

California Writs: Flow Chart

NOTE: This chart is meant to be used as a quick reference guide for writ petitions filed in the California Court of Appeal. There may be exceptions to the rules stated here, and more detailed provisions in the statutes, rules of court, and case law. Always read the full statute or rule to decide how to proceed in your case.

SUPERIOR COURT ORDER

PETITION FOR WRIT OF MANDATE, PROHIBITION, OR CERTIORARI

The Petitioner files a challenge to the Superior Court order in the Court of Appeal, asking for it to review the order because the Petitioner thinks the order is incorrect. This can be in the form of a petition for a writ of mandate, prohibition, or certiorari.

A **writ of mandate** directs a Superior Court to do something.

A **writ of prohibition** directs a Superior Court to stop doing something or prevents the Superior Court from doing something.

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.

OPTIONAL PRELIMINARY BRIEFING

Either the Superior Court or any Real Party in Interest (such as the opposing party in the Superior Court action) can file a preliminary brief opposing the writ petition. This is called a **preliminary opposition** and is due 10 days after the petition is filed.

The Petitioner can then file a **preliminary reply**, due 10 days after the opposition is filed.

At any point after the writ petition is filed, and regardless of whether preliminary briefing is submitted, the Court of Appeal can do one of three things:

ORDER TO SHOW CAUSE OR ALTERNATIVE WRIT

Both an Order to Show Cause and an Alternative Writ are orders issued by the Court of Appeal.

An **Order to Show Cause** directs the Superior Court to submit a brief explaining why it has not fixed the error the Petitioner claims it made.

An **Alternative Writ** gives the Superior Court a choice: either fix its error or submit a brief explaining why it refuses to do so.

WRIT DENIED

The Court of Appeal can deny the writ petition summarily.

A **summary denial** means the Court of Appeal denies the request without giving an opinion on the evidence, facts, and legal arguments presented in the case.

The Court of Appeal is not required to give their reasons for a summary denial.

PALMA NOTICE

In a **Palma Notice**, the Court of Appeal notifies the parties that it is thinking about granting the Petitioner's requested relief based upon the initial arguments in the writ petition. This means the Court of Appeal wants to issue a **Peremptory Writ in the First Instance**, but first needs to give the parties notice.

The *Palma* Notice can set expedited deadlines for the parties to respond in writing to the notice before the Court of Appeal grants the Peremptory Writ in the First Instance.

A *Palma* Notice can include a short discussion, possibly with legal citations, suggesting the Superior Court erred. It can also state that if the Superior Court fixes its error in response to the notice, the writ will be denied as moot (meaning, no longer relevant or needed).

RETURN

The Superior Court or any Real Party in Interest (such as the opposing party in the Superior Court action) can serve and file a response (called a **return**) to the Court of Appeal's order. The return is due within 30 days after the Court of Appeal issues the Alternative Writ or Order to Show Cause, unless the Court of Appeal orders otherwise.

REPLY

The Petitioner can serve and file a **reply** within 15 days after the return is filed, unless the Court of Appeal orders otherwise.

OPPOSITION

The Superior Court or any Real Party in Interest (such as the opposing party in the Superior Court action) can serve and file a brief opposing the writ petition (called an **opposition**). The opposition is due within 30 days after the Court of Appeal issues the *Palma* Notice, unless the Court of Appeal orders otherwise.

REPLY

The Petitioner can serve and file a **reply** within 15 days after the opposition is filed, unless the Court of Appeal orders otherwise.

ORAL ARGUMENT

Assuming the writ petition is not defective or moot, the Court of Appeal should give the parties opportunity for **oral argument** after the briefing is complete.

The Court of Appeal can either give the parties notice of a hearing date and time, or instruct them to request oral argument. Oral argument can be waived.

WRIT DISMISSED

After issuing an Alternative Writ or Order to Show Cause, the Court of Appeal can decide the writ petition is **moot** (meaning, no longer relevant or needed). A writ petition can become moot if the Superior Court fixes its error on its own.

Or the Court of Appeal can decide the writ petition is **defective** (meaning, it doesn't satisfy a requirement necessary to grant writ relief). A writ petition can be defective if, for example, it's missing an essential part of the case record, like a transcript from an important hearing.

In those circumstances, the Court of Appeal can dismiss the writ petition without oral argument or a written opinion.

WRIT DENIED

Even after a *Palma* Notice, the Court of Appeal can **deny** writ relief.

For example, the writ could be denied as moot if the Superior Court fixed its error and relief is no longer needed. Or the Court of Appeal could ultimately decide relief isn't appropriate based on the petition and any opposition or reply filed.

WRIT GRANTED

The Court of Appeal can grant relief to the Petitioner in the form of a **Peremptory Writ in the First Instance**. In the writ, the Court of Appeal directs the Superior Court to do or not do what the writ petition requested.

The writ is "in the first instance" because the Superior Court's error and the Petitioner's need for relief were obvious, and/or relief was urgently needed, so the Court of Appeal decided to grant the writ on an expedited timeline without a full briefing schedule or oral argument.

WRIT DENIED

The Court of Appeal can **deny** the writ petition. A written opinion is required.

WRIT GRANTED

The Court of Appeal can grant relief to the Petitioner in the form of a **Peremptory Writ**. In the writ, the Court of Appeal directs the Superior Court to do or not do what the writ petition requested. A written opinion is required.

Legal authority for the information in this flow chart 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 flow chart, please contact info@fvaplaw.org. For more information on California writs, visit <https://fvaplaw.org/resource/california-writs-frequently-asked-questions/> for FVAP's **California Writs: Frequently Asked Questions** and <https://fvaplaw.org/resource/california-writs-definitions/> for FVAP's **California Writs: Definitions**.