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Research Guide

Writ of Administrative Mandamus

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Scope:

This guide is an introduction to the proper use of a Petition for Writ of Administrative Mandamus, also known as Administrative Mandate. It is **not** intended to be a comprehensive resource. Additional research will be necessary.

What it is:

Generally, a Petition for Writ of Administrative Mandamus is a request that a Superior Court review and reverse the final decision or order of an administrative agency. It is brought under *California Code of Civil Procedure* §1094.5. The terms mandamus and mandate are synonymous. CCP §1084.

What decisions may be challenged using a Petition for Writ of Administrative Mandamus?

- Administrative mandamus review can be used to challenge an agency's adjudicatory decisions when: (1) The agency's decision is final; (2) The decision results from a proceeding in which by law a hearing is required; (3) Evidence is required to be taken, and (3) The decision maker had discretion to determine the facts.

- "Legislative" decisions, (i.e., decisions where an agency formulates a general rule which it will apply to future situations) are not appealable using administrative mandamus. Petitioners who seek relief from legislative decisions must appeal using "traditional" mandamus, under California Code of Civil Procedure §1085.

- Most writs challenge the decisions of state and local government agencies. However, a Petition for Writ of Administrative Mandamus may also be used to review the decisions of private organizations, such as private colleges and hospital boards, so long as the petition meets the criteria above.

- The decisions of certain California governmental agencies may not be challenged using a Petition for Writ of Administrative Mandamus. Instead, the law provides some other method for seeking judicial review of their decisions. These agencies include (but are not limited to) the Public Utilities Commission, the Department of Alcoholic Beverage Control and its Appeals Board, the State Bar of California, the Workers Compensation Appeals Board, the Agricultural Labor Relations Board and the Public Employee Relations Board.

Who can bring a Petition for Writ of Administrative Mandamus?

A person seeking administrative mandamus must have either a "beneficial" or a "public" interest in the matter. A beneficial interest exists where the person has rights or legal interests that exceed those of the general public. A public interest exists where members of the general public seek to enforce public rights or duties.

When can you bring a Petition for Writ of Administrative Mandamus?

Petitioners may only appeal final decisions from administrative agencies when there are no further administrative appeals available to them.

When is the latest you may Petition for Writ of Administrative Mandamus?

The “statute of limitations” governing a particular action determines how long a petitioner may wait before appealing an agency’s decisions. This period may be as short as 15 days or as long as four years. For information about some the more common limitation periods, see 1 *California Administrative Mandamus* Chapter 9, Statutes of Limitations §9.8-§9.12., at KFC 782.D4 2003, and 41A, *California Forms of Pleading & Practice*, Chapter 474A, Timing of Judicial Review of Agency Decisions §474A.20, at KFC 1010 .A65 C3. The filing of the petition generally tolls the limitations period, even if the petition is defective. Note: Administrative mandamus is an equitable proceeding in which the defense of laches may be invoked. Laches may bar an action filed within the appropriate statute of limitations period.

Staying the agency decision pending hearing of your petition.

If the agency is likely to act on its decision before the court hears your petition, you may need to move for an order staying the effective date of the decision. For instructions, see 41A *California Forms of Pleading & Practice*, Chapter 474C, Procedures in Reviewing Agency Decisions § 474C.18, or 2 *California Administrative Mandamus* Chapter 11, Stay Orders, Noticed Motions and Alternative Writs §11.3, at KFC 782.D4 2003; and see 2 *California Administrative Mandamus* Chapter 11, Stay Orders, Noticed Motions and Alternative Writs §§ 11.63-11.64 for sample motion forms.

Basic Procedures:

There are two ways a petitioner in an administrative mandamus proceeding can bring the petition before the court:

- An Alternative Writ Procedure. Here, the petitioner seeks a preliminary order compelling the agency to set aside its decision, or “show cause” at a hearing on a certain date why it has not done so. *California Code of Civil Procedure* §1087. To use this procedure, a petitioner must file a petition for the initial Alternative Writ in the court’s Civil Business Office, and then appear ex parte (without advance notice to the other party) to argue to the court that he or she should be granted an order to show cause. *San Diego Superior Court Local Rule 2.4.8 (B)*, *California Code of Civil Procedure* §1088. See 2 *California Administrative Mandamus*, Chapter 11, Stay Orders, Noticed Motions and Alternative Writs §11.42, at KFC 782.D4 2003, for an explanation of this procedure and see §11.68 for sample forms. See 1 *California Administrative Mandamus*, Chapter 10, Initiating Proceedings to Review § 10.65 for a detailed example of the petition itself. However, according to San Diego Superior Court Local Rules, “... [S]eeking mandamus or prohibition relief, is not necessary to obtain an alternative writ ... The noticed motion procedure should be used whenever possible.” *San Diego Superior Court Local Rule 2.4.8 (A)*.
- The Noticed Motion Procedure - This motion is similar to a noticed motion in any ordinary civil action. See 2 *California Administrative Mandamus*, Chapter 11, Stay Orders, Noticed Motions and Alternative Writs §11.28, at KFC 782.D4 2003, for an explanation of this procedure, and §11.65 for sample forms. See 1 *California Administrative Mandamus*, Chapter 10, Initiating Proceedings to Review § 10.65 for a detailed example of the petition itself.

In either case, petitioners must obtain a full record of the administrative proceedings they challenge and file them with the court at least five days before their hearing. California Rules of Court, Superior Court Rule 3.1140. For this procedure see 41A *California Forms of Pleading & Practice*, Chapter 474C, Procedures in Reviewing Agency Decisions § 474C.23, or 1 *California Administrative Mandamus* Chapter 10, Initiating Proceedings to Review §§10.1 and 10.63, at KFC 782.D4 2003.

Other Resources:

- Driver's License Suspension: 8 *California Forms of Pleading & Practice*, Automobiles: Drivers' Licenses §92.180.
- California Unemployment and Disability Insurance: 49 *California Forms of Pleading & Practice*, Chapter 564, Unemployment and Disability Insurance, §564.300 and §564.301.
- Handling Administrative Mandamus: Here's How and When to Do it (CEB Action Guide). KFC 782 .K67 2000.
- 8 Witkin, Cal. Procedure (4th ed.), *Extraordinary writs*, Chapter 12, sections 295 et. seq. KFC 995 .W52 1996.

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