MEMORANDUM 2026-2

New Proposed Topic for Resolution

This memorandum[1] presents a proposed new topic for the Commission's Resolution of Authority. At its December 2025 meeting, the Commission approved topics to be included in the resolution for consideration by the Legislature.[2] This new topic relates to writ practice and was submitted by Commissioner Carrillo on behalf of Justice Daniel H. Bromberg of the Sixth District Court of Appeal.[3]

According to the Fourth District Court of Appeal:

> A writ is a directive from [an appellate court] to a trial court, an administrative agency, or a person to do something or to stop doing something. Unlike appeals, which are heard as a matter of right, writ petitions are generally heard as a matter of discretion, and they are governed by equitable principles. Appellate courts generally grant writ relief only when the petitioner (1) has no other plain, speedy and adequate remedy in the ordinary course of law; and (2) will suffer irreparable injury if such relief is not granted.[4]

A party to an action may file a petition for a writ and the California Rules of Court set forth the process for doing so.[5]

At the outset of his request, Justice Bromberg cites to a Commission Report published in 1997:

> [In that report] Professor Michael Asimov noted the "antiquated and idiosyncratic nature of the writ of mandamus." (Asimov, *A Modern Judicial Review Statute to Replace Administrative Mandamus* (1997) 27 Cal. Law Revision Com. Rep. 403, 407.)[6]

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[1] Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

[2] Memorandum 2026-1, p. 3; see also Memorandum 2025-45.

[3] EX 1.

[4] Fourth District Court of Appeal, *Handout on Writs*.

[5] California Rules of Court, rules 8.485-8.493

[6] *A Modern Judicial Review Statute to Replace Administrative Mandamus*, 27 Cal. L. Revision Com. Reports 403 (1997). The Commission also issued a Recommendation on *Judicial Review of Agency Action*, 27 Cal. L. Revision Comm'n Reports 194 (1997). A search on Westlaw indicates the Legislature did not implement this recommendation.

This report was one of seven background reports prepared by Professor Asimov for the Commission on revising the adjudication provisions of California's Administrative Procedure Act and modernizing the system of judicial review of state and local administrative agency action.[7]

As reflected in Justice Bromberg's request, civil writ practice is generally governed by the Code of Civil Procedure[8] and the corresponding rules promulgated by Judicial Council.[9] Section 1068 provides for a writ of review to correct a completed judicial act in excess of jurisdiction.[10] Section 1085 provides for a writ of mandate to correct an abuse of discretion or compel the performance of a ministerial duty.[11] Sections 1102 and 1103 provide for a writ of prohibition to prevent a threatened judicial act in excess of jurisdiction.[12] Justice Bromberg believes that writ practice is poorly understood, inefficient, and unevenly applied, and warrants study of how it could be improved.

Justice Bromberg states:

> A writ petition is a combined factual pleading, request for discretionary review, and briefing on the merits. Unlike appeals, writ petitions may be denied summarily without a response. If there is a response, it initially comes in a "preliminary opposition," and the Court of Appeal may choose to reach the merits by issuing an "alternative writ" or an order to show cause. If the merits are reached, the petitioner's adversary (the "real party in interest") files a "return," a combined answer and brief, and the petitioner files a reply or "traverse." The Court of Appeal also may grant a writ petition without full briefing by issuing a "peremptory writ" if it issues a "*Palma* notice."[13]
>
> Writ practice is poorly understood. The statutes and rules governing writ petitions are sparse (see Code Civ. Proc., §§ 1068, 1085, 1103; California Rules of Court, rules 8.485-8.493), and because writs generally are granted or denied without explanation, there is limited case law on them. This leaves appellate courts with broad discretion, and because each district and division in the Court of Appeal has its own writ staff, writ practice varies across the state. And because few lawyers file writs frequently, and even fewer do so in multiple venues, writ practice is not well understood by practitioners.

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[7] *A Modern Judicial Review Statute to Replace Administrative Mandamus,* 27 Cal. L. Revision Com. Reports 403, (1997).

[8] Unless otherwise indicated, all statutory references are to the Code of Civil Procedure.

[9] California Rules of Court, rules 8.485-8.493.

[10] See also Code Civ. Proc., pt. 3, title 1, ch. 1, § 1067 et seq.

[11] See also Code Civ. Proc., pt. 3, title 1, ch. 2, § 1084 et seq.

[12] See also Code Civ. Proc., pt. 3, title 1, ch. 3, § 1102 et seq.

[13] EX 1; a Palma notice is a procedural mechanism used by appellate courts to inform parties that the court is considering issuing a peremptory writ of mandate or prohibition in the first instance, without first issuing an alternative writ or order to show cause. *Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171.

Regarding his concern that writ practice is inefficient and wasteful, Justice Bromberg states:

> Because writ petitions are an extraordinary remedy, they generally are available only if there is no adequate remedy on appeal and a risk of irreparable injury absent writ review. (See, e.g., *Powers v. City of Richmond* (1995) 10 Cal.4th 85, 112-113; *Omaha Indemnity Co. v. Superior Court* (1989) 209 Cal.App.3d 1266, 1274.) As a result, writs are rarely granted; indeed, the Supreme Court once noted that 94% of writ petitions are denied. (*Brown, Winfield & Canzoneri, Inc. v. Superior Court* (2010) 47 Cal.4th 1233, 1241, fn. 3.) Nonetheless, in 2024, over 5,000 petitions were filed. (Judicial Council of California, 2025 Statistics Report: Statewide Caseload Trends (2025), p. 78.)[14] Because sophisticated practitioners understand writ petitions are rarely granted, a large proportion of filings are weak or frivolous petitions from unsophisticated, often vexatious litigants. As a result, most resources devoted to writ petitions are consumed by petitions that should not have been filed.[15]

Finally, Justice Bromberg writes that:

> [B]ecause of the large volume of writ petitions, appellate justices rely heavily on the writ staff who initially review the appeals. As each district and division has its own staff, there is a danger that different, uneven standards are being applied.[16]

Justice Bromberg illustrates how federal courts avoid some of these problems, including:

> In federal court writs of mandamus are subject to a stringent additional requirement—that the right to relief is clear and indisputable (see *Gulfstream Aerospace Corp. v. Mayacamas Corp.* (1988) 485 U.S. 271, 289)—which makes successful writs even rarer than in California.[17]

In closing, Justice Bromberg noted:

> Although this memorandum has focused on the use of writs in discretionary interlocutory appeals[18], there are other aspects to writ practice in the Court of Appeal. For example, writs of habeas corpus may be filed in the Court of Appeal[19], and writs are used to review many administrative agency decisions and for stays pending appeal ("writs of supersedeas"). Writ practice in these areas suffers from many of the same problems as writ practice in discretionary interlocutory appeals

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[14] Judicial Council, *2025 Court Statistics Report,* p.78.

[15] EX 2.

[16] EX 2.

[17] EX 2.

[18] A discretionary interlocutory appeal refers to a limited mechanism allowing appellate review of certain non-final orders before a case concludes.

[19] A study related to writs of habeas corpus would be under the jurisdiction of the Committee on the Revision of the Penal Code.

> and also warrants review, either separately or as part of a comprehensive review of California writ practice.[20]

This memorandum does not explore the other aspects of writ practice identified by Justice Bromberg. The staff, however, believes the Commission is well positioned to study writ practice as described in this memorandum.[21] Thus, the staff recommends that the Commission ask the Legislature to add a study of the Code of Civil Procedure that focuses on writ practice to the Commission's Resolution of Authority.

Does the Commission approve of requesting the Legislature to add this new topic to the Commission's study authority?

Respectfully submitted,

Sharon Reilly
Executive Director

[20] EX 2.
[21] See, *supra*, fn. 4.

MEMORANDUM

To: California Law Revision Commission

From: Justice Daniel H. Bromberg

Date: January 14, 2026

Re: Proposed Study of California Writ Practice

In a report nearly three decades ago, Professor Michael Asimov noted the "antiquated and idiosyncratic nature of the writ of mandamus." (Asimov, *A Modern Judicial Review Statute to Replace Administrative Mandamus* (1997) 27 Cal. Law Revision Com. Rep. 403, 407.) California appellate courts use writs of mandamus, and analogous writs of prohibition and certiorari, to provide discretionary interlocutory review. (See 8 Witkin, Cal. Proc. (6th ed. 2025) Extraordinary Writs, § 1; 2 Eisenberg et al., Cal. Prac. Guide: Civil Appeals & Writs (The Rutter Group 2023) § 15:1 et seq.) This "writ practice," which is poorly understood, inefficient, and unevenly applied, warrants study.

As Professor Asimov noted, writ practice is "a world of its own," which differs greatly from ordinary appellate practice and has its own arcane terminology. (Asimov, *supra*, 27 Cal. Law Revision Com. Rep. at p. 407.) A writ petition is a combined factual pleading, request for discretionary review, and briefing on the merits. Unlike appeals, writ petitions may be denied summarily without a response. If there is a response, it initially comes in a "preliminary opposition," and the Court of Appeal may choose to reach the merits by issuing an "alternative writ" or an order to show cause. If the merits are reached, the petitioner's adversary (the "real party in interest") files a "return," a combined answer and brief, and the petitioner files a reply or "traverse." The Court of Appeal also may grant a writ petition without full briefing by issuing a "peremptory writ" if it issues a "*Palma* notice."

Writ practice is poorly understood. The statutes and rules governing writ petitions are sparse (see Code Civ. Proc., §§ 1068, 1085, 1103; California Rules of Court, rules 8.485-8.493), and because writs generally are granted or denied without explanation, there is limited case law on them. This leaves appellate courts with broad discretion, and because each district and division in the Court of Appeal has its own writ staff, writ practice varies across the state. And because few lawyers file writs frequently, and even fewer do so in multiple venues, writ practice is not well understood by practitioners.

Writ practice is also inefficient and wasteful. Because writ petitions are an extraordinary remedy, they generally are available only if there is no adequate remedy on appeal and a risk of irreparable injury absent writ review. (See, e.g., *Powers v. City of Richmond* (1995) 10 Cal.4th 85, 112-113; *Omaha Indemnity Co. v. Superior Court* (1989) 209 Cal.App.3d 1266, 1274.) As a result, writs are rarely granted; indeed, the Supreme Court

once noted that 94% of writ petitions are denied. (*Brown, Winfield & Canzoneri, Inc. v. Superior Court* (2010) 47 Cal.4th 1233, 1241, fn. 3.) Nonetheless, in 2024, over 5,000 petitions were filed. (Judicial Council of California, 2025 Statistics Report: Statewide Caseload Trends (2025), p. 78.) Because sophisticated practitioners understand writ petitions are rarely granted, a large proportion of filings are weak or frivolous petitions from unsophisticated, often vexatious litigants. As a result, most resources devoted to writ petitions are consumed by petitions that should not have been filed.

In addition, because of the large volume of writ petitions, appellate justices rely heavily on the writ staff who initially review the appeals. As each district and division has its own staff, there is a danger that different, uneven standards are being applied.

Federal courts avoid some of these problems. In federal court writs of mandamus are subject to a stringent additional requirement—that the right to relief is clear and indisputable (see *Gulfstream Aerospace Corp. v. Mayacamas Corp.* (1988) 485 U.S. 271, 289)—which makes successful writs even rarer than in California. In addition, in federal courts discretionary interlocutory appeals are subject to a two-step process: (1) The trial judge certifies there is a controlling question on which there is substantial ground for difference and an immediate appeal may materially advance termination of the litigation, and (2) the appellate court decides to take the appeal. (28 U.S.C. § 1292(b).) This procedure allows the trial judge to act as a gatekeeper and weed out frivolous or unnecessary applications for interlocutory appeals. (A California statute allows trial courts to recommend interlocutory review on similar grounds (Code Civ. Proc., § 166.1), but creates no procedure for adopting recommendations, and many appellate courts pay little attention to them. (See 2 Eisenberg et al., *supra*, § 15:22.11, p. 15-18.))

In light of the poor understanding, inefficiency, uneven application, and other problems with California's antiquated writ practice, the Commission should study the practice and consider whether to modernize, clarify, and reform the State's process for discretionary interlocutory appeals.

Although this memorandum has focused on the use of writs in discretionary interlocutory appeals, there are other aspects to writ practice in the Court of Appeal. For example, writs of habeas corpus may be filed in the Court of Appeal, and writs are used to review many administrative agency decisions and for stays pending appeal ("writs of supersedeas"). Writ practice in these areas suffers from many of the same problems as writ practice in discretionary interlocutory appeals and also warrants review, either separately or as part of a comprehensive review of California writ practice.