

## CIVIL WRITS 101-what is a civil writ?

Civil writ procedure is often a mystery, even to experienced practitioners and to some judges.

Starting with the basics, civil writs are commonly used to compel a government agency or official to either take some specified action or refrain from engaging in some specified action. Civil writs may also issue to compel a nongovernmental entity such as a corporation, hospital board, college, or person, to perform a legal duty or to reinstate a person to a right or office. These are called writs of mandate or mandamus. Where the writ prohibits certain activity, it may be called a writ of prohibition. In practice, however, whatever the action being taken or refrained from, the writ is usually referred to as a writ of mandate.

Civil writs compelling a governmental agency or official are issued in the first instance by superior courts. The superior court's decision may be reviewed by the appellate court by way of appeal. A writ may also be sought in the Court of Appeal to review a lower court's decision where the usual appeal procedure is inadequate or unavailable, and immediate review is required.

California law recognizes statutory and common law writs. Most civil writs are sought pursuant to Code of Civil Proc. section 1085 (traditional or ordinary writ) or Code of Civil Proc. section 1094.5 (administrative mandamus).

Ordinary writs pursuant to Code of Civil Proc. section 1085 are sought for review of legislative acts such as a city council's adoption of a local ordinance, or quasi-legislative acts such as adoption of a regulation by a government agency. They may also be used to review ministerial acts such as to compel a nongovernmental entity to perform a legal duty like certifying an election. This type of writ could also be used to compel a governmental agency to hold an evidentiary hearing in an administrative adjudicatory process.

Administrative writs pursuant to Code of Civil Proc. section 1094.5 are sought for review of quasi-judicial or adjudicatory decisions or acts by a governmental agency, such as denial of a public employee's pension benefits following an evidentiary hearing.

<b>§1085</b>	<b>§1094.5</b>
Traditional/ordinary writ	Administrative writ
- Ministerial acts	- Quasi-judicial acts and decisions
- Legislative acts	- Adjudicatory decisions