APP-150-INFO Information on Proceedings for Writs in the Appellate Division of the Superior Court

General Information

This pamphlet provides general information about proceedings in which a person is requesting a writ—a writ of mandate (sometimes called "mandamus"), prohibition, or review (sometimes called "certiorari")—in the superior court appellate division. Please read this form before you complete *Petition for Writ (Appellate Division)* (form APP-151).

This pamphlet does NOT provide information about appeals in the superior court appellate division. For information about appeal procedures in limited civil cases, please see *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO). For information about appeal procedures in infraction cases, please see *Information on Appeal Procedures for Infractions* (form CR-141-INFO). For information about appeal procedures in misdemeanor cases, please see *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO). This pamphlet also does not cover proceedings for writs of supersedeas or habeas corpus. Please see rule 8.824 of the California Rules of Court regarding writs of supersedeas. For information about writs of habeas corpus, please see rules 4.550–4.552 of the California Rules of Court, and *Petition for Writ of Habeas Corpus* (form MC-275). You can get these rules and forms at any courthouse or county law library or go to *www.courtinfo.ca.gov/rules* for the rules or *www.courtinfo.ca.gov/forms* for the forms.

The information in this pamphlet is not intended to cover everything you may need to know about proceedings for writs in the appellate division. It is only meant to give you an overview to help guide you through the process. You should thoroughly read rules 8.930–8.936 of the California Rules of Court, which set out the procedures for writ proceedings in the appellate division. You can get these rules at any courthouse or county law library or go to *www.courtinfo.ca.gov/rules*.

You are allowed to represent yourself in a writ proceeding in the appellate division. If you have any questions about the writ procedures, however, you should consult an attorney. You must retain your own attorney if you want one. You can get information about finding an attorney on the California Courts Self-Help Center Web site at *www.courtinfo.ca.gov/selfhelp/lowcost/*.

1 What Is a Writ?

A writ is an order (called a "writ") from a higher court directing a lower court to do something that the lower court has a legal obligation to do, or to not do something the court does not have the legal authority to do. In writ proceedings in the appellate division, the lower court is the superior court that took the action or issued the order being challenged. **In this information sheet, we refer to the superior court as the "trial court."**

There are three main types of writs: writs of mandate (sometimes called "mandamus"), writs of prohibition, and writs of review (sometimes called "certiorari"). These names refer to the type of order being issued: writs of mandate are orders to do something, writs of prohibition are orders not to do something, and writs of review are orders providing for review of a judicial action that has already been taken. There are laws (statutes) concerning each type of writ that you should read: see Code of Civil Procedure sections 1084–1097 regarding writs of mandate, sections 1103–1105 regarding writs of prohibition, and sections 1067–1077 regarding writs of review. You can get copies of these statutes at any county law library or go to *www.leginfo.ca.gov/calaw.html*.

Writs may be requested when a trial court makes what a party believes is a legal error concerning an important ruling during a case and the party believes that he or she will be harmed in a way that cannot be fixed later through an appeal if the error is not corrected. The party is usually asking that the trial court be ordered to cancel (vacate) its ruling, issue a new ruling, and/or not take any steps to enforce its ruling.

Not every mistake a trial court might make can be addressed by an writ; these writs can only address the following types of legal errors:

- The trial court has a legal duty to act but refuses to exercise its power to act;
- The trial court has a legal duty to perform a mandatory act but has not performed that act;
- The trial court had a legal duty to act but abused its discretion in the way it acted; or
- The trial court has performed or is threatening to perform a judicial function (like deciding a person's rights under law in a particular situation) in a way that the court does not have the legal power to do.

A writ proceeding is not the same thing as an appeal. An appeal is the usual way in which a party asks a higher court to review a lower court's decision. But appeals can be used only to review a trial court's final judgment and certain limited orders. Most rulings made by a trial court before it issues its final judgment are not subject to immediate appeal; they can be reviewed only after the case is over, as part of an appeal of the final judgment. Writ proceedings, in contrast, can be used to seek immediate review of important rulings made by a trial court before it issues its final judgment.

Also unlike appeals, writs are discretionary. In an appeal, the appellate division must hear the parties' arguments and decide whether the appealing party is correct that the superior court made an error and whether, based on that error, the party is entitled to the relief requested (this is called "a decision on the merits"). In contrast, in an writ proceeding, the appellate division is not required to issue a decision on the merits; even if the superior court made an error, the appellate division can decide to leave review of that error for an appeal from the final judgment in the case. Most requests for writs are denied without a decision on the merits (this is called a "summary denial"), and courts rarely grant the relief requested even in those cases that are decided on the merits. Both because these writ proceedings are not the ordinary way trial court decisions are reviewed and because these writs are rarely issued, these writ proceedings are often called proceedings for "extraordinary" relief and these writs are often called "extraordinary" writs.

A writ proceeding is also not a new trial. The appellate division will not consider new evidence, such as the testimony of new witnesses. Instead, the role of the appellate division is to review a record of what happened in the trial court and the trial court's ruling to see if the trial court made the legal error claimed by the person requesting the writ. When it conducts its review, the appellate division presumes that the trial court's ruling is correct; the person who requests the writ must show the appellate division that the trial court made the legal error the person is claiming.

The person requesting the writ must also show the appellate division that there is no adequate way to address the trial court's error other than through issuing a writ (this is referred to as having "no adequate remedy at law"). As noted above, the other, more common, way of obtaining review of a superior court ruling is through an appeal. If a superior court ruling can be reviewed either through an immediate appeal or as part of an appeal of the final judgment in the case, the appellate division will generally consider this appeal to be an adequate remedy unless the person requesting the writ can show the appellate division that he or she will be harmed in a way that cannot be fixed by the appeal (this is referred to as "irreparable" injury or harm) if the appellate division does not issue the writ.

(2) Who Are the Parties in a Writ Proceeding?

The party that requests the writ is called the PETITIONER. The court that the petitioner is asking to be ordered to do something or not do something is called the RESPONDENT. In appellate division writ proceedings, the trial court is the respondent. Each other party in the trial court case is called a REAL PARTY IN INTEREST.

Information for the Petitioner

This part of this information sheet is written for the petitioner–the party that is requesting the writ. It explains some of the rules and procedures relating to requesting an writ. The information may also be helpful to a real party in interest. There is additional information for the real party in interest starting on page 10 of this form.

3 Who Can Request a Writ?

Only a party that has a "beneficial interest" in the trial court's ruling can request a writ challenging the ruling. A "beneficial interest" means that the party has a specific right or interest affected by the ruling that goes beyond the general rights or interests the public at large may have in the ruling. While this includes a party—the plaintiff or defendant—in the trial court proceeding, in most cases, nonparties who are directly and negatively affected by a ruling can also seek a writ challenging that ruling. However, only a party in the trial court proceeding can seek a writ challenging a ruling on a motion to disqualify a judge (see Code of Civil Procedure section 170.3(d)).

4 What Kinds of Rulings Can Be Challenged in an Extraordinary Writ Proceeding in the Appellate Division?

There are laws (statutes) that provide that certain kinds of rulings can or must be challenged using a writ proceeding. These are called "statutory writs." Here is a list of some of the most common rulings that can or must be challenged by way of statutory writs:

- A ruling on a motion to disqualify a judge (see Code of Civil Procedure, section 170.3(d));
- Denial of a motion for summary judgment (see Code of Civil Procedure, section 437c(m)(l));
- A ruling on a motion for summary adjudication of issues (see Code of Civil Procedure, section 437c(m)(l));
- Denial of a stay in an unlawful detainer matter (see Code of Civil Procedure, section 1176);
- Denial of a motion to dismiss a criminal matter (see Penal Code section 999(a)); and
- An order disqualifying the prosecuting attorney (see Penal Code section 1424).

You can get copies of these statutes at any county law library or go to *www.leginfo.ca.gov/calaw.html*. You will need to check whether there is a statute providing that the specific ruling you want to challenge can or must be reviewed using a writ proceeding. (Note that just because there is a statute requiring or allowing you to request a writ to challenge a particular ruling does not mean that the court must grant your request; the appellate division still has discretion to grant or deny a statutory writ.)

Even if there is not a statute specifically providing for a writ proceeding to challenge a particular ruling, most trial court rulings other than rulings on the admissibility of evidence and the final judgment can potentially be challenged using a writ proceeding if the petitioner has no other adequate remedy at law. These nonstatutory writs are called "common law" writs.

Different courts have the power (called "jurisdiction") to consider requests for writs depending on the type of cases. The appellate division can only consider requests for writs in limited civil cases, misdemeanor cases, and infraction cases. A limited civil case is a civil case in which the amount claimed is $25,000 or less (see Code of Civil Procedure sections 85 and 88). Misdemeanor cases are those in which a person has been charged with a crime for which the punishment can include jail time of up to one year but not a sentence to state prison (see Penal Code sections 19.6 and 19.8). Infraction cases, such as those regarding traffic tickets or citations for violations of some city ordinances, are cases where a person has been convicted of a crime for which the punishment can be a fine, traffic school, or some form of community service but cannot include any jail or prison time (see Penal Code sections 19.6 and 19.8).

The appellate division does NOT have jurisdiction to consider requests for writs in either unlimited civil cases (civil cases in which the amount claimed is more than $25,000) or felony cases (cases in which a person has been charged with a crime for which the punishment can include a sentence to state prison); requests for writs in these cases can be made in the Courts of Appeal. The appellate division also does not have the jurisdiction to consider requests for writs of habeas corpus; requests for these writs can be made in the superior court.

5 How Do I Start a Writ Proceeding in the Appellate Division?

The first step in starting a writ proceeding is serving and filing a petition for a writ. A "petition" is a formal request that a court take action. A petition for a writ explains to the appellate division what happened in the trial court, what error you (the petitioner) believe the trial court made, why you have no other adequate remedy at law, and what order you are requesting the appellate division to issue.

6 How Do I Prepare a Writ Petition?

If you are represented by an attorney, your attorney will prepare your petition for a writ. If you are not represented by an attorney, you must use *Petition for Writ (Appellate Division)* (form APP-151) to prepare your petition. You can get form APP-151 at any courthouse or county law library or go to *www.courtinfo.ca.gov/forms*. This form asks you to fill in the information that needs to be contained in a writ petition, including what ruling you are challenging, when the trial court made the ruling, what interest you have in the ruling, what legal error you believe the trial court made, why you do not have an adequate remedy at law, and what order you are requesting the appellate division to issue.

A. Describing Your Interest in the Ruling You Are Challenging

As discussed above, only a person who has a "beneficial interest" in the trial court's ruling can request a writ challenging that ruling. A "beneficial interest" means that you have a specific right or interest affected by the ruling that goes beyond the general rights or interests the public at large may have in the ruling. To show the appellate division that you have a beneficial interest in the ruling you want to challenge, you must either indicate that you were a party—the plaintiff or defendant—in the trial court proceeding in which the ruling was issued or, if you were not a party, you must describe how you will be directly and negatively affected by the ruling.

B. Describing the Legal Error You Believe the Trial Court Made

In your writ petition, you must describe the legal error that you believe the superior court made. As discussed above, not every mistake a trial court might make can be addressed by a writ; you must show that the trial court made one of the following types of legal errors:

- The trial court has a legal duty to act but refuses to exercise its power to act;
- The trial court has a legal duty to perform a mandatory act but has not performed that act;
- The trial court had a legal duty to act but abused its discretion in the way it acted; or
- The trial court has performed or is threatening to perform a judicial function, like deciding a person's rights under law in a particular situation, in a way that the court does not have the legal power to do.

To show the appellate division that the trial court made one of these legal errors, you will need to show that the trial court has the legal duty or the power to act or not act in a particular way. You will need to tell the appellate division what legal authority—what constitutional provision, statute, rule, or published court decision—establishes the trial court's legal duty or power to act or not act in that way. Then you will need to explain why you believe the trial court has not acted in the way it is legally required to act.

C. Describing Why You Have No Adequate Remedy at Law

One of the most important parts of your petition is explaining to the appellate division why you have no other adequate legal remedy. To do this, you will need to show the appellate division that you have no way to adequately challenge the trial court's ruling other than through a writ proceeding and show how you will be irreparably harmed if the appellate division does not issue the writ you are requesting. Remember, the appellate division does not have to grant your petition just because the trial court made an error. You must convince the court why it is important for it to issue the writ. This is true even in the case of statutory writs; while the Legislature has already determined that a writ proceeding is an appropriate way to seek review of these rulings, issuing the writ is still discretionary.

As noted above, if the ruling can be reviewed either through an immediate appeal or as part of an appeal of the final judgment in the case, the appellate division will generally consider this appeal to be an adequate remedy unless you can show the appellate division that you will be harmed in a way that cannot be fixed by the appeal (this is referred to as "irreparable" injury or harm) if it does not issue the writ. It is therefore important for you to find out if the ruling you want to challenge can be appealed immediately or as part of the final judgment.

Just as there are laws (statutes) that provide that certain kinds of rulings can be reviewed using a writ, there are also laws that provide that certain kinds of rulings can be appealed immediately. Code of Civil Procedure section 904.2 identifies the types of orders in a limited civil case that can be appealed immediately. These orders include:

- An order made after final judgment in the case;
- An order changing or refusing to change the place of trial (venue);
- An order granting a motion to quash service of summons or granting a motion to stay or dismiss the action on the ground of inconvenient forum;
- An order granting a new trial or denying a motion for judgment notwithstanding the verdict;
- An order granting or dissolving an injunction or refusing to grant or dissolve an injunction; and
- An order appointing a receiver.

In misdemeanor and infraction cases, the following court orders can be appealed immediately:

- An order granting or denying a motion to suppress evidence (Penal Code section 1538.5(j)); and
- Any order made after the final judgment that affects the substantial rights of the defendant (Penal Code section 1466).

You can get copies of these statutes at any county law library or go to *www.leginfo.ca.gov/calaw.html*. You should also check if there are published court decisions that indicate whether a challenge to the type of ruling at issue in your case should be made using an appeal or a writ proceeding.

D. Describing the Order You Want the Appellate Division to Issue

You must describe what you are asking the appellate division to order the trial court to do or not to do. As noted above, the petitioner typically asks that the trial court be ordered to cancel (vacate) its ruling, issue a new ruling, and/or not to take any steps to enforce its ruling.

If you want the appellate division to order the trial court not to proceed any further in its action until the appellate division decides whether to grant the writ you are requesting, you must ask for a "stay." If you want a stay, in general, you should first ask the trial court to stay its own proceedings. You should tell the appellate division whether you asked the trial court for a stay. If you did not ask the trial court for a stay, you should tell the appellate division why you did not do this.

If you ask for a stay, make sure you also fill out the "Stay Requested" box on the first page of *Petition for Writ (Appellate Division)* (form APP-151).

E. Verifying the Petition

Petitions for writs must be "verified." This means that the person signing the petition—either the petitioner or the petitioner's attorney—must declare under penalty of perjury that the facts stated in the petition are true and correct and indicate the location and date that the petition was signed. On the last page of *Petition for Writ (Appellate Division)* (form APP-151), there is a place for you to verify your petition. This verification is written assuming that the petition will be signed in California. If you are signing form APP-151 outside of California, you will need to cross out the word "California" in the verification and write in the location where you are when you sign the petition.

7 Is There Anything Else That I Need to Serve and File With My Petition?

Yes. Along with the petition, you must serve and file a record of what happened in the trial court. Since the appellate division judges were not present for the proceedings in the trial court, a record of these proceedings must be sent to the appellate division for its review. The documents that make up this record are called "supporting documents."

The supporting documents must include a transcript or electronic recording of the oral proceedings in the trial court relating to the ruling that you are challenging in the petition. A transcript is a written record (often called the "verbatim" record) of the oral proceedings in the trial court. If a court reporter was present during the trial court proceedings and made a record of the oral proceedings, you can have the court reporter prepare a transcript of those oral proceedings, called a reporter's transcript, for the appellate division. If a reporter was not present, but the trial court proceedings were officially recorded on approved electronic recording equipment, you can elect to have a transcript prepared for the appellate division from the official electronic recording of these proceedings. Alternatively, if the appellate division has a local rule permitting this and all the parties agree (stipulate), a copy of the official electronic recording itself can be used as the record of such oral proceedings. The petitioner is responsible for paying the cost of preparing a transcript or the cost of preparing a copy of the official electronic recording.

If a transcript or official electronic recording of these proceedings is not available, your petition must include a declaration either (1) explaining why the transcript or official electronic recording is unavailable and fairly summarizing the proceedings, including the petitioner's arguments and any statement by the court supporting its ruling or (2) stating that the transcript or electronic recording has been ordered, the date it was ordered, and the date it is expected to be filed.

The following documents must also be included in the supporting documents:

- The trial court ruling being challenged in the petition;
- All documents and exhibits submitted to the trial court supporting and opposing the petitioner's position; and
- Any other documents or portions of documents submitted to the trial court that are necessary for a complete understanding of the case and of the ruling being challenged.

Rule 8.901 of the California Rules of Court also provides, that in extraordinary circumstances, the petition may be filed without these documents. If the petition is filed without these documents, you must explain in your petition the urgency and the circumstances making the documents unavailable.

Supporting documents must be submitted to the court in the format required by rule 8.931. Among other things, there must be a tab for each document and an index identifying the documents that are included. You should carefully read rule 8.931. You can get a copy of rule 8.931 at any courthouse or county law library or go to *www.courtinfo.ca.gov/rules*.

8 When Do I Need to Serve and File My Petition?

In the case of statutory writs, the statute usually sets a specific deadline by which the petition must be served and filed. Here is a list of the deadlines for filing some of the most common statutory writs (you can get copies of these statutes at any county law library or go to *www.leginfo.ca.gov/calaw.html):*

Statutory Writ	Filing Deadline
Writ challenging a ruling on a motion to disqualify a judge (see Code of Civil Procedure, section 170.3(d))	10 days after notice to the parties of the decision
Writ challenging the denial of a motion for summary judgment (see Code of Civil Procedure, section 437c(m)(l))	20 days after service of written notice of entry of the order
Writ challenging a ruling on a motion for summary adjudication of issues (see Code of Civil Procedure, section 437c(m)(l))	20 days after service of written notice of entry of the order
Writ challenging the denial of a motion to dismiss a criminal matter (see Penal Code section 999(a))	15 days after denial of the motion
Writ challenging the denial of a motion to suppress evidence in a criminal matter (see Penal Code sections 1538.5(i))	30 days after denial of the motion

In the case of common law writs or statutory writs for which no deadline is specified, there is no absolute deadline for filing the petition. However, you should file the petition as soon as possible and in any event not later than 60 days after the court makes the ruling that you are challenging in the petition. Remember, the court is not required to grant your petition even if the trial court made an error. Absent extraordinary circumstances, if you delay in filing your petition it creates the impression that it is not really urgent that the appellate division issue the writ you are requesting and the appellate division may deny your petition. If there are extraordinary circumstances that delayed the filing of your petition, you should explain these circumstances to the appellate division in your petition.

9 How Do I Serve My Petition?

Rule 8.931(e) requires that the petition and one set of supporting documents be served on any named real party in interest and that just the petition be served on the respondent trial court. "Serving" a document on a party means that a copy of the document you are filing in court is delivered to that party. You can get information about how to serve court documents on the California Courts Self-Help Center Web site at *www.courtinfo.ca.gov/selfhelp/lowcost/getready.htm#serving*.

Part of serving a document is making a record that the document has been served. This record is called a "proof of service," and it shows who was served with the document, how the document was served on that party, and the date the document was served.

10 How Do I File My Petition?

To file a petition for a writ in the appellate division, you must bring or mail the original petition, including the supporting documents, and the proof of service to the clerk for the appellate division of the superior court that took the action or issued the ruling you are challenging. If the superior court has more than one courthouse location, you should call the clerk at the courthouse where the ruling you are challenging was issued to ask where to file your petition.

You should make a copy of all the documents you are planning to file for your own records before you file them with the court.

11 Is There a Fee to File a Petition for a Writ?

There is no fee to file a petition for a writ in a criminal case. There is a fee, however, to file such a petition in a civil case. You should ask the clerk for the appellate division where you are filing the petition what this fee is. If you think you cannot afford to pay this filing fee because of your financial condition, you can request that the fee be waived. To do this, you must file an application for a waiver of court fees and costs under rules 3.50 et seq. You must use *Application for Waiver of Court Fees and Costs* (form FW-001), to prepare and file this application. You can get form FW-001 at any courthouse or county law library or go to w*ww.courtinfo.ca.gov/forms*. You can file this application either before you file your petition or with your petition.

12 What Happens After I Serve and File My Petition?

Within 10 days after you serve and file your petition, the respondent or any real party in interest can serve and file preliminary opposition to the petition. Within 10 days after an opposition is filed, you may serve and file a reply to that opposition.

The appellate division does not have to wait for an opposition or reply before it can act on a petition for an extraordinary writ, however. Without waiting, the appellate division can:

- Issue a stay of the trial court proceedings;
- Summarily deny the petition;
- Issue an alternative writ or order to show cause; or
- Notify the parties that it is considering issuing a peremptory writ in the first instance.

The last three of these options are discussed in more detail on the next page.

A. Summary Denial

A "summary denial" means that the court denies the petition without deciding the merits of the petitioner's claims. No reasons need to be given for a summary denial. Most petitions for writs are denied in this way.

B. Alternative Writ or Order to Show Cause

An "alternative writ" is an order directing the trial court either to do what the petitioner has requested in the petition (or some modified form of what was requested as provided in the appellate division's order) or show the appellate division why it (the trial court) should not be ordered to do so. An "order to show cause" is similar; it is an order directing the trial court to show the appellate division why it (the trial court) should not be ordered to do what the petitioner has requested in the petition (or some modified form of what was requested as provided in the appellate division's order). The appellate division will issue an alternative writ or an order to show cause only if the petitioner has shown that he or she has no adequate remedy at law and the appellate division has determined that the petition may have merit.

If the appellate division issues an alternative writ and the trial court complies with the order by doing what the petitioner requested (or the modified form of what was requested as provided in the appellate division's order), then no further action by the appellate division is necessary and the appellate division may dismiss the petition. If the trial court does not comply with an alternative writ in this way, however, or if the appellate division issues an order to show cause, then the respondent court or the real party in interest can file a response to the appellate division's order (called a "return") that explains why the trial court should not be ordered to do what the petitioner has requested. The return must be filed within the time specified by the appellate division or, if no time is specified, within 30 days from the date the alternative writ or order to show cause was issued. The petitioner will then have an opportunity to file a reply within 15 days after the return is filed. The appellate division may set the matter for oral argument. When all the papers have been filed (or the time to file them has passed) and oral argument is completed, the appellate division will decide the case.

C. Peremptory Writ in the First Instance

A "peremptory in the first instance" writ is an order directing the trial court to do what the petitioner has requested (or some modified form of what was requested as provided in the appellate division's order) that is issued without first issuing an alternative writ or order to show cause. It is very rare for the appellate division to issue a peremptory writ in the first instance, and it will not do so without first notifying the parties and giving the respondent court and real party in interest an opportunity to file an opposition.

The respondent court or the real party in interest can file a response to the appellate division's notice (called an "opposition") that explains why the trial court should not be ordered to do what the petitioner has requested. The opposition must be filed within the time specified by the appellate division or, if no time is specified, within 30 days from the date the notice was issued. The petitioner will then have an opportunity to file a reply within 15 days after the opposition is filed. The appellate division may then set the matter for oral argument. When all the papers have been filed (or the time to file them has passed) and oral argument is completed, the appellate division will decide the case.

(13) What Should I Do if the Court Denies My Petition?

If the court denies your petition, it may be helpful to consult an attorney. You must retain your own attorney if you want one. You can get information about finding an attorney on the California Courts Self-Help Center Web site at *www.courtinfo.ca .gov/selfhelp/lowcost*.

Information for the Real Party in Interest

This part of this information sheet is written for the real party in interest—the party or parties from the trial court proceeding other than the petitioner. It explains some of the rules and procedures relating to responding to a petition for a writ. The information may also be helpful to the petitioner.

(14) I Have Received a Copy of a Petition for a Writ in a Case in Which I Am a Party. Do I Need to Do Anything?

No. Although the California Rules of Court provide that you can file a preliminary opposition to a petition for a writ within 10 days after the petition is served and filed, you are not required to do so. As explained in the response to question (12) above, the appellate division can take certain actions on the petition without waiting for any opposition, including:

- Summarily denying the petition;
- Issuing an alternative writ or order to show cause; or
- Notifying the parties that it is considering issuing a peremptory writ in the first instance.

Most petitions for writs are summarily denied, often within just a few days of filing. If you have not already received something from the appellate division indicating what action it is taking on the petition, it is a good idea to call the appellate division to see if the petition has been denied before you decide whether and how to respond.

This would also be an appropriate time to seek legal advice, if you want it. You are allowed to represent yourself in an writ proceeding in the appellate division. If you have any questions about the writ proceedings and about whether and how you should respond to a writ petition, however, you should consult an attorney. You must retain your own attorney if you want one. You can get information about finding an attorney on the California Courts Self-Help Center Web site at *www.courtinfo.ca.gov/selfhelp/lowcost.*

If the petition has not already been summarily denied, you may serve and file a preliminary opposition to the petition within 10 days after the petition was served and filed. Opposition at this stage is optional, however. The appellate division will not grant the writ requested by the petitioner without first issuing an alternative writ, order to show cause, or notice that it is considering issuing a peremptory writ. In all these circumstances, you will receive notice from the court and have an opportunity to file a response. A preliminary opposition is therefore typically used to explain to the appellate division why you believe it should not grant an alternative writ or order to show cause. In general, however, it is a good idea to consider filing a preliminary opposition if the petition misstates the facts or if you think the petition has merit.

If you decide to file a preliminary opposition, you must serve that preliminary opposition on all the other parties to the writ proceeding. “Serving” a document on a party means that a copy of the document you are filing in court is delivered to that party. You can get information about how to serve court documents on the California Courts Self-Help Center Web site at *www.courtinfo.ca.gov/selfhelp/lowcost/getready.htm#serving.*

(15) I Have Received a Copy of an Alternative Writ or an Order to Show Cause Issued by the Appellate Division. Do I Need to Do Anything?

Yes. Except when the trial court has already complied with an alternative writ by taking the action specified in that alternative writ, you should serve and file a response called a "return."

As explained in the answer to question (12) above, the appellate division will issue an alternative writ or an order to show cause only if the appellate division has determined that the petition for an extraordinary writ may have merit. An "alternative writ" is an order directing the trial court either to do what the petitioner has requested in the petition (or some modified form of what was requested, as provided in the appellate division's order) or show the appellate division why it (the trial court) should not be ordered to do so. An "order to show cause" is similar; it is an order directing the trial court to show the appellate division why it (the trial court) should not be ordered to do what the petitioner has requested in the petition (or some modified form of what was requested as provided in the appellate division's order).

If the appellate division issues an alternative writ and the trial court complies with the order by doing what the petitioner requested (or the modified form of what was requested as provided in the appellate division's order), then no further action by the appellate division is necessary and the appellate division may dismiss the petition. If the trial court does not comply with an alternative writ in this way, however, or if the appellate division issues an order to show cause, then the respondent court or the real party in interest may serve and file a response to the appellate division's order called a "return."

A return is your argument to the appellate division about why the trial court should not be ordered to do what the petitioner has requested. If you are represented by an attorney in the writ proceeding, your attorney will prepare your return. If you are not represented by an attorney, you will need to prepare your own return. A return typically consists of a legal response called an "answer." An answer is used to admit or deny the facts alleged in the petition, to add to or correct the facts, and to explain any legal defenses to the legal arguments made by the petitioner. You should read Code of Civil Procedure sections 430.10–430.80 for more information about answers. You can get copies of these statutes at any county law library or go to *www.leginfo.ca.gov/calaw.html*. A return can also include additional supporting documents not already filed by the petitioner.

If you do not file a return when the appellate division issues an alternative writ or order to show cause, it does not mean that the appellate division is required to issue the writ requested by the petitioner. However, the appellate division will treat the facts stated by the petitioner in the petition as true, which makes it more likely the appellate division will issue the requested writ.

Unless the appellate division sets a different filing deadline in its alternative writ or order to show cause, you must serve and file your return within 30 days after the appellate division issues the alternative writ or order to show cause. The return must be served on all the other parties to the writ proceeding. "Serving" a document on a party means that a copy of the document you are filing in court is delivered to that party. You can get information about how to serve court documents on the California Courts Self-Help Center Web site at *www.courtinfo.ca.gov/selfhelp/lowcost/getready.htm#serving*.

16 I Have Received a Copy of a Notice Issued by the Appellate Division Indicating That it is Considering Issuing a Peremptory Writ in the First Instance. Do I Need to Do Anything?

Yes. You should serve and file a response called an "opposition."

As explained in the answer to question 12 above, a "peremptory in the first instance" writ is an order directing the trial court to do what the petitioner has requested (or some modified form of what was requested, as provided in the appellate division's order) that is issued without first issuing an alternative writ or order to show cause. The appellate division will not issue a peremptory writ in the first instance without first giving the parties notice and an opportunity to file an opposition. However, when the appellate division issues such a notice, it means that the appellate division is strongly considering granting the writ requested by the petitioner.

An opposition is your argument to the appellate division about why the trial court should not be ordered to do what the petitioner has requested. If you are represented by an attorney in the writ proceeding, your attorney will prepare your opposition. If you are not represented by an attorney, you will need to prepare your own opposition. Like a return discussed in the response to question 15 above, an opposition typically consists of a legal response called an "answer." An answer is used to admit or deny the facts alleged in the petition, to add to or correct the facts, and to explain any legal defenses to the legal arguments made by the petitioner. You should read Code of Civil Procedure sections 430.10–430.80 for more information about answers. You can get copies of these statutes at any county law library or go to *www.leginfo.ca.gov/calaw.html*.

Unless the appellate division sets a different deadline in its notice that it is considering issuing a peremptory writ, you must serve and file your opposition within 30 days after the appellate division issues the notice. The opposition must be served on all the other parties to the writ proceeding. "Serving" a document on a party means that a copy of the document that you are filing in court is delivered to that party. You can get information about how to serve court documents on the California Courts Self-Help Center Web site at *www.courtinfo.ca.gov/selfhelp/lowcost /getready.htm#serving*.

17 What Happens After I Serve and File My Return or Opposition?

After you file a return or opposition, the petitioner has 15 days to serve and file a reply. The appellate division may also set the matter for oral argument. When all the papers have been filed (or the time to file them has passed) and oral argument is completed, the appellate division will decide the case.