



How to Litigate a Writ of Mandate Case

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Introduction

- Paper provides overview of laws
- Cities normally defend writs
- Best defense is to prepare for suit well before it is filed

The Nature of a Writ of Mandate

- “Extraordinary” or “prerogative” writs
- Writs of prohibition and certiorari distinguished from writs of mandate
- The writ demands action

Traditional Mandate vs. Administrative Mandate

Traditional

Administrative

CCP § 1085

Legislative,
quasi-legislative
administrative
legal duties

CCP § 1094.5

Adjudicatory or
quasi-judicial
action, hearing
& evidence
required by law

Traditional Mandate Under CCP §1085 – Three Elements

1. Respondent's duty – Under CCP § 1085, mandate lies to “compel performance of an act which the law especially enjoins” (duty imposed by ordinance included)
2. Under CCP § 1086, the petitioner must be “beneficially interested,” and
3. There must be no other adequate remedy

Traditional Mandate: Respondent's Clear and Present Duty

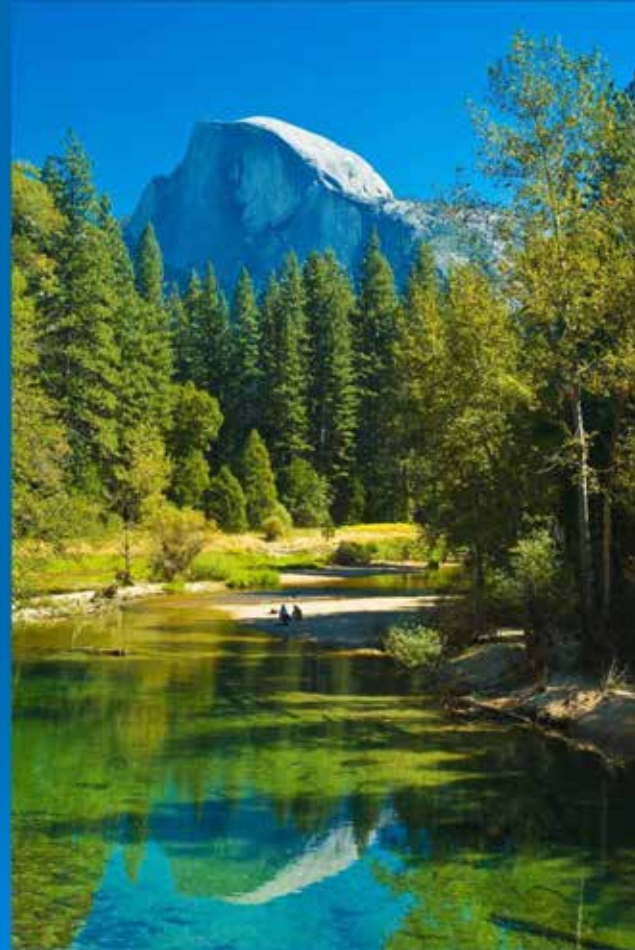
- No duty where language is directory
- Duty compelled is usually ministerial but writ may correct an abuse of discretion
- There must be a present duty to act

Discretionary Duty

- The writ cannot control the exercise of discretion e.g. purely legislative act
- It can prevent an abuse of discretion
- It can challenge the failure to exercise discretion

Abuse of Discretion-Standard of Review

- Abuse of discretion standard requires that the challenged action be:
 - Arbitrary and capricious and
 - Totally lacking in evidentiary support




Review Confined to Administrative Record - Western States ?

Review confined to administrative record before agency ONLY in:

- CEQA traditional mandate cases with formal quasi-legislative administrative process
- Other formal quasi-legislative procedures if agency is required by law to conduct a factual inquiry and support its conclusions with facts in its administrative record

Traditional Mandate: Petitioner's Beneficial Interest

- Standing = petitioner personally affected in a concrete, particularized way
 - Standing requirement is jurisdictional
 - Standing can be lost by subsequent events
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Traditional Mandate: Public Interest Exceptions



- Public interest can result in relaxation of requirements of both:

Respondent's duty


and

Petitioner's beneficial
Interest

Traditional Mandate: Statutory Entitlement to Writ Relief

- Some statutory schemes explicitly provide for remedy of a writ of mandate, e.g.:
 - Gov't Code § 549560, 549560.1 (Brown Act)
 - Gov't Code §6258 (Public Records Act)
 - Election Code §9295 (challenge to ballot materials)

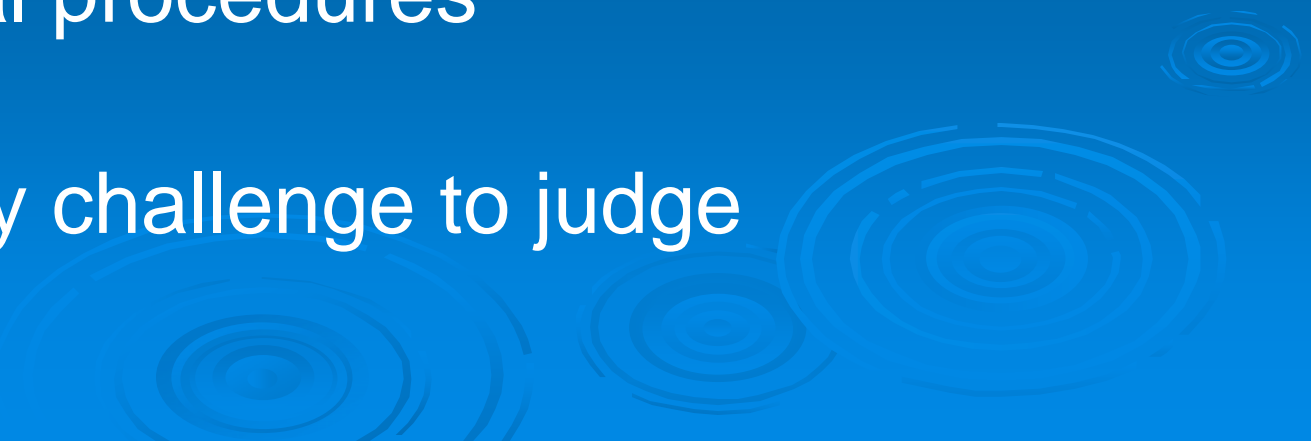
Traditional Mandate: Inadequacy of Other Remedies

- Exhaustion of administrative remedies required
 - Injunctive and declaratory relief can be combined with an action for a writ of mandate
 - Other available remedies
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Traditional Mandate – Statute of Limitations (S/L)

- No specific S/L for traditional mandate
- Look at substantive law raised by writ for possible S/L
- If special statutory writ of mandate, look whether it has S/L

Traditional Mandate - Procedure

- Code of Civil Procedure provisions and California Rules of Court governing civil actions apply to writs of mandate unless otherwise provided
 - Check local procedures
 - Peremptory challenge to judge
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Traditional Mandate - Initiating Petition

- The petition is the equivalent of a complaint and must be verified
- No summons except where:
 - 1) other relief is being sought; or
 - 2) in certain statutory proceedings requiring the issuance and service of a summons

Traditional Mandate Procedure

- Indispensible parties must be joined as real parties in interest
- Review limited to record in CEQA quasi-legislative actions



Traditional Mandate - Alternative Writ v Service of Petition Alone

- Ex parte application for alternative writ
- If alternative writ issued – time to answer or otherwise respond is stated in writ
- If no alternative writ sought respondents and/or real parties in interest may answer or otherwise respond 30 days from service of petition


Traditional Mandate - Demurrer, Answer

- May demur - demurrer can reach judicially noticed matters, including legislative history
- May answer – affirmative allegations (disputed by replication or proof at trial)

Traditional Mandate - No Noticed Motion if Facts in Dispute

- Cannot proceed by noticed motion if facts are in dispute
- May file summary judgment motion

Trial and Judgment

- Trial on disputed facts is before judge or, in the discretion of the judge, by a jury
 - Order denying writ must be turned into judgment
 - Judgment should resolve all issues
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Appealability; Attorney's Fees

- Make sure order is turned into a final judgment if writ is denied or else order is not appealable, and time to appeal will not run
- No specific §1085 entitlement to attorney's fees; but might be sought under other attorney's fee recovery laws, e.g. CCP §1021.5

Traditional Mandate: Other Applicable Principles and Defenses




➤ Equitable principles apply:

- 1) can't compel void or unlawful act
- 2) laches
- 3) unclean hands

Administrative Mandate – CCP § 1094.5

- Used to review a final determination made as a result of a proceeding where:
 1. a hearing is legally required;
 2. evidence must be taken; and
 3. discretion is vested with discretion to determine the facts

Administrative Mandate - Grounds

- Agency acted in excess of or without jurisdiction
 - No fair trial
 - Prejudicial abuse of discretion
 - Absence of findings
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Jurisdiction


- Examples -
- Licensee withdrew before final determination
- Statute of limitations ran proceeding/appeal initiated before agency

Fair trial Before Administrative Tribunal

➤ Examples:

- Inadequate notice
- Lack of impartiality of decision maker (e.g. pecuniary bias, improper combination of prosecutorial and advisory functions, pre-judgment of issues)
- Reasonableness of opportunity to be heard

Prejudicial Abuse of Discretion

- Agency failed to proceed in manner required by law
 - Decision not supported by findings
 - Findings not supported by evidence
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Absence of Findings

- Agency must set forth findings “to bridge the analytic gap between the raw evidence and the ultimate decision or order”
- (*Topanga Ass’n for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515.)

Standards of Review

- Independent Judgment
Or
- Substantial Evidence



Independent Judgment

- Required when statute requires or vested right at stake (e.g. revocation of license, termination of employment, or agency has quasi-judicial powers.)
- Abuse of discretion when agency findings are supported by the weight or preponderance of the evidence

Substantial Evidence

➤ Abuse of discretion established if:

1. The decision is not supported by findings;

or


2. The findings are supported by substantial evidence in light of the administrative record



Substantial Evidence and Burden of Proof

- It is presumed that the findings were supported by substantial evidence
- Petitioner has burden of proving that decision is invalid
- Staff reports constitute substantial evidence
- Testimony of neighbors constitutes substantial evidence

Statute of Limitations (S/L)

- Petition for writ of administrative mandate must be filed within 90 days of notice of agency's final action
 - Time extended if petitioner makes timely request for record within 10 days of decision
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Administrative Mandate Procedure

Preparation of Administrative Record

- Agency must prepare record §1094.6, petitioner pays
- Includes transcript of proceedings, the final decision, all admitted and rejected exhibits and all other documents in the case
- May need to correct record if incomplete, etc.
- No extra record evidence unless could not have been introduced at hearing despite diligence

Petition Verification Alternative Writ, Stay, Hearing on Noticed Motion

- Petition must be verified (waived if not asserted.)
- At alternative writ stage, stay may be sought – court can consider likelihood of prevailing on merits
- Hearing set by noticed motion when record is ready
- Seek statement of decision by time of oral argument

Administrative Mandate: Judgment, Remand, Attorney's Fees

- If judgment for petitioner, writ may issue commanding reconsideration
- No interlocutory order remanding case
- Attorney's fees of \$7,500 under Gov't Code §800 if action set aside was arbitrary and capricious
- Other attorney's fee statutes might apply, like CCP §1021.5

Administrative Mandate – Appeal, Stay

- If writ denied, previously issued stay is continued for 20 days from filing of notice of appeal; Court of Appeal can extend stay
- If writ granted, stay continues pending appeal unless Court of Appeal decides otherwise

Conclusion

- Do preventative advance work
- Figure out the right writ, (§1085 or §1094.5) & standards of review
- Litigate strategically, limit record when you need to, prepare appealable judgments.