points and authorities in opposition to the petition. Petitioner may file a reply to the return unless the Court of Appeal orders otherwise. (Rule 8.487(b).)

**Oral Argument:** Oral argument may be requested by the Court of Appeal. If the Court of Appeal calls for argument by alternative writ or order to show cause (cf. *Bay Development, Ltd. v. Superior Court* (1990) 50 Cal.3d 1012, 1025, fn. 8), argument is encouraged. For a discussion of oral argument rules and strategy, see Eisenberg et al., *California Practice Guide: Civil Appeals and Writs* (The Rutter Group 2010) Chapter 10, Oral Argument.

**Submission and Decision:** Once an alternative writ or order to show cause has issued, the Court of Appeal must file an opinion “in writing with reasons stated.”

(Cal. Const., art. VI, § 14.) The writ proceeding will stand submitted at completion of oral argument or upon the Court of Appeal's approval of waiver of oral argument (cf. rule 8.256(d)(1)). The Court of Appeal has 90 days after submission in which to file the opinion. (Cal. Const., art. VI, § 19.)

**Further Review:** Upon summary denial, the writ proceeding is no longer before the Court of Appeal, and any further review must be sought by timely petition for review in the Supreme Court. Other dispositions are governed by the same rehearing and review rules and time periods applicable to appeals, unless the Court of Appeal orders (under rule 8.490(b)(3)) that a decision granting a peremptory writ will be final immediately or within less than the usual 30-day period.

## HABEAS CORPUS

Habeas corpus (hereafter habeas) is called the "great writ." Its statutory purpose is to inquire into the lawfulness of a person's imprisonment or restraint of his or her liberty (Pen. Code, § 1473), but its use has been expanded to deal with any of various issues related to actual or constructive custody. It has been held that habeas jurisdiction may persist even after custody has terminated and that, if a pending case poses an issue of broad public interest that is likely to recur, the court may exercise an inherent discretion to resolve the issue even though an event occurring during its pendency would normally render the matter moot. (See *In re William M.* (1970) 3 Cal.3d 16, 23-25.) Thus, in an appropriate case, habeas may be used to obtain what amounts to declaratory relief notwithstanding technical mootness. Habeas also has the special property of permitting a new factual inquiry into the issues, often by evidentiary hearing.

It is often said that habeas will not lie to correct ordinary error or to review matters that were rejected on appeal or could have been raised by timely appeal. (*In re Lindley* (1947) 29 Cal.2d 709, 722-723; *In re Waltreus* (1965) 62 Cal.2d 218; *In re Dixon* (1953) 41 Cal.2d 756, 759; see also *In re Harris* (1993) 5 Cal.4th 813.) The best case for habeas is one that persuasively alleges a fundamental jurisdictional error or denial of a fundamental right. (See *In re Clark* (1993) 5 Cal.4th 750; *In re Harris* (1993) 5 Cal.4th 813.) For an overview of habeas procedure, see *People v. Duvall* (1995) 9 Cal.4th 464, 474-479, and *People v. Romero* (1994) 8 Cal.4th 728, 736-742.

## PROCEDURAL REQUIREMENTS FOR HABEAS PETITIONS

**Proper Court:** The petitioner should, as with extraordinary writs, start in the lowest available court. (See *In re Steele* (2004) 32 Cal.4th 682, 692; *In re Ramirez* (2001) 89 Cal.App.4th 1312, 1316.)

## **Outline of Original Proceedings and Relief Ancillary to Appeal**

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**Timeliness:** Habeas should be sought promptly. As a general rule, absent justification for the failure to present all known claims in a single, timely petition for writ of habeas corpus, successive and/or untimely petitions will be summarily denied. The only exception to this general rule concerns petitions that allege facts, which, if proven, would establish a fundamental miscarriage of justice. (*In re Clark* (1993) 5 Cal.4th 750, 797.) The petitioner bears the initial burden of alleging facts to explain and justify delay and/or a successive petition. (*Id.* at p. 798, fn. 35; see also *In re Robbins* (1998) 18 Cal.4th 770, 780-781, 787, 805.)

**Form:** Printed Judicial Council forms are available and must be used by in-custody habeas petitioners (rule 8.380(a)). If the petition is filed by an attorney, the petition need not be on the Judicial Council form, but it must contain the pertinent information specified in that form and must comply with the requirements of rules 8.40(b)-(c), 8.204(a)-(b), and 8.486(a)(6). (See rule 8.384(a).)

**Record:** Often (in the nature of habeas) the relevant facts have not previously been recorded. Part of the relief sought in such cases will be a hearing at which more evidence can be taken. The petitioner must present, by verified statement and such record as he or she can marshal, a factual case sufficient to make a prima facie case for relief. (See generally *In re Hochberg* (1970) 2 Cal.3d 870; *In re Lawler* (1979) 23 Cal.3d 190, 194.) To satisfy the initial burden of pleading adequate grounds for relief, “[t]he petition should both (i) state fully and with particularity the facts on which relief is sought [citations], as well as (ii) include copies of reasonably available documentary evidence supporting the claim, including pertinent portions of trial transcripts and affidavits or declarations.” (*People v. Duvall* (1995) 9 Cal.4th 464, 474.) Many habeas petitions are denied for failure to make a prima facie case at the outset. If the petition is filed by an attorney, any supporting documents accompanying the petition must comply with the requirements of rule 8.486(c). (Rule 8.384(b)(3).)

**Memorandum of Points and Authorities:** Counsel should submit a memorandum of points and authorities in support of the habeas petition. The waiver of a memorandum of points and authorities for in-custody habeas petitions (in rule 8.380(b)) should be understood to extend only to pro se petitioners. The memorandum must comply with the requirements of rule 8.204(a)-(c). (Rule 8.384(a)(2).)

**Repeat Applications:** All habeas claims must be raised in a single, timely petition absent justification for the failure. (See *In re Clark* (1993) 5 Cal.4th 750, 774-775.) With the exception of petitions alleging facts demonstrating that a fundamental miscarriage of justice occurred, unjustified successive petitions will not be entertained on their merits. Petitioner must adequately explain the failure to present the claims underlying a new petition in a prior petition and that explanation must justify the piecemeal presentation of petitioner’s claims. (*Ibid.*) Denial of habeas is not appealable. “[T]he sole and proper remedy after denial of a petition for a writ of habeas corpus by a superior court is to file a new petition with the Court of Appeal.” (*In re Reed* (1983) 33 Cal.3d 914, 918, fn. 2, overruled on other grounds in *In re Alva* (2004) 33 Cal.4th 254, 292.) Further review may be sought in the Supreme Court either by

filing a new habeas petition or a petition for review. (*Ibid.*) In general, habeas may not be used to renew contentions made and rejected in an earlier appeal. (*In re Waltreus* (1965) 62 Cal.2d 218, 225; *In re Winchester* (1960) 53 Cal.2d 528, 532; *In re Harris* (1993) 5 Cal.4th 813, 829.)

### PROCESSING A HABEAS PETITION

**Informal Response:** If the habeas petition makes a prima facie case for relief, an order to show cause should issue. But it is common for reviewing courts to ask opposing counsel (often the Attorney General) to furnish an informal response. The petitioner must be given an opportunity to reply. (Rule 8.385(b).)

**Order to Show Cause:** Habeas may be summarily denied. If relief is to be granted, the normal first order is an order to show cause directed to the custodial authority and made returnable before a specified court at a specified time. (Rule 8.385(d)–(f).) Often a reviewing court will make the order returnable before a lower court that is better equipped to deal with apparent evidentiary issues. (Rule 8.385(e).)

**Stays:** It is possible for a reviewing court, upon an appropriate showing, to issue temporary stay orders pending determination of a habeas petition.

**Return:** The habeas order to show cause initiates a structured exchange of pleadings. The party ordered to show cause is expected to file a return to the writ that is in the nature of a pleading to justify the responding party's position with respect to the petitioner's allegations. Normally, the return will also be accompanied by factual materials. The petitioner will then be expected to file a traverse to the return, analogous to the answer in civil pleading. (See *In re Lawler* (1979) 23 Cal.3d 190, 194; *People v. Duvall* (1995) 9 Cal.4th 464; rule 8.386.)

**Hearing:** Depending on the nature of the issue joined by return and traverse, the court may order evidentiary hearings (before itself, a lower court, or a referee or master) or proceed directly to oral argument on points of law. Submission, decision, and review will be similar to other writ petitions, except that an unsuccessful petitioner will sometimes choose to file a new habeas petition (rather than a petition for review) in the Supreme Court. (Rules 8.386(f)–(g), 8.387.)

### OTHER ORIGINAL PROCEEDINGS

**Certiorari:** Certiorari is rarely used in its common-law form except to review contempt adjudications. It lies to review a nonappealable completed judicial act in excess of jurisdiction. (Code Civ. Proc., §§ 1067-1068.) Procedurally, certiorari differs from mandate and prohibition. The writ of certiorari issues not to grant relief, but simply to call up the relevant lower-court record, which will then be reviewed upon such

## **Outline of Original Proceedings and Relief Ancillary to Appeal**

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procedures as the reviewing court may specify. (See generally Abbott et al., Cal. Civil Writ Practice (Cont.Ed.Bar 4th ed. 2010) §§ 15.27-15.38, 20.10, pp. 364-370, 568-569.)

**Workers' Compensation Appeals Board (WCAB):** Statutory review of WCAB matters (rule 8.495) is a subset of a highly specialized field of practice with a substantial literature of its own. Begin with Borah et al., California Workers' Compensation Practice (Cont.Ed.Bar 4th ed. 2010), which points to several other workers' compensation texts and to the special reporters.

**Agricultural Labor Relations Board (ALRB):** Review of ALRB proceedings (rule 8.498) are discussed in *Tex-Cal Land Management, Inc. v. Agricultural Labor Relations Bd.* (1979) 24 Cal.3d 335.

**Coram Vobis:** Coram vobis is a writ occasionally sought in criminal matters and even more rarely in civil matters. (See Bonneau et al., Appeals and Writs in Criminal Cases (Cont.Ed.Bar 3d ed. 2010) §§ 11.1-11.4, pp. 538-542; Abbott et al., Cal. Civil Writ Practice (Cont.Ed.Bar 4th ed. 2010) § 15.44.-15.48, pp. 372-374; *People v. Kim* (2009) 45 Cal.4th 1078) [discussing coram nobis].)

**Quo Warranto:** Quo warranto is theoretically available, but rarely sought. (See 8 Witkin, Cal. Procedure (5th ed. 2008 & 2010 supp.) Extraordinary Writs, §§ 27-30, pp. 907-912; Abbott et al., Cal. Civil Writ Practice (Cont.Ed.Bar 4th ed. 2010) §§ 4.27, 15.50, pp. 79-80, 375.)

**Administrative Mandamus:** Note that administrative mandamus (Code Civ. Proc., § 1094.5) is a trial court phenomenon. Reviewing courts will normally see such matters on appeal rather than by writ petition. See Abbott et al., California Administrative Mandamus (Cont.Ed.Bar 3d ed. 2011).

## **RELIEF ANCILLARY TO APPEAL**

Following are a few of the special forms of relief ancillary to appeal.

**Stays Pending Appeal:** Stays pending appeal under Code of Civil Procedure section 923 (including the writ of supersedeas) are discussed in Abbott et al., California Civil Appellate Practice (Cont.Ed.Bar 3d ed. 2010) Chapter 6, Staying Enforcement During Appeal, and Eisenberg et al., California Practice Guide: Civil Appeals and Writs (The Rutter Group 2010) Chapter 7, Stays and Supersedeas. Two important cases are *People ex rel. S.F. Bay etc. Com. v. Town of Emeryville* (1968) 69 Cal.2d 533, 538, and *Mills v. County of Trinity* (1979) 98 Cal.App.3d 859, 861. There are a few other statutory provisions for stays. (See, e.g., Code Civ. Proc., §§ 916-917.9, 1094.5, subd. (g), 1176; Pen. Code, §§ 1506-1507.) A petition for writ of supersedeas must comply with the requirements of rules 8.112 and 8.116.

## **Outline of Original Proceedings and Relief Ancillary to Appeal**

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**Bail Pending Appeal:** Bail pending appeal in criminal matters is normally applied for and handled in the trial court. (Cf. Pen. Code, §§ 1272-1272.1; rule 8.312.) The Court of Appeal's review will be to assure that the trial court has exercised its discretion.

**Appellate Division Transfers:** Appellate division transfers are considered under Code of Civil Procedure section 911 and rules 8.1000 et seq. Under the Rules of Court, transfer may be ordered only where the appellate division has either published its opinion or certified the case for transfer or upon a party's petition to transfer. The Court of Appeal has "uncontrolled discretion" to grant or deny transfer. (*Dvorin v. Appellate Dept.* (1975) 15 Cal.3d 648, 650.) Transfer will be ordered only if the Court of Appeal determines "that transfer is necessary to secure uniformity of decision or to settle an important question of law." (Rule 8.1002.)