



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

http://www.sanmateocourt.org/general_info/judicial_admin_record.php

Use the following *sample record request* as a guide. Note that the agency may request reimbursement for actual costs for transcribing or otherwise preparing the record. Low income petitioners may obtain a waiver of costs.

Sample Record Request

*[Your name
Your address
Your telephone number
Your e-mail address]*

Bianca Fasuescu
Executive Assistant
Superior Court of California
400 County Center
Redwood City, CA 94063

Re: Request for Administrative Record

Dear Ms. Fasuescu:

You are hereby requested by __ *[Your name]* __, a party in the above-titled administrative proceedings, to prepare and deliver to the undersigned in accordance with CCP §1094.6 the record in these proceedings, including the transcript of the proceedings, all pleadings, all notices and orders, any proposed decision by a hearing officer, the final decision, all admitted exhibits, all rejected exhibits in the possession of the agency, all written evidence, and any other papers in the case.

DATED: *Type date*

Sincerely,

[Your signature]

[Your name]
In Pro Per

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

Petition:

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:

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

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.

Example of Petition to DMV

YOUR NAME
Street Address
City, State, Zip
Phone Number (with area code)
Fax Number: if available
Email: if available

YOUR NAME, IN PRO PER

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN MATEO**

NAME OF PLAINTIFF(S))
)
) Petitioner(s)/Plaintiff(s),)
)
 vs.)
)
 DIRECTOR,)
)
 DEPARTMENT OF MOTOR VEHICLES,)
)
 Respondent(s)/Defendant(s).)
)
)
)
)
)

No.:
**PETITION FOR WRIT OF
ADMINISTRATIVE MANDAMUS (CCP
§1094.5)**

Petitioner alleges:

1. Petitioner _____ [*full name*] is a resident of the County of San Mateo, State of California at the time this Petition is filed.
2. Respondent is the Director of the Department of Motor Vehicles (“the Department”) which is a department in the Business and Transportation Agency of the State of California.

3. Prior to the suspension of petitioner's driver's license, petitioner was the holder of a valid California driver's license number _____[*license number*] issued by the Department.

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

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

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

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

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

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

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

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

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

b. *[add additional grounds as warranted]*

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

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

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

WHEREFORE, petitioner prays as follows:

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

2. For costs of suit herein incurred; and

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

DATED: *Type date*

Your signature

YOUR NAME
In Pro Per

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: *Type date*

Your signature

YOUR NAME
Petitioner

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

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

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

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

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

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

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

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

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

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

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

WHEREFORE, petitioner prays as follows:

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

2. For costs of suit herein incurred; and

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

DATED: *Type date*

Your signature

YOUR NAME
In Pro Per

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: *Type date*

Your signature

YOUR NAME
Petitioner

Example of Notice of Motion

YOUR NAME
Street Address
City, State, Zip
Phone Number (with area code)
Fax Number: if available
Email: if available

YOUR NAME, IN PRO PER

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN MATEO**

NAME OF PLAINTIFF(S))	
	)	No.:
Petitioner(s)/Plaintiff(s),	)	NOTICE OF MOTION FOR WRIT OF
	)	ADMINISTRATIVE MANDAMUS (CCP
vs.	)	§1094.5)
NAME OF AGENCY,	)	Date: _____
	)	Time: _____
Respondent(s)/Defendant(s).	)	Dept: __[number]__
	)	Judge: __[if known]__
_____ [name of other party, such as)	
employer])	
Real Party in Interest.)	
)	
)	

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

PLEASE TAKE NOTICE that on __ [date] __, at __ __ a.m./p.m., or as soon thereafter as the matter may be heard, in __ [specify department] __, of the above-named Court, located at __ [address] __, California, petitioner __ [name] __ will move this Court for a peremptory writ of mandamus, under Code of Civil Procedure §1094.5 commanding respondent __ [agency

name]__ to set aside its decision of __ *[date]* __, in the administrative proceedings titled __ *[title of administrative matter]* __.

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

This motion is based on this notice, the verified petition, the administrative record previously lodged __ *[or to be lodged]* __ with this Court, the declarations and exhibits, and any and all other evidence that may be presented at the hearing on this motion.

DATED: *Type date*

Your signature

YOUR NAME
In Pro Per

Example of Notice of Lodging

YOUR NAME
Street Address
City, State, Zip
Phone Number (with area code)
Fax Number: if available
Email: if available

YOUR NAME, IN PRO PER

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN MATEO**

NAME OF PLAINTIFF(S))	
	)	No.:
Petitioner(s)/Plaintiff(s),	)	NOTICE OF LODGING
	)	ADMINISTRATIVE RECORD
vs.)	
	)	Date: _____
NAME OF AGENCY,)	
	)	Time: _____
Respondent(s)/Defendant(s).)	
	)	Dept: __[number]__
	)	Judge: __[if known]__
)	

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

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

DATED: *Type date*

Your signature

YOUR NAME
In Pro Per