California Writs: Frequently Asked Questions

- This Frequently Asked Questions (FAQ) resource focuses on 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.

What are the different California state courts?

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.

Court of Appeal = The Courts of Appeal are the next 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/.

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/.

What is a 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).

As explained below, writs are different from appeals.

What is a 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.

When do you file a writ petition?

A writ petition is typically filed in the Court of Appeal after a party obtains a judgment, order, or decision from the Superior Court that they disagree with. The deadlines for filing a writ petition are explained below.

For an overview of the writ petition process, visit https://fvaplaw.org/resource/california-writs-flow-chart/ for **FVAP's California Writs: Flow Chart.**

Who are the parties in a writ petition case?

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.

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

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.

What is an 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, as explained below.

How is a writ different from an appeal?

Writ petitions and appeals are two different ways to challenge a Superior Court judgment, order, or decision in the Court of Appeal. Generally, appeals are used to challenge final orders. Writ petitions are typically used only for emergency circumstances and generally challenge temporary orders. An example of a temporary order that could be challenged by a writ petition is an order denying a person's request for the opposing party to temporarily move out of their shared home while a restraining order request against the opposing party is pending.

Here are three key differences between writs and appeals:

(1) Unlike the right to an appeal, there is no right to writ review.

Writ petitions are discretionary. The Court of Appeal does not have to make a decision on the "merits" of a writ petition, which means the Court of Appeal can deny the writ petition without giving an opinion on the evidence, facts, and legal arguments presented in the case. The Court of Appeal can deny a writ without any explanation. In California, denying a writ without any explanation is what happens in most cases.

This is different from appeals, where there is a right to an appeal of most final Superior Court orders. A right to an appeal means that, if an appeal is properly filed before the Court of Appeal, then the Court of Appeal must review it and issue an opinion deciding the appeal on the evidence, facts, and legal arguments presented in the case.

(2) It is typically more difficult to win on a writ petition than it is to win on an appeal.

Writs are reserved for limited and emergency circumstances, and therefore it can be more difficult to win on a writ petition. A Court of Appeal will typically only issue a writ if (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.

In addition to these threshold requirements, a Petitioner must still prove that the Superior Court made a mistake in the law or made an order no other judge would reasonably make under the same circumstances to obtain writ relief (much like they would have to do in an appeal). This means that not only does a Petitioner have to prove in their writ petition that the Superior Court did something wrong, but they also must persuade the Court of Appeal to step in and direct the Superior Court to fix its error.

(3) Writs move more quickly than appeals.

Because writs are designed for emergency circumstances, a writ petition has faster deadlines than an appeal typically does. A writ petition generally should be filed within 60 days or less from the date of the Superior Court's order.

In addition, the Court of Appeal is also likely to issue a decision on a writ petition more quickly than it would on an appeal. While appeals can take over a year to finish, writ cases can be complete within months or even weeks.

What is the difference between statutory and common law writs?

There are generally two categories of writs: statutory and common law writs.

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.

Note that statutes often provide the deadline for when a statutory writ petition must be filed so it can be significantly shorter than the general 60-day deadline.

Here are some examples of orders reviewable by a statutory writ petition:

- **Code Civ. Proc., § 170.3(d):** Grant or denial of a motion to disqualify a judge, either for cause (meaning, based on a reason such as prejudice or bias) under Code Civ. Proc., § 170.1 or by peremptory challenge (meaning, without explaining prejudice or bias) under Code Civ. Proc., § 170.6

- **Code Civ. Proc., § 400:** Grant or denial of a motion to change venue (meaning, grant or denial of a motion to change the place of trial)

- **Code Civ. Proc., § 404.6 and Cal. Rules of Court, rule 3.505:** Order concerning coordination of actions pending in different courts (meaning, an order merging two or more cases pending in different counties into a single case because they share common questions of fact or law)

- **Code Civ. Proc., § 405.39:** Grant or denial of a motion to expunge lis pendens (meaning, grant or denial of a motion to remove a formal notice of a pending legal action that could affect the title or ownership of a property)

- **Code Civ. Proc., § 418.10(c):** Denial of a motion to quash service of process for lack of jurisdiction (meaning, a motion arguing that service of a document was invalid and/or that the court has no power or authority over the opposing party) OR denial of a motion to stay the action or dismiss the action on the grounds of inconvenient forum (meaning, on the grounds that a different court is a better venue or place for the action); though note that the motion and writ petition must be filed before or at the same time as the responsive pleading (meaning, the formal written response to a petitioner's arguments)

- **Code Civ. Proc., § 877.6(e):** Grant or denial of a motion for good faith settlement decision (meaning, grant or denial of a motion for the court to declare that a civil respondent settled with a petitioner in good faith in an action with multiple respondents)

- **Code Civ. Proc., § 437c(m)(1):** Denial of a motion for summary judgment (meaning, denial of a motion for the court to decide a case without a full trial) OR grant or denial of a motion for summary adjudication (meaning, grant or denial of a motion for the court to decide a particular issue within a case)

- **Cal. Rules of Court, rule 1.100(g)(2):** Grant or denial of a request for accommodation by a person with disabilities pursuant to Cal. Rules of Court, rule 1.100

- **Code Civ. Proc., § 904.1(b):** Order or judgment for a monetary sanction (meaning, an order to pay money as a penalty) against a party or an attorney if the sanction amount is $5,000 or less

Common law writs are all other 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. 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.

What are the differences between writs of mandate, writs of prohibition, and writs of certiorari?

A party can file a petition for a writ of mandate, prohibition, and/or certiorari. They can all be requested from the Court of Appeal, but they serve different purposes.

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.

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.

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.

TIP: Often Petitioners will label a writ petition as a "petition for writ of mandate, prohibition, certiorari, and/or other appropriate relief" to not limit the type of help they are asking for from the Court of Appeal.

What needs to be proven in a writ petition?

The following three requirements generally must be proven in every writ petition:

(1) There is no other adequate remedy at law.

This generally means one of two things:

(a) The Superior Court order is not appealable. For example, a temporary child custody and visitation order is generally not appealable.

(b) An appeal would not be an effective remedy to challenge the order. An appeal may not be effective in situations where a Petitioner requires help from the Court of Appeal as soon as possible and cannot wait for the process of an appeal to be available or done. For example, an order allowing a child to move to a different state with one parent is often a final and appealable order. However, it can be more effective to challenge the move-away order by writ petition before the child moves out of state to prevent any potential harm from the move.

This requirement can also include explaining that there are no other remedies available from the Superior Court, or that asking for more remedies from the Superior Court would be pointless because the Superior Court has made it clear it is not going to change its mind and fix its error on its own.

(2) The Petitioner faces irreparable harm without writ relief.

This means that under the Petitioner's specific circumstances, the Petitioner faces a risk of irreversible harm if the Court of Appeal doesn't help by issuing writ relief. Irreversible or irreparable harm means the harm cannot be fixed or reversed in the future, either by action from the Superior Court or through a later appeal in the Court of Appeal.

Whether the Petitioner faces irreparable harm without writ relief is decided on a case-by-case basis, and may include, for example, risk of harm to a Petitioner's or their children's safety.

(3) The Petitioner must have a beneficial interest in the writ proceeding.

This generally means that the Petitioner can gain or lose something from the outcome of a writ proceeding. Typically, a person who is a party in a Superior Court case will have a beneficial interest in a writ proceeding challenging an order from that case.

In addition, a Petitioner must still prove that the Superior Court made a mistake in the law or made an order no other judge would reasonably make under the same circumstances to obtain writ relief. This means that not only does a Petitioner have to prove in their writ petition that the Superior Court did something wrong, but they also must persuade the Court of Appeal to step in and direct the Superior Court to fix its error based on the above requirements.

What is the deadline for filing a writ petition?

For **statutory writs** (meaning writs authorized by statute), refer to the relevant statute for the deadline to file the writ petition.

Common law writ petitions (which includes all other writs not authorized by statute) must be filed within a reasonable amount of time. Generally, this means the writ petition should be filed within 60 days or less from the date of the Superior Court's order.

If a writ petition is filed after the 60-day deadline has passed, the Petitioner typically must explain in the writ petition why the delay in filing is reasonable and why the delay doesn't prejudice (meaning, harm) the opposing party in the original Superior Court case.

Note also that the Court of Appeal can deny a writ petition as untimely even if it is filed before the 60-day deadline, such as if there's not enough time for the Court of Appeal to act and be helpful. For example, the Court of Appeal may deny a writ petition as untimely if it challenges a temporary child custody and visitation order, but is filed the day before a hearing at which the Superior Court is likely to change the temporary order.

What is a 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.

What can the opposing party do after a writ petition is filed?

The opposing party in the Superior Court case (known as the Real Party in Interest in the writ proceeding) does not have to do anything when served with the writ petition, unless the Court of Appeal requests a response. If the Court of Appeal requests that a party respond to the writ petition, it will notify all parties and set a due date for the response. The Real Party in Interest can also choose to file a response, even if the Court of Appeal does not request it.

Because writs are discretionary, the Court of Appeal may issue a stay or deny a writ petition without requesting a response from the Real Party in Interest. However, the Court of Appeal generally cannot grant writ relief before it has given the Real Party in Interest an opportunity to respond to the petition.

What happens after I file a writ petition?

Generally, a Court of Appeal can respond to a writ petition in three different ways:

(1) Summary Denial

This is when the Court of Appeal denies a writ petition without giving an opinion on the evidence, facts, and legal arguments presented in the case. This is what happens to most writ petitions in California. The Court of Appeal does not have to provide the parties with notice or an opportunity to respond before a summary denial, nor does it have to provide an explanation for denying the writ petition. Once summarily denied, the Court of Appeal no longer has jurisdiction (meaning, power or authority) to reconsider the writ petition. Generally, a challenge to the Court of Appeal's summary denial must be filed in the Supreme Court of California by a petition for review within 10 days of the denial becoming final.

(2) Peremptory Writ in the First Instance

This is when the Court of Appeal grants writ relief and issues a writ either overturning or affirming an action taken by the Superior Court, or directing the Superior Court to do something or stop doing something. While the Court of Appeal must provide notice to the parties, it does not have to provide an opportunity for oral argument before issuing a Peremptory Writ in the First Instance.

This is a rare outcome and usually limited to situations where (1) there has been a clear error and the Petitioner's need for relief is clear, and/or (2) the circumstances are so urgent that the Court of Appeal speeds up the normal writ review process.

Before issuing a Peremptory Writ in the First Instance, the Court of Appeal must issue a *Palma* Notice to inform the Superior Court and any Real Party in Interest that the Court of Appeal is thinking about issuing the Peremptory Writ. The parties, including the Superior Court and the Real Party in Interest, will then have an opportunity to respond in writing to the Court's *Palma* Notice. Typically, in the *Palma* Notice, the Court of Appeal will also strongly encourage the Superior Court to first fix its incorrect order on its own.

If the Superior Court corrects its error before the Peremptory Writ in the First Instance is granted, then the writ petition will typically be dismissed as moot (meaning, no longer relevant or needed). If the Superior Court does not act, then the Court of Appeal can proceed with issuing the Peremptory Writ in the First Instance.

(3) Alternative Writ or Order to Show Cause

This happens when the Court of Appeal is considering granting writ relief but will first provide all parties an opportunity to argue for or against the writ petition. 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.

If the Superior Court does not fix its error, the Superior Court or any Real Party in Interest will have an opportunity to submit a brief explaining their arguments, and the Petitioner will have an opportunity to respond to those arguments. The Court of Appeal will then typically give the parties the opportunity to present oral argument, if they want. Finally, the Court of Appeal will then either grant or deny the writ in the form of a written opinion explaining its decision.

Is the Court of Appeal required to hold a hearing or oral argument when it considers a writ petition?

It depends. If the Court of Appeal chooses to summarily deny the writ petition or grant a Peremptory Writ in the First Instance, it is not required to hold oral argument. However, if the Court of Appeal is considering granting writ relief and issues an Alternative Writ or Order to Show Cause, then the Court of Appeal is typically required to give the parties an opportunity to present oral argument, though there are exceptions. The parties can also waive oral argument.

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 FAQ, 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-definitions/ for FVAP's **California Writs: Definitions.**
