



SAN MATEO COUNTY LAW LIBRARY

RESEARCH GUIDE #13

WRIT OF ADMINISTRATIVE MANDATE (MANDAMUS)

This resource guide only provides guidance, and does not constitute legal advice. If you need legal advice you need to speak with an attorney. To find an attorney to assist you, you may contact the San Mateo County Lawyer Referral Service at (650) 369-4149.

WHAT IS A WRIT OF ADMINISTRATIVE MANDATE?

Writs of Administrative Mandate (Mandamus) are used to ask a Superior Court to review a decision made by an administrative agency of the government, such as for example the Workers' Compensation Appeal Board, or the Department of Motor Vehicles (DMV). It is not a trial. Generally, the court will not accept new evidence, or rule on the merits of your case. Instead, the court may inquire into whether the agency acted in excess of its jurisdiction, made a serious error of law, or abused its discretion in determining the facts. See [California Code of Civil Procedure § 1094.5](#).

DO I QUALIFY?

The petitioner has to be beneficially interested in the outcome of the proceeding, and Writs of Administrative Mandate can only be used when the agency's decision is final and there are no further administrative appeals available. In other words, *when all administrative remedies have been exhausted*.

HOW LONG DO I HAVE TO FILE A WRIT OF MANDATE?

You may have a very brief window of time to file a petition, based on the statute of limitations governing the particular action. Review the code governing the government agency whose decision you wish to challenge to see if a specific deadline applies. For example, the deadline is 90 days from the date of order refusing, revoking, or suspending a *driver's license* (Veh C §14401(a)).

WHAT TO DO:

There are two primary ways to bring the petition to a hearing:

1. Noticed motion for writ of mandate
2. Alternative writ of mandate (*Use if you need a court order or hearing right away*)

Noticed motion for writ of mandate - There are 5 steps

Noticed motion, like an ordinary motion in a civil action, gives notice, and sets a time when writ will be heard, i.e., time for trial.

STEP 1: Request the Administrative Record

Request a copy of the administrative record. For updates on the instructions, see <https://www.sanmateo.courts.ca.gov/general-information/public-access-judicial-administrative-records>

Requests shall include:

- Requester's name, organization or business, address, telephone number and e-mail address
- Description of information requested
- Indicate whether the requested records will be used to further any commercial, trade or profit interest
- If you recently requested these materials from someone else at this court, please indicate that person's name and date of that request

Records may be subject to payment of a fee (see Fee Guidelines and subdivision (e)(4) of rule 10.500). Requests can also be made in person at the address above from 8 a.m. to 4:30 p.m., Monday through Friday. Please note that the court observes all state holidays.

STEP 2: Draft the Petition and the Notice of Motion for the Writ of Mandamus

Petition:

TO DOWNLOAD THE TEMPLATE SHOWN BELOW:

From a computer with an internet connection, go to <http://www.smclawlibrary.org/ResearchGuides/PetitionWritDMV.docx> and <http://www.smclawlibrary.org/ResearchGuides/PetitionWritUnemployment.docx>. When you click these links, it should open the two Petitions as Word Documents.

In the writ petition, you need to *allege facts* showing:

1. The petitioner's right to file a suit:
 - You are beneficially interested in the decision; or
 - Public interest's right to file a suit exists.
2. The respondent's capacity to respond.
3. The nature of any real party whose interest is directly affected by the proceedings.

4. The case meets CCP §1094.5 requirements.
5. Why the decision is invalid.
6. All administrative remedies were exhausted.
7. The need for evidence outside administrative record that was:
 - Unavailable at the hearing; or
 - Improperly excluded at the hearing.

Attachment of a *Memorandum of Points and Authorities* may be needed with the existence of evidence that the agency did not consider. A Memorandum of Points and Authorities is a document that cites legal authorities such as statutes and court cases in support of your motion. See *California Points and Authorities v.19 Chapter 195-1*. (KFC 1010 .C34 V.19)

In the writ petition, you need to include a prayer for relief, which describes the remedies you seek from the court. For example, damages, if applicable, attorney fees, if applicable, or other costs.

In the writ petition, you need to include the verification:

You declaration under oath or upon penalty of perjury that a statement or pleading is true. It will be located at the end of a document.

See the two examples with verification at the end of this guide: DUI and Unemployment Case.

Notice of Motion:

TO DOWNLOAD THE TEMPLATE SHOWN BELOW:

From a computer with an internet connection, go to <http://www.smclawlibrary.org/ResearchGuides/NoticeWrit.docx>. When you click this link, it should open the Notice as a Word Document.

A Notice of Motion informs the Court of what it is you are asking them to do, and informs any party to the action where and when the motion is going to be heard. *Follow the template provided at the end of this guide.*

STEP 3: File the Petition and the Notice of Motion for the Writ of Mandamus

File the petition within the shortest potentially applicable statute of limitations with the clerk of the court.

STEP 4: Serve the Petition and the Notice of Motion for the Writ of Mandamus

Personally, serve copies on all parties: the respondent (agency) and any real party in interest with the petition.

Always check whether any governing statute or ordinance requires or permits service on a particular person within the agency. *Example:*

Veh C §24.5 requires that in proceedings against director and *Department of Motor Vehicles*, all civil process and all subpoena for production of department records be served on director or his/her appointed representatives at the department's headquarters.

STEP 5: File the Administrative Record with the Court with a Notice of Lodging

TO DOWNLOAD THE TEMPLATE SHOWN BELOW:

From a computer with an internet connection, go to <http://www.smclawlibrary.org/ResearchGuides/NoticeLodging.docx>. When you click this link, it should open the Notice as a Word Document.

When administrative record is received, prepare the Notice of Lodging Administrative Record *following the template provided at the end of this guide*. File the notice and a copy of the administrative record with the court. The record must be received by the court at least five days before the hearing.

1 YOUR NAME
Street Address
2 City, State, Zip
Phone Number (with area code)
3 Fax Number: (if available)
Email: (if available)
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5 YOUR NAME, IN PRO PER
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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN MATEO**
10

11 NAME OF PETITONER(S)) Case No.:
)
12) Petitioner(s),) **PETITION FOR WRIT OF**
) **ADMINISTRATIVE MANDAMUS (CCP**
13 vs.) **§1094.5)**
)
14 DIRECTOR,)
)
15 DEPARTMENT OF MOTOR VEHICLES,)
)
16 Respondent(s).)
)
17)
)
18)
)
19)
)
20)
)
21 _____

22 Petitioner alleges:

- 23 1. Petitioner _____ [full name] is a resident of the County of San Mateo, State of
24 California at the time this Petition is filed.
25 2. Respondent is the Director of the Department of Motor Vehicles (“the Department”) which is a
26 department in the Business and Transportation Agency of the State of California.
27 3. Prior to the suspension of petitioner’s driver’s license, petitioner was the holder of a valid
28 California driver’s license number _____ [license number] issued by the Department.

1 4. On _____[date], in the County of San Mateo, State of California, petitioner was detained by a
2 Peace Officer of the _____[specify, i.e. California Highway Patrol, Police Department,
3 County Sheriff's Department, etc.].

4 5. After arrest for violation of Vehicle Code §23152 was _____[administered OR not
5 administered] a chemical test for blood alcohol concentration.

6 6. Per Vehicle Code §13380, the Officer then filed a sworn statement with the Department stating
7 that there was reasonable cause to believe petitioner had been driving a motor vehicle in violation of
8 Vehicle Code §23152, the petitioner _____ [did not take or complete a chemical test OR
9 took a chemical test with a result of __% and __% blood alcohol concentration].

10 7. Under Vehicle Code Section 13950, the Department is required to give notice an opportunity to
11 be heard whenever the Department proposes to suspend a driver's license. Under Vehicle Code
12 Sections 14100 and 14101, the Department is required to grant a hearing on request when the
13 Department has given notice pursuant to Vehicle Code Section 13950, except when the action in
14 question is mandatory by the Vehicle Code or the person receiving the notice has previously had the
15 opportunity for a hearing.

16 8. Under Vehicle Code Section 14104.7, evidence is required to be taken at the hearing referred to
17 in Paragraph 3.

18 9. On _____[date], petitioner requested an administrative hearing. The hearing was granted and
19 held on _____[date].

20 10. On _____[date], the Department issued an Order of Suspension which stated that
21 petitioner's privilege to drive a motor vehicle was suspended for ____ year(s), from _____[date]
22 through _____[date]. The suspension was under the authority of Vehicle Code §13353.3.

23 11. The Department's Order suspending petitioner's driver's license is invalid for the following
24 reasons:

25 a. [list separately each ground on which the order is invalid, e.g. The Department failed to
26 grant the petitioner a fair trial in that (specify facts, such as bias of hearing officer)]

27 b. [add additional grounds as warranted]

28

1 12. The substance of the evidence received at the hearing is as follows: _____ [*state substance of*
2 *evidence*]. The evidence does not support the findings for the following reasons: _____ [*specify*
3 *reasons*].

4 13. Petitioner has the following relevant evidence that was not presented at the hearing: _____
5 [*describe completely*]. This evidence could not be produced at the hearing because _____
6 [*specify why*].

7 14. Petitioner has no plain, speedy, and adequate remedy in the ordinary course of law in that
8 petitioner has no means other than this proceeding by which [*he/she*] can compel the Department to
9 reverse its decision and reinstate petitioner's driving privilege.

10 WHEREFORE, petitioner prays as follows:

11 1. A peremptory writ of mandate issue, directed to respondent, and compelling respondent to set
12 aside the Department's order of _____ [*date*], and to reinstate petitioner's driver's license as it
13 existed before the order was issued;

14 2. For costs of suit herein incurred; and

15 3. Such other relief be granted that the Court considers proper.

16 DATED:

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Your signature

YOUR NAME
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VERIFICATION

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I am the petitioner in this proceeding. The facts alleged in the above petition are true of my own knowledge.

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

DATED:

Your signature

YOUR NAME
Petitioner

1 YOUR NAME
Street Address
2 City, State, Zip
Phone Number (with area code)
3 Fax Number: (if available)
Email: (if available)
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5 YOUR NAME, IN PRO PER
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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN MATEO**
10

11 NAME OF PETITONER(S)) Case No.:
)
12) Petitioner(s),) **PETITION FOR WRIT OF**
) **ADMINISTRATIVE MANDAMUS (CCP**
13 vs.) **§1094.5)**
)
14 UNEMPLOYMENT INSURANCE APPEALS)
BOARD,)
15) Respondent(s).)
16)
17) _____ [name of employer])
)
18) Real Party in Interest.)
)
19)
20)
21) _____)

22 Petitioner, __[name]__, petitions this Court for a writ of mandate under Code of Civil Procedure
23 §1094.5, directed to respondent Unemployment Appeals Board and the Employment Development
24 Department, and by this verified petition alleges as follows:

25 1. Respondent Unemployment Insurance Appeals Board (hereinafter, the appeals board) and its employees
26 constitute the Appeals Division of the Employment Development Department.

27 ///
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1 2. Real Party in Interest, __[name of employer]__ (hereinafter employer) is, and at all times herein
2 mentioned was a corporation organized and existing under the laws of California, with its principle place of
3 business located in _____, California.

4 3. From __[date]__ to __[date]__, petitioner was employed by employer at its place of business at
5 __[street address and city]__, California as a __[full or part-time]__ __[title of job]__ and paid
6 wages while so employed sufficient to qualify [him/her] for unemployment compensation benefits.

7
8 4. On __[date]__ petitioner __[terminated his/her service or notified employer that his/her services
9 were terminated]__ __[specify reasons for termination]__.

10 5. Thereafter, petitioner duly filed a claim for unemployment compensation benefits at __[specify,
11 e.g. a public employment office of the California Employment Development Department]__ located
12 at __[address]__, where [he/she] registered for employment.

13 6. The claim was denied by an examiner of the California Employment Development Department
14 on __[date]__, on the ground that petitioner was disqualified from receiving unemployment for the
15 reason(s) that __[specify reasons for denial]__, and on __[date]__ petitioner received a written
16 notice of this determination.

17 7. Pursuant to the provisions of Section 1328 of the Unemployment Insurance Code, Petitioner duly
18 filed an appeal with an administrative law judge who, by written decision dated __[date]__, affirmed
19 the examiner's determination.

20 8. In affirming the examiner's determination and ruling, the administrative law judge abused
21 [his/her] discretion and acted in excess of [his/her] jurisdiction in concluding that the claimant
22 __[voluntarily left his/her work without good cause OR was discharged for misconduct in
23 connection with his/her work]__. The conclusion is contrary to the weight of the evidence that the
24 claimant __[insert your reasons for termination of employment, i.e., laid off without good cause].

25 9. As authorized by Section 1336 of the Unemployment Insurance Code, Petitioner thereafter duly
26 filed an appeal with the appeals board, which on __[date]__ affirmed the administrative law judge's
27 decision and notified petitioner accordingly.

1 10. In affirming the decision of the administrative law judge, the appeals board abused its discretion
2 in excess of its jurisdiction in the same manner as the administrative law judge, as alleged in
3 paragraph 8.

4 11. Petitioner has exhausted the available administrative remedies required to be pursued by _
5 _[him/her]_ _, as follows: __[specify administrative procedures exhausted, or explain why
6 exhaustion excused]__.

7 12. Petitioner has no plain, speedy, and adequate remedy in the ordinary course of law to compel
8 the appeals board to reverse its decision and to grant petitioner's claim for unemployment
9 compensation benefits, and no remedy at all unless this petition is granted.

10 WHEREFORE, petitioner prays as follows:

11 1. A peremptory writ of mandate issue, under Code of Civil Procedure §1094.5, directed to
12 respondent, and compelling respondent to set aside its decision affirming the decision of the
13 administrative law judge affirming the determination of the Director of Employment Development
14 that the claimant __[voluntarily left his/her job OR was discharged for misconduct in connection
15 with his/her work] and is ineligible for unemployment compensation benefits.

16 2. For costs of suit herein incurred; and

17 3. Such other relief be granted that the Court considers proper.

18 DATED:

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Your signature

YOUR NAME
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VERIFICATION

I am the petitioner in this proceeding. The facts alleged in the above petition are true of my own knowledge.

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

DATED:

Your signature

YOUR NAME
Petitioner

1 YOUR NAME
Street Address
2 City, State, Zip
Phone Number (with area code)
3 Fax Number: (if available)
Email: (if available)
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5 YOUR NAME, IN PRO PER
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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN MATEO**
10

11 NAME OF PETITONER(S)) Case No.:
12)
Petitioner(s),) **NOTICE OF MOTION FOR WRIT OF**
13 vs.) **ADMINISTRATIVE MANDAMUS (CCP**
14) **§1094.5)**
NAME OF AGENCY,)
15 Respondent(s).) Date: _____
16) Time: _____
17 _____[name of other party, such as) Dept: __[number]__
employer]) Judge: __[if known]__
18 Real Party in Interest.)
19)
20)
21)

22 To *[name of agency, any party in interest]*:
23

24 PLEASE TAKE NOTICE that on __[date]__, at __ a.m./p.m., or as soon thereafter as the matter
25 may be heard, in __[specify department]__, of the above-named Court, located at __[address]__,
26 California, petitioner __[name]__ will move this Court for a peremptory writ of mandamus, under
27 Code of Civil Procedure §1094.5 commanding respondent __[agency name]__ to set aside its
28 decision of __[date]__, in the administrative proceedings titled __[title of administrative matter]__.

1 This motion is made on the grounds that __ *[specify, e.g. the agency's decision is unsupported by*
2 *the findings, and the findings are unsupported by the evidence]*__ .

3 This motion is based on this notice, the verified petition, the administrative record previously
4 lodged __ *[or to be lodged]*__ with this Court, the declarations and exhibits, and any and all other
5 evidence that may be presented at the hearing on this motion.
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7 DATED:
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10 *Your signature*
11 _____
12 YOUR NAME
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1 YOUR NAME
Street Address
2 City, State, Zip
Phone Number (with area code)
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Email: (if available)
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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN MATEO**
10

11 NAME OF PETITONER(S)) Case No.:
12)
Petitioner(s),) **NOTICE OF LODGING**
13 vs.) **ADMINISTRATIVE RECORD**
14) Date: _____
NAME OF AGENCY,)
15 Respondent(s).) Time: _____
16) Dept: __[number]__
17) Judge: __[if known]__
18)
19)

19 _____
20 PLEASE TAKE NOTICE that petitioner __[name]__ hereby lodges with this Court the record
21 of the administrative proceedings in the matter entitled __[name of action]__.

22 The record consists of __[number]__ volumes of reporter's transcripts and __[number]__
23 exhibits.
24

25 DATED:
26

27 _____
YOUR NAME
In Pro Per
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