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Statutory Writs

A writ is an order issued by the reviewing court commanding an inferior tribunal to do something or prohibiting it from doing something. *See* Cal. Civ. Proc. Code § 1085. Writs are different from appeals because they are not heard as a "matter of right." Rather writs are considered extraordinary and discretionary. The main civil common law writs are mandate, prohibition, and certiorari. When a writ of mandate, prohibition or certiorari is expressly authorized by statute it is often referred to as a "statutory writ." However, even though a writ is authorized by statute, it is still discretionary. This column discusses some of the important issues to think about when handling a statutory writ.

Some Orders Can Only Be Challenged By A Statutory Writ

Some trial court orders can only be challenged by a statutory writ. The failure to file a writ waives the right to obtain appellate review of the ruling. Such orders include, but are not limited to: an order denying a motion to quash service of process for lack of personal jurisdiction; an order on a motion to disqualify a judge; an order granting or denying a motion to expunge a lis pendens; and an order with respect to the production of documents under the California Public Records Act. When litigating any of these motions, the attorney should pay attention to the procedural rules regarding filing a writ and obtaining appellate review.

Statutory Writs Have Filing Deadlines

Common law writs do not have to be filed within a certain time from the issuance of the challenged order. Courts expect writ petitions for common law writs to be filed within 60 days of service of notice of entry of the challenged order. In contrast, statutory writs tend to have very tight filing deadlines and the deadlines are usually jurisdictional. For example, the time to file a writ from an order on a lis pendens is within 20 days of service of written notice of the order. A party may obtain a 10 day extension of this time limit from the trial court. Similarly, a writ petition challenging an order denying summary judgment must be filed within 20 days after written notice of entry of the order. Other statutory writs have different deadlines and each statutory provision must be reviewed carefully to determine the appropriate deadline for filing the statutory writ.

Remind The Court When You Have A Statutory Writ

When a lawyer files a writ petition, the lawyer hopes that she will not receive a terse minute order or postcard stating that the writ petition has been summarily denied.

However, the odds are against the petitioner. Over 90 percent of writ petitions are denied. Remember, it is called "extraordinary relief."

The decision to file a writ petition when a writ petition is the exclusive avenue to obtain appellate review is different from deciding whether to file a common law writ. The attorney must determine whether the ruling is so detrimental to the case that the one chance at appellate review must be utilized. This is usually the case if a motion to quash for lack of personal jurisdiction has been denied by the trial court. The impact of the loss of a personal jurisdiction motion is that the defendant will have to submit to the court's jurisdiction and forever waive its challenge to the personal jurisdiction determination. In the writ petition, the appellate court should be reminded that this is the only chance for the trial court's error to be corrected.

In *Powers v. City of Richmond*, 10 Cal. 4th 85 (1995), the California Supreme Court recognized that statutory writs are in fact different than common law writs when they are the exclusive means of appellate review. "Although appellate review by extraordinary writ petition, is said to be discretionary, a court must exercise it discretion 'within reasonable bounds and for a proper reason.'" *Powers*, 10 Cal. 4th at 113. "The discretionary aspect of writ review comes into play primarily when the petitioner has another remedy by appeal and the issue is whether the alternative remedy is adequate." *Id.* The Court expressly acknowledged that "when an extraordinary writ proceeding is the only avenue of appellate review, a reviewing court's discretion is quite restricted." *Id.* It further explained that "when writ review is the exclusive means of appellate review of a final order or judgment, an appellate court may not deny an apparently meritorious writ petition, timely presented in a formally and procedurally sufficient manner, merely because, for example, the petition presents no important issue of law or because the court considers the case less worthy of its attention than other matters." *Id.* at 114.

Conclusion

The appellate lawyer must pay close attention to whether a writ is a common law writ or a statutory writ. Immediately upon issuance of the adverse ruling, the appellate lawyer should determine if the clock is ticking on the time to file a statutory writ petition. If the writ is a statutory writ and writ review is the exclusive means to obtain appellate review, the appellate practitioner should remind the court that this is the only opportunity for the court to correct the erroneous ruling.

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