

California Writs: Definitions



- This resource provides definitions for terms related to writ petitions filed in the California Court of Appeal that challenge California family law judgments, orders, or decisions. Writ petitions challenging orders from criminal and other civil law cases (such as juvenile dependency cases or housing cases) may have other applicable rules.
- Rules and laws change often, so all information should be checked to make sure it is right before you use the rules and laws.
- This resource does NOT constitute legal advice and viewing this resource does NOT create an attorney-client relationship between you and FVAP.

APPEAL



An appeal is a request for a higher court to review a judgment, order, or decision from a lower court because the appellant (the person filing the appeal) believes the lower court made a mistake in the law or made an order no other judge would reasonably make under the same circumstances. While appeals and writ petitions are both ways to ask a higher court to review a lower court's order, appeals and writ petitions have different rules, requirements, and timelines.

COMMON LAW WRIT

Common law writs are writs that are not authorized by statute. Whether a common law writ is available usually depends on whether the case meets the criteria for writ relief. Namely, those requirements are that (1) a Petitioner has no other way to challenge a harmful Superior Court order, and (2) the Petitioner will face irreparable harm (meaning, harm that cannot be later fixed) without the Court of Appeal stepping in immediately to direct a Superior Court to fix its error. A common law writ petition generally should be filed within 60 days or less from the date of the Superior Court's order.

COURT OF APPEAL

The Courts of Appeal are the second highest courts in the California court system. When a person wants to challenge a judgment, order, or decision made by a Superior Court, they typically file a request in the Court of Appeal (either by writ petition or appeal) to ask the Court of Appeal to review the case and decide whether the Superior Court did something wrong.



Note that a Court of Appeal generally only reviews what already happened in a case to decide if the Superior Court made a mistake in the law or made an order no other judge would reasonably make under the same circumstances. The Court of Appeal typically cannot consider new evidence or testimony when reviewing an order from the Superior Court.

California has six Courts of Appeal. For more information, visit <https://appellate.courts.ca.gov/>.

PARTY



A party in a court case is a person who is participating in and is directly impacted by a case. Parties include the person who starts a case by filing a request and the person who is defending against the request. Parties can either be self-represented or represented by an attorney.

PETITIONER

The person who files a writ petition is called the Petitioner in the writ case.

REAL PARTY IN INTEREST

The opposing party in the original Superior Court case is called a Real Party in Interest in the writ case. They are called a Real Party in Interest because, even though a writ will not directly tell them to do or not do something, they can still be impacted by the Court of Appeal's decision. The Real Party in Interest can also file arguments responding to a writ petition, whether or not the Court of Appeal requests it.

RESPONDENT

The Respondent in the writ case is typically the Superior Court whose judgment, order, or decision is being challenged by the Petitioner. This is different from Superior Court cases, where typically the respondent is another person, not a court. The Superior Court is the Respondent in a writ case because the writ petition is challenging the Superior Court's decision, and typically a writ would ultimately direct the Superior Court to do something or stop doing something.



STATUTORY WRIT

Statutory writs are where a statute expressly states that an order can or must be challenged by a writ petition. For example, there are statutes saying that Superior Court decisions on motions to disqualify a judge or requests for disability accommodations generally must be challenged by writ petition.

STAY

A stay is a court order that pauses a legal proceeding, the actions of a party, or the enforcement of an order. A Petitioner can request a temporary stay through a writ petition, which would be a request to temporarily suspend the enforcement of the challenged Superior Court order while the Court of Appeal is reviewing the writ petition.

Note that stays can also be pursued in an appeal. A petition for a writ of supersedeas is the name for a request for a stay in an appeal case. A petition for a writ of supersedeas does not ask the Court of Appeal to change a Superior Court's order; it only asks the Court of Appeal to suspend the enforcement of the order until the appeal is decided.

Generally, before requesting a stay from the Court of Appeal, a Petitioner should request a stay from the Superior Court first. This is because typically the Court of Appeal wants to see that the Petitioner has used all available options from the Superior Court first before it gets involved in a case.

SUPERIOR COURT



Superior Courts, also known as trial courts, are the lowest courts in the California court system. The Superior Court is typically the court that hears a party's case for the first time. A Superior Court (either through a judge or a jury) will consider the evidence and arguments in a case and apply the law to those facts to make a decision.

California has 58 Superior Courts, one for each county in the state. For more information, visit <https://courts.ca.gov/courts/superior-courts>.

SUPREME COURT OF CALIFORNIA

The Supreme Court of California is the highest court in the California court system. Generally, the Supreme Court of California reviews cases previously decided by the Court of Appeal, though in rare circumstances the Supreme Court of California can be the first court to review a case.



California only has one Supreme Court. For more information, visit <https://supreme.courts.ca.gov/>.

WRIT

A writ is an order from a higher court that typically directs a lower court to either do something or stop doing something because the lower court made a mistake in the law or made an order no other judge would reasonably make under the same circumstances. For example, the Court of Appeal can issue a writ that tells the Superior Court to do something like change a temporary child custody and visitation order.

Or the Court of Appeal can issue a writ that tells the Superior Court to stop doing something, such as a writ preventing the Superior Court from holding a hearing on a custody and visitation request because the opposing party didn't receive proper notice of the hearing.

A writ can also overturn or affirm an action taken by the lower court (see writ of certiorari, defined below).

WRIT OF CERTIORARI

For a writ of certiorari, the Court of Appeal reviews an action taken by the Superior Court and decides whether the Superior Court acted within its power and complied with the law when taking that action. For example, if the Court of Appeal believes the Superior Court issued a custody order that was not allowed under the law such as granting custody to a parent who abused the other parent without first going through a mandatory decision-making process, the Court of Appeal can issue a writ of certiorari overturning that custody order.



WRIT OF MANDATE

A writ of mandate is an order from a higher court telling a lower court to do something. This includes telling a lower court to do something that it is obligated to do under the law. It also includes telling a lower court to correct an error it made. For example, say a Superior Court incorrectly refuses to issue a temporary order for the opposing party to move out of a shared home while a restraining order request against the opposing party is pending. The Court of Appeal can grant a writ of mandate that directs the Superior Court to issue that temporary move-out order.



WRIT OF PROHIBITION

A writ of prohibition is an order from a higher court telling a lower court to stop doing something. For example, the Court of Appeal can issue a writ of prohibition directing the Superior Court to not hold a hearing on a case because the law says the Superior Court doesn't have the jurisdiction (meaning, the power or authority) to hear that case.



WRIT PETITION

A writ petition is the request that a party files in the Court of Appeal asking for a writ that either (1) overturns or affirms an action taken by the Superior Court, or (2) directs the Superior Court to do something or stop doing something because the Superior Court made a mistake in the law or made an order no other judge would reasonably make under the same circumstances. In other words, a writ petition is a request for a writ. A writ petition outlines the case record and the Petitioner's legal arguments for why the Court of Appeal should issue a writ.



Legal authority for the information in this resource is in California Code of Civil Procedure sections 1067 et seq., California Rules of Court, rules 8.485 et seq., and related case law.

Writ procedure may vary by each district of the Court of Appeal. To learn more about the process in the Court of Appeal district for your Superior Court in California, visit <https://appellate.courts.ca.gov/>.

If you have questions about this resource, please contact info@fvaplaw.org. For more information on California writs, visit <https://fvaplaw.org/resource/california-writs-flow-chart/> for FVAP's **California Writs: Flow Chart** and <https://fvaplaw.org/resource/california-writs-frequently-asked-questions/> for FVAP's **California Writs: Frequently Asked Questions**.
