MEMORANDUM 2026-42R

Writ Procedures: Background on California Civil Writ Practice and Proposed Scope of Study [Revised][1]

The Legislature passed ACR 168 (Pacheco) on July 15, 2026, part of which directs the Commission[2] to study "whether the Code of Civil Procedure should be revised, including, but not limited to, whether the statutes governing writ procedures should be revised."[3] This Memorandum provides background on writ practice in California, other states, and at the federal level; describes stakeholder outreach since the prior Commission meeting; and proposes limiting the scope of this study to extraordinary writ proceedings[4] in the Supreme Court, Courts of Appeals, and appellate division of the superior court.

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[1] The staff revised and republished this Memorandum to reflect comments from Commissioner Carrillo during the October 30, 2026, Commission meeting directing staff revise the references from "administrative writ of mandate" to "administrative writ of mandamus."

[2] Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission's staff.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

[3] 2026 Cal. Stat. ch. 148 (ACR 168, Pacheco).

[4] Extraordinary writ proceedings are those that may be heard at the court's discretion. This will be discussed further in the memorandum.

BACKGROUND ON CALIFORNIA CIVIL WRIT PRACTICE

This section explains various types of civil writs addressed in California courts.

A writ is general term for a court's written order commanding the addressee to do or to stop doing a specified act.[5] There are many types of writs, which may be heard at all levels of California courts.

For purposes of this memorandum, the "appellate court" is the court that hears the appeal of a lower court's decision. "Appellate court" is used to refer to the Court of Appeal, the appellate division of the superior court, or the Supreme Court. "Trial court" refers to the trial divisions of the superior courts.

Trial Court Writ Practice

The trial courts hear enforcement writs, writs of mandate, and administrative writs of mandamus.

The following are enforcement writs:

- A writ of execution is a court order that directs a levying officer (usually the sheriff) to enforce a money judgment for a creditor.[6]
- A writ of attachment is a court order that allows a plaintiff to seize a defendant's property before final judgement to help satisfy a potential money judgment.[7]
- A writ of possession (claim and delivery) is a court order that allows a plaintiff who claims right to property to obtain possession of that property before final judgment.[8]
- A writ of sale is a court order that allows a plaintiff to sell specific real or personal property.[9]

Trial courts also hear writs of mandate and administrative writs of mandamus:

- A writ of mandate (also known as a "traditional" writ of mandate) at the trial court is a remedy to compel the performance of a legally required act or to obtain judicial review of certain agency actions.[10] For example, a resident may petition the court to compel a city to follow its own ordinance on utility rate increases.

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[5] Writ, Black's Law Dict. (12th ed. 2024).
[6] Code Civ. Proc. §§ 699.510 – 699.560; Moore & Thomas, Cal. Civ. Prac. Proc. (2026) § 30:24.
[7] Code Civ. Proc. §§ 482.010 – 482.120; Moore & Thomas, Cal. Civ. Prac. Proc. (2026) § 16:1.
[8] Code Civ. Proc. §§ 511.010 – 516.050; Moore & Thomas, Cal. Civ. Prac. Proc. (2026) § 16:83.
[9] Code Civ. Proc. § 716.010.
[10] Asimow, Levy, Tuleja & Brehler, California Practice Guide: Administrative Law (The Rutter Group 2025) §13:45.

- An administrative writ of mandamus is a remedy for reviewing state or local agency decisions made after a legally required evidentiary hearing when no other method of review is provided by statute.[11]

These writs are distinguishable from appellate writ proceedings because they do not involve review of a lower court's ruling.

The staff notes that writs of mandate, to the extent they are used to review agency decisions, and administrative writs of mandamus may merit a study of their own.[12] These proceedings differ from the extraordinary writs discussed below in that a trial court reviews an agency's decision rather than a lower court's order,[13] and, with respect to writs of administrative mandate, these reviews have their own limitation periods, stay standards, and standard of review.[14] Further, these reviews may be by right or discretionary, depending on the writ. Staff outreach also suggests that the stakeholders who work on trial court writs are largely different from those who work on appellate extraordinary writs. Studying both together would require outreach to two distinct groups, so addressing them in separate studies may be more practical. The staff seeks the Commission's direction on the proposed scope of the study, discussed below, including whether these proceedings should be excluded from the study and whether they warrant separate study.

Appellate Court Writ Practice

Appellate writ practice generally provides a way to obtain secondary review of otherwise nonappealable trial court rulings or to preserve appellate jurisdiction and maintain the status quo pending review and a ruling on the merits by the appellate court.[15] In exceptional circumstances, appellate courts have also reviewed appealable orders by writ, particularly in cases involving important issues or matters of first impression.[16]

These writ proceedings may be heard by the appellate division of the superior court, the

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[11] *Id.* at §13:140; Code Civ. Proc. § 1094.5.

[12] Writs of mandate and administrative writ of mandamus proceedings were the subject of a 1993 background study resulting in a 1997 CLRC recommendation, which proposed to replace writs reviewing state and local agency actions with a single, streamlined statutory scheme. The bill (Senate Bill 209, 1997-98 legislative session) was not enacted. After that, the Commission considered another recommendation in June 1999 to address some procedural issues instead of the sweeping overhaul proposed in 1997, but because of potential opposition, the Commission did not proceed with the recommendation (see Minutes (November 1999), p.10).

[13] *California Water Impact Network v. Newhall County Water Dist.* (2008) 161 Cal.App.4th 1464, 1483 (The trial court reviews an agency's action under Section 1085 via a traditional writ of mandate).

[14] Code Civ. Proc. §§ 1094.6 (limitations period as to certain agency decisions under Section 1094.5), 1094.5(g) (stay standards); Cal. Prac. Guide. Civ. App. & Writs, Ch. 8-C § 8:127 (superior court's standard of review of an administrative decision under Section 1094.5 is subject to either independent review or substantial evidence review).

[15] Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2025) §§7:260, 15:1.

[16] *Id.* at 15:5 (citing *People ex rel. Becerra v. Superior Court* (2018) 29 Cal.App.5th 486, 494; *JSM Tuscany, LLC v. Superior Court* (2011) 193 Cal.App.4th 1222, 1236; *Rodrigues v. Superior Court* (2005) 127 Cal.App.4th 1027, 1032).

Courts of Appeal, or the Supreme Court, depending on the nature of the underlying case and the court with jurisdiction to review.[17]

Unlike appeals, which are heard as a matter of right, appellate courts have complete discretion to hear an extraordinary writ.[18] Writ petitions are rarely granted because appellate courts generally prefer to review cases by the ordinary appeals process.[19] Although appellate courts typically deny writ petitions without written explanation, common reasons for denial are to avoid interfering with the trial court, to avoid "piecemeal" litigation, and, if the case is still pending, that there is a high likelihood the "purported error will either be mooted or cured by the time of judgment."[20]

Appellate writ practice is comprised of extraordinary writs arising from the common law (common law writs) and writs expressly authorized or governed by statute (statutory writs). A discussion of each is below.

Common Law Writs

Writs of mandate, prohibition, certiorari, and supersedeas were developed through case law and are now largely governed by statutory provisions in the Code of Civil Procedure. Three of the four common law extraordinary writs—mandate, prohibition, and certiorari—are subject to certain common requirements: an appellate court will generally only grant relief if the petitioner shows that there is no other adequate remedy at law,[21] that the writ is necessary to prevent irreparable injury, and that the petitioner has some beneficial interest in the lawsuit, *i.e.*, a special interest in the lawsuit more than the interest held in common with the general public.[22] These are minimum threshold requirements; courts also

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[17] Cal. Rules of Court, rules 8.930-8.936 (writs in the appellate division of the superior court); Cal. Rules of Court, rule 8.824 (writs of supersedeas in the appellate division of the superior court); Cal. Rules of Court, rules 8.485-8.493 (writs in the Supreme Court and Court of Appeal).

[18] *Id.* at §15:1.2. Even if a trial court ruling is wrong, the appellate court does not have to grant immediate writ review but can instead wait to decide the issue via appeal from the final judgment. *Id.* (citing *Omaha Indemnity Co. v. Superior Court* (1989) 209 Cal.App.3d 1266, 1268).

[19] Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2025) §15:1.15. In practice, over 90% of writ petitions are denied. *Id.* at §15:1.3. Typically, appeals proceed by filing a notice of appeal after a final judgment or an order appealable under Code Civ. Proc § 904.1. Cal. Rules of Court, rule 8.100.

[20] *Id.* at §15:1.5 (quoting *Science Applications Internat. Corp. v. Superior Court* (1995) 39 Cal.App.4th 1095, 1100). Sometimes, a trial judge may recommend that an appellate court review an interlocutory by writ. Code Civ. Proc. § 166.1. Appellate courts vary in the extent to which they consider such recommendations when determining whether to grant a writ petition. Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2025) §15:22.10.

[21] In other words, there must be no other way to challenge the order, such as by appeal or other recourse in the superior court, such as a motion for a new trial or a motion to vacate the judgment and enter a new judgment. Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2025) §15:4.

[22] Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2025) §§15:3-15:14. For example, the California Supreme Court held a plaintiff group of businesses had a beneficial interest in a lawsuit challenging a ban to plastic bags because the ban would have a severe and immediate effect on their businesses. *Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 170.

consider other criteria developed in case law, depending on the circumstances of the case.[23] Writs of supersedeas have different criteria, discussed further below.

Writ of Mandate

A writ of mandate is the most common writ.[24] Governed by the same statutes as those used in superior courts, a writ of mandate is a remedy that may be brought to compel any inferior tribunal, corporation, board, or person to perform a legal duty.[25] However, at the appellate level, a writ of mandate is a way to get a higher court to review a ruling in an ongoing case in a lower court. For example, a writ of mandate may be used in a personal injury case to challenge a judge's order to produce documents that a party thinks are attorney-client privileged. Because the case is still proceeding, it is too soon for the party to appeal because there is no final judgment, so the party may file a writ of mandate under Code of Civil Procedure Section 1085 in an attempt to get the appellate court to vacate the order.

Writs of mandate were developed through case law and later codified in the Code of Civil Procedure, which defines the process and broad applications for its use.[26] Writs of mandate are available in a wide variety of circumstances to correct an abuse of discretion by the court or enforce a nondiscretionary duty to act.[27]

In addition to the common requirements, an appellate court may grant a petition and issue a writ of mandate if there was an abuse of discretion or failure to perform a nondiscretionary (*i.e.*, ministerial) duty to act on the part of the trial court.[28]

An appellate court may also issue a writ of mandate as an "alternative" or "peremptory" writ.[29] An alternative writ commands the respondent to do the act requested by the petitioning party or show cause why that act has not been performed.[30] A peremptory writ orders the respondent to do the act requested.[31] A court can issue a peremptory writ

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[23] Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2025) §15:18; *Omaha Indemnity*, 209 Cal.App.3d at 1273–74.

[24] Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2025) §15:32 (*City of King City v. Community Bank of Central Calif.* (2005) 131 Cal.App.4th 913, 925 ("Mandate is the principal extraordinary writ surviving under California law.")). Code Civ. Proc. §§ 1085, 1086.

[25] Code Civ. Proc. §§ 1085, 1086.

[26] *Western States Petroleum Assn. v. Superior Court* (1994) 26 Cal.Rptr.2d 452, 454-55, revd. on other grounds *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559 ("traditional mandate, as codified in section 1085, is the modern equivalent of the common law [] writ of mandamus.").

[27] Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2025) §15:33.

[28] Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2025) §15:37. For example, an abuse of discretion could consist of a trial court's misinterpretation of a statute or case law, or an improper ruling based on the facts. *Id.*

[29] Code Civ. Proc. §§ 1087, 1088.

[30] Code Civ. Proc. § 1087.

[31] Code Civ. Proc. §1088.

immediately, or after first issuing an alternative writ and holding a hearing.[32]

Writ of Prohibition

A writ of prohibition is a common law writ used to restrain a judicial act that lacked jurisdiction or that exceeds the court's jurisdiction.[33] In contrast to a writ of mandate, which orders the respondent to take affirmative action, a writ of prohibition is preventative and requires the respondent *not* to take some action.[34]

Writs of prohibition are used only to correct jurisdictional defects or errors; examples include a superior court attempting to hear a case for which it lacks subject matter jurisdiction[35] or to enforce an order or judgment that is void.[36] Because a writ of prohibition is preventative, it generally addresses an act that has not yet occurred.

In addition to the common requirements, an appellate court may grant a petition and issue a writ of prohibition if the petitioner is seeking to stop a court from taking an action for which it lacks jurisdiction.[37]

Like writs of mandate, a writ of prohibition must issue either as an alternative writ, which orders the respondent to refrain from further proceedings in the matter specified in the writ or show cause why such restraining order should not be continued, or as a peremptory writ, which orders the respondent to refrain from taking the challenged action.[38] A court can issue a peremptory writ immediately, or after first issuing an alternative writ and holding a hearing.[39]

Writ of Certiorari

A writ of certiorari, also known as a "writ of review," reviews completed judicial acts taken without jurisdiction or in excess of jurisdiction.[40]

Writs of certiorari are the counterparts to writs of prohibition.[41] A writ of prohibition generally is used to prevent a jurisdictional error *before* the challenged act occurs; certiorari generally is used to review a *completed* judicial act that was taken without or in excess of

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[32] *Id.*

[33] Code Civ. Proc. § 1102.

[34] Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2025) § 15:56.

[35] *Hagan v. Superior Court* (1960) 53 Cal.2d 498, 502 (writ of prohibition appropriate to review a superior court's attempt to award costs of suit not authorized by statute because such award is beyond the court's jurisdiction); Subject matter jurisdiction is "jurisdiction over the nature of the case and the type of relief sought." Jurisdiction, Black's Law Dict. (12th ed. 2024).

[36] *De Luca v. Superior Court* (1968) 262 Cal.App.2d 254, 261 (issuing writ of prohibition because the trial court lacked jurisdiction to add an alimony award to a final divorce judgment that contained no provision for alimony).

[37] Code Civ. Proc. § 1102.

[38] Code Civ. Proc. § 1104. See discussion above in section on Writs of Mandate for explanation of these terms.

[39] Code Civ. Proc. § 1104.

[40] Code Civ. Proc. § 1068.

[41] Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2025) §15:71.

jurisdiction.[42] Like a writ of prohibition, certiorari addresses only jurisdictional errors, or actions that exceed the court's power to act in a particular manner.[43]

In addition to the common requirements, an appellate court may grant a petition and issue a writ of certiorari if: (1) there is no other adequate remedy, including no appeal;[44] and (2) there is a completed judicial act.[45]

A writ of certiorari may be appropriate to review (1) a judgment of the appellate division of the superior court that exceeds that court's jurisdiction,[46] (2) a nonappealable probate order,[47] or (3) a defense judgment entered after a trial de novo (a new trial)[48] where it is necessary to settle "significant issues of small claims law or procedure."[49]

Unlike writs of mandate and prohibition, there are no alternative writs of certiorari.[50] Instead, if the court grants relief, it issues an order voiding the judgment, order, or other judicial action that was challenged.[51] A court can issue that order immediately, without further proceedings, if the only issue is one of law and the hearing is on only the respondent's demurrer (a response arguing the petition does not state grounds for relief even if its facts are true).[52]

Writ of Supersedeas

A writ of supersedeas is a common law writ that suspends the trial court's authority to carry out an appealed judgment or order.[53] Its purpose is to preserve appellate jurisdiction and maintain the status quo pending review and a ruling on the merits by the appellate court.[54] Unlike the other appellate writs, writs of supersedeas do not address the merits of

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[42] *Id.*

[43] *Id.* at15:72.

[44] Code Civ. Proc. § 1068. Unlike writs of mandate and prohibition, a writ of certiorari is not available simply because the petitioner believes an appeal is inadequate.

[45] Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2025) § 15:76 (writs of certiorari can review only judicial acts – as opposed to ministerial or legislative acts – and only completed – as opposed to threatened – judicial acts).

[46] *Dvorin v. Appellate Dept.* (1975) 15 Cal.3d 648, 650 (holding on a writ of certiorari that the appellate division of the superior court's denial of a motion for summary judgment and entry of summary judgment for the non-moving party exceeded the court's jurisdiction).

[47] *Linstead v. Superior Court* (1936) 17 Cal.App.2d 9, 11 (holding that a writ of certiorari was the proper method of review for an order setting aside a probate decree of distribution of an estate).

[48] *De Novo,* Black's Law Dict. (12th ed. 2024) (new, independent).

[49] *Houghtaling v. Superior Court* (1993) 17 Cal.App.4th 1128, 1131 (holding that a writ of certiorari was appropriate because significant issues of small claims law were at issue when the lower court refused to allow a notarized statement into evidence because the witness had not been subject to cross-examination).

[50] 8 Witkin, Cal. Proc. 6th Writs § 200 (2026).

[51] 8 Witkin, Cal. Proc. 6th Writs § 212(1) (2026).

[52] 8 Witkin, Cal. Proc. 6th Writs § 212(1) (2026); Demurrer, Black's Law Dict. (12th ed. 2024).

[53] Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2025) § 7:260. Code Civ. Proc. § 923.

[54] *Id.*; *Quiles v. Parent* (2017) 10 Cal.App.5th 130, 136; California Rules of Court, rule 8.112.

the appealed judgment or order.[55]

A writ of supersedeas may be used to obtain or enforce a stay pending an appeal.[56] Some situations in which a writ of supersedeas may be appropriate are: (1) when the trial court stay lacks authority to stay the judgment or order, making supersedeas the only method of obtaining a stay;[57] (2) when the trial court has discretion to grant a stay but declines to do so;[58] (3) when the judgment/order ordinarily may be stayed only by posting a bond but the appellant is not able to post the bond;[59] (4) when an automatic stay applies but the trial court nevertheless takes action to enforce the judgment or order, and appellate intervention is necessary to preserve the stay;[60] (5) when a stay is necessary to preserve the status quo pending a separate appeal;[61] or (6) when the trial court has required an incorrect bond amount.[62]

A court of appeal may issue a writ of supersedeas if: (1) a notice of appeal was filed;[63] (2) the appellant exhausted all available remedies at the superior court to obtain a stay;[64] and (3) the appellant showed that they would suffer irreparable harm without the stay and that the appeal has merit.[65]

Statutory Writs

A statutory writ is a petition for mandate, prohibition, or certiorari that a statute expressly authorizes for a particular type of order or proceeding.[66] The authorizing statute defines when writ review is available and, in some circumstances, makes a writ the only way to obtain appellate review.

The requirements for a statutory writ depend on the statute authorizing review. Statutory writs differ from common law writs in that the statute authorizing the writ sets forth a short statutory filing deadline,[67] and many courts treat these statutory deadlines as

[55] Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2025) § 7:260.

[56] *Id.* at §7:272.

[57] In limited circumstances, a writ of supersedeas is the only way to obtain a stay of an appealed judgment or order, such as a prohibitory injunction (which is an injunction to restrain specified conduct). Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2025) §§7:263, 7:264.

[58] *Reed v. Superior Court* (2001) 92 Cal.App.4th 448, 455.

[59] Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2025) § 7:271.

[60] *Estate of Dabney* (1951) 37 Cal.2d 402, 408.

[61] Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2025) § 7:272.1.

[62] *Leung v. Verdugo Hills Hosp.* (2008) 168 Cal.App.4th 205, 211.

[63] *In re Christy L.* (1986) 187 Cal.App.3d 753, 758-59.

[64] *Nuckolls v. Bank of Calif., Nat. Assn.* (1936) 7 Cal.2d 574, 577 (an appellant must exhaust his remedies in the lower court before filing a petition for writ of supersedeas).

[65] Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2025) §7:279.

[66] Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2025) § 15:85.

[67] See, e.g., Code Civ. Proc. § 170.3(d) (requiring a petition for writ of mandate to be filed and served within 10 days after service of notice of entry of order determining whether judge is disqualified); Bus. & Prof. Code § 6126.3(b) (requiring a petition for writ to be filed within 20 days after service of a notice of entry of an order directing disclosure

jurisdictional. That means that once the deadline has passed, the court lacks authority to act on the petition.[68]

Examples of situations in which a statutory writ may be the only means of obtaining appellate review include challenges to: (1) an order denying a motion to quash service of process for lack of personal jurisdiction;[69] (2) a motion to disqualify a judge;[70] (3) an order compelling or refusing disclosure of public documents under the California Public Records Act;[71] (4) an order granting or denying a motion for change of venue;[72] and (5) an order granting a State Bar application for the court to assume jurisdiction over an unauthorized practice of law.[73]

BACKGROUND ON WRIT PRACTICE IN OTHER STATES

At the staff's request, the National Conference of State Legislatures (NCSL) provided a broad overview of state statutes addressing the authority and procedure for writs of mandamus, prohibition, and certiorari.[74]

An initial review of the writ statutes across the states identified in that overview suggests there is no single prevailing statutory model for regulating extraordinary writ practice. States differ in which writs they codify, how much detail they provide regarding writ procedures, and whether matters such as filing deadlines and standards for relief are addressed by statute or by court rules and case law.

One comparison point stands out. New York has gone further than most states in restructuring its writ practice—rather than preserving mandamus, prohibition, and certiorari as separate common law writs, New York consolidated them in 1962 into a single statute known as an "Article 78 proceeding," with a single, unified procedure.[75] The staff will examine whether any language from New York's statute would be suitable for California legislation.

Louisiana, by contrast, uses different terminology for similar relief. What California calls an extraordinary writ, Louisiana calls a "supervisory writ." Like in California,

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by a public official or supporting a public official's decision to refuse disclosure under the Public Records Act); Code Civ. Proc. § 400 (requiring a petition for writ of mandate challenging an order granting or denying a motion to change the place of trial to be filed within 20 days after service of notice of the order).

[68] *Aquino v. Superior Court* (2021) 73 Cal.App.5th 104, 109-110.

[69] Code Civ. Proc. § 418.10(c).

[70] Code Civ. Proc. § 170.3(d).

[71] Gov. Code § 7923.500.

[72] Code Civ. Proc. § 400.

[73] Bus. & Prof. Code § 6180.13.

[74] Email from Jessica Guarino, NCSL, to Commission Staff (Sept. 24, 2026) attaching NCSL, *50 State Statutory Writ Procedures.* The staff thanks NCSL for its assistance with this overview.

[75] N.Y. Civ. Prac. Laws & Rules §§ 7801-7806.

however, the underlying procedure for a supervisory writ in Louisiana is set primarily by court rule rather than by statute.[76]

A stakeholder also identified Washington as a state that has attempted to establish the standard governing discretionary interlocutory review, which is the review of an order while a lawsuit is ongoing. Washington Rule of Appellate Procedure 2.3(b)—a court rule, rather than a statute—permits discretionary review of a trial court decision that is not otherwise appealable only where: (1) the superior court committed an obvious error which would render further proceedings useless; (2) the superior court committed probable error and the decision substantially alters the status quo or substantially limits the freedom of a party to act; (3) the trial court has so far departed from the accepted and usual course of judicial proceedings as to require review; or (4) the trial court has certified, or the parties have stipulated, that the order involves a controlling question of law as to which there is a substantial ground for difference of opinion, and that immediate review may materially advance the ultimate termination of the litigation.[77] The staff will continue reviewing Washington's rule as a possible model to codify the factors for granting writ review in California.

The staff intends to continue researching writ practice in other states as the study progresses.

BACKGROUND ON FEDERAL WRIT PRACTICE

This section presents a brief description of federal writ practice and discretionary interlocutory appeals.[78]

Federal Extraordinary Writs

There are two kinds of federal extraordinary writs: mandamus and prohibition. However, in practice, federal courts generally treat mandamus and prohibition similarly,[79] and mandamus may be used to address both functions of compelling and preventing action.[80] Both writs are derived from the All Writs Act, 28 U.S.C. Section 1651(a), and

[76] La. Code Civ. Proc. Art. 2201.

[77] Wash. Rules App. Proc., rule 2.3(b).

[78] 28 U.S.C. Section 1292(b). A discretionary interlocutory appeal is when a district court certifies for appeal an order that is not a final judgment and the Court of Appeals exercises its discretion to review it. *In re Somberg* (2022) 31 F.4th 1006, 1008.

[79] *Kerr v. United States Dist. Ct.* (1976) 426 U.S. 394, 402 (mandamus used to confine a lower court to a lawful exercise of its jurisdiction).

[80] Goelz, Batalden, & Querio, *Federal Ninth Circuit Civil Appellate Practice* (Apr. 2026) §13:7; *Calderon v. United States Dist. Ct. for Northern Dist. of Calif.* (9th Cir. 1998) 134 F.3d 981, 983 fn. 3, abrogation on other grounds recognized by *Jackson v. Roe* (9th Cir. 2005) 425 F.3d 654, 659.

governed procedurally by Federal Rule of Appellate Procedure 21.[81]

Like in California, whether to grant a petition for writ of mandamus or prohibition is within the federal appellate court's discretion. Federal appellate practice has no counterpart to California's certiorari, a writ of review of completed judicial acts.[82] In the federal system, "certiorari" refers only to the Supreme Court's discretionary review of a court of appeals' judgment under 28 U.S.C. Section 1254(1) and Supreme Court Rule 10.[83]

Likewise, there is not a distinct writ of supersedeas—federal courts instead provide for a stay of a judgment or order pending appeal under Federal Rule of Appellate Procedure 8 and Federal Rule of Civil Procedure 62, historically secured by what was called a "supersedeas bond."[84]

Federal mandamus is more restrictive than in California. The Ninth Circuit has identified five "*Bauman*" factors to help the court in determining whether to issue a writ of mandamus: (1) whether the petitioner has any other means to obtain the relief (such as by appeal); (2) whether the petitioner will be damaged or prejudiced in a way that cannot be corrected by a later appeal; (3) whether the district court's order is clearly erroneous as a matter of law; (4) whether the district court's order is a recurring error or manifests a persistent disregard of the federal rules; and (5) whether the district court's order raises new and important problems or issues of first impression.[85]

Discretionary Interlocutory Appeal under 28 U.S.C. Section 1292(b)

A discretionary interlocutory appeal allows a court of appeals, in its discretion, to review certain orders issued before a district court enters a final judgment.[86] Unlike an ordinary appeal, which generally follows a final judgment, a Section 1292(b) appeal permits appellate review of an interlocutory order when the statutory requirements for interlocutory review are satisfied.[87]

Before a court of appeals will hear a discretionary interlocutory appeal, the district court must first certify the order.[88] A district court shall certify an order for interlocutory appeal if the court believes that the order (1) involves a controlling question of law; (2) as to which

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[81] 28 U.S.C. § 1651(a); Fed. Rules App. Proc., rule 21.

[82] Code Civ. Proc. § 1068.

[83] 28 U.S.C. § 1254(1); U.S. Supreme Ct. Rules, rule 10.

[84] Fed. R. Civ. P. 62(b), Advisory Committee Notes to 2018 amendment (noting that subdivision (b) "carries forward in modified form the supersedeas bond provisions of former Rule 62(d).").

[85] *Bauman v. United States Dist. Ct.* (9th Cir. 1977) 557 F.2d 650, 654-55.

[86] Goelz, Batalden, & Querio, *Federal Ninth Circuit Civil Appellate Practice* (Apr. 2026) §13:16; *In re Somberg,* 31 F.4th at 1008. 28 U.S.C. § 1292(b).

[87] Goelz, Batalden, & Querio, *Federal Ninth Circuit Civil Appellate Practice* (Apr. 2026) §13:16.

[88] 28 U.S.C. § 1292(b). "Certify" in this context means the district court judge states in the order that the order meets the requirements for review under Section 1292(b).

there is substantial grounds for difference of opinion; and (3) immediate appeal may materially advance ultimate termination of the litigation.[89] The district court's certification of an order does not itself require the court of appeals to hear the appeal; the court of appeals retains discretion to accept or decline review.[90]

Section 1292(b) and federal writs of mandamus can both provide appellate review before final judgment, and legal practice guides instruct attorneys to consider carefully whether mandamus or Section 1292(b) criteria apply.[91] A Section 1292(b) petition requires a showing of a "substantial ground for difference of opinion" about the legal question, while a mandamus petition generally must show clear legal error.[92] Moreover, Section 1292(b) provides a mechanism for the parties and district court to obtain review before incurring the costs and delay of proceeding with the litigation.[93] Therefore, when a district court order meets the criteria for Section 1292(b) review and the district court agrees to certify it for review, a petition under Section 1292(b) is preferable to a petition for writ of mandamus.[94] Mandamus remains available when an order does not meet the Section 1292(b) criteria or the district court declines to certify it.

One major distinction between an interlocutory appeal under Section 1292(b) and a writ in California is the requirement under Section 1292(b) that the petitioner first approach the lower court (the court that issued the order) for permission to file the writ petition with the appellate court.[95] The petitioner must also convince the court of appeals that exceptional circumstances justify intervening before the final judgment in the underlying case.[96] The party that prevailed under the district court's order is entitled to file an opposition to the application for Section 1292(b) certification.[97] If the district court grants the application for certification, the petitioner then must file a petition with the court of appeals within 10 days after the district court's certification order.[98] Like in California, a petition for permission to appeal under Section 1292(b) does not automatically stay the lower court proceedings, but the petitioner may request a stay from the district court or the court of appeals.[99]

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[89] *Id.*
[90] *Id.*
[91] Goelz, Batalden, & Querio, *Federal Ninth Circuit Civil Appellate Practice* (Apr. 2026) §13:16.
[92] *Id.* at §13:17.
[93] *Id.* at §13:18.
[94] Goelz, Batalden, & Querio, *Federal Ninth Circuit Civil Appellate Practice* (Apr. 2026) §13:18.
[95] *Id.* at § 2:159.
[96] *In re Cement Antitrust Litig.* (9th Cir. 1981) 673 F.2d 1020, 1026.
[97] Goelz, Batalden, & Querio, *Federal Ninth Circuit Civil Appellate Practice* (Apr. 2026) §2:169.
[98] Fed. Rules of App. Proc. Rule 5(a)(1); 28 U.S.C. § 1292(b).
[99] 28 U.S.C. § 1292(b); Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2025) § 15:183.

There are potential benefits to the Section 1292(b) certification requirement. First, requiring the district court to certify an order before a party may seek interlocutory review could serve a "gatekeeping" mechanism, potentially reducing the number of matters that reach the courts of appeals for interlocutory review. Second, because the district judge is familiar with the litigation, the district court may be well positioned to identify issues that warrant immediate appellate review. Finally, Section 1292(b) establishes specific criteria for interlocutory review, which may provide practitioners with clearer guidance than a standard developed primarily through case law. The certification requirement, however, creates an additional procedural hurdle for a party seeking interlocutory review, potentially adding time and expense to the process of obtaining appellate review of an issue that might require prompt resolution.

The staff intends to conduct additional research into federal appellate practice, including the district-court certification process under Section 1292(b), to assess whether aspects of that process could be adapted to California's writ process. The staff also intends to seek feedback from stakeholders with experience seeking or responding to Section 1292(b) certification to better understand how the certification process operates in practice and its potential advantages and disadvantages.

STAKEHOLDER OUTREACH AND ISSUES WITH CURRENT WRIT PRACTICE

Since the last meeting, the staff has conducted several interviews of writ practitioners. Stakeholders generally agreed that current writ practice is inconsistent across appellate courts—for example, in how courts handle oppositions to writ petitions and the type of document the court uses to issue a writ (*e.g.*, an order to show cause, an alternative writ, or a *Palma* notice)—and several suggested that greater uniformity in these technical and procedural aspects would be beneficial. Stakeholders were more divided on whether the substantive standard for granting a writ could (or should) be codified, with some cautioning that the standard's inherently discretionary nature may not lend itself to a statutory fix.

The staff also asked stakeholders whether California should adopt a certification model similar to the federal discretionary interlocutory appeal process, under which a lower court must "approve" an issue before interlocutory review may proceed. One stakeholder thought the federal standard for certifying an interlocutory appeal is clearer but more restrictive, while California's standard affords more discretion at the cost of predictability. Another stakeholder expressed reservations about using such a model in California because it runs the risk that a trial judge asked to approve review of their own ruling may not always do so fairly. One stakeholder also identified the term "mandate" itself as a central source of

confusion because the same statute, Code of Civil Procedure Section 1085, governs both a trial court's writ of mandate to enforce a legal duty and an appellate court's writ of mandate reviewing a superior court order, despite the two serving fundamentally different functions.[100] Another practitioner thought the deadlines for statutory writs could be improved by standardizing them in a single code section instead of their dispersion throughout the Code of Civil Procedure.

The staff will review these suggestions and continue to engage with stakeholders on these and additional recommendations.

PROPOSED SCOPE OF STUDY

Based on the staff's initial research and stakeholder outreach, the staff recommends that the Commission focus the study on writ practice by which an appellate court reviews another court's action or order. The study would encompass extraordinary writ proceedings in the Supreme Court, Courts of Appeal, and the appellate division of the superior court.[101] The study would include writs of certiorari, mandate, prohibition, and statutory writs that involve extraordinary appellate review of another court's action. It would not extend to writ proceedings in the superior court that do not involve appellate-level review, such as writs of mandate and administrative mandate, attachment, execution, possession, and sale.

The staff recommends including writ proceedings in the appellate division of the superior court in the study, even though these proceedings are governed by different court rules than proceedings before the Courts of Appeal. The rules governing writ proceedings in the superior court appellate division "are modeled on, and are similar to, the rules for writ proceedings in the court of appeal."[102] Because writ practice in the appellate division raises largely the same structural and procedural questions as writs before the Courts of Appeal—including when extraordinary review should be available and what procedures should govern a petition—the staff believes it makes sense to study these forms of writ practice together.

The staff recommends excluding writ proceedings in the superior court that do not involve appellate-level review, such as writs of traditional and administrative mandate, attachment, execution, possession, and sale. These are procedurally distinct from the review function that writs of mandate, prohibition, and certiorari serve at the appellate

[100] That stakeholder suggested separating an appellate court's writ of mandate reviewing a trial court order from the trial court's writ of mandate under a different set of rules.

[101] Cal. Rules of Court, rules 8.930-8.936. The appellate division of the superior court also hears writs of mandate, prohibition, and certiorari in misdemeanor and infraction cases. This study is limited to civil writ practice and does not address those proceedings.

[102] Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2025) § 16:120.

level. Including these proceedings would require the Commission to consider a fundamentally different setting in which writ relief is sought.

The staff also recommends excluding writs of supersedeas. Although supersedeas is an appellate writ, its function differs from the extraordinary appellate writs. Supersedeas does not ordinarily provide appellate review of the merits or legality of a lower court's action, but operates to preserve the status quo and protect appellate jurisdiction pending resolution of an appeal.[103] Its procedures therefore raise issues more closely related to stays and the effect of an appeal than to the procedural framework governing extraordinary writ review.

This proposed scope is also consistent with Justice Bromberg's original suggestion for the study, which focused on appellate writs,[104] and with the staff's stakeholder outreach. That outreach suggests that writ proceedings heard by the superior court in the first instance, as well as writs of supersedeas, raise distinct issues that could constitute substantial subjects for study in their own right and would be better addressed separately if the Commission later determines that a broader study is warranted.

PROPOSED NEXT STEPS

If the Commission approves the scope described above, staff will continue to engage in outreach with other interested stakeholders, including appellate justices, appellate division judges, and practitioners with relevant experience in writ practice. Staff will also work on identifying specific issues in writ procedure for the Commission's consideration at a future meeting, including by exploring the ideas raised by stakeholders to date, as described above. The staff will also work on further researching writ procedures in other states.

Does the Commission agree to focus the scope of the study on extraordinary writ practice at the appellate level—including writ proceedings before the appellate division of the superior court—while excluding superior court writ proceedings that do not involve appellate-level review? Does the Commission have any other suggestions for how to approach this study?

Respectfully submitted,

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[103] Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2025) § 7:260.
[104] Memorandum 2026-2, EX 1-2.