



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 27, 2015

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Title	Agenda Item Type
Small Claims: Extraordinary Writs under Code of Civil Procedure section 116.798	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rules 8.930 and 8.950; adopt rules 8.970–8.977; revise forms APP-150-INFO and APP-151; approve forms SC-300 and SC-300-INFO	January 1, 2016
Recommended by	Date of Report
Civil and Small Claims Advisory Committee Hon. Patricia M. Lucas, Chair	September 1, 2015
Appellate Advisory Committee Hon. Raymond J. Ikola, Chair	Contact
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### Executive Summary

The Civil and Small Claims Advisory Committee and the Appellate Advisory Committee recommend new rules and forms to comply with a statutory mandate to develop procedural rules for certain writ proceedings on small claims rulings. The recommendation also provides clarifying amendments to current rules and forms that apply to writ proceedings in the appellate division, generally to the extent that those apply to small claims proceedings relating to postjudgment enforcement actions.

## Recommendation

The Civil and Small Claims Advisory Committee (CSCAC) and the Appellate Advisory Committee (AAC) together recommend that the Judicial Council amend or adopt a set of proposed changes to the California Rules of Court designed to fulfill the statutory mandate to develop procedural rules for certain writ proceedings on small claims rulings, and revise or approve forms to help litigants participating in these proceedings. This recommendation has three main parts:

1. Adopt a new set of rules for writ proceedings relating to actions by small claims divisions other than postjudgment enforcement orders (Cal. Rules of Court, rules 8.970–8.977).
2. Approve two new forms for these writ proceedings:
  - A form for the petition—*Petition for Writ (Small Claims)* (form SC-300); and
  - An information sheet explaining these writ proceedings—*Information on Writ Proceedings in Small Claims Cases* (form SC-300-INFO).
3. Adopt changes to the existing rules and forms relating to writ proceedings in the superior court appellate division to reflect both the new procedures for writ proceedings relating to actions by small claims divisions other than postjudgment enforcement orders and to clarify jurisdiction in other small claims writ proceedings (Cal. Rules of Court, rules 8.930 and 8.950; *Information on Writ Proceedings in Misdemeanor, Infraction, and Limited Civil Cases* (form APP-150-INFO); and *Petition for Writ (Misdemeanor, Infraction, and Limited Civil Cases)* (form APP-151)).

The text of the new and amended rules is attached at pages 17–24. The new and revised forms are attached at pages 25–62.

## Previous Council Action

The council has not previously taken action relating to procedures for extraordinary writs in small claims actions.

## Rationale for Recommendation

### Background

Legislation was enacted in 2013 to clarify the proper jurisdiction for writs in small claims actions given trial court unification (Code Civ. Proc., § 116.798). This legislation makes the jurisdiction dependant on the stage of the small claims case at which the act being challenged took place (1) in any small claims court action other than a postjudgment enforcement proceeding, (2) in a postjudgment enforcement proceeding, or (3) in a small claims appeal (which is essentially a trial de novo). This new statute provides that writs proceedings in the first set of matters—those challenging an action of the small claims court other than a postjudgment enforcement action—must be heard by a single judge who is assigned to the superior court appellate division. The

statute also requires the Judicial Council to promulgate new rules for writ proceedings relating to these rulings.

The new statute was recommended by the California Law Revision Commission (CLRC), as part of its work in recommending statutory amendments to address provisions of the law that were obsolete as a result of trial court unification. As part of this work, the CLRC, with input from the CSCAC, developed recommended legislation to clarify small claims writ jurisdiction after unification, which was eventually enacted as Code of Civil Procedure section 116.798.<sup>1</sup>

The CLRC comments that accompanied its recommendation noted that the new law is solely to clarify which court has jurisdiction of a writ petition, not to in any way change the circumstances under which a party may seek a writ or a court grant one.<sup>2</sup> Relief through writs—particularly the common law writs of review, mandate, and prohibition encompassed by the new statute—is deemed extraordinary and is at the discretion of the reviewing court, not available as a matter of course. The finality of small claims judgments makes courts reluctant to consider writs as an alternative means of review, but does not preclude such writs. See *Bricker v. Superior Court*, (2005) 133 Cal.App.4th 634.

### **Proposed new rules**

In developing the new rules and forms for writ proceedings in initial small claims actions, the advisory committees looked to the current rules applicable to writ proceedings in limited civil cases (Cal. Rules of Court, rules 8.930 et seq.) and used those as a model for the new rules. The new rules regarding small claims writ proceedings would be added to the division of the rules for the superior court appellate division that currently contains the rules regarding trial of small claims cases on appeal. The primary provisions of the proposed new rules are summarized below.

- **Rule 8.970. Application.** This rule describes which proceedings are governed by the rules, and which are not.
- **Rule 8.971. Definitions.** This rule provides definitions of the terms writ, petition, petitioner, respondent small claims court, and real party in interest. This parallels a rule setting out definitions in the rules regarding small claims appeals.
- **Rule 8.972. Petitions filed by persons not represented by an attorney.** This rule states the rules for petitions filed by self-represented parties, mandating at the start that the parties use a specific Judicial Council petition form unless a court finds good cause. The petitioner is to attach the court ruling objected to and any documents submitted to the small claims court that

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<sup>1</sup> All further statutory references are to the Code of Civil Procedure unless otherwise noted.

<sup>2</sup> See California Law Revision Commission's *Recommendations on Trial Court Restructuring: Writ Jurisdiction in a Small Claims Case* (Aug. 2011) (CLRC 2011 Report) at p. 340. The report may be found at: <http://www.clrc.ca.gov/J1452.html>.

support or oppose the petitioner’s position, or are otherwise necessary for a complete understanding of the matter.

The rule differs from the parallel rule relating to appellate division writs generally with respect to providing a record of what was said at the court proceedings. Rather than requiring a reporter’s transcript (which is not available in small claims proceedings), proposed subpart (a)(2) provides that if the petition raises any issue that would require the judge considering it to understand what was said in the small claims court, the petition must include a fair summary of the proceedings, including the parties’ arguments and any statement by the small claims court supporting its ruling.<sup>3</sup>

The service requirements provided here are similar to those for other writ proceedings in the appellate division, except for the addition of a requirement that the petitioner serve a copy of the form information sheet along with the petition and supporting documents (Cal. Rules of Court, rule 8.972(d)).

- **Rule 8.973. Petitions filed by an attorney for a party.** This rule addresses petitions filed by attorneys. The advisory committees, recognizing the complexity of extraordinary writ proceedings, followed the example in the rules on writs to the appellate division generally (cf. Cal. Rules of Court, rule 8.932) and acknowledge that attorneys will be involved for at least some writ petitions.<sup>4</sup> Although the petition form must be used by self-represented parties, this rule permits counsel to file individualized pleadings should they choose to do so, so long as all the information required in the form petition is included.
- **Rule 8.974(a). Preliminary opposition.** Because parties are permitted by statute to file a preliminary opposition to a petition for writ (see § 1107), this rule provides a procedure for doing so, including a 10-day deadline for filing the opposition, parallel to the rules for appellate division writs generally. In an effort to simplify the procedures, this new rule includes a provision stating that the preliminary opposition is not required unless requested by the court. There is no provision in this rule for a reply brief, which is intended to keep the procedure as simple as possible.

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<sup>3</sup> The advisory committees requested specific comments on this provision in the rule and the corresponding items in the form petition (see proposed *Petition for Writ (Small Claims)* (form SC-300) at items 10.a(4), 10.b(4), and 10.c(4)). The committees had some concerns over whether this item should be required by rule, possibly setting up a trap for unwary self-represented parties who do not understand when it may or may not be required. On the other hand, the committees were also concerned that including such a provision in the rule and form may lead to unnecessary paperwork, as parties may provide detailed summaries of the full proceedings even when unnecessary.

<sup>4</sup> Section 116.530(a) states that “Except as permitted by this section, no attorneys may take part *in the conduct or defense of a small claims action.*” A writ proceeding is not itself a small claims action, but a new proceeding filed in the appellate division. A writ petition is similar to a complaint starting a new civil proceeding, formally against the lower court, which will be decided outside the small claims division. Hence the ban on attorneys in section 116.530(a) does not apply in writ proceedings challenging small claims actions, and some petitioners may well be represented by counsel.

- **Rule 8.974(b). Return or opposition; reply.** This subpart sets out the procedure for filing a return if the court issues an alternative writ or order to show cause, or an opposition if the court provides notice that it is considering a peremptory writ without issuing anything further. The respondent has 30 days to respond if no other date is ordered by the court, and the petitioner then has 15 days to reply. This rule is almost identical to the corresponding rule for appellate division writs generally (cf. Cal. Rules of Court, rule 8.933(b)), with the exception that “return” is defined within the rule as a response. The committees concluded that since the provisions essentially echo the statute (see § 1089) there was no way to make it simpler for small claims parties.
- **Rule 8.976. Filing, finality, and modification of decisions; remittitur.** These provisions parallel the similar rule for appellate division writs but have been modified to reflect that the small claims writs will not be issued by the appellate division, but by a single judge in that division. They also differ in that there are no provisions or cross-references in this new rule regarding rehearings or requests to transfer a proceeding to the Court of Appeal. The committees decided that these were unnecessary for small claims cases, as the extraordinary writ proceeding is already providing a chance for a review not generally permitted in small claims, where speedy finality is the norm and a goal of the small claims procedures.

### **Proposed new forms**

Two new forms are being proposed for small claims writ proceedings: *Petition for Writ (Small Claims)* (form SC-300) and *Information on Writ Proceedings in Small Claims Cases* (form SC-300-INFO). These forms parallel the petition and information sheet forms developed by the Appellate Advisory Committee (AAC) several years ago for writs in the appellate division generally.

#### ***Petition for Writ (Small Claims)* (form SC-300)**

This form is based on current form APP-151, the petition for use for writs in limited civil cases, misdemeanors, and infractions. Like that form, it is geared to self-represented litigants and is essentially in the style of plain-language forms. It begins with a list of general instructions about when the form is applicable, when<sup>5</sup> and where it should be filed, and how it should be served.<sup>6</sup> The party is instructed to read the information sheet before completing the petition.

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<sup>5</sup> This form and the information sheet both note that while there is not a hard deadline for common law writs, the parties should file within 30 days. This is based on the recommended timeline the council approved being included on the general appellate division writ forms.

<sup>6</sup> Parties are referred to the appellate forms for information about service, form APP-109 and form APP-109-INFO. These are set up for self-represented litigants, so they seem reasonable for use in small claims cases going to be heard in the appellate division. There are somewhat similar small claims forms for proof of service (forms SC-104 and SC-104B), but they are set up for service of process, and for the service of the claims form and cross-claims form, so they are not as directly applicable.

The first several items request information about the parties and about the court action being challenged. (See items 1–7.) The next items ask whether any other writ petition or an appeal has been filed. (See items 8–9.)

The most important item is item 10, which seeks the reasons for the petition. This item, like the others, parallels a similar item in form APP-151. It is divided into four subparts, based on the type of action challenged and writ sought, described in simple language, and each of those subparts is divided into four further subparts.

- The party is first asked to describe what it believes the law requires the court to do that it did not do, or what the court did or said that the party is challenging. (See items 10a(1), 10b(1), and 10c(1).)
- Then the form asks the party to identify the legal basis for the claim. (See items 10a(2), 10b(2), and 10c(2).)
- Third (and this is where it differs from the APP-151 form), it asks the parties to identify any supporting documents that show the objected to action of the court, and to describe what the small claims court did that is being challenged. (See items 10a(3), 10b(3), and 10c(1) and (3).)
- Finally, because there is no formal record kept of the small claims proceedings, if the petition raises an issue that would require the appellate division judge to consider what was said in the small claims court, the party is asked to write a summary of what was said at the court, by the parties and the judge, that is relevant to the request for a writ.<sup>7</sup> This item implements the provisions in rule 8.972(a)(1), which requires a summary of the proceedings in certain circumstances. (See footnote 3 above.)

### ***Information on Writ Proceedings in Small Claims Cases (form SC-300-INFO)***

This proposed form is based on *Information on Writ Proceedings in Misdemeanor, Infraction, and Limited Civil Cases* (form APP-150-INFO); however, there have been changes made to the content of the form to reflect its application to writ proceedings in small claims cases. The committees considered how the limitations on review available in small claims cases should be reflected in information provided to the parties,<sup>8</sup> as well as making changes to reflect proposed

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<sup>7</sup> In the petition used for writs to the appellate division generally, the last subpart in this item asks the parties to identify sections in the transcript or record of the oral proceeding. The supporting documents for those petitions are required to include a reporter's transcript of the oral proceedings or record of some kind. (See rules 8.486(b)(1)(D) and 8.931(b)(1)(D).) Because no record exists in small claims proceedings, on form SC-300 this item is used for the parties to provide a fair summary of the proceedings if needed.

<sup>8</sup> Under the small claims statutory scheme, a plaintiff does not have the right to appeal the small claims court judgment (§ 116.710). In selecting to proceed in small claims court, the plaintiff essentially trades off the right to an appeal for a quicker, less expensive dispute resolution process. Within the writ context, this means that the usual alternative of an appeal as an adequate remedy is not available. This does not mean, however, that courts readily grant writ petitions in these cases. The Courts of Appeal have historically been reluctant to review rulings in small

rules 8.970 et seq. and proposed new form SC-300. The differences in the proposed small claims information form are summarized below:

- Item 1 reflects the limitations on appellate review of small claims judgments and the different jurisdiction and procedures applicable to writs challenging postjudgment actions and actions related to a trial de novo;
- Items 4, 6, and 12 also reflect the limitations on appellate review of small claims judgments, the goal of small claims court in terms of providing a quicker, lower cost resolution, and how that relates to whether a court is likely to grant a petition for a writ;
- Item 7 reflects the provisions of section 116.798 with respect to jurisdiction over writ proceedings relating to small claims cases;
- Item 13 reflects proposed rule 8.972 in that there is no reference to providing a reporter's transcript of the oral proceedings;
- References to trial court were changed to refer to small claims court and references to small claims advisors have been added; and
- References to action by the appellate division have been changed to refer to action by the appellate division judge.

### **Changes to current rules and forms**

Minor changes to the current rules and forms for writ proceedings in the appellate division are also being proposed to reflect the clarification provided in section 116.798 as to where writs challenging small claims actions are to be heard.

- Rule 8.930 would be amended to clarify that writs relating to postjudgment enforcement orders by the small claims division are governed by the rules pertaining to writ proceedings in the appellate division generally. A provision would also be added to clarify that other acts by the small claims division are not governed by those rules, and an advisory committee comment added as to what rules govern such proceedings.

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claims matters because doing so would undermine the goal of providing a speedy and inexpensive resolution of cases falling within the jurisdiction of small claims court. (Code Civ. Proc., § 116.510.) But while disfavored, it has been held that review of small claims judgments may be available by extraordinary writ where there is "statewide importance of the general issues presented" (*Green v. Superior Court* (1974) 10 Cal.3d 616, 621 [111 Cal.Rptr. 704, 517 P.2d 1168]) and "in order to secure uniformity in the operations of the small claims courts and uniform interpretation of the statutes governing them" (*Davis v. Superior Court* (1980) 102 Cal.App.3d 164, 168 [162 Cal.Rptr.2d 167]). The committees tried to reflect this case law in the description of writ proceedings in the proposed information sheet for writ actions in small claims cases.

- *Information on Writ Proceedings in Misdemeanor, Infraction, and Limited Civil Cases* (form APP-150-INFO) would be revised to note that the procedures described in the information sheet DO apply to writs challenging acts by the small claims division relating to postjudgment enforcement orders, but DO NOT apply to other acts by the small claims division or acts relating to small claims appeals in the superior court. (See new material in items 1 and 7).<sup>9</sup>
- The instructions on the *Petition for Writ (Misdemeanor, Infraction, and Limited Civil Cases)* (form APP-151) would be revised to refer to those small claims writ proceedings covered by the petition, and a full paragraph about small claims writ proceedings would be added at the end. In addition, the current first paragraph would be divided in two, with a separate bullet point now including a stronger instruction not to use the form for appeals and other writs.

## **Comments, Alternatives Considered, and Policy Implications**

### **Comments received**

The proposed rules and forms were circulated for public comment in spring 2015. Six commentators responded, a few with detailed comments. The commentators are the California Judges Association (CJA), which supported the proposal as circulated, retired Commissioner Douglas G. Carnahan, the Orange County Bar Association, the Litigations Section of the State Bar, and the Superior Courts of Los Angeles and San Diego Counties, all of whom agreed with the proposal generally but sought some modification. The more significant modifications requested and the working group's actions on each are summarized here. The text of all the comments, and the committees' responses to them, may be viewed in the comment chart attached at pages 63–84.

### **Comments on rule 8.972—petitions for persons not represented by an attorney**

#### ***Written Summary of Proceedings—Rule 8.972(a)(2)***

This rule states the rules for petitions filed by self-represented parties, mandating at the start that they use a specific Judicial Council petition form unless a court finds good cause otherwise. The petitioner is to attach the ruling objected to, along with any document submitted to the small claims court that supports or opposes the petitioner's position or is otherwise necessary for a complete understanding of the matter.

The rule differs from the parallel rule relating to appellate division writs generally with respect to providing a record of what was said at the court proceedings. Rather than requiring a reporter's transcript (which is not available in small claims proceedings), proposed subpart (a)(2) provides that if the petition raises any issue that would require the judge considering it to understand what was said in the small claims court, the petition must include a fair summary of the proceedings,

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<sup>9</sup> The form would also be revised to correct an error in item 14, changing the statement that petitions for writ should be filed within 60 days after the court makes the ruling that is being challenged, to within 30 days, as noted in the instructions to the petition on form APP-151.



including the parties' arguments and any statement by the small claims court supporting its ruling.

The advisory committees requested specific comments on this provision in the rule and the corresponding items in the form petition. The committees had some concerns over whether this item should be required, because it placed a burden that might have to be met by some petitioners for a writ even to be considered. Some committee members were also concerned that including such a provision in the rule and form may lead to unnecessary paperwork, as parties may provide detailed summaries of the full proceedings even when unnecessary.

Four comments were received on this point. The CJA and Commissioner Carnahan (now retired but with extensive small claims experience) both opined that the rule should be left as proposed, because a written summary of the relevant statements below would be helpful to the reviewing court, and because the inclusion of an item for the summary in the petition form would provide a trigger for the party to provide it when appropriate. The State Bar Litigation Section suggested that the requirement for a written summary of what was said below should be made mandatory in *all* cases, leaving it up to the appellate division to determine if relevant rather than to the self-represented litigant. The Superior Court of San Diego County, on the other hand, proposed making the summary optional in all cases, both to avoid any trap for the unwary and to possibly lessen any expectation that the court must credit the party's summary.

The advisory committees concluded that the rule as proposed—requiring a summary of the statements below if such statements are pertinent to the issues on the petition for writ—is the most effective way of providing needed information to the appellate division judge without overburdening parties. The groups also concluded that including an item for the summary of what was said in the form petition (see form SC-300 at item 10(a)(3), 10(b)(3), and 10(c)(3)) provides a reminder for the parties to provide the summary, and so eliminates, or at least minimizes, any potential trap for the unwary. The groups also reworked the language about this summary on the information sheet, providing an express pointer to the item on the form in which it can be provided. See form SC-300-INFO at item 12.b, at the last two bullet points.

On a related point, the Orange County Bar Association did not respond to the question directly, but raised a different concern: how the appellate division will evaluate the “record” that consists of the parties' (sometimes) competing versions of what was said in the small claims court proceeding. The commenter notes that the proposal does not address the issue, which it considered unfair to the appellate division. The advisory committees decided against providing anything further on this point. The groups concluded that, with nothing in the rule, the appellate division judge will evaluate the verified petition, including the summary, just as it would evaluate any other verified statements.

***Sanction for inadequate proof of service—rule 8.972(d)(3)***

Commissioner Carnahan had two issues with this section, particularly with subpart (3) which requires a clerk to file the petition if the proof of service is defective, but also provides that if the

parties fails to provide a corrected proof within five days after the clerk gives notice of the defect, the court may strike the petition or impose a lesser sanction.

First, he suggested that some reference should be included in the rules (to apply here and elsewhere) that when time frames are provided, it should be expressly stated that the extensions of time set out in Code of Civil Procedure, sections 1005 and 1013 apply. Commissioner Carnahan stated that this needed to be made clear because such provisions expressly do not apply in small claims actions. The committees disagreed with this proposal, noting that these provisions would not apply under the proposed rules in any event. Section 1005 addresses time frames for filings relating to notice of certain specified motions and other types of proceedings, but there are no such proceedings in the proposed rules. The petitioning party does not have to provide notice of a hearing to the other side—if anyone does that, it will be the court. Section 1013 provides an extension of time for action or duty following service by mail or other method. However, in the proposed rules, none of the time frames run from “service” of any documents but rather from provision of notice by the clerk, which could be in person or by phone as well as by serving a document of some kind (see , e.g., rule 8.972(c)(2) and (d)(3)), or from the time a paper is filed (see, e.g., rule 8.974(a)(2) and (b)(3)). These time frames track what the AAC developed in the rules for writs in limited civil cases and misdemeanors, which intentionally did not use service as a trigger for any time frames.

Second, the commenter questions the use of the phrase “impose a lesser sanction” as being ambiguous to court and parties. Would such sanctions include monetary sanctions, for example? The committees agreed with this comment and amended the proposed rule to provide that if a party fails to file a corrected proof of service within five days after notice of the defect, the court may strike the petition or allow additional time to file a corrected proof of service.

### ***Need for verification***

The Superior Court of Los Angeles County raised concerns regarding the required verification of the petition for writ, first as to what form it is to be in and second as to what to do if not included—asking whether the filing should be rejected on that ground. The committees decided no modification of the rule was required as to the format of the verification: it should be in the format required in the new Judicial Council petition for writ form or, if that form is not used, in any format that complies with statute. As to the fate of a nonverified petition, the committees concluded that it should not be rejected by the clerk on that ground, and added a new provision to the rule to that effect, while also providing that if the party fails to file a verification within five days after notice of the defect, the court may strike the petition. See rule 8.972(a)(3), and see also(c)(2) (failure to provided attachments in correct form), and (d)(3) (failure to provide proof of service).

### **Comments on rule 8.974—preliminary opposition**

The State Bar’s Litigation Section commented that rule 8.974(a) regarding what is to be in a preliminary opposition should be expanded, to more closely parallel what is in the rules relating to preliminary oppositions on petitions for writs in civil limited cases. The proposed

modifications would also change “must” to “should” to avoid suggesting that arguments not stated in the preliminary opposition are not forfeited. The advisory committees agreed with this comment and modified the language of the rule to reflect that. See rule 8.974(a)(3).

**Comment on rule 8.975(b)—notice to court by telephone**

This rule requires the appellate division clerk to notify the clerk in the small claims court by telephone if the writ or order stays proceedings set to occur within seven days or requires action within seven days. Commissioner Carnahan proposed that there be a further requirement that the small claims court clerk make a written record of having received such a call, in the small claims file for the case. The advisory committees concluded that, while this may be a best practice, to include the provision as a rule of court would be micromanaging court operations to an extent that is not necessary.

**Comment on *Petition for Writ (Small Claims)* (form SC-300)**

The State Bar’s Litigation Section raised the point raised that the verification on the proposed petition form, as circulated, was inappropriate because it covered *all* attachments, which could include copies of evidence submitted by either party and court orders. The goal of the committees is to ensure that the verification covers the information provided in attachments that contain responses to the questions in the petition; those responses that are too long to fit in the form and so are completed on attached sheets. The committees modified the verification language on the form so that it covered only such responsive information. See form SC-300 at page 7 of 7.

**Comments on *Information on Writ Proceedings in Small Claims Cases* (form SC-300-INFO)**

***Item 6. “Can a writ be used to address any errors made by a small claims court?”***

Commissioner Carnahan expressed concerns that the language in the first set of bullet points in this item, describing when a writ might be granted, was not sufficiently restrictive and would be used by plaintiffs in particular to make an “end run” around the rules prohibiting appeals in small claims actions. He commented that he feared that the attempt to “formalize what the law was (anyway) before CCP 116.798” will open cans of worms that will change the nature of the small claims courts and the “no appeal” rules. He proposed that the language describing when writs might be appropriate be strengthened,<sup>10</sup> and to tell the parties that the judge considering the writ petition must become convinced that “the error is so dramatic and unjust that it cannot be allowed to stand.”

The advisory committees understand the commissioner’s concerns but concluded that the inclusion of the proposed language could be viewed as an attempt to set legal standards that do not currently exist, and so is not an appropriate action for the Judicial Council. The committees

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<sup>10</sup> He suggested, for example, that the form should provide that writs could only address “gross and unusual legal errors” where a court had a “clear” duty to act but “clearly and manifestly unjustly” refused to do so.

did, however, modify the item in light of the comments. As circulated, the item sets forth the bases for seeking a writ before stating the reasons why a writ will generally not be granted in small claims actions. As modified, this order is reversed, placing the section titled “Writs are not generally granted” first, followed by the section titled “Writs can only address certain legal errors.”

***Item 18. “What happens after I file my petition?”***

The State Bar’s Litigation Section suggested that it would be helpful to inform the parties in this item that the small claims court must provide parties with notice and an opportunity to be heard before that court changes its order in response to an alternative writ from the appellate division, citing to *Brown, Winfield & Canzoneri, Inc. v. Superior Court* (2010) 47 Cal.4th 1233, at page 1250 and footnote 10.<sup>11</sup> While this comment may be based on a correct statement of the law—that the court cannot change its order in response to an alternative writ without first providing notice and opportunity to be heard—the advisory committees concluded that it would not be helpful to the parties to add the proposed language to the information sheet.<sup>12</sup> It is not directly relevant to what a *party* (rather than the small claims court) needs to do, and might only serve to make an already confusing process even more confusing for self-represented parties.

***Items 18(d) and 19. Peremptory writs in the first instance***

The State Bar’s Litigation Section also commented on the information provided regarding peremptory writs in the first instance. It noted that, as circulated, item 18(d) states that an appellate division judge will not issue a peremptory writ in the first instance “without first notifying the parties and giving the respondent court and any real party in interest a chance to file an opposition,” even though, the commenter noted, the appellate division judge need not provide notice before issuing a peremptory writ in the first instance if the petition expressly sought such relief. Seeking such relief in the petition is considered sufficient notice (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 180), although “an appellate court, absent exceptional circumstances, should not issue a peremptory writ in the first instance without having received, or solicited, opposition from the party or parties adversely affected.” (*Ibid.*) The commenter proposed that the language in the form should be modified to avoid any suggestion to the contrary.

The committees agreed with the commenter on this point. While there is no specific place in the petition form to include a request for a peremptory writ in the first instance, such relief could be

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<sup>11</sup> The commenter proposed the committees modify the penultimate paragraph in form SC-300-INFO, item 18(c), as follows:

“If the appellate division issues an alternative writ and the small claims court, after notifying the parties that it is considering changing its order and providing an opportunity to be heard, does what the petitioner requested (or a modified form of what the petitioner requested as ordered by the appellate division), then no further action by the appellate division is needed and the appellate division may dismiss the petition.”

<sup>12</sup> At least one member of the committees does not believe that this is a correct statement of the law in all instances, and so opposed adding the statement on that ground also.

requested in the “other” section, in item 12(d) on form SC-300. Because of this possibility, or the possibility that an attorney may seek such relief on behalf of a client in an individually drafted petition, the proposed information sheet was modified to reflect this possibility. The lists at the beginning of items 18 and 19 have been expanded to reflect that a peremptory writ in the first instance could be issued either after the court provides notice of that possibility *or* if such relief were expressly requested in the petition. The language the commenter pointed to in item 18(d) has also been modified, along with similar language in item 19. The latter item was also further modified to include the information that a party may want to consider whether to file a preliminary opposition in such circumstances, along with a description of what would be in such an opposition.

Similar changes are recommended to *Information on Writ Proceedings in Misdemeanor, Infraction, and Limited Civil Cases* (form APP-150-INFO). See items 18 and 20 in that form.

### **Other Comments**

The Superior Court of San Diego County has provided some other comments, not directly tied to items in the rules or forms.

### ***Instructions for vexatious litigant***

The commenter suggests that either the information sheet or the petition (in the instructions) should state that a vexatious litigant must obtain a prefiling order before he or she can file a petition for writ. The committees concluded that such information was not needed. Other forms do not include such an instruction (e.g., *Plaintiff's Claim and Order to Go to Small Claims Court* (form SC-100)) and the committees concluded that there was no reason why this form should differ from others in this respect. Parties who are not vexatious litigants do not need the information, and those that are have already received orders telling them what is needed if they wish to file an action.

### ***Informal action by court***

The commenter noted that there was no discussion of an informal response as a possible order from the court on a petition for writ, even though such a process was sometimes used to help resolve a writ without having to issue the more formal alternative writ or order to show cause. The commenter suggested that it might be beneficial to include reference to this type of order from the court in the rules or the information sheet.

The committees disagreed. They had considered the issue of providing for less formal procedures for small claims writs at the beginning of their work on this proposal, but concluded that such procedures were not authorized by statute. The group concluded that the statutory provisions for extraordinary writs in Code of Civil Procedure section 1067 et seq. were applicable to all writ proceedings and therefore decided that the new rules should reflect those provisions. Those mandated procedures do not provide for informal action by the parties or the court.

### ***Need for forms***

The commenter from the Superior Court of San Diego County raised the point that the forms are problematic because they may result in the increase of petitions filed with the court, including frivolous ones, and they are not expressly required by the statute (only rules are required). The commenter also asserted that the proposal will impact larger courts disproportionately, because of the higher volume of small claims filings, and questioned the need for the adoption of the new forms because they will increase the need for court time and costs without the need for them having been established.<sup>13</sup>

When first working on this proposal, the advisory committees expressly considered the alternative of not developing a petition form, particularly in light of the fact that the existence of the form may lead to more petitions for extraordinary writs being filed in small claims actions. Almost every member of the two committees, however, concluded that without such forms the petitions that are filed would be more difficult for the court to handle as well as being extremely difficult for parties to prepare properly. The petitions would have to either be individually drafted—which, in light of the complex statutory requirements, would be very difficult for self-represented parties—or somehow shoehorned into the current *Petition for Writ (Misdemeanor, Infraction, or Limited Civil Case)* (form APP-151), which would also be difficult because it assumes the lodging of some version of a record of the proceedings; this record does not exist in small claims actions and is not required under the new rules. In light of the requirement that rules be developed in any event, the committees concluded that it would be less burdensome for both courts and the parties to have a specific form for initiating these proceedings.

### **Alternatives considered**

#### ***Whether the general statutes relating to writs of mandate, prohibition, and review should apply to these small claims writ proceedings***

Code of Civil Procedure sections 1068, 1085, and 1102 et seq. address extraordinary writs generally. The committees considered whether the proposed new rules, which the California Law Review Commission report indicates could be for “relatively quick, inexpensive, and informal” procedures, had to reflect the procedural requirements for writs established by these code sections, or whether they could provide for simpler procedures. Proceedings seeking extraordinary writs under the statutory provisions are complex and somewhat arcane. This will be especially problematic for small claims parties.

The committees concluded, however, that the existing statutory procedures for extraordinary writs were most likely applicable to these small claims writ proceedings. Although the mandate to develop new “procedural rules” was placed within the portion of the Code of Civil Procedure expressly dealing with small claims actions, rather than in the portion dealing with extraordinary writs generally, section 116.798(a) contains a cross-reference to the extraordinary writs section,

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<sup>13</sup> Commenter CJA also queried why the development of the new rules was needed, since petitions for writs are so infrequent in small claims cases.

providing that the small claims division is an inferior tribunal for purposes of Title 1 (commencing with section 1067) of Part 3. The committees therefore concluded that the new rules should comply with the statutory procedures for writs set out in that title of the Code of Civil Procedure.

***Whether the new rules should apply only to the writ proceedings for which the statute mandated new rules or should also apply to those relating to postjudgment actions***

As noted above, Code of Civil Procedure section 116.798 draws a distinction between writs on small claims division actions relating to postjudgment enforcement, and other actions by the small claims divisions (i.e., judgment at initial hearing and any motions relating to that). The statute only directs the Judicial Council to adopt rules for the latter type of proceeding. The committees considered, however, whether it might also be helpful to apply any new rules to writ proceedings relating to small claims postjudgment proceedings so that there would be a single set of procedures applicable to all writ proceedings challenging actions by the small claims court.

CSCAC had previously considered this issue in a related context. At the request of the California Law Revision Commission, it considered whether the new law should provide that writ petitions relating to postjudgment enforcement orders of the small claims division should be considered by a single superior court judge who is assigned to the appellate division rather than by the appellate division, so that all writ petitions relating to acts of the small claims division would be handled in the same way. At the time CSCAC recommended that the distinction be included in the statute, as provided by common law. See *General Electric Capital Auto Financial Service, Inc. v. Appellate Division of the Superior Court* (2001) 88 Cal.App.4th 136 (appellate division has writ jurisdiction regarding postjudgment enforcement orders in small claims cases). The Law Revision Commission noted that a “significant advantage to this approach [having postjudgment writs go to the appellate division] is that it treats all judgments in limited civil cases the same way for enforcement purposes.” (CLRC Report (2011), p. 337.)

The committees concluded that, in light of this history, it would be preferable that postjudgment writ proceedings continue to be governed by the existing rules for writ proceedings in limited civil cases. The committees are recommending minor amendments to those rules and forms to clarify this situation.

***How to provide a record of the oral proceedings for the reviewing court***

The committees considered whether, in light of the lack of any official record of small claims proceedings and the fact that many parties will be self-represented even on these writ proceedings, the rules should not include any provision requiring a record of what was said at the small claims proceedings. Ultimately, the committees decided that, if the petitioner is raising an issue that can only be understood if there is a record of the oral proceeding, then the petitioner should provide a statement that fairly summarizes the proceedings, including the parties’ arguments. Also, any statement by the small claims court supporting its ruling must be provided. As noted above, the committees sought specific comments on whether this provision was needed and has concluded that it is.

### ***Whether to recommend any forms***

Although the statute requires the council to develop new *rules* regarding writs in small claims cases, it does not mandate the development of *forms*. The committees considered the alternative of not developing a petition form, particularly in light of the fact that the existence of the form may lead to more petitions for extraordinary writs being filed in small claims actions. As noted above, the committees<sup>14</sup> concluded, however, that without such standardized forms, petitions in small claims actions would be difficult for the court to handle and would be extremely difficult for parties to properly prepare. The committees concluded that it would be less burdensome for both courts and the parties to have a specific form for these proceedings.

### **Implementation Requirements, Costs, and Operational Impacts**

This proposal will require training of judicial officers and court staff as to the new rules and forms for certain writs in small claims cases. The number of petitions for writs in small claims cases may be increased due to the existence of the new forms. The rules will clarify what is required of the parties in such cases, which should make it easier in the long run for courts to adjudicate the petitions. Because the new rules are mandated by statute, the council must adopt rules in this area whether or not they place a further burden on the courts.

### **Attachments**

1. Cal. Rules of Court, rules 8.930, 8.950, and 8.970—8.977, at pages 17–24
2. Revised Judicial Council forms APP-150-INFO and APP-151, at pages 25–44
3. New Judicial Council forms SC-300 and SC-300-INFO, at pages 45–62
4. Chart of comments, at pages 63–84

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<sup>14</sup> One member of the Civil and Small Claims Advisory Committee disagreed with this conclusion, preferring that only rules be developed at this point, with no forms.



Rules 8.930 and 8.950 of the California Rules of Court are amended and rules 8.970–8.977 are adopted, effective January 1, 2016, to read:

1                   **Division 2. Rules Relating to the Superior Court Appellate Division**

2  
3                                   **Chapter 6. Writ Proceedings**

4  
5 **Rule 8.930. Application**

6  
7 **(a) Writ proceedings governed**

8  
9       Except as provided in (b), the rules in this chapter govern proceedings in the appellate  
10       division for writs of mandate, certiorari, or prohibition, or other writs within the original  
11       jurisdiction of the appellate division, including writs relating to a postjudgment  
12       enforcement order of the small claims division. In all respects not provided for in this  
13       chapter, rule 8.883, regarding the form and content of briefs, applies.

14  
15 **(b) Writ proceedings not governed**

16  
17       The rules in this chapter do not apply to:

- 18  
19       (1)     Petitions for writs of supersedeas under rule 8.824;  
20  
21       (2)     Petitions for writs relating to acts of the small claims division other than a  
22       postjudgment enforcement order; or  
23  
24       (3)     Petitions for writs not within the original jurisdiction of the appellate division.

25  
26                                   **Advisory Committee Comment**

27  
28       *Information on Writ Proceedings in Misdemeanor, Infraction, and Limited Civil Cases* (form APP-150-  
29       INFO) provides additional information about proceedings for writs in the appellate division of the  
30       superior court. This form is available at any courthouse or county law library or online at  
31       [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms).

32  
33       **Subdivision (b)(1).** The superior courts, not the appellate divisions, have original jurisdiction in habeas  
34       corpus proceedings (see Cal. Const., art. VI, § 10). Habeas corpus proceedings in the superior courts are  
35       governed by rules 4.550 et seq.

36  
37       **Subdivision (b)(2).** A petition that seeks a writ relating to an act of the small claims division other than a  
38       postjudgment enforcement order is heard by a single judge of the appellate division (see Code Civ. Proc.  
39       § 116.798(a)) and is governed by rules 8.970 et seq.

1 **Rules 8.931–8.936 \* \* \***

2  
3 **Division 3. ~~Trial of Small Claims Cases on Appeal~~ Rules Relating to Appeals and Writs in**  
4 **Small Claims Cases**

5  
6 **Chapter 1. Trial of Small Claims Cases on Appeal**

7  
8 **Rule 8.950. Application**

9  
10 The rules in this ~~division~~ chapter supplement article 7 of the Small Claims Act, Code of Civil  
11 Procedure sections 116.710 et seq., providing for new trials of small claims cases on appeal, and  
12 must be read in conjunction with those statutes.

13  
14 **Rule 8.952–8.966 \* \* \***

15  
16 **Chapter 2. Writ Petitions**

17  
18 **Rule 8.970. Application**

19  
20 **(a) Writ proceedings governed**

21  
22 Except as provided in (b), the rules in this chapter govern proceedings under Code of Civil  
23 Procedure section 116.798(a) for writs of mandate, certiorari, or prohibition, relating to an  
24 act of the small claims division, other than a postjudgment enforcement order. In all  
25 respects not provided for in this chapter, rule 8.883, regarding the form and content of  
26 briefs, applies.

27  
28 **(b) Writ proceedings not governed**

29  
30 The rules in this chapter do not apply to:

- 31  
32 (1) Proceedings under Code of Civil Procedure section 116.798(c) for writs relating to a  
33 postjudgment enforcement order of the small claims division, which are governed by  
34 rules 8.930–8.936.  
35  
36 (2) Proceedings under Code of Civil Procedure section 116.798(b) for writs relating to  
37 an act of a superior court in a small claims appeal, which are governed by rules  
38 8.485–8.493.

39  
40 **Advisory Committee Comment**

41  
42 Code of Civil Procedure section 116.798 provides where writs in small claims actions may be heard.

43  
44 The Judicial Council form *Information on Writ Proceedings in Small Claims Actions* (form SC-300-  
45 INFO) provides additional information about proceedings for writs in small claims actions in the appellate  
46 division of the superior court. This form is available at any courthouse or county law library or online at  
47 [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms).

1 **Rule 8.971. Definitions**

2  
3 The definitions in rule 1.6 apply to these rules unless the context or subject matter requires  
4 otherwise. In addition, the following definitions apply to these rules:

- 5  
6 (1) “Writ” means an order telling the small claims court to do something that the law says it  
7 must do, or not do something the law says it must not do. The various types of writs  
8 covered by this chapter are described in statutes beginning at section 1067 of the Code of  
9 Civil Procedure.
- 10  
11 (2) “Petition” means a request for a writ.
- 12  
13 (3) “Petitioner” means the person asking for the writ.
- 14  
15 (4) “Respondent” and “small claims court” mean the court against which the writ is sought.
- 16  
17 (5) “Real party in interest” means any other party in the small claims court case who would be  
18 affected by a ruling regarding the request for a writ.

19  
20 **Rule 8.972. Petitions filed by persons not represented by an attorney**

21  
22 **(a) Petitions**

- 23  
24 (1) A person who is not represented by an attorney and who requests a writ under this  
25 chapter must file the petition on a *Petition for Writ (Small Claims)* (form SC-300).  
26 For good cause the court may permit an unrepresented party to file a petition that is  
27 not on that form.
- 28  
29 (2) If the petition raises any issue that would require the appellate division judge  
30 considering it to understand what was said in the small claims court, it must include  
31 a statement that fairly summarizes the proceedings, including the parties’  
32 arguments and any statement by the small claims court supporting its ruling.
- 33  
34 (3) The clerk must file the petition even if it is not verified but if the party asking for  
35 the writ fails to file a verification within five days after the clerk gives notice of the  
36 defect, the court may strike the petition.

37  
38 **(b) Contents of supporting documents**

- 39  
40 (1) The petition must be accompanied by copies of the following:
- 41  
42 (A) The small claims court ruling from which the petition seeks relief;
- 43  
44 (B) All documents and exhibits submitted to the small claims court supporting and  
45 opposing the petitioner’s position; and
- 46

1           (C) Any other documents or portions of documents submitted to the small claims  
2 court that are necessary for a complete understanding of the case and the ruling  
3 under review.

4  
5           (2) If the petition does not include the required documents or does not present facts  
6 sufficient to excuse the failure to submit them, the appellate division judge may  
7 summarily deny a stay request, the petition, or both.

8  
9 **(c) Form of supporting documents**

10  
11 (1) Documents submitted under (b) must comply with the following requirements:

12  
13 (A) They must be attached to the petition. The pages must be consecutively  
14 numbered.

15  
16 (B) They must each be given a number or letter.

17  
18 (2) The clerk must file any supporting documents not complying with (1), but the court  
19 may notify the petitioner that it may strike or summarily deny the petition if the  
20 documents are not brought into compliance within a stated reasonable time of not  
21 less than five days.

22  
23 **(d) Service**

24  
25 (1) The petition and all its attachments, and a copy of *Information on Writ Proceedings*  
26 *in Small Claims Cases* (form SC-300-INFO) must be served personally or by mail on  
27 all the parties in the case, and the petition must be served on the small claims court.

28  
29 (2) The petitioner must file a proof of service at the same time the petition is filed.

30  
31 (3) The clerk must file the petition even if its proof of service is defective but if the party  
32 asking for the writ fails to file a corrected proof of service within five days after the  
33 clerk gives notice of the defect, the court may strike the petition or allow additional  
34 time to file a corrected proof of service.

35  
36 (4) The court may allow the petition to be filed without proof of service.

37  
38 **Advisory Committee Comment**

39  
40 **Subdivision (a).** *Petition for Writ (Small Claims)* (form SC-300) and *Information on Writ Proceedings in*  
41 *Small Claims Cases* (form SC-300-INFO) are available at any courthouse or county law library or online  
42 at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms).

43  
44 **Rule 8.973. Petitions filed by an attorney for a party**

45  
46 **(a) General application of rule 8.972**

1 Except as provided in this rule, rule 8.972 applies to any petition for an extraordinary writ  
2 filed by an attorney under this chapter.

3  
4 **(b) Form and content of petition**

- 5  
6 (1) A petition for an extraordinary writ filed by an attorney may, but is not required to  
7 be, filed on *Petition for Writ (Small Claims)* (form SC-300). It must contain all the  
8 information requested in that form.  
9  
10 (2) The petition must disclose the name of any real party in interest.  
11  
12 (3) If the petition seeks review of small claims court proceedings that are also the  
13 subject of a pending appeal, the notice “Related Appeal Pending” must appear on the  
14 cover of the petition, and the first paragraph of the petition must state the appeal’s  
15 title and any appellate division docket number.  
16  
17 (4) The petition must be verified.  
18  
19 (5) The petition must be accompanied by a memorandum, which need not repeat facts  
20 alleged in the petition.  
21  
22 (6) Rule 8.883(b) governs the length of the petition and memorandum, but the  
23 verification and any supporting documents are excluded from the limits stated in rule  
24 8.883(b)(1) and (2).  
25  
26 (7) If the petition requests a temporary stay, it must explain the urgency.  
27

28 **Rule 8.974. Opposition**

29  
30 **(a) Preliminary opposition**

- 31  
32 (1) The respondent and real party in interest are not required to file any opposition to the  
33 petition unless asked to do so by the appellate division judge.  
34  
35 (2) Within 10 days after the petition is filed, the respondent or any real party in interest  
36 may serve and file a preliminary opposition.  
37  
38 (3) A preliminary opposition should contain any legal arguments the party wants to  
39 make as to why the appellate division judge should not issue a writ and a statement  
40 of any material facts not included in the petition.  
41  
42 (4) Without requesting opposition, the appellate division judge may grant or deny a  
43 request for temporary stay, deny the petition, issue an alternative writ or order to  
44 show cause, or notify the parties that the judge is considering issuing a peremptory  
45 writ in the first instance.  
46

1 **(b) Return or opposition; reply**  
2

- 3 (1) If the appellate division judge issues an alternative writ or order to show cause, the  
4 respondent or any real party in interest, individually or jointly, may serve and file a  
5 return (which is a response to the petition) by demurrer, verified answer, or both. If  
6 the appellate division judge notifies the parties that he or she is considering issuing a  
7 peremptory writ in the first instance, the respondent or any real party in interest may  
8 serve and file an opposition.  
9
- 10 (2) Unless the appellate division judge orders otherwise, the return or opposition must be  
11 served and filed within 30 days after the appellate division judge issues the  
12 alternative writ or order to show cause or notifies the parties that it is considering  
13 issuing a peremptory writ in the first instance.  
14
- 15 (3) Unless the appellate division judge orders otherwise, the petitioner may serve and  
16 file a reply within 15 days after the return or opposition is filed.  
17
- 18 (4) If the return is by demurrer alone and the demurrer is not sustained, the appellate  
19 division judge may issue the peremptory writ without granting leave to answer.  
20

21 **(c) Form of preliminary opposition, return, or opposition**  
22

23 Any preliminary opposition, return, or opposition must comply with rule 8.931(c). If it is  
24 filed by an attorney, it must also comply with rule 8.932(b)(3)–(7).  
25

26 **Rule 8. 975. Notice to small claims court**  
27

28 **(a) Notice if writ issues**  
29

30 If a writ or order issues directed to any judge, court, or other officer, the appellate division  
31 clerk must promptly send a certified copy of the writ or order to the person or entity to  
32 whom it is directed.  
33

34 **(b) Notice by telephone**  
35

- 36 (1) If the writ or order stays or prohibits proceedings set to occur within seven days or  
37 requires action within seven days—or in any other urgent situation—the appellate  
38 division clerk must make a reasonable effort to notify the clerk of the respondent  
39 small claims court by telephone. The clerk of the respondent small claims court must  
40 then notify the judge or officer most directly concerned.  
41
- 42 (2) The appellate division clerk need not give notice by telephone of the summary denial  
43 of a writ, whether or not a stay was previously issued.  
44  
45

1 **Rule 8.976. Filing, finality, and modification of decisions; remittitur**

2  
3 **(a) Filing of decision**

4  
5 The appellate division clerk must promptly file all opinions and orders in proceedings  
6 under this chapter and promptly send copies showing the filing date to the parties and,  
7 when relevant, to the small claims court.

8  
9 **(b) Finality of decision**

10  
11 (1) Except as otherwise ordered by the appellate division judge, the following decisions  
12 regarding petitions for writs under this chapter are final in the issuing court when  
13 filed:

14  
15 (A) An order denying or dismissing such a petition without issuance of an  
16 alternative writ, order to show cause, or writ of review; and

17  
18 (B) An order denying or dismissing such a petition as moot after issuance of an  
19 alternative writ, order to show cause, or writ of review.

20  
21 (2) Except as otherwise provided in (3), all other decisions in a writ proceeding under  
22 this chapter are final 30 days after the decision is filed.

23  
24 (3) If necessary to prevent mootness or frustration of the relief granted or to otherwise  
25 promote the interests of justice, a judge in the appellate division may order early  
26 finality of a decision granting a petition for a writ under this chapter or denying such  
27 a petition after issuing an alternative writ, order to show cause, or writ of review.  
28 The decision may provide for finality on filing or within a stated period of less than  
29 30 days.

30  
31 **(c) Modification of decisions**

32  
33 Rule 8.888(b) governs the modification of decisions in writ proceedings under this chapter.

34  
35 **(d) Remittitur**

36  
37 The appellate division must issue a remittitur after the judge issues a decision in a writ  
38 proceeding under this chapter except when the judge issues one of the orders listed in  
39 (b)(1). The remittitur is deemed issued when the clerk enters it in the record. The clerk  
40 must immediately send the parties notice of issuance of the remittitur, showing the date of  
41 entry.

1 Advisory Committee Comment

2  
3 Subdivision (b)(1). Examples of situations in which the appellate division judge may issue an order  
4 dismissing a writ petition include when the petitioner fails to comply with an order, when the judge  
5 recalls the alternative writ, order to show cause, or writ of review as improvidently granted, or when the  
6 petition becomes moot.

7  
8 **Rule 8.977. Costs**

9  
10 **(a) Entitlement to costs**

11  
12 The prevailing party in an original proceeding is entitled to costs if the appellate division  
13 judge resolves the proceeding after issuing an alternative writ, an order to show cause, or a  
14 peremptory writ in the first instance.

15  
16 **(b) Award of costs**

17  
18 (1) In the interests of justice, the appellate division judge may award or deny costs as the  
19 court deems proper.

20  
21 (2) The opinion or order resolving the proceeding must specify the award or denial of  
22 costs.

23  
24 (3) Rule 8.891(b)–(d) governs the procedure for recovering costs under this rule.  
25



## GENERAL INFORMATION

## ① What does this information sheet cover?

This information sheet tells you about **writ proceedings**—proceedings in which a person is asking for a writ of mandate, prohibition, or review—in misdemeanor, infraction, and limited civil cases, and in certain small claims cases. Please read this information sheet before you fill out *Petition for Writ (Misdemeanor, Infraction, or Limited Civil Case)* (form APP-151). This information sheet does not cover everything you may need to know about writ proceedings. It is only meant to give you a general idea of the writ process. To learn more, you should 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 online at [www.courts.ca.gov/rules](http://www.courts.ca.gov/rules).

This information sheet does NOT provide information about appeals or proceedings for writs of supersedeas or habeas corpus, or for writs in certain small claims cases.

- For information about appeals, please see the box on the right side of this page.
- 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).
- For information about writs of supersedeas, please see rule 8.824 of the California Rules of Court.
- This information sheet applies to writs relating to *postjudgment enforcement actions* of the small claims division. For information about writs relating to other actions by the small claims division, see rules 8.930–8.936 of the California Rules of Court and *Petition for Writ (Small Claims)* (form SC-300).
- For information about writs relating to actions of the superior court on small claims appeals, see rules 8.485–8.493 of the California Rules of Court.

You can get these rules and forms at any courthouse or county law library or online at [www.courts.ca.gov/rules](http://www.courts.ca.gov/rules) for the rules or [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms) for the forms.

## ② What is a writ?

A writ is an order from a higher court telling a lower court to do something the law says the lower court must do or not to do something the law says the lower court does not have the power 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.

For information about appeal procedures, see:

- *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO)
- *Information on Appeal Procedures for Infractions* (form CR-141-INFO)
- *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO)

You can get these forms at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms).

In this information sheet, we call the lower court the “trial court.”

## ③ Are there different kinds of writs?

Yes. There are three main kinds of writs:

- Writs of mandate (sometimes called “mandamus”), which are orders telling the trial court to do something.
- Writs of prohibition, which are orders telling the trial court not to do something.
- Writs of review (sometimes called “certiorari”), which are orders telling the trial court that the appellate division will review certain kinds of actions already taken by the trial court.

There are laws (statutes) that you should read concerning each type of writ: see California Code of Civil Procedure sections 1084–1097 about writs of mandate, sections 1102–1105 about writs of prohibition, and sections 1067–1077 about writs of review. You can get copies of



these statutes at any county law library or online at [leginfo.ca.gov/faces/codes.xhtml](http://leginfo.ca.gov/faces/codes.xhtml).

#### 4 Is a writ proceeding the same as an appeal?

No. In an **appeal**, the appellate division *must* consider the parties' arguments and decide whether the trial court made the legal error claimed by the appealing party and whether the trial court's decision should be overturned based on that error (this is called a "decision on the merits"). In a **writ proceeding**, the appellate division is *not* required to make a decision on the merits; even if the trial court made a legal error, the appellate division can decide not to consider that error now, but to wait and consider the error as part of any appeal from the final judgment. Most requests for writs are denied without a decision on the merits (this is called a "summary denial"). Because of this, appeals are the ordinary way that decisions made by a trial court are reviewed and writ proceedings are often called proceedings for "extraordinary" relief.

Appeals and writ proceedings are also used to review different kinds of decisions by the trial court. Appeals can be used only to review a trial court's final judgment and a few kinds of orders. Most rulings made by a trial court before it issues its final judgment cannot be appealed right away; they can only be appealed after the trial court case is over, as part of an appeal of the final judgment. Unlike appeals, writ proceedings can be used to ask for review of certain kinds of important rulings made by a trial court before it issues its final judgment.

#### 5 Is a writ proceeding a new trial?

No. A **writ proceeding is NOT a new trial**. The appellate division will not consider new evidence, such as the testimony of new witnesses. Instead, if it does not summarily deny the request for a writ, the appellate division reviews 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 asking for 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.

#### 6 Can a writ be used to address *any* errors made by a trial court?

No.

**Writs can only address certain legal errors.** Writs can only address the following types of legal errors made by a trial court:

- The trial court has a legal duty to act but:
  - Refuses to act
  - Has not done what the law says it must do
  - Has acted in a way the law says it does not have the power to act
- The trial court has performed or says it is going to perform a judicial function (like deciding a person's rights under law in a particular case) in a way that the court does not have the legal power to do.

**There must be no other adequate remedy.** The trial court's error must also be something that can be fixed only with a writ. The person asking for the writ must show the appellate division that there is no adequate way to address the trial court's error other than with the writ (this is called having "no adequate remedy at law"). As mentioned above, appeals are the ordinary way that trial court decisions are reviewed. If the trial court's ruling can be appealed, the appellate division will generally consider an appeal to be good enough (an "adequate remedy") unless the person asking for the writ can show the appellate division that he or she will be harmed in a way that cannot be fixed by the appeal if the appellate division does not issue the writ (this is called "irreparable" injury or harm).

**Statutory writs:** 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 a statute says can or must be challenged using a writ:

- A ruling on a motion to disqualify a judge (see California Code of Civil Procedure section 170.3(d))
- Denial of a motion for summary judgment (see California Code of Civil Procedure section 437c(m)(1))



- A ruling on a motion for summary adjudication of issues (see California Code of Civil Procedure section 437c(m)(1))
- Denial of a stay in an unlawful detainer matter (see California Code of Civil Procedure section 1176)
- An order disqualifying the prosecuting attorney (see California Penal Code section 1424)

You can get copies of these statutes at any county law library or online at [leginfo.legislature.ca.gov/faces/codes.xhtml](http://leginfo.legislature.ca.gov/faces/codes.xhtml). 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 ask for a writ to challenge a ruling does not mean that the court must grant your request; the appellate division can still deny a request for a statutory writ.)

**Common law writs:** Even if there is not a statute specifically providing for a writ proceeding to challenge a particular ruling, most trial court rulings other than the final judgment can potentially be challenged using a writ proceeding if the trial court made the type of legal error described above and the petitioner has no other adequate remedy at law. These writs are called “common law” writs.

### 7 Can the appellate division consider a request for a writ in *any* case?

No. Different courts have the power (called “jurisdiction”) to consider requests for writs in different types of cases. The appellate division can only consider requests for writs in limited civil, misdemeanor, and infraction cases, and certain small claims cases. A limited civil case is a civil case in which the amount claimed is \$25,000 or less (see California Code of Civil Procedure sections 85 and 88). Misdemeanor cases are cases in which a person has been charged with or convicted of a crime for which the punishment can include jail time of up to one year but not time in state prison (see California Penal Code sections 17 and 19.2). (If the person was also charged with or convicted of a felony in the same case, it is considered a felony case, not a misdemeanor case.) Infraction cases are cases in which a person has been charged with or convicted of a

crime for which the punishment can be a fine, traffic school, or some form of community service but cannot include any time in jail or prison (see California Penal Code sections 17 and 19.8). Examples of infractions include traffic tickets or citations for violations of some city or county ordinances. (If a person was also charged with or convicted of a misdemeanor in the same case, it is considered a misdemeanor case, not an infraction case.) You can get copies of these statutes at any county law library or online at [leginfo.legislature.ca.gov/faces/codes.xhtml](http://leginfo.legislature.ca.gov/faces/codes.xhtml). The appellate division can consider requests for writs in small claims actions relating to postjudgment enforcement orders.

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 or convicted of a crime for which the punishment can include time in state prison). Requests for writs in these cases can be made in the Court of Appeal. The appellate division also does NOT have jurisdiction to consider requests for writs of habeas corpus; requests for these writs can be made in the superior court.

Requests for writs relating to actions of the small claims division *other* than postjudgment enforcement orders are considered by a single judge in the appellate division. (See form SC-300-INFO.) Requests for writs relating to superior court actions in small claims cases on appeal may be made to the Court of Appeal.

### 8 Who are the parties in a writ proceeding?

If you are asking for the writ, you are called the PETITIONER. You should read “Information for the Petitioner,” beginning on page 4.

The court the petitioner is asking to be ordered to do or not to do something is called the RESPONDENT. In appellate division writ proceedings, the trial court is the respondent.

Any other party in the trial court case who would be affected by a ruling regarding the request for a writ is a REAL PARTY IN INTEREST. If you are a real party in interest, you should read “Information for a Real Party in Interest,” beginning on page 10.



**9 Do I need a lawyer to represent me in a writ proceeding?**

You do not *have* to have a lawyer; you are allowed to represent yourself in a writ proceeding in the appellate division. But writ proceedings can be very complicated and you will have to follow the same rules that lawyers have to follow. If you have any questions about the writ procedures, you should talk to a lawyer. In limited civil cases and infraction cases, you must hire a lawyer at your own expense if you want one (the court cannot provide one). You can get information about finding a lawyer on the California Courts Online Self-Help Center at [www.courts.ca.gov/selfhelp-lowcosthelp.htm](http://www.courts.ca.gov/selfhelp-lowcosthelp.htm).

**INFORMATION FOR THE PETITIONER**

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

**10 Who can ask for a writ?**

Only a party in the trial court proceeding—the plaintiff or defendant in a civil case or the defendant or prosecuting agency in a misdemeanor or infraction case—can ask for a writ challenging a ruling on a motion to disqualify a judge (see California Code of Civil Procedure section 170.3(d)). Parties are also usually the only ones that ask for writs challenging other kinds of trial court rulings. However, in most cases, a person who was not a party does have the legal right to ask for a writ if that person has a “beneficial interest” in the trial court’s ruling. A “beneficial interest” means that the person has a specific right or interest affected by the ruling that goes beyond the general rights or interests the public may have in the ruling.

**11 How do I ask for a writ?**

To ask for a writ you must serve and file a petition for a writ (see below for an explanation of how to “serve and file” a petition). A petition is a formal request that the appellate division issue a writ. A petition for a writ

explains to the appellate division what happened in the trial court, what legal 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 make.

**12 How do I prepare a writ petition?**

If you are represented by a lawyer, your lawyer will prepare your petition for a writ. If you are not represented by a lawyer, you must use *Petition for Writ (Misdemeanor, Infraction, or Limited Civil Case)* (form APP-151) to prepare your petition. You can get form APP-151 at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms). This form asks you to fill in the information that needs to be in a writ petition.

**a. Description of your interest in the trial court’s ruling**

Your petition needs to tell the appellate division why you have a right to ask for a writ in the case. As discussed above, usually only a person who was a party in the trial court case—the plaintiff or defendant in a civil case or the defendant or prosecuting agency in a misdemeanor or infraction case—asks for a writ challenging a ruling in that case. If you were a party in the trial court case, say that in your petition. If you were not a party, you will need to describe what “beneficial interest” you have in the trial court’s 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 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 describe how the ruling will affect you in a direct and negative way.

**b. Description of the legal error you believe the trial court made**

Your petition will need to tell the appellate division what legal error you believe the trial court made. 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 act
  - Has not done what the law says it must do
  - Has acted in a way the law says it does not have the power to act
- The trial court has performed or says it is going to perform a judicial function (like deciding a person’s rights under law in a particular case) 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.
- Show the appellate division that the trial court has not acted in the way that this legal authority says the court is required to act. You will need to tell the appellate division exactly where in the record of what happened in the trial court it shows that the trial court did not act in the way it was required to.

### c. Description of why you need the writ

One of the most important parts of your petition is explaining to the appellate division why you need the writ you have requested. Remember, the appellate division does not have to grant your petition just because the trial court made an error. You must convince the appellate division that it is important for it to issue the writ.

***Your petition needs to show that a writ is the only way to fix the trial court’s error.*** To convince the court you need the writ, you will need to show the appellate division that you have no way to fix the trial court’s error other than through a writ (this is called having “no adequate remedy at law”).

***This will be hard if the trial court’s ruling can be appealed.*** If the ruling you are challenging can be appealed, either immediately or as part of an appeal of

the final judgment in your case, the appellate division will generally consider this appeal to be a good enough way to fix the trial court’s ruling (an “adequate remedy”). To be able to explain to the appellate division why you do not have an adequate remedy at law, you will need to find out if the ruling you want to challenge can be appealed, either immediately or as part of an appeal of the final judgment.

### ***Here are some trial court rulings that can be appealed.***

There are laws (statutes) that say that certain kinds of trial court rulings (“orders”) can be appealed immediately. In limited civil cases, California Code of Civil Procedure section 904.2 lists orders that can be appealed immediately, including orders:

- Changing or refusing to change the place of trial (venue)
- Granting a motion to quash service of summons
- Granting a motion to stay or dismiss the action on the ground of inconvenient forum
- Granting a new trial
- Denying a motion for judgment notwithstanding the verdict
- Granting or dissolving an injunction or refusing to grant or dissolve an injunction
- Appointing a receiver
- Made after final judgment in the case

In misdemeanor and infraction cases, orders made after the final judgment that affect the substantial rights of the defendant can be appealed immediately (California Penal Code section 1466).

In misdemeanor cases, orders granting or denying a motion to suppress evidence can also be appealed immediately (California Penal Code section 1538.5(j)).

You can get copies of these statutes at any county law library or online at [leginfo.legislature.ca.gov/faces/codes.xhtml](http://leginfo.legislature.ca.gov/faces/codes.xhtml). You should also check to see if there are published court decisions that indicate whether you can



or must use an appeal or a writ petition to challenge the type of ruling you want to challenge in your case.

*If the ruling can be appealed, you will need to show that an appeal will not fix the trial court's error.* If the trial court ruling you want to challenge can be appealed, you will need to show the appellate division why that appeal is not good enough to fix the trial court's error. To do that, you will need to show the appellate division how you will be harmed by the trial court's error in a way that cannot be fixed by the appeal if the appellate division does not issue the writ (this is called "irreparable" injury or harm). For example, because of the time it takes for an appeal, the harm you want to prevent may happen before an appeal can be finished.

#### d. Description of the order you want the appellate division to make

Your petition needs to describe what you are asking the appellate division to order the trial court to do or not do. Writ petitions usually ask that the trial court be ordered to cancel ("vacate") its ruling, issue a new ruling, or not take any steps to enforce its ruling.

If you want the appellate division to order the trial court not to do anything more until the appellate division decides whether to grant the writ you are requesting, you must ask for a "stay." If you want a stay, you should first ask the trial court for a stay. 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 the appellate division for a stay, make sure you also fill out the "Stay requested" box on the first page of the *Petition for Writ (Misdemeanor, Infraction, or Limited Civil Case)* (form APP-151).

#### e. Verifying the petition

Petitions for writs must be "verified." This means that 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, must sign the petition, and must indicate the date that the petition was signed. On the last page of the *Petition for Writ (Misdemeanor,*

*Infraction, or Limited Civil Case)* (form APP-151), there is a place for you to verify your petition.

### 13 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 (see below for an explanation of how to serve and file the petition). Since the appellate division judges were not there in the trial court, a record of what happened must be sent to the appellate division for its review. The materials that make up this record are called "supporting documents."

**What needs to be in the supporting documents.** The supporting documents must include:

- A record of what was said in the trial court about the ruling that you are challenging (this is called the "oral proceedings") and
- Copies of certain important documents from the trial court.

Read below for more information about these two parts of the supporting documents.

**Record of the oral proceedings.** There are several ways a record of what was said in the trial court may be provided to the appellate division:

- **A transcript**—A transcript is a written record (often called the "verbatim" record) of the oral proceedings in the trial court. If a court reporter was in the trial court 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 there, but the oral proceedings were officially recorded on approved electronic recording equipment, you can have a transcript prepared for the appellate division from the official electronic recording of these proceedings. You (the petitioner) must pay for preparing a transcript, unless the court orders otherwise.
- **A copy of an electronic recording**—If the oral proceedings were officially recorded on approved electronic recording equipment, the court has a local rule for the appellate division permitting this



recording to be used as the record of the oral proceedings, and all the parties agree (“stipulate”), a copy of the official electronic recording itself can be used as the record of the oral proceedings instead of a transcript. You (the petitioner) must pay for preparing a copy of the official electronic recording, unless the court orders otherwise.

- **A summary**—If a transcript or official electronic recording of what was said in the trial court is not available, your petition must include a declaration (a statement signed by the petitioner under penalty of perjury) either:
  - Explaining why the transcript or official electronic recording is not available and providing a fair summary of the proceedings, including the petitioner’s arguments and any statement by the court supporting its ruling or
  - Stating that the transcript or electronic recording has been ordered, the date it was ordered, and the date it is expected to be filed.

**Copies of documents from the trial court.** Copies of the following documents from the trial court 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
- 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

**What if I cannot get copies of the documents from the trial court because of an emergency?** Rule 8.931 of the California Rules of Court provides that in extraordinary circumstances the petition may be filed without copies of the documents from the trial court. If the petition is filed without these documents, you must explain in your petition the urgency and the circumstances making the documents available.

**Format of the supporting documents.** Supporting documents must be put in the format required by rule

8.931 of the California Rules of Court. Among other things, there must be a tab for each document and an index listing 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 online at [www.courts.ca.gov/rules](http://www.courts.ca.gov/rules).

**14 Is there a deadline to ask for a writ?**

Yes. For statutory writs, the statute usually sets the deadline for serving and filing the petition. Here is a list of the deadlines for filing petitions for some of the most common statutory writs (you can get copies of these statutes at any county law library or online at [leginfo.legislature.ca.gov/faces/codes.xhtml](http://leginfo.legislature.ca.gov/faces/codes.xhtml)).

Statutory Writ	Filing Deadline
Writ challenging a ruling on a motion to disqualify a judge (see California 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 California Code of Civil Procedure section 437c(m)(1))	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 California Code of Civil Procedure section 437c(m)(1))	20 days after service of written notice of entry of the order

For common law writs or statutory writs where the statute does not set a deadline, you should file the petition as soon as possible and not later than 30 days after the court makes the ruling that you are challenging in the petition. While there is no absolute deadline for filing these petitions, writ petitions are usually used when it is urgent that the trial court’s error be fixed. Remember, the court is not required to grant your petition even if the trial court made an error. If you delay in filing your petition, it may make the appellate division think that it is not really urgent that the trial court’s error be fixed 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.

### **15 How do I “serve” my petition?**

Rule 8.931(d) 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 petition on a party means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver (“serve”) the petition to the real party in interest and the respondent court in the way required by law.
- Make a record that the petition has been served. This record is called a “proof of service.” *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. The proof of service must show who served the petition, who was served with the petition, how the petition was served (by mail or in person), and the date the petition was served.

You can get more information about how to serve court documents and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at [www.courts.ca.gov/selfhelp-serving.htm](http://www.courts.ca.gov/selfhelp-serving.htm).

### **16 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 made 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 made 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. It is a good idea to bring or mail an extra copy of the petition to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

### **17 Do I have to pay to file a petition?**

There is no fee to file a petition for a writ in a misdemeanor or infraction case, but there is a fee to file a petition for a writ in a limited civil case. You should ask the clerk for the appellate division where you are filing the petition what this fee is. If you cannot afford to pay this filing fee, you can ask the court to waive this fee. To do this, you must fill out a *Request to Waive Court Fees* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms). You can file this application either before you file your petition or with your petition. The court will review this application and decide whether to waive the filing fee.

### **18 What happens after I 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 a writ, however. Without waiting, the appellate division can:

- a. Issue a stay
- b. Summarily deny the petition
- c. Issue an alternative writ or order to show cause
- d. Notify the parties that it is considering issuing a preemptory writ in the first instance
- e. Issue a preemptory writ in the first instance if such relief was expressly requested in the petition.

Read below for more information about these options.

#### **a. Stay of trial court proceedings**

A stay is an order from the appellate division telling the trial court not to do anything more until the appellate division decides whether to grant your petition. A stay puts the trial court proceedings on temporary hold.





**b. Summary denial**

A “summary denial” means that the appellate division denies the petition without deciding whether the trial court made the legal error claimed by the petitioner or whether the writ requested by the petitioner should be issued based on that error. Remember, even if the trial court made a legal error, the appellate division can decide not to consider that error now but to wait and consider the error as part of any appeal from the final judgment. No reasons need to be given for a summary denial. Most petitions for writs are denied in this way.

**c. Alternative writ or order to show cause**

An “alternative writ” is an order telling the trial court either to do what the petitioner has requested in the petition (or some modified form of what the petitioner requested) or to show the appellate division why the trial court should not be ordered to do what the petitioner requested. An “order to show cause” is similar; it is an order telling the trial court to show the appellate division why the trial court should not be ordered to do what the petitioner requested in the petition (or some modified form of what the petitioner requested). 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 decided that the petitioner may have shown that the trial court made a legal error that needs to be fixed.

If the appellate division issues an alternative writ and the trial court does what the petitioner requested (or a modified form of what the petitioner requested as ordered by the appellate division), then no further action by the appellate division is needed and the appellate division may dismiss the petition.

If the trial court does not comply with an alternative writ, however, or if the appellate division issues an order to show cause, then the respondent court or a 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 requested. The return must be served and 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 serve and 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 served and filed (or the time to serve and file them has passed) and oral argument is completed, the appellate division will decide the case.

**d. Peremptory writ in the first instance**

A “peremptory writ in the first instance” is an order telling the trial court to do what the petitioner has requested (or some modified form of what the petitioner requested) that is issued without the appellate division 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 unless the respondent and real parties in interest have received notice that the court might do so, either through the petitioner expressly asking for such relief in the petition, or by the court first notifying the parties and giving the respondent court and any real party in interest a chance to file an opposition.

The respondent court or a 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 served and 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 a chance to serve and 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 served and filed (or the time to serve and file them has passed) and oral argument is completed, the appellate division will decide the case.

**19 What should I do if the court denies my petition?**

If the court denies your petition, it may be helpful to talk to a lawyer. In a limited civil or infraction case, you must hire a lawyer at your own expense if you want one (the court cannot provide one). You can get information about finding an attorney on the California Courts Online Self-Help Center at [www.courts.ca.gov/selfhelp-lowcosthelp.htm](http://www.courts.ca.gov/selfhelp-lowcosthelp.htm).



### INFORMATION FOR A REAL PARTY IN INTEREST

This part of the information sheet is written for a real party in interest—a party from the trial court case other than the petitioner who will be affected by a ruling on a petition for a writ. 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.

#### 20 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?

You do not *have* to do anything. The California Rules of Court give you the right to file a preliminary opposition to a petition for a writ within 10 days after the petition is served and filed, but you are not required to do this. The appellate division can take certain actions without waiting for any opposition, including:

- Summarily denying the petition
- Issuing an alternative writ or order to show cause
- Notifying the parties that it is considering issuing a peremptory writ in the first instance
- Issuing a peremptory writ in the first instance if such relief was expressly requested in the petition.

Read the response to question 18 for more information about these options.

Most petitions for writs are summarily denied, often within a few days after they are filed. If you have not already received something from the appellate division saying 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 be a good time to talk to a lawyer. You do not *have* to have a lawyer; you are allowed to represent yourself in a writ proceeding in the appellate division. But writ proceedings can be very complicated and you will have to follow the same rules that lawyers have to follow. If you have any questions about writ proceedings or about whether and how you should respond to a writ petition, you should talk to a lawyer. In a limited civil

case or infraction case, you must hire a lawyer at your own expense if you want one (the court cannot provide one). You can get information about finding an attorney on the California Courts Online Self-Help Center at [www.courts.ca.gov/selfhelp-lowcosthelp.htm](http://www.courts.ca.gov/selfhelp-lowcosthelp.htm).

If the petition has not already been summarily denied, you may, but are not required to, serve and file a preliminary opposition to the petition within 10 days after the petition was served and filed. In general, it is a good idea to consider filing a preliminary opposition if the petition misstates the facts or if you think the petition shows that the trial court made a legal error that may need to be fixed. However, the appellate division will seldom grant a writ without first issuing an alternative writ, an order to show cause, or a notice that it is considering issuing a peremptory writ. In all these circumstances, you will get notice from the court and have a chance to file a response. Note that the appellate division may issue a peremptory writ without notice if the petitioner expressly asked the court, in the petition, to issue a peremptory writ in the first instance. If the petitioner did that, you may want to consider whether to file a preliminary opposition, to explain why you believe the small claims court made no legal error and why the petitioner is not entitled to a writ.

If you decide to file a preliminary opposition, you must serve that preliminary opposition on all the other parties to the writ proceeding. “Serving and filing” an opposition means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver (“serve”) the preliminary opposition to the other parties in the way required by law.
- Make a record that the preliminary opposition has been served. This record is called a “proof of service.” *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. The proof of service must show who served the preliminary opposition, who was served with the preliminary opposition, how the preliminary opposition was served (by mail or in person), and the date the preliminary opposition was served.
- File the original preliminary opposition and the proof of service with the appellate division. You



should make a copy of the preliminary opposition for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the preliminary opposition to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court documents and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at [www.courts.ca.gov/selfhelp-serving.htm](http://www.courts.ca.gov/selfhelp-serving.htm).

**21 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. Unless the trial court has already done what the alternative writ told it to do, you should serve and file a response called a “return.”

As explained above, the appellate division will issue an alternative writ or an order to show cause if the appellate division has decided that the petitioner may have shown that the trial court made a legal error that needs to be fixed. An “alternative writ” is an order telling the trial court either to do what the petitioner has requested in the petition (or some modified form of what the petitioner requested) or to show the appellate division why the trial court should not be ordered to do what the petitioner requested. An “order to show cause” is similar; it is an order telling the trial court to show the appellate division why the trial court should not be ordered to do what the petitioner requested in the petition (or some modified form of what the petitioner requested).

If the appellate division issues an alternative writ and the trial court does what the petitioner requested (or a modified form of what the petitioner requested as ordered by the appellate division), then no further action by the appellate division is needed and the appellate division may dismiss the petition. If the trial court does not comply with an alternative writ, 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 a lawyer in the writ proceeding, your lawyer will prepare your return. If you are not represented by a lawyer, you will need to prepare your own return. A return is usually 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 California 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 online at [leginfo.legislature.ca.gov/faces/codes.xhtml](http://leginfo.legislature.ca.gov/faces/codes.xhtml). 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 and filing” the return means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver (“serve”) the return to the other parties in the way required by law.
- Make a record that the return has been served. This record is called a “proof of service.” *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. The proof of service must show who served the return, who was served with the return, how the return was served (by mail or in person), and the date the return was served.
- File the original return and the proof of service with the appellate division. You should make a copy of the return you are planning to file for your own records before you file it with the court. It is a good



- idea to bring or mail an extra copy of the return to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court documents and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at [www.courts.ca.gov/selfhelp-serving.htm](http://www.courts.ca.gov/selfhelp-serving.htm).

**22 I have received a copy of a notice from the appellate division indicating 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 18, a “peremptory writ in the first instance” is an order telling the trial court to do what the petitioner has requested (or some form of what the petitioner requested as ordered by the appellate division) that is issued without the appellate division 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 a chance 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 a lawyer in the writ proceeding, your lawyer will prepare your opposition. If you are not represented by a lawyer, you will need to prepare your own opposition. Like a return discussed above, an opposition is usually 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 California 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 online at [leginfo.legislature.ca.gov/faces/codes.xhtml](http://leginfo.legislature.ca.gov/faces/codes.xhtml).

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 and filing” the opposition means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver (“serve”) the opposition to the other parties in the way required by law.
- Make a record that the opposition has been served. This record is called a “proof of service.” *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. The proof of service must show who served the opposition, who was served, how the opposition was served (by mail or in person), and the date the opposition was served.
- File the original opposition and the proof of service with the appellate division. You should make a copy of the opposition you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the opposition to the clerk when you file your original, and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court documents and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at [www.courts.ca.gov/selfhelp-serving.htm](http://www.courts.ca.gov/selfhelp-serving.htm).

**23 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.

Clerk stamps date here when form is filed.

**DRAFT**  
**08.28.15**  
**NOT APPROVED BY**  
**THE JUDICIAL COUNCIL**

Clerk will fill in the number below:

Appellate Division Case Number:

---

**Petitioner**

(fill in the name of the person asking for the writ)

v.

Superior Court of California, County of \_\_\_\_\_

---

**Respondent**

(fill in the name of the court whose action or ruling you are challenging)

---

**Real Party in Interest**

(fill in the name of any other parties in the trial court case)

 Stay requested

(see item 12 c. on page 6)

**Instructions**

- This form is only for requesting a **writ** in a misdemeanor, infraction, or limited civil case, or a writ challenging a postjudgment enforcement order in a small claims case (see below\*).
  - Do *not* use this form for other writs and for appeals. You can get forms to use for those at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms).
  - Before you fill out this form, read *Information on Writ Proceedings in Misdemeanor, Infraction, and Limited Civil Cases* (form APP-150-INFO) to know your rights and responsibilities. You can get form APP-150-INFO at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms).
  - Unless a special statute sets an earlier deadline, you should file this form no later than **30 days** after the date the trial court took the action or issued the ruling you are challenging in this petition (see form APP-150-INFO, page 7, for more information about the deadline for filing a writ petition). It is your responsibility to find out if a special statute sets an earlier deadline. If your petition is filed late, the appellate division may deny it.
  - Fill out this form and make a copy of the completed form for your records and for the respondent (the trial court whose action or ruling you are challenging) and each of the real parties in interest (the other party or parties in the trial court case).
  - Serve a copy of the completed form on the respondent and on each real party in interest and keep proof of this service. *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. You can get information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at [www.courts.ca.gov/selfhelp-serving.htm](http://www.courts.ca.gov/selfhelp-serving.htm).
  - Take or mail the completed form and your proof of service on the respondent and each real party in interest to the clerk's office for the appellate division of the superior court that took the action or issued the ruling you are challenging.
- \* Small Claims cases. If you are a party in a small claims case, this form is only to be used for requesting a writ relating to a postjudgment enforcement order of a small claims division. For writs relating to other acts of a small claims division, the form to use is the *Petition for Writ (Small Claims)* (form SC-300). See also Cal. Rules of Court, rules 8.970–8.977. For writs relating to acts of a superior court in a small claims appeal, see Cal. Rules of Court, rules 8.485–8.493.



Appellate Division Case Name: \_\_\_\_\_

**1 Your Information**

a. Petitioner (the party who is asking for the writ):

Name: \_\_\_\_\_

Street address: \_\_\_\_\_  
*Street* *City* *State* *Zip*

Mailing address (if different): \_\_\_\_\_  
*Street* *City* *State* *Zip*

Phone: \_\_\_\_\_ E-mail (if available): \_\_\_\_\_

b. Petitioner’s lawyer (skip this if the petitioner does not have a lawyer for this petition):

Name: \_\_\_\_\_ State Bar number: \_\_\_\_\_

Street address: \_\_\_\_\_  
*Street* *City* *State* *Zip*

Mailing address (if different): \_\_\_\_\_  
*Street* *City* *State* *Zip*

Phone: \_\_\_\_\_ E-mail (if available): \_\_\_\_\_

Fax (if available): \_\_\_\_\_

**The Trial Court Action or Ruling You Are Challenging**

**2** I am/My client is filing this petition to challenge an action taken or ruling made by the trial court in the following case:

a. Case name (fill in the trial court case name): \_\_\_\_\_

b. Case number (fill in the trial court case number): \_\_\_\_\_

**3** The trial court action or ruling I am/my client is challenging is (describe the action taken or ruling made by the trial court): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**4** The trial court took this action or made this ruling on the following date (fill in the date): \_\_\_\_\_

**5** If you are filing this petition more than 30 days after the date that you listed in **4**, explain the extraordinary circumstances that caused the delay in filing this petition: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



Appellate Division Case Name: \_\_\_\_\_

**The Parties in the Trial Court Case**

- 6 I/My client (*check and fill in a or b*):
- a.  was a party in the case identified in 2.
- b.  was not a party in the case identified in 2 but will be directly and negatively affected in the following way by the action taken or ruling made by the trial court (*describe how you/your client will be directly and negatively affected by the trial court's action or ruling*):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

- 7 The other party or parties in the case identified in 2 was/were (*fill in the names of the parties*):

\_\_\_\_\_

\_\_\_\_\_

**Appeals or Other Petitions for Writs in This Case**

- 8 Did you or anyone else file an appeal about the same trial court action or ruling you are challenging in this petition? (*Check and fill in a or b*):

- a.  No
- b.  Yes (*fill in the appellate division case number of the appeal*): \_\_\_\_\_

- 9 Have you filed a previous petition for a writ challenging this trial court action or ruling? (*Check and fill in a or b*):

- a.  No
- b.  Yes (*Please provide the following information about this previous petition*).

- (1) Petition title (*fill in the title of the petition*): \_\_\_\_\_
- (2) Date petition filed (*fill in the date you filed this petition*): \_\_\_\_\_
- (3) Case number (*fill in the case number of the petition*): \_\_\_\_\_

*If you/your client filed more than one previous petition, attach another page providing this information for each additional petition. At the top of each page, write "APP-151, item 9."*

**Reasons for This Petition**

- 10 The trial court made the following legal error or errors when it took the action or made the ruling described in 3 (*check and fill in at least one*):

- a.  The trial court has not done or has refused to do something that the law says it *must* do.

- (1) *Describe what you believe the law says the trial court must do*: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

- (2) *Identify the law (the section of the Constitution or statute, published court decision, or other legal authority) that says the trial court must do this*: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



Appellate Division Case Name: \_\_\_\_\_

**10** (continued)

(3) *Identify where in the supporting documents (the record of what was said in the trial court and the documents from the trial court) it shows that the court did not do or refused to do this:*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*Check here if you need more space to describe the reason for your petition and attach a separate page or pages describing it. At the top of each page, write "APP-151, item 10a."*

b.  The trial court has done something that the law says the court *cannot or must not* do.

(1) *Describe what the trial court did:* \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(2) *Identify where in the supporting documents (the record of what was said in the trial court and the documents from the trial court) it shows that the court did this:* \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(3) *Identify the law (the section of the Constitution or statute, published court decision, or other legal authority) that says the trial court cannot or must not do this:* \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*Check here if you need more space to describe the reason for your petition and attach a separate page or pages describing it. At the top of each page, write "APP-151, item 10b."*

c.  The trial court has performed or said it is going to perform a judicial function (like deciding a person’s rights under law in a particular situation) in a way the court does not have the legal power to do.

(1) *Describe what the trial court did or said it is going to do:* \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(2) *Identify where in the supporting documents (the record of what was said in the trial court and the documents from the trial court) it shows that the court did or said it was going to do this:*  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_





Appellate Division Case Name: \_\_\_\_\_

**10** (continued)

(3) *Identify the law (the section of the Constitution or statute, published court decision, or other legal authority) that says the trial court does not have the power to do this:*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- Check here if you need more space to describe this reason for your petition and attach a separate page or pages describing it. At the top of each page, write “APP-151, item 10c.”*
- Check here if there are more reasons for this petition and attach an additional page or pages describing these reasons. At the top of each page, write “APP-151, item 10d.”*

**11** This petition will be granted only if there is no other adequate way to address the trial court’s action or ruling other than by issuing the requested writ.

a. *Explain why there is no way other than through this petition for a writ—through an appeal, for example—for your arguments to be adequately presented to the appellate division:*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

b. *Explain how you/your client will be irreparably harmed if the appellate division does not issue the writ you are requesting:* \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Order You Are Asking the Appellate Division to Make**

**12** I request that this court (*check and fill in all that apply*):

a.  order the trial court to do the following (*describe what, if anything, you want the trial court to be ordered to do*): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

b.  order the trial court not to do the following (*describe what, if anything, you want the trial court to be ordered NOT to do*): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



Appellate Division Case Name: \_\_\_\_\_

**12** (continued)

- c.  issue a stay ordering the trial court not to take any further action in this case until this court decides whether to grant or deny this petition (*describe below why it is urgent that the trial court not take any further action and check the Stay requested box on page 1 of this form*):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

I/My client:

- (1)  asked the trial court to stay these proceedings, but the trial court denied this request (*include in your supporting documents a copy of the trial court's order denying your request for a stay*).
- (2)  did not ask the trial court to stay these proceedings for the following reasons (*describe below why you did not ask the trial court to stay these proceedings*):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

- d.  take other action (*describe*): \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

- e.  grant any additional relief that the appellate division decides is fair and appropriate.

**Supporting Documents**

**13** Is a record of what was said in the trial court about the action or ruling you are challenging attached as required by rule 8.931(b)(1)(D) of the California Rules of Court?

- a.  Yes, a transcript or an official electronic recording of what was said in the trial court is attached.
- b.  No, a transcript or official electronic recording is not attached, but I have attached a declaration (a statement signed under penalty of perjury) (*Check (1) or (2)*):
  - (1)  stating the transcript or electronic recording has been ordered, the date it was ordered, and the date it is expected to be filed.
  - (2)  explaining why the transcript or official electronic recording is not available and providing a fair summary of what was said in the trial court, including the petitioner's arguments and any statement by the trial court supporting its ruling.



Appellate Division Case Name: \_\_\_\_\_

14 Are the following documents attached as required by rule 8.931(b)(1)(A)–(C):

- The trial court ruling being challenged in this petition
- All documents and exhibits submitted to the trial court supporting and opposing the petitioner’s position
- Any other documents or portions of documents submitted to the trial court that are necessary for a complete understanding of the case and the ruling being challenged? (*Check a or b*):

a.  Yes, these documents are attached.

b.  No, these documents are not attached for the following reasons (*explain why these documents are not attached and give a fair summary of the substance of these documents. Note that rule 8.931 provides that, in extraordinary circumstances, the petition may be filed without these documents, but the petitioner must explain the urgency and the circumstances making the documents unavailable*):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Verification**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Type or print your name*

 \_\_\_\_\_  
*Signature of petitioner or attorney*

Clerk stamps date here when form is filed.

DRAFT  
 08/28/15  
 Not approved  
 by the Judicial Council

\_\_\_\_\_

**Petitioner**  
*(fill in the name of the person asking for the writ)*

v.

**Superior Court of California, County of** \_\_\_\_\_

\_\_\_\_\_

**Respondent**  
*(fill in the name of the court whose action or ruling you are challenging)*

\_\_\_\_\_

**Real Party in Interest**  
*(fill in the name of any other parties in the trial court case)*

Clerk will fill in the number below:

**Appellate Division Case Number:**

**Stay requested**  
*(see item 12 c. on page 6)*

**Instructions**

- This form is only for requesting a **writ** in a small claims case which does *not* relate to an action enforcing the small claims judgment.
- Do not use this form for the appeal or trial de novo of a small claims matter or for writs on the appeal of a small claims matter. Other forms or pleadings should be used for those those kinds of actions.
- For requesting a writ relating to a court action regarding *enforcement* of a small claims judgment, you should use form APP-151, *Petition for Writ (Misdemeanor, Infraction, or Limited Civil Case)*. You can get that form and other forms for other writs and for appeals at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms).
- Before you fill out this form, read *Information on Writ Proceedings in Small Claims Cases* (form SC-300-INFO) to know your rights and responsibilities. You can get form SC-300-INFO at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms).
- Generally, you should file this form no later than **30 days** after the date the small claims court took the action or issued the ruling you are challenging in this petition (see form SC-300-INFO for more information about the deadline for filing a writ petition). It is your responsibility to find out if a special statute sets an earlier deadline. If your petition is filed late, the appellate division may deny it.
- Fill out this form and make a copy of the completed form for your records and for the small claims court whose action or ruling you are challenging (called the respondent) and each of the other party or parties in the small claims case (called real party in interest).
- Serve a copy of the completed form on the small claims court and serve a copy of the form and a copy of form SC-300-INFO on each real party in interest and keep proof of this service. *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. You can get information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at [www.courts.ca.gov/selfhelp-serving.htm](http://www.courts.ca.gov/selfhelp-serving.htm).
- Take or mail the completed form and your proof of service to the clerk’s office for the appellate division of the court that took the action or issued the ruling you are challenging.



Appellate Division Case Name: \_\_\_\_\_

**1 Your Information**

a. Petitioner (the party who is asking for the writ):

Name: \_\_\_\_\_

Street address: \_\_\_\_\_  
Street City State Zip

Mailing address (if different): \_\_\_\_\_  
Street City State Zip

Phone: \_\_\_\_\_ E-mail (if available): \_\_\_\_\_

b. Petitioner’s lawyer (skip this if the petitioner does not have a lawyer for this petition):

Name: \_\_\_\_\_ State Bar number: \_\_\_\_\_

Street address: \_\_\_\_\_  
Street City State Zip

Mailing address (if different): \_\_\_\_\_  
Street City State Zip

Phone: \_\_\_\_\_ E-mail (if available): \_\_\_\_\_

Fax (if available): \_\_\_\_\_

**The Small Claims Court Action or Ruling You Are Challenging**

**2** I am/My client is filing this petition to challenge an action taken or ruling made by the small claims court in the following case:

a. Case name (fill in the small claims court case name): \_\_\_\_\_

b. Case number (fill in the small claims court case number): \_\_\_\_\_

**3** The small claims court action or ruling I am/my client is challenging is (describe the action taken or ruling made by the small claims court): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**4** The small claims court took this action or made this ruling on the following date (fill in the date): \_\_\_\_\_

**5** If you are filing this petition more than 30 days after the date that you listed in **4**, explain the extraordinary circumstances that caused the delay in filing this petition: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



Appellate Division Case Name: \_\_\_\_\_

**The Parties in the Small Claims Court Case**

- 6 I/My client (check and fill in a or b):
  - a.  was a party in the case identified in 2.
  - b.  was not a party in the case identified in 2 but will be directly and negatively affected in the following way by the action taken or ruling made by the small claims court (describe how you/your client will be directly and negatively affected by the small claims court’s action or ruling):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

- 7 The other party or parties in the case identified in 2 was/were (fill in the names of the parties):

\_\_\_\_\_

\_\_\_\_\_

**Appeals or Other Petitions for Writs in This Case**

- 8 Did you or anyone else file an appeal about the same small claims court action or ruling you are challenging in this petition? (Check and fill in a or b):
  - a.  No
  - b.  Yes (fill in the date the appeal/new trial is set for): \_\_\_\_\_

- 9 Have you filed a previous petition for a writ challenging this action or ruling? (Check and fill in a or b):
  - a.  No
  - b.  Yes (Please provide the following information about this previous petition).

- (1) Petition title (fill in the title of the petition): \_\_\_\_\_
- (2) Date petition filed (fill in the date you filed this petition): \_\_\_\_\_
- (3) Case number (fill in the case number of the petition): \_\_\_\_\_

If you/your client filed more than one previous petition, attach another page providing this information for each additional petition. At the top of each page, write “SC-300, item 9.”)

**Reasons for This Petition**

- 10 The small claims court made the following legal error or errors when it took the action or made the ruling described in 3 (check and fill in at least one):
  - a.  The small claims court has not done or has refused to do something that the law says it must do.

- (1) Describe what you believe the law says the small claims court must do: \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

- (2) Identify the law (the section of the Constitution or statute, published court decision, or other legal authority) that says the small claims court must do this: \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_



Appellate Division Case Name: \_\_\_\_\_

**10** (continued)

(3) Identify the supporting documents (the documents from the small claims case) and describe what the judge said or did that shows that the court did not do or refused to do this:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(4) If something was said at the small claims court that is relevant to your request for a writ, provide a fair summary of what was said by you and others, including the court (other than what you described above), that is relevant to your request for writ. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Check here if you need more space to describe the reason for your petition and attach a separate page or pages describing it. At the top of each page, write "SC-300, item 10a."

b.  The small claims court has done something that the law says the court cannot or must not do.

(1) Describe what the small claims court did: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

(2) Identify the law (the section of the Constitution or statute, published court decision, or other legal authority) that says the small claims court cannot or must not do this: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

(3) Identify the supporting documents (the documents from the small claims case) and describe what the judge said or did that shows that the court did this: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

(4) If something was said at the small claims court that is relevant to your request for a writ, provide a fair summary of what was said by you and others, including the court (other than what you described above), that is relevant to your request for writ. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Check here if you need more space to describe the reason for your petition and attach a separate page or pages describing it. At the top of each page, write "SC-300, item 10b."



Appellate Division Case Name: \_\_\_\_\_

10 (continued)

c.  The small claims court has performed or said it is going to perform a judicial function (like deciding a person's rights under law in a particular situation) in a way the court does not have the legal power to do.

(1) Describe what the small claims court did or said it is going to do: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(2) Identify the law (the section of the Constitution or statute, published court decision, or other legal authority) that says the small claims court does not have the power to do this:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(3) Identify the supporting documents (the documents from the small claims case) that shows that the court did or said it was going to do this: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(4) If something was said at the small claims court that is relevant to your request for a writ, provide a fair summary of what was said by you and others, including the court (other than what you described above), that is relevant to your request for writ. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Check here if you need more space to describe this reason for your petition and attach a separate page or pages describing it. At the top of each page, write "SC-300, item 10c."

d.  Check here if there are more reasons for this petition and attach an additional page or pages describing these reasons. At the top of each page, write "SC-300, item 10d."

11 This petition will be granted only if there is no other adequate way to address the small claims court's action or ruling other than by issuing the requested writ.

a. Explain why there is no way other than through this petition for a writ—through an appeal, for example—for your arguments to be adequately presented to the appellate division:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

b. Explain how you/your client will be irreparably harmed if the appellate division does not issue the writ you are requesting: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_





**Order You Are Asking the Appellate Division to Make**

12 I request that this court (*check and fill in all that apply*):

a.  order the small claims court to do the following (*describe what, if anything, you want the court to be ordered to do*): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

b.  order the small claims court not to do the following (*describe what, if anything, you want the court to be ordered NOT to do*): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

c.  issue a stay ordering the small claims court not to take any further action in this case until this court decides whether to grant or deny this petition (*describe below why it is urgent that the small claims court not take any further action and check the Stay requested box on page 1 of this form*):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I/My client:

(1)  asked the small claims court to stay these proceedings, but the small claims court denied this request (*include in your supporting documents a copy of the small claims court's order denying your request for a stay*).

(2)  did not ask the small claims court to stay these proceedings for the following reasons (*describe below why you did not ask the small claims court to stay these proceedings*):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

d.  take other action (*describe*): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

e.  grant any additional relief that the appellate division decides is fair and appropriate.



Appellate Division Case Name: \_\_\_\_\_

**Supporting Documents**

- 13 Are the following documents attached as required by rule 8.972(b)(1) (Check a or b):
- The small claims court ruling being challenged in this petition
  - All documents and exhibits submitted to the small claims court supporting and opposing you/your client’s position
  - Any other documents or portions of documents submitted to the small claims court that are necessary for a complete understanding of the case and the ruling being challenged?

- a.  Yes, these documents are attached.
- b.  No, these documents are not attached for the following reasons (explain why these documents are not attached and give a fair summary of what is in these documents. Note that rule 8.972 provides that, in extraordinary circumstances, the petition may be filed without these documents, but the petitioner must explain the urgency and the circumstances making the documents unavailable):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

14 Number of pages attached to this form, if any: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
*Lawyer’s name (if any)*

▶ \_\_\_\_\_  
*Lawyer’s signature*

I declare under penalty of perjury under the laws of the State of California that the information above and on any attached pages providing further responses to the questions above is true and correct.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Type or print petitioner’s name*

▶ \_\_\_\_\_  
*Petitioner’s signature*

## GENERAL INFORMATION

## 1 What does this information sheet cover?

This information sheet tells you about **writ proceedings**—proceedings in which a person is asking for a writ of mandate, prohibition, or review—in small claims cases. Please read this information sheet before you fill out *Petition for Writ (Small Claims)* (form SC-300). This information sheet does not cover everything you may need to know about writ proceedings. It is only meant to give you a general idea of the writ process. To learn more, you should read the California Rules of Court identified below, which set out the procedures for writ proceedings in the different courts that consider request for writs in small claims cases.

This information sheet does NOT provide information about motions to vacate a judgment or appeals in small claims cases, or about requests for writs on all types of rulings in a small claims case.

- For information about making a motion to cancel or correct a judgment in small claims court, please see Code of Civil Procedure sections 116.720–116.745 and *Notice of Motion to Vacate Judgment and Declaration* (form SC-135).
- For information about appealing a small claims judgment, which you can only do if you disagree with a judgment ordering you to pay money, please see Code of Civil Procedure sections 116.710, 116.750–116.795, rules 8.950–8.966 of the California Rules of Court and *What to Do After the Court Decides Your Small Claims Case* (form SC-200-INFO).

While this information sheet provides general information about writs and writ procedures, the procedures it describes do NOT apply to writs in all small claims cases. These procedures only apply to requests for writs relating to actions of the small claims court *other* than postjudgment enforcement actions. These requests will be considered by a single judge from the appellate division of the superior court. The procedures are set out in more detail in rules 8.970–8.977 of the California Rules of Court.

- For information about requests for writs relating to postjudgment enforcement actions, see rules 8.930–8.936 of the California Rules of Court and *Information on Writ Proceedings in Misdemeanor, Infraction, and Limited Civil Cases* (form APP-150-INFO). Matters relating to enforcement of small claims judgments are treated in the same manner as enforcement of judgments in limited (smaller) civil cases.
- For information about requests for writs relating to actions of the superior court on small claims appeals, see rules 8.485–8.493 of the California Rules of Court. Those requests should be made to the Court of Appeal.

You can get these rules and forms at any courthouse or county law library or online at [www.courts.ca.gov/rules](http://www.courts.ca.gov/rules) for the rules or [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms) for the forms. You can get copies of statutes at any county law library or online [leginfo.legislature.ca.gov/faces/codes.xhtml](http://leginfo.legislature.ca.gov/faces/codes.xhtml).

## 2 What is a writ?

A writ is an order from a higher court telling a lower court to do something the law says the lower court must do, or not to do something the law says the lower court does not have the power to do. In writ proceedings in the appellate division, the lower court is the small claims court that took the action or issued the order being challenged.

**In this information sheet, we call the lower court the “small claims court.”**

## 3 Are there different kinds of writs?

Yes. There are three main kinds of writs:

- Writs of mandate (sometimes called “mandamus”), which are orders telling the small claims court to do something.
- Writs of prohibition, which are orders telling the small claims court *not* to do something.
- Writs of review (sometimes called “certiorari”), which are orders telling the small claims court that a judge in the appellate division will review certain



kinds of actions already taken by the small claims court.

There are laws (statutes) that you should read concerning each type of writ: see California Code of Civil Procedure sections 1084–1097 about writs of mandate, sections 1102–1105 about writs of prohibition, and sections 1067–1077 about writs of review.

#### 4 Is a writ proceeding the same as an appeal?

No. Generally, in an **appeal**, the higher court *must* consider the parties’ arguments and decide whether the trial court made the legal error claimed by the appealing party and whether the trial court’s decision should be overturned based on that error (this is called a “decision on the merits”). In choosing to go to small claims court, the party filing a claim agreed to give up the right to an appeal in exchange for a less formal and less expensive way of proceeding. The defendant in a small claim case does have the right to an appeal, in the form of a new trial, and if the defendant asks for one, the higher court *must* allow a new trial on all the claims in the case, with each side presenting evidence.

In a **writ proceeding**, the appellate division judge is *not* required to make a decision on the merits or hold a new trial. Even if the small claims court made a legal error, the appellate division judge can decide not to consider that error, and usually will not. Most requests for writs are denied without a decision on the merits (this is called a “summary denial”). Because of this, a writ proceeding is often called a proceeding for “*extraordinary*” relief, while a judgment by the small claims court, or possibly a new trial at superior court for the defendant, is the *ordinary* way that small claims court cases end.

#### 5 Is a writ proceeding a new trial?

No. A **writ proceeding is NOT a new trial**. The appellate division judge will not consider new evidence, such as the testimony of new witnesses. Instead, if he or she does not summarily deny the request for a writ, the appellate division judge reviews what happened in the small claims court and the small claims court’s ruling to see if the small claims court made the legal error claimed by the person asking for the writ. In conducting this review, the appellate division judge presumes that the

small claims court’s ruling is correct; the person who requests the writ must show the appellate division judge that the small claims court made the legal error the person is claiming.

#### 6 Can a writ be used to address any errors made by a small claims court?

No.

*Writs are not generally granted regarding small claims cases.* The small claims courts exists to provide a speedy and inexpensive way for a party to obtain a judgment. This works in part by limiting what a party can do after the small claims court makes its rulings.

When a person or business chooses to make a claim in small claims court, rather than filing in a different level of the superior court, that party—the plaintiff—gives up the right to ask for an appeal of the small claims court’s rulings. This is a trade-off for the faster, less formal, and less expensive court proceedings. As a result, appellate courts have been reluctant to consider requests for writs in small claims cases.

A defendant in a small claims case does have the right to appeal the initial small claims court decisions and get a new trial in the superior court. Because the defendant already has this right to have the case heard again, including putting on the evidence and being represented by an attorney if defendant wants to hire one, appellate courts are unlikely to see any need for a writ instead.

However, the appellate division judge does have the discretion to consider a request for an extraordinary writ challenging a ruling in a small claims case. For example, the judge may do so if he or she considers the issue raised to be of statewide importance, or in order to make sure that the small claims division is generally being consistent in how it is acting under the law. Not every legal or factual error made by a small claims judge will form a ground for the granting of a writ.

*Writs can only address certain legal errors.* Writs can only address the following types of legal errors made by a small claims court:

- The small claims court has a legal duty to act but:
  - Refuses to act
  - Has not done what the law says it must do



- Has acted in a way the law says it does not have the power to act
- The small claims court has performed or says it is going to perform a judicial function (like deciding a person’s rights under law in a particular case) in a way that the court does not have the legal power to do.

**7 Can the appellate division consider a request for a writ in any small claims case?**

No. Different courts have the power (called “jurisdiction”) to consider requests for writs in different types of cases. Requests for writs in small claims cases may be considered in one of three different ways, depending on the stage of the case:

- Requests for writs relating to actions of the small claims division *other* than postjudgment enforcement orders are considered by a single judge in the appellate division. This covers requests for writs on any rulings relating to the initial small claims trial, including the judgment.
- Requests for writs relating to superior court actions in small claims cases on appeal are not considered by the appellate division, but by the Court of Appeal.
- Requests for writs relating to the enforcement of a judgment in a small claims case, whether the judgment was issued at the small claims hearing or at a new trial in the superior court, are considered by the appellate division.

**8 Who are the parties in a writ proceeding?**

If you are asking for the writ, you are called the PETITIONER. You should read “Information for the Petitioner,” beginning on the right side of this page.

The court the petitioner is asking to be ordered to do or not to do something is called the RESPONDENT. In writ proceedings challenging rulings in small claims cases, the small claims court is the respondent. Any other party in the small claims court case who would be affected by a ruling regarding the request for a writ is a REAL PARTY IN INTEREST. If you are a real

party in interest, you should read “Information for a Real Party in Interest,” beginning on page 8.

**9 Do I need a lawyer to represent me in a writ proceeding?**

You do not *have* to have a lawyer; you are allowed to represent yourself in a writ proceeding in the appellate division. But writ proceedings can be very complicated and you will have to follow the same rules that lawyers have to follow. If you have any questions about the writ procedures, you should talk to a lawyer. In limited civil cases and infraction cases, you must hire a lawyer at your own expense if you want one (the court cannot provide one). You can get information about finding a lawyer on the California Courts Online Self-Help Center at [www.courts.ca.gov/selfhelp-lowcosthelp.htm](http://www.courts.ca.gov/selfhelp-lowcosthelp.htm). You may also get help from the small claims advisors in your county if available. Ask the court how to contact them or look for contact information at [www.courts.ca.gov/selfhelp-advisors.htm](http://www.courts.ca.gov/selfhelp-advisors.htm).

**INFORMATION FOR THE PETITIONER**

This part of the information sheet is written for the petitioner—the party asking for the writ. It explains some of the rules and procedures relating to asking for a writ. The information may also be helpful to a real party in interest. There is more information for a real party in interest starting on page 8 of this information sheet.

**10 Who can ask for a writ?**

Parties—the plaintiff or defendant— are usually the only ones that ask for writs challenging small claims court rulings. However, in most cases, a person who was not a party does have the legal right to ask for a writ if that person has a “beneficial interest” in the small claims court’s ruling. A “beneficial interest” means that the person has a specific right or interest affected by the ruling that goes beyond the general rights or interests the public may have in the ruling.

**11 How do I ask for a writ?**

To ask for a writ you must serve and file a petition for a writ (see below for an explanation of how to “serve and file” a petition). A petition is a formal request that the



appellate division issue a writ. A petition for a writ explains to the appellate division what happened in the small claims court, what legal error you (the petitioner) believe the small claims court made, why you have no other adequate remedy at law, and what order you are requesting the appellate division to make.

## 12 How do I prepare a writ petition?

If you are represented by a lawyer, your lawyer will prepare your petition for a writ. If you are not represented by a lawyer, you must use *Petition for Writ (Small Claims)* (form SC-300) to prepare your petition. You can get it at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms). This form asks you to fill in the information that needs to be in a writ petition.

### a. Description of your interest in the small claims court's ruling

Your petition needs to tell the appellate division judge why you have a right to ask for a writ in the case. As discussed above, usually only a person who was a party in the small claims court case asks for a writ challenging a ruling in that case. If you were a party in the small claims court case, say that in your petition. If you were not a party, you will need to describe what “beneficial interest” you have in the small claims court’s 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 may have in the ruling. To show the appellate division judge that you have a beneficial interest in the ruling you want to challenge, you must describe how the ruling will affect you in a direct and negative way.

### b. Description of the legal error you believe the small claims court made

Your petition will need to tell the appellate division judge what legal error you believe the small claims court made. Not every mistake a small claims court might make can be addressed by a writ. You must show that the small claims court made one of the following types of legal errors:

- The small claims court has a legal duty to act but:
  - Refuses to act
  - Has not done what the law says it must do
- Has acted in a way the law says it does not have the power to act
- The small claims court has performed or says it is going to perform a judicial function (like deciding a person’s rights under law in a particular case) in a way that the court does not have the legal power to do.

To show the appellate division judge that the small claims court made one of these legal errors, you will need to:

- Show that the small claims 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 judge what legal authority—what constitutional provision, statute, rule, or published court decision—establishes the small claims court’s legal duty or power to act or not act in that way.
- Show the appellate division judge that the small claims court has not acted in the way that this legal authority says the court is required to act. You will need to tell the appellate division judge what happened in the small claims court that shows that the small claims court did not act in the way it was required to. If the petition raises an issue that would require the appellate division judge to consider what was said in the small claims court, you will need to write a complete and accurate summary of what was said by you and others, including the court, that is relevant to your request for a writ.
- You can provide this information and the summary of what was said at item 10 of the petition and, as instructed there, you can add additional pages if more room is needed. Note that you will be providing this information, and everything in the petition, under penalty of perjury.

### c. Description of why you need the writ

One of the most important parts of your petition is explaining to the appellate division why you need the writ you have requested. Remember, the appellate division judge does not have to grant your petition just because the small claims court made an error. You must convince the appellate division that it is important for it to issue the writ.



Your petition needs to show that a writ is the only way to fix the small claims court's error. To convince the court you need the writ, you will need to show the appellate division judge that you have no way to fix the small claims court's error other than through a writ (this is called having "no adequate remedy at law").

This will be hard to show if the small claims court's ruling can be appealed and a new trial held. If you are a defendant and the ruling you are challenging can be appealed, the appellate division will generally consider this new trial to be a good enough way to fix the small claims court's ruling (an "adequate remedy"). You will need to show the appellate division judge how you will be harmed by the small claims court's error in a way that cannot be fixed by the new trial if the appellate division judge does not issue the writ (this is called "irreparable" injury or harm). For example, the harm you want to prevent may happen before the new trial can be held.

Even if you cannot appeal the ruling you are objecting to, the appellate division judge still does not have to grant the petition. As described above, small claims decisions are meant to be speedy and inexpensive, so appellate review is generally not granted in these cases. You will need to explain why your case should be treated differently.

#### **d. Description of the order you want the appellate division to make**

Your petition needs to describe what you are asking the appellate division judge to order the small claims court to do or not do. Writ petitions usually ask that the small claims court be ordered to cancel ("vacate") its ruling, issue a new ruling, or not take any steps to enforce its ruling.

If you want the appellate division judge to order the small claims court not to do anything more until the appellate division judge decides whether to grant the writ you are requesting, you must ask for a "stay." If you want a stay, you should first ask the small claims court for a stay. You should tell the appellate division judge whether you asked the small claims court for a stay. If you did not ask the small claims court for a stay, you should tell the appellate division judge why you did not do this. This information is requested in the petition form.

If you ask the appellate division judge for a stay, make sure you also check the "Stay requested" box on the first page of the *Petition for Writ (Small Claims)* (form SC-300) and complete item 12c on that form.

#### **e. Verifying the petition**

Petitions for writs must be "verified." This means that the petitioner (or in certain circumstances the petitioner's attorney) must declare under penalty of perjury that the facts stated in the petition are true and correct, must sign the petition, and must indicate the date that the petition was signed. On the last page of the *Petition for Writ (Small Claims)* (form SC-300), there is a place for you to verify your petition.

#### **13 Is there anything else that I need to serve and file with my petition?**

Yes. Along with the petition, you must serve and file documents showing what happened in the small claims court (see below for an explanation of how to serve and file the petition and other documents). Because the appellate division judge was not there in the small claims court, copies of certain documents from that court that show what happened must be sent to the appellate division judge. These are called "supporting documents." You must also serve any other party in this case, the real party in interest, with a copy of this form *Information on Writ Proceedings in Small Claims Cases* (form SC-300-INFO).

#### ***Copies of documents from the small claims court.***

Copies of the following documents from the small claims court must also be included in the supporting documents:

- The small claims court ruling or judgment being challenged in the petition
- All documents and exhibits submitted to the small claims court supporting and opposing your position
- Any other documents or portions of documents submitted to the small claims court that are necessary for a complete understanding of the case and of the ruling being challenged

***What if I cannot get copies of the documents from the small claims court because of an emergency?*** Rule 8.972 of the California Rules of Court provides that in



extraordinary circumstances the petition may be filed without copies of the documents from the small claims court. If the petition is filed without these documents, you must explain in your petition the urgency and the circumstances making the documents unavailable.

**Format of the supporting documents.** Supporting documents must be put in the format required by rule 8.972 of the California Rules of Court. You should carefully read rule 8.972. You can get a copy of rule 8.972 at any courthouse or county law library or online at [www.courts.ca.gov/rules](http://www.courts.ca.gov/rules).

### **14 Is there a deadline to ask for a writ?**

Yes. There are laws (statutes) that require that certain kind of rulings may only be challenged using a writ proceeding. These are called “statutory writs” and the statute usually sets the deadline for serving and filing the petition. For example, a writ challenging a ruling on a motion to disqualify a judge (see California Code of Civil Procedure section 170.3(d)) must be filed within 10 days after notice to the parties of the decision. You will need to check whether there is a statute providing a deadline for filing a challenge to the specific ruling you are challenging. (You can find copies of statutes at any county law library or online at [leginfo.legislature.ca.gov/faces/codes.xhtml](http://leginfo.legislature.ca.gov/faces/codes.xhtml)).

If there is not a statute specifically providing for a writ proceeding to challenge a particular ruling, or if the statute does not set a deadline, you should file the petition as soon as possible and not later than 30 days after the court makes the ruling that you are challenging in the petition. While there is no absolute deadline for filing these petitions, writ petitions are usually used when it is urgent that the small claims court’s error be fixed. Remember, the appellate division judge is not required to grant your petition even if the small claims court made an error. If you delay in filing your petition, it may make the appellate division judge think that it is not really urgent that the small claims court’s error be fixed and the appellate division judge 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 judge in your petition.

### **15 How do I “serve” my petition?**

Rule 8.972(d) requires that the petition with the attached supporting documents, along with a copy of this form, be served on any named real party in interest and that the petition be served on the respondent small claims court. “Serving” a petition on a party means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver (“serve”) the petition to the real party in interest and the respondent court in the way required by law.
- Make a record that the petition has been served. This record is called a “proof of service.” *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. The proof of service must show who served the petition, who was served with the petition, how the petition was served (by mail or in person), and the date the petition was served.

You can get more information about how to serve court documents and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at [www.courts.ca.gov/selfhelp-serving.htm](http://www.courts.ca.gov/selfhelp-serving.htm).

### **16 How do I file my petition?**

To file a petition for a writ, 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 made 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 made 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. It is a good idea to bring or mail an extra copy of the petition to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

### **17 Do I have to pay to file a petition?**

Yes. You should ask the clerk for the appellate division where you are filing the petition what this fee is. If you cannot afford to pay this filing fee, you can ask the court to waive this fee. To do this, you must fill out a *Request*





to *Waive Court Fees* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms). You can file this application either before you file your petition or with your petition. The court will review this application and decide whether to waive the filing fee.

### **18 What happens after I 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 a preliminary opposition to the petition.

The appellate division judge does not have to wait for an opposition before acting on a petition for a writ, however. Without waiting, the appellate division judge can:

- a. Issue a stay.
- b. Summarily deny the petition.
- c. Issue an alternative writ or order to show cause.
- d. Notify the parties that he or she is considering issuing a peremptory writ in the first instance.
- e. Issue a peremptory writ in the first instance if such relief was expressly requested in the petition.

Read below for more information about these options.

#### **a. Stay of small claims court proceedings**

A stay is an order from the appellate division judge telling the small claims court not to do anything more until the appellate division judge decides whether to grant your petition. A stay puts the small claims court proceedings on temporary hold.

#### **b. Summary denial**

A “summary denial” means that the appellate division judge denies the petition without deciding whether the small claims court made the legal error claimed by the petitioner or whether the writ requested by the petitioner should be issued based on that error. No reasons need to be given for a summary denial. Most petitions for writs are denied in this way.

#### **c. Alternative writ or order to show cause**

An “alternative writ” is an order telling the small claims court either to do what the petitioner has requested in the petition (or some modified form of what the petitioner requested) or to show the appellate division judge why the small claims court should not be ordered to do what the petitioner requested. An “order to show cause” is similar; it is an order telling the small claims court to show the appellate division judge why the small claims court should not be ordered to do what the petitioner requested in the petition (or some modified form of what the petitioner requested). The appellate division judge 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 judge has decided that the petitioner may have shown that the small claims court made a legal error that needs to be fixed.

If the appellate division judge issues an alternative writ and the small claims court does what the petitioner requested (or a modified form of what the petitioner requested as ordered by the appellate division judge), then no further action by the appellate division judge is needed and the appellate division may dismiss the petition.

If the small claims court does not comply with an alternative writ, however, or if the appellate division judge issues an order to show cause, then the respondent court or a real party in interest can file a response to the appellate division judge’s order (called a “return”) that explains why the small claims court should not be ordered to do what the petitioner requested. The return must be served and filed within the time specified by the appellate division judge 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 serve and file a reply within 15 days after the return is filed. The appellate division judge may set the matter for oral argument. When all the papers have been served and filed (or the time to serve and file them has passed) and any oral argument is completed, the appellate division will decide the case.

#### **d. Peremptory writ in the first instance**

A “peremptory writ in the first instance” is an order telling the small claims court to do what the petitioner



has requested (or some modified form of what the petitioner requested) that is issued without the appellate division judge first issuing an alternative writ or order to show cause. It is very rare for the appellate division judge to issue a peremptory writ in the first instance, and this will not be done unless the respondent and real parties in interest have received notice that the judge might do so, either through the petitioner expressly asking for such relief in the petition or by the judge giving the respondent court and any real party in interest notice and a chance to file an opposition.

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

### INFORMATION FOR A REAL PARTY IN INTEREST

This part of the information sheet is written for a real party in interest—a party from the small claims court case other than the petitioner who will be affected by a ruling on a petition for a writ. 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.

#### **19 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?**

You do not *have* to do anything. The Code of Civil Procedure and California Rules of Court give you the right to file a preliminary opposition to a petition for a writ within 10 days after the petition is served and filed,

but you are not required to do this. The appellate division judge can take certain actions without waiting for any opposition, including:

- Summarily denying the petition
- Issuing an alternative writ or order to show cause
- Notifying the parties that the judge is considering issuing a peremptory writ in the first instance
- Issuing a peremptory writ in the first instance if such relief was expressly requested in the petition.

Read the response in section **18** for more information about these options.

Most petitions for writs are summarily denied, often within a few days after they are filed. If you have not already received something from the appellate division judge saying what action the judge 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 a good time to talk to a lawyer. You do not *have* to have a lawyer; you are allowed to represent yourself in a writ proceeding in the appellate division. But writ proceedings can be very complicated and you will have to follow the same rules that lawyers have to follow. If you have any questions about writ proceedings or about whether and how you should respond to a writ petition, you should talk to a lawyer. You must hire a lawyer at your own expense if you want one (the court cannot provide one). You can get information about finding a lawyer on the California Courts Online Self-Help Center at [www.courts.ca.gov/selfhelp-lowcosthelp.htm](http://www.courts.ca.gov/selfhelp-lowcosthelp.htm). You may also get help from the small claims advisors in your county if available. Ask the court how to contact them or look for contact information at [www.courts.ca.gov/selfhelp-advisors.htm](http://www.courts.ca.gov/selfhelp-advisors.htm).

If the petition has not already been summarily denied, you may, but are not required to, serve and file a preliminary opposition to the petition within 10 days after the petition was served and filed. The appellate division judge will seldom grant a writ without first issuing an alternative writ, an order to show cause, or a notice that the judge is considering issuing a peremptory writ. In all these circumstances, you will get notice from the court and have a chance to file a response. Note that



the appellate division judge may issue a peremptory writ without notice if the petitioner expressly asked the court to do so in the petition, that is, asked the court to issue a peremptory writ in the first instance. If the petitioner did that, you may want to consider whether to file a preliminary opposition, to explain why you believe the small claims court made no legal error and why the petitioner is not entitled to a writ.

If you decide to file a preliminary opposition, you must serve that preliminary opposition on all the other parties to the writ proceeding. “Serving and filing” an opposition means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver (“serve”) the preliminary opposition to the other parties in the way required by law.
- Make a record that the preliminary opposition has been served. This record is called a “proof of service.” *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. The proof of service must show who served the preliminary opposition, who was served with the preliminary opposition, how the preliminary opposition was served (by mail or in person), and the date the preliminary opposition was served.
- File the original preliminary opposition and the proof of service with the appellate division. You should make a copy of the preliminary opposition you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the preliminary opposition to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court documents and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at [www.courts.ca.gov/selfhelp-serving.htm](http://www.courts.ca.gov/selfhelp-serving.htm).

## 20 I have received a copy of an alternative writ or an order to show cause issued by the appellate division judge. Do I need to do anything?

Yes. Unless the small claims court has already done what the alternative writ told it to do, you should serve and file a response called a “return.”

As explained above, the appellate division judge will issue an alternative writ or an order to show cause only if the appellate division judge has decided that the petitioner may have shown that the small claims court made a legal error that needs to be fixed. An “alternative writ” is an order telling the small claims court either to do what the petitioner has requested in the petition (or some modified form of what the petitioner requested) or to show the appellate division judge why the small claims court should not be ordered to do what the petitioner requested. An “order to show cause” is similar; it is an order telling the small claims court to show the appellate division judge why the small claims court should not be ordered to do what the petitioner requested in the petition (or some modified form of what the petitioner requested).

If the appellate division judge issues an alternative writ and the small claims court does what the petitioner requested (or a modified form of what the petitioner requested as ordered by the appellate division judge), then no further action by the appellate division judge is needed and the appellate division judge may dismiss the petition. If the small claims court does not comply with an alternative writ, however, or if the appellate division judge issues an order to show cause, then the small claims court or the real party in interest may serve and file a response to the appellate division judge’s order, called a “return.”

A return is your argument to the appellate division judge about why the small claims court should not be ordered to do what the petitioner has requested. If you are represented by a lawyer in the writ proceeding, your lawyer will prepare your return. If you are not represented by a lawyer, you will need to prepare your own return. A return is a legal response, either your argument about why the writ is legally inadequate or 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 California Code of Civil Procedure sections 430.10–431.30 for more information about responses and answers. You can get copies of these statutes at any county law library or online at [leginfo.legislature.ca.gov/faces/codes.xhtml](http://leginfo.legislature.ca.gov/faces/codes.xhtml). 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 judge issues an alternative writ or order to show cause, it does not mean that the appellate division judge is required to issue the writ requested by the petitioner. However, the appellate division judge will treat the facts stated by the petitioner in the petition as true, which makes it more likely the appellate division judge will issue the requested writ.

Unless the appellate division judge sets a different filing deadline in the alternative writ or order to show cause, you must serve and file your return within 30 days after the appellate division judge issues the alternative writ or order to show cause. The return must be served on all the other parties to the writ proceeding. “Serving and filing” the return means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver (“serve”) the return to the other parties in the way required by law.
- Make a record that the return has been served. This record is called a “proof of service.” *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. The proof of service must show who served the return, who was served with the return, how the return was served (by mail or in person), and the date the return was served.
- File the original return and the proof of service with the appellate division. You should make a copy of the return you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the return to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court documents and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California

Courts Online Self-Help Center at [www.courts.ca.gov/selfhelp-serving.htm](http://www.courts.ca.gov/selfhelp-serving.htm).

**21 I have received a copy of a notice from the appellate division judge indicating 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 **18**, a “peremptory writ in the first instance” is an order telling the small claims court to do what the petitioner has requested (or some modified form of what the petitioner requested as ordered by the appellate division judge) that is issued without the appellate division judge first issuing an alternative writ or order to show cause. The appellate division judge will seldom issue a peremptory writ in the first instance without first giving the parties notice and a chance to file an opposition. However, when the appellate division judge issues such a notice, it means that the appellate division judge is strongly considering granting the writ requested by the petitioner.

An opposition is your argument to the appellate division judge about why the small claims court should not be ordered to do what the petitioner has requested. If you are represented by a lawyer in the writ proceeding, your lawyer will prepare your opposition. If you are not represented by a lawyer, you will need to prepare your own opposition. An opposition is a response to the legal arguments made by the petitioner. Unless the appellate division judge sets a different deadline in the notice that the judge 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 and filing” the opposition means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver (“serve”) the opposition to the other parties in the way required by law.
- Make a record that the opposition has been served. This record is called a “proof of service.” *Proof of Service (Appellate Division)* (form APP-109) can be



used to make this record. The proof of service must show who served the opposition, who was served with the opposition, how the opposition was served (by mail or in person), and the date the opposition was served.

- File the original opposition and the proof of service with the appellate division. You should make a copy of the opposition you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the opposition to the clerk when you file your original, and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court documents and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at [www.courts.ca.gov/selfhelp-serving.htm](http://www.courts.ca.gov/selfhelp-serving.htm).

### **22 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 judge may also set the matter for oral argument. When all the papers have been filed (or the time to file them has passed) and any oral argument is completed, the appellate division judge will decide the case.



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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
1.	California Judges Association Civil Law & Procedures Committee by Joan P. Weber, President	A	<p>This proposal for rule changes is set forth by both the Civil and Small Claims Advisory Committee (CSCAC) and the Appellate Advisory Committee (AAD) to clarify which court has jurisdiction of writs and to propose form changes to help litigants participating in these proceedings.</p> <p>This proposal has three parts:</p> <ol style="list-style-type: none"> <li>1. A set of proposed new rules for writ proceedings in small claims divisions other than post judgment enforcement orders.</li> <li>2. A set of two new forms for these writ proceedings.</li> <li>3. A set of proposed changes to the existing rules and forms relating to writ proceedings in the superior court appellate divisions to reflect both the new procedures for writ proceedings relating to actions by small claims divisions other than post judgment enforcement orders and to clarify jurisdiction in other small claims writ proceedings.</li> </ol> <p><i>COMMENTS/ANALYSIS</i></p> <p>I spoke at length with our Appellate Department Supervising Judge, Deborah Chuang about these proposed changes. At the outset, she commented that writs in both the small claims</p>	<p>The committees appreciate the comment and note that the commentator concludes the comment by supporting the proposal. The committee addresses the specific points raised below.</p>

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			<p>and limited civil arena are extremely rare. She has seen only two in Orange County in the last two years. In my tenure as a limited civil judge and an open trial court hearing small claims matters (consisting of about 3-4 years before my current assignment as a general civil judge), I do not recall seeing a writ in either the small claims court or in my prior limited civil assignment.</p> <p>The most significant proposed change is to require self-represented litigants seeking a writ in small claims court must, unless there is a finding of good cause, use a specific Judicial Council petition. (Rule 8.972.) Subpart (a)(2) of the form requires the self-represented litigant to include a fair summary of the proceedings, including the parties' arguments and any statement by the small claims court supporting its ruling.</p> <p>Footnote 3 of the Invitation to Comment states specifically:</p> <p>“The advisory committees request specific comments on this provision in the rule and the corresponding items in the form petition (parens omitted.) the committee has some concerns over whether this item should be required by rule, possibly setting up a trap for the unwary self-represented parties who do not understand when it may or may not be required. On the other hand, the committees are also concerned that including such a provision in the rule and form</p>	

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			<p>may lead to unnecessary paperwork, as parties may provide detailed summaries of the full proceedings even when unnecessary.”</p> <p>Judge Chuang believes that the requirement should not be implemented by rule because of the “trap” argument. I differ, and believe that the requirement of setting forth in detail the arguments, a summary of the proceedings and the court’s statement would be of great benefit to a reviewing court and should be required by a self-represented litigant.</p> <p>If it is clearly stated on the form (which it is) I do not see how a self-represented litigant could reasonably miss this requirement. The only possible problem is whether the litigant will be properly directed to the form by court personnel.</p> <p>This is where proper training of staff is important. This proposal will require staff training, otherwise, it will not work and indeed the proposal will become a “trap.” The self-represented litigant will not know of the requirement to use a judicial form and submit a defective writ application at the outset.</p> <p>Staff training will require time and outlay of some funds. It may be argued that clear rules regarding what is required for self-represented litigants to obtain a small claims writ may</p>	<p>The committees agree with the commentator that, where the summary of the proceedings and statements below are pertinent for the issue before the reviewing court, the summary should be required. The committees also agree that including an item for the summary in the form petition provides a reminder for the parties to include the summary, and so avoids any potential trap for a party.</p> <p>The committees agree that there will need to be some training for court clerks regarding the required use of the new form</p> <p>The committees agree that petitions for writs occur infrequently in small claims cases. However, the council was mandated to develop new procedural rules for such writs by the</p>



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			<p>provide some efficiencies in the long run. However, the infrequency of these petitions renders these arguments weak.</p> <p><i>FINAL THOUGHTS</i></p> <p>My final thought on this proposal is whether we are addressing a problem that does not exist. Is there generally a thought that litigants (particularly self-represented litigants) are not obtaining writ relief when there was an abuse of discretion in the small claims court (or limited civil court?)</p> <p>Perhaps clarifying the lines of jurisdiction between small claims writs and limited civil writs in a good thing, but beyond that, the proposal will require staff training to ensure that it works. In these times of financial stress, I believe that such scarce and valuable resources could be used more effectively elsewhere.</p> <p>Based on this thorough analysis and research, California Judges Association supports the proposal.</p>	<p>Legislature. See Code Civ. Proc. § 116.798(a)(5).</p> <p>The committees recognize that there will be some implementation costs in the courts. However, as noted above, the council was mandated by statute to develop procedures for small claims writ petitions.</p> <p>The committees note the commenter’s support for the proposal.</p>
2.	Douglas G. Carnahan, Attorney at Law Retired Commissioner of Superior Court of Los Angeles County (former Chairperson, Small Claims Subcommittee, Civil and Small Claims Advisory Committee)	AM	<p>I am pleased to offer a couple of observations in response to the captioned Invitation to Comment.</p> <p><b>1. Re proposed Rule 8.972(a)(2): "If the petition raises any issue that would require the appellate division judge considering it to</b></p>	<p>The committees note the commenter’s general agreement with the proposal, and appreciate the detailed comments, which are responded to below.</p>

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			<p><b>understand what was said in the small claims court, it must include a statement that fairly summarizes the proceedings, including the parties' arguments and any statement by the small claims court supporting its ruling."</b></p> <p>The Invitation to Comment makes the specific request, "The advisory committees request specific comments on this provision in the rule and the corresponding items in the form petition....The committee has some concerns over whether this item should be required by rule, possibly setting up a trap for the unwary self-represented parties who do not understand when it may or may not be required. On the other hand, the committees are also concerned that including such a provision in the rule and form may lead to unnecessary paperwork, as parties may provide detailed summaries of the full proceedings even when unnecessary."</p> <p>The committees' concerns are well taken, but on balance I think the decision should be to go ahead and include the requirement in the rule and form, as written. My reasons are:</p> <p>a. If we assume that the majority of writ petitions under 116.798 are from dissatisfied plaintiffs, emphasizing a requirement that the plaintiff provide as much detail as possible about what legal errors caused him or her not to prevail is a good thing.</p>	<p>The committees agree with this conclusion and will leave the rule and form as proposed. The committees determined that, where the summary of the proceedings and statements below are pertinent for the issue before the reviewing court, the summary should be required. The committees concluded that including an item for the summary in the form petition provides a reminder for the parties to provide the summary.</p>

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			<p>b. In more general terms, the appellate division judge reviewing the paper petition will be presented, if you will, with a "gestalt," or overall view of what happened in the small claims division, and the more detail the petitioner can provide about this the better informed the writ judge will be.</p> <p>c. Since we can assume that the majority of these petitions will be denied, a more detailed "record" facing the writ judge and then supporting the denial, will be more informative and more protective of the processes of the appellate division.</p> <p><b>2. Proposed Rule 8.972(d)(3): "The clerk [of the appellate division] must file the petition even if its proof of service is defective, but if the party asking for the writ fails to file a corrected proof of service within five days after the clerk gives notice of the defect the court may strike the petition or impose a lesser sanction."</b></p> <p>I have two comments about this, one general and one specific.</p> <p>a. Generally, I have picked this section as an example of the use in the proposed rules of a time deadline, here "five" days. I think it should be made clear, in these rules, when time deadlines are given, that CCP 1013 and 1005 were intended to apply to the giving of notice.</p>	<p>The committees disagree with this proposal, noting that the provisions would not apply under the proposed rules in any event.</p> <ul style="list-style-type: none"> <li>Section 1005 provides the time for notice of certain specified motions and for notice of other types of proceedings for which</li> </ul>

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			<p>This is related to the fact that in the Small Claims Act itself, at CCP 116.140, the legislative statement is made that, "The following do not apply in small claims actions: (a) Subdivision (a) of section 1013 and subdivision (b) of Section 1005, on the extension of time for taking action when notice is given by mail." In other words, it should be made clear that the extensions of time provided by 1013 and 1005, which do not normally apply to notices in the underlying small claims cases, do apply to these writ petitions. Perhaps a statement in proposed Rules 8.970 or 8.971 to this effect would be a good idea.</p> <p>b. More specifically, I am concerned about the use of the phrase "impose a lesser sanction" in the quoted proposed rule. The language as drafted opens questions both of definition and process. It strikes me that the intent was to allow the court to give the petitioner additional time to file a corrected proof of service, on pain of dismissal, but if that was the idea, then that should be spelled out in the rule. Use of "sanction language," standing alone, as here, leaves both litigants and the court uncertain as to what might be done (for instance, does the language allow the court to impose a monetary sanction for filing a late proof of service?). I would simply strike the words "or impose a lesser sanction" and add the words "<b>or allow</b></p>	<p>express time limits are provided, and also extends the time for such notice based on type of service. But there are not such proceedings in these rules. The petitioning party does not have to provide notice of a hearing to the other side—if anyone does that it will be the court.</p> <ul style="list-style-type: none"> <li>Section 1013 provides an extension of time for action or duty following service by mail or other method—but there is no such provision in these rules. None of the time frames run from “service” of any documents (See , e.g., rule 8.972(c)(2) and (d)(3), or rule 8.974(a)(2) and (b)(3)).</li> </ul> <p>The committees have modified the proposed rule to reflect the concerns raised in this comment.</p>

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			<p><b>additional time to file a corrected proof of service, upon pain of dismissal of the petition."</b> Or perhaps strike the language regarding a "lesser sanction" totally.</p> <p><b>3. Proposed Rule 8.975(b)(1): "If the writ or order stays or prohibits proceedings set to occur within seven days or requires action with seven days - or in any other urgent situation - the appellate division clerk must make a reasonable effort to notify the clerk of the respondent small claims court by telephone. The clerk of the respondent small claims court must then notify the judge or other officer most directly concerned."</b></p> <p>This requirement is reasonable on its face, but I would append to it additional language stating, "A record of the telephone call from the appellate division to the respondent small claims court shall be made by the clerk of the respondent small claims court and placed in the small claims court file." In addition to this being good file management, it is quite possible that the small claims clerk's notifying "the judge or other officer most directly concerned" might not eliminate the possibility that a different clerk or bench officer would later have to deal with the results of the writ petition, so a record in the file of the telephonic transmission from the appellate division would be a good idea. Best practice would be for the receiving clerk to do this without being told, but incorporating the</p>	<p>The committees appreciate the concern that best practices be applied, but have concluded that this proposal goes too far in micromanaging court clerk procedures.</p>

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			<p>idea in the rule would establish the policy.</p> <p><b>4. SC-300-INFO: Information on Writ Proceedings in Small Claims Cases, Item #6: "Can a writ be used to address any errors made by a small claims court?"</b></p> <p>I am concerned about the textual discussion of this question, for the following reasons:</p> <p>a. The basic answer, of course, is NO, and that answer is given. However, the discussion then veers into the immediate comment, "Writs can only address the following types of legal errors made by a small claims court: The small claims court has a legal duty to act but:...Has not done what the law says it must do...." This comment will open a huge door - especially to losing plaintiffs - to drive through their "truck of belief" that they were done wrong, and that the writ petition is the way to gain justice.</p> <p>b. An attempt is made, in the paragraph beginning, "When a person or business chooses to make a claim in small claims court..." to explain why extraordinary writs in small claims do not have a good chance of success. The info sheet explains the historical trade-off between deciding to sue in small claims and the relinquishment by the plaintiff of the right to appeal. This explanation will be completely ignored by most potential writ petitioners - instead they will focus on the introductory</p>	<p>The committees appreciate the concerns raised, that rules for petitions for writ in small claims actions may change expectations regarding the review of small claims decisions, but note that a statutory mandate led to the adoption of the new rules.</p> <p>As to the additional language proposed in the comment, the committees concluded that the suggested additions might be viewed as setting a new standard for review, which the committees do not believe is within the purview of the council. However, in light of this comment, the committees have reordered the provisions in this item, to emphasize that the petitions will seldom be granted.</p>

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			<p>language in the bullet points at the top of Item 6.</p> <p>c. I propose that the language in the bullet points be elaborated on. It seems to me that the bullet points, as written, provide an end run around the historical "no appeal to the losing plaintiff" aspect of small claims. I would propose new language in the bullet points along the following lines:</p> <p><i>"Writs can only address certain legal errors: Writs can only address the following types of gross and unusual legal errors made by a small claims court.</i></p> <p>- The small claims court has a clear legal duty to act but:</p> <ul style="list-style-type: none"> <li>• Clearly and manifestly unjustly refuses to act.</li> <li>• Has explicitly not done what the law clearly says it must do.</li> <li>• Has acted in a way the law says it clearly does not have the power to act.</li> </ul> <p>- The small claims court has performed or says it is going to perform a judicial function (like deciding a person's rights under the law in a particular case) in a way that the court clearly does not have the legal power to do.</p> <p>In other words, every legal or factual error made by a small claims judge will not form a ground</p>	

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	Commentator	Position	Comment	Committee Response
			<p>for the granting of a writ. The judge considering the writ petition must become convinced that the error is so dramatic and unjust that it cannot be allowed to stand."</p> <p>Then I would go on with the language as is continued in the rule, explaining the basis for the unlikelihood of writ petitions being granted. The larding of the information sheet with adverbial qualifications, as I have just proposed, is normally not good legal writing, but in this case it would serve the purpose of trying to "explain the inexplicable" - that the whole concept of an extraordinary writ focuses on the extraordinary nature of the relief granted, and that this concept conflicts with the "no appeal" rule in small claims.</p> <p>My fear is that in an attempt to formalize what the law was (anyway) before CCP 116.798, various cans of worms have been opened that will dramatically change the nature of small claims courts. Anything that the rule drafters can do to minimize this effect would be a good thing.</p>	
3.	Orange County Bar Association by Ashleigh Aitken, President	AM	<p>The proposed effective date should be changed to January 1, 2016 as we are beyond the stated effective date of January 1, 2015. The proposal appropriately addresses the stated purpose.</p> <p>As to the provision that in the absence of court reports in Small Claims Court proceedings, the</p>	<p>The committees are recommending that the forms and rules be effective January 1, 2016 and will assure that all dates in the recommendation reflect that.</p> <p>The statements will be made under penalty of perjury and will be evaluated by the appellate</p>



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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			parties must provide a written summary of the court proceedings including the arguments of the parties and the statements made by the court, one concern is how the Appellate Division will evaluate the “record” that consists of the parties’ (sometimes) competing versions of what was said in the Small Claims Court proceeding. The proposal does not address the issue, which seems unfair to the Appellate Division.	division in the same way it evaluates other verified statements.
4.	State Bar of California Litigation Section Rules and Legislation Committee by Reuben A. Ginsburg, Chair	AM	<p>The Committee believes that rule 8.972(a)(2) should not rely on a self-represented petitioner to determine whether a fair summary of the proceedings is needed. Instead, the rule should provide that the petition must include a statement that fairly summarizes the proceedings, including the parties’ arguments and any statement by the small claims court supporting its ruling. This would allow the appellate division judge, rather than the petitioner, to determine whether such information is relevant.</p> <p>We would modify the language in rule 8.974(a)(3) to state more clearly that a preliminary opposition should include both legal arguments and any material facts not included in the petition, as in rule 8.933(a)(2), governing writs in the appellate division in misdemeanor, infraction, and limited civil cases, and rule 8.487(a)(2), governing writs in the Court of Appeal and the Supreme Court. The latter rules both state, “A preliminary opposition must</p>	The committees have considered this and other comments on this issue, and have concluded that the rule as proposed is the most effective way of providing needed information to the appellate division judge without over-burdening parties. The committee also concluded that including an item for the summary in the form petition provides a reminder for the parties to provide the summary.

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			<p>contain a memorandum and a statement of any material fact not included in the petition.” We would also change “must” to “should” so as to avoid suggesting that arguments not stated in the preliminary opposition are forfeited. Accordingly, we would modify the proposal as follows:</p> <p>“A preliminary opposition <del>must</del> <u>should</u> contain any legal arguments the party wants to make as to why the appellate division judge should not issue a writ <u>and a statement of any material fact not included in the petition.</u>”</p> <p>The verification language on page 7 of form SC-300 (“I declare under penalty of perjury under the laws of the State of California that the information above and on all attachments is true and correct”) differs from the standard verification language (see Code Civ. Proc., § 2015.5). The attachments may include the ruling by the small claims court, exhibits submitted to the small claims court by both sides, and other documents, as stated in item 13 of the form. The petitioner should not verify the contents of those documents. We would modify this language as follows:</p> <p>“I declare under penalty of perjury under the laws of the State of California that the <del>information above and on all attachments</del> <u>foregoing</u> is true and correct.”</p>	<p>The committees agree with the concerns raised and have modified the text recommended for this rule. The committees note that there may be attached pages that include additional information in response to questions on the petition form, which could not all fit on the form itself. For that reason, the verification must include some information beyond that on the form. The verification has been modified to clarify this point.</p>

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			<p>We believe that it would be helpful to inform the parties that the small claims court must provide notice and an opportunity to be heard before changing its order in response to an alternative writ. (<i>Brown, Winfield &amp; Canzoneri, Inc. v. Superior Court</i> (2010) 47 Cal.4th 1233, 1250, fn. 10.) Accordingly, we would modify the penultimate paragraph in form SC-300-INFO, item 18(c), as follows:</p> <p>“If the appellate division issues an alternative writ and the small claims court, <u>after notifying the parties that it is considering changing its order and providing an opportunity to be heard,</u> does what the petitioner requested (or a modified form of what the petitioner requested as ordered by the appellate division), then no further action by the appellate division is needed and the appellate division may dismiss the petition.”</p> <p>Form SC-300-INFO states on page 7, item 18(d), first paragraph that an appellate division judge will not issue a peremptory writ in the first instance “without first notifying the parties and giving the respondent court and any real party in interest a chance to file an opposition.” Similar language appears on page 8, item 19, fifth paragraph, and issuing a peremptory writ in the first instance without prior notice by the appellate division judge is not listed as an option in the bullet points following the first paragraph in item 19 on page 8. But the</p>	<p>The committees considered this comment but concluded that the proposed modification is unnecessary. While it may be a correct statement of the law, it provides information that is important to the court, but not the party. The committees concluded the suggested addition could be confusing to a party, and so have not added it, believing the item is more appropriately addressed by education of judicial officers.</p> <p>The committees agree with the comment and have modified items 18 and 19 to reflect the possibility of a court issuing a peremptory writ in the first instance without further notification to the party. While the committees think such action would be extremely rare in small claims cases, it is legally possible and will be included in the information sheet.</p>

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			<p>appellate division judge need not provide notice before issuing a peremptory writ in the first instance if the petition sought a peremptory writ in the first instance. Seeking such relief in the petition is considered sufficient notice (<i>Palma v. U.S. Industrial Fasteners, Inc.</i> (1984) 36 Cal.3d 171, 180), although “an appellate court, absent exceptional circumstances, should not issue a peremptory writ in the first instance without having received, or solicited, opposition from the party or parties adversely affected.” (<i>Ibid.</i>) We believe that the cited language should be modified to avoid any suggestion to the contrary.</p> <p>We note that there is no language in form SC-300-INFO stating what a preliminary opposition should state. APP-150-INFO, in contrast, states on page 28, item 20, fifth paragraph that a preliminary opposition is “typically used to explain to the appellate division why you believe it should not grant an alternative writ or order to show cause.” We believe that it would be helpful to clearly state that a preliminary opposition should both state why writ relief is not appropriate and address the merits. We therefore would add the following to form SC-300-INFO, item 19, at the end of the first paragraph:</p> <p>“A preliminary opposition should explain why you believe the small claims court made no legal error and why the petitioner is not entitled</p>	<p>The committees have modified item 19 in light of this comment to include more information regarding a preliminary opposition.</p>

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			to a writ.”	
5.	Superior Court of Los Angeles County (no name indicated)	AM	<p>The date at the bottom of the Form APP-150-INFO needs to be corrected.</p> <p>Clarification is needed regarding the form (sworn statement, affidavit, witnessed, etc.) of verification required.</p> <p>Additionally, clarification is need as to whether a petition must be rejected if it is not verified.</p>	<p>The form will be amended to have the correct 2016 effective date.</p> <p>The committees determined that further clarification on this point need not be added to the rule. Self represented parties are required to use the verification included in the new Judicial Council form. Others may use the form or, for individually drafted petitions, any verification format permitted by statute.</p> <p>In light of this comment, the committees have added rule 8.972(a)(3) to clarify that a clerk may not reject a petition on the grounds that it is not verified, but the court strike such a petition later if a verification is not provided after notice to the party.</p>
6.	Superior Court of San Diego County By Mike Roddy, Executive Officer	AM	<ul style="list-style-type: none"> <li>Does the proposal appropriately address the stated purpose? If the judicial council is only required to promulgate rules, and not also forms, even though the CSCAC’s reasoning for also including forms is sound, perhaps it would be prudent to delay the release of forms to gauge whether the volume of small claims writs actually filed warrants a form. The availability/existence of a form could encourage frivolous filings and therefore cause an increase in the number of petitions filed with the courts, most lacking in merit. There have been about three small claims writs filed in the San Diego</li> </ul>	<p>The committees expressly considered the alternative of not developing a petition form, particularly in light of the fact that the existence of the form may lead to more petitions for extraordinary writs being filed in small claims actions. The committees concluded, however, that without such forms petitions that are filed would be difficult for the court to handle because they would be extremely difficult for parties to properly prepare. The petitions would have to either be individually drafted—which would be extremely difficult for self-represented parties—or somehow shoehorned into the current form APP-</p>

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			<p>County Superior Court Appellate Division since 2011.</p> <ul style="list-style-type: none"> <li>• <i>Should the new rules require that if the petition raises any issue that would require the judge considering it to understand what was said in the small claims court, the petition must include a fair summary of the proceedings, including the parties' arguments and any statement by the small claims court supporting its ruling? (See discussion at footnote 3.)</i> No. If adopted, the rules should make the summary optional ("petition <i>may</i> include a brief statement" – please see additional comments on this issue below).</li> <li>• <i>Would the proposal provide cost savings? If so please quantify.</i> No. If the inclusion of forms causes an increase in the number of small claims writs filed, then there would be an associated <i>increase</i> in employee time and court resources related to the processing and handling</li> </ul>	<p>151 (which assumes the lodging of some version of a record of the proceedings, which record does not exist in small claims actions and is not required under the new rules). The committee concluded that it would be less burdensome for both courts and the parties to have a specific form for these proceedings.</p> <p>The committees have reviewed this and other comments on this issue, and have concluded that the rule as proposed is the most effective way of providing needed information to the appellate division judge without over-burdening parties. The committee also concluded that including an item for the summary in the form petition provides a reminder for the parties to provide the summary.</p> <p>The committees appreciate the response from the commentator regarding costs resulting from the use of the newly developed forms. As noted above, the committees have concluded that in light of the mandate to make new procedural rules regarding small claims writs, and the recent</p>

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			<p>of those writs.</p> <ul style="list-style-type: none"> <li>• <i>What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.</i> Training of small claims clerks and appellate clerks.</li> <li>• <i>How well would this proposal work in courts of different sizes? As a result of the higher volume of small claims matters heard in larger courts, this proposal would disproportionately impact larger courts. The San Diego Superior Court questions the need for the implementation of these rule changes and adoption of new forms as they will increase time and costs without the need being clearly established.</i></li> </ul> <p><b>Advisory Committee Comment</b> on page 12, line 43 reads: “Code of Civil Procedure section 116.798 provides where writs in small claims actions may be <b>filed</b>.” Possibly replace “filed” with “heard” to mirror the language of section 116.798.</p>	<p>legislative recognition that the appellate division is the appropriate jurisdiction for small claims writ, the committees have concluded that the form petition will make it easier for courts as well as for the parties to be able to deal with such extraordinary petitions.</p> <p>The committees appreciate the response from the commentator regarding training costs</p> <p>The recent legislation mandates that the council adopt procedural rules for writs in small claims actions, so the committee had no choice in that area. The committee concluded, as described above, that in light of that requirement, it made sense to develop a petition form for the parties to use, rather than leave it up to non-represented parties to draft petitions that would comply with what is, at best, an arcane area of civil procedure.</p> <p>The note has been modified in light of this comment to reflect the statutory language.</p>

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			<p><b>Proposed Rule 8.972(a)(1) and (2), for Petitions filed by persons not represented by an attorney:</b></p> <p><i>(a) Petitions</i></p> <p><i>(1) A person who is not represented by an attorney and who asks the <b>appellate division</b> for a writ under this chapter must file the petition on Petition for Writ (Small Claims) (formSC-300). For good cause the</i></p> <p><i>court may permit an unrepresented party to file a petition that is not on that form.</i></p> <p><b>Comment:</b> Change “asks” to “petitions.” This change recognizes that as defined in the Chapter, “petition” means a request for a writ. Omit “the appellate division” because the petition will only be considered by a single judge, not the appellate division. So, the sentence would read: “A person who... petitions for a writ under this chapter...”</p> <p><i>(2) If the petition raises any issue that would require the appellate division judge considering it to understand what was said in the small claims court, <b>it must include a statement</b> that fairly summarizes the proceedings, including the parties’ arguments and any <b>statement by the small claims court supporting its ruling.</b></i></p> <p><b>Comment:</b> Rather than eliminate this provision,</p>	<p>Rule 8.972(a)(1) has been modified in light of this comment.</p> <p>The committees have considered this and other</p>



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			<p>to address the committee’s concerns, “it must include a statement” should be revised to read “petition <i>may</i> include a <b>brief</b> statement.” Making the inclusion of the summary optional could alleviate the concern while alerting self-represented litigants that any such summary should be brief. It is also noted that if the summary is optional, this might mitigate an expectation in the self-represented litigant, unschooled in the law, that the reviewing court will or must credit his/her summary.</p> <p>Also, change “statement by the small claims court supporting its ruling” to “statement made by the small claims court in support of its ruling” to provide greater clarity as to what is being asked of the litigant.</p> <p><b>FORM SC-300-INFO</b></p> <p><b>Comments</b></p> <ul style="list-style-type: none"> <li>• Perhaps the form or the petition should include a statement that a vexatious litigant must obtain a pre-filing order from the Appellate Division Presiding Judge before she or he can file a petition for writ and/or that a proposed writ petition by a vexatious litigant should be submitted at the same time as the request for a pre-filing order.</li> <li>• There is no discussion of an informal</li> </ul>	<p>comments on this issue, and have concluded that the rule as proposed is the most effective way of providing needed information to the appellate division judge without over-burdening parties. The committee also concluded that including an item for the summary in the form petition provides a reminder for the parties to provide the summary.</p> <p>The committees declined to include anything on the proposed form or information sheet regarding procedures for vexatious litigants. Such information is not included on the small claims claim form or other pleading forms, is irrelevant to parties who are not vexatious litigants, and is already known to those who are. To the extent it might be of assistance to clerks, proper training on this issue would be a more effective method of assuring compliance with the law.</p> <p>The committees considered developing different,</p>

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			<p>response as a possible order from the court on a petition for writ. This is a common response from the court which can help resolve a writ without taking the more formal alternative writ or OSC approach. It may be beneficial to include reference to this type of order from the court on a writ.</p> <p><b>SC-300-INFO, Page 41, Item 12(b), last bullet item provides:</b></p> <p><i>Because there is no formal record kept of the small claims proceedings, if the petition raises an issue that would <b>requires</b> the appellate division judge to consider what was said in the small claims court, you will need to write a complete and accurate summary of what was said by you and others, including the court, that is relevant to your request for a writ. You may add extra pages if you need more space.</i></p> <p><b>Comment:</b> “Requires” should be revised to read “require.” Also, because this is a rule the CSCAC is not certain it wants to include, any ultimate decision on how or if the rule is included should be captured in the form and the petition at item 10c(4).</p> <p><b>SC-300-INFO, Page 42, Item 13, first paragraph provides in part:</b></p>	<p>less formal procedures for petitions for extraordinary writs in small claims actions, but concluded that the statutory procedures for extraordinary writs were most likely applicable to all writ proceedings, including those in small claims cases. The committee therefore concluded that the new rules should reflect the statutory procedures for writs set out in the Code of Civil Procedure, and they do.</p> <p>The typo has been corrected. The item has also been modified to clarify that the summary is to be provided in the petition form.</p>

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			<p><i>Yes. Along with the petition, you must serve and file <b>a documents</b> showing what happened in the small claims court... (see below for an explanation of how to serve and file the petition). <b>Since</b> the appellate division judge was not there in the small claims court, copies of certain documents from that court that show what happened must be sent to the appellate division.</i></p> <p><b>Comment:</b> Change “a documents” to “documents.” Change “Since” to “Because.”</p>	<p>The suggested modifications have been made.</p>