

CALIFORNIA PRACTICE GUIDE CIVIL APPEALS AND WRITS 2024 UPDATE

This year's Update completely replaces all pages in the two volumes. ***DO NOT DISCARD THE EXISTING TAB DIVIDERS.*** Insert the enclosed replacement contents under the appropriate tabs.

These Highlights summarize the most significant developments over the past year. The paragraph numbers are keyed to the 2024 edition of the Practice Guide where the topics are discussed in greater detail. Our cut-off date for this Update was October 1, 2024. Some of the new cases cited were not final as of that date, so be sure to check the subsequent histories before citing or relying on them.

Your comments invited! If you see room for improvement, please let us know. We appreciate hearing from you!

JON B. EISENBERG
Healdsburg, CA

LAURIE J. HEPLER
San Francisco, CA

CONTINUING LEGAL EDUCATION  PROGRAMS AND PUBLICATIONS

THE RUTTER GROUP[™]
A DIVISION OF THOMSON REUTERS

2024 UPDATE HIGHLIGHTS

CHAPTER 1

PRELIMINARY CONSIDERATIONS

Evaluating Potential Appeal

[1:63] **Monetary sanctions for frivolous appeal:** See *Champlin/GEI Wind Holdings, LLC v. Avery* (2023) 92 CA5th 218, 227-229, 309 CR3d 361, 370-371—\$15,000 total sanctions imposed against attorney and client for appeal that “indisputably ha[d] no merit.”

CHAPTER 2

APPEALABILITY AND STANDING TO APPEAL

Determining Appealability

[2:8.1] **Improper appeal treated as writ:** See *Last v. Sup.Ct. (Last)* (2023) 94 CA5th 30, 43-44, 311 CR3d 791, 802-803—trial court’s retention of jurisdiction to retroactively modify spousal support potentially rendered temporary support order nonfinal and thus nonappealable under collateral order doctrine.

Appellate Jurisdiction and the Right to Appeal

[2:18] **No “substitute” right to appeal by party consent:** See *Housing Auth. of City of Calexico v. Multi-Housing Tax Credit Partners XXIX, L.P.* (2023) 94 CA5th 1103, 1115-1121, 312 CR3d 792, 800-806—parties to agreement to arbitrate may not contract to bypass superior court review of order and obtain review by court of appeal in first instance.

Final Judgments

[2:38.1; 2:111] **Label not determinative:** If it fully disposes of the action (i.e., leaving nothing to be done except for the entry of judgment), even an order not made appealable by statute may be treated as an appealable final judgment for purposes of “saving” an appeal noticed from that order before entry of final judgment. [*Meinhardt v. City of Sunnyvale* (2024) 16 C5th 643, 655-658, 323 CR3d 354, 362-364 (nevertheless holding that such order cannot *trigger deadline* for appeal)]

Exception to “One Final Judgment Rule”

[2:82.3] **Monetary sanctions:** The appealability of monetary sanctions order does not render unrelated discovery orders appealable; the court will “review the merits of related orders only to the extent necessary to resolve the challenge to the appealable monetary sanctions.” [*Tedesco v. White* (2023) 96 CA5th 1090, 1097, 314 CR3d 901, 907]

Final Judgments in “Special Proceedings”—Writ Proceedings

[2:112] **Exception—no right of appeal where related issues still pending:** See *Jackson v. Board of Civil Service Commissioners of City of Los Angeles* (2024) 99 CA5th 648, 655-662, 318 CR3d 79, 83-89—order granting writ petition in part was not immediately appealable because, although trial court did not retain jurisdiction over any issues, petitioner could again petition for administrative mandate following board’s post-writ consideration.

Nonappealable Orders

[2:238.2] **Demurrer sustained with leave to amend when no amendment filed:** See *Shaw v. Los Angeles Unified School Dist.* (2023) 95 CA5th 740, 753, 313 CR3d 617, 630—decision not to amend typically treated as waiving any *unpled* allegations.

Standing to Appeal

[2:272.1] **Nonparty standing to appeal monetary sanctions:** See *Tedesco v. White*, supra, 96 CA5th at 1093, 314 CR3d at 904, fn. 3—appellant who was sanctioned for serving discovery without trial court standing nonetheless had standing to appeal sanctions order against her.

[2:295] **Consent to judgment solely to expedite appeal:** See *Simple Avo Paradise Ranch, LLC v. Southern Calif. Edison Co.* (2024) 102 CA5th 281, 293-298, 321 CR3d 305, 313-317 (reluctantly applying *Norgart* exception to permit defendant in coordinated proceeding to appeal stipulated judgment with single plaintiff, who joined case long after challenged demurrer ruling).

CHAPTER 3

NOTICE OF APPEAL AND CROSS-APPEAL

Timely Filing of Appeal

[3:5.5] **Subsequent judgment starts time in which to file notice of appeal:** See *Meinhardt v. City of Sunnyvale* (2024) 16 C5th 643, 323 CR3d 354—order not expressly made appealable by statute does *not* start time in which to file notice of appeal; only subsequent judgment does.

Calculating Appeal Time Periods

[3:42.5; 3:140.1] **Mandatory electronic service:** *On or after July 1, 2025*, if a party or other person is subject to mandatory or consensual electronic service, the clerk must electronically *serve* the document. [Amended CCP §1010.6(d)]

Filing and Transmittal Procedures

[3:133.1] **Timely filing notice of appeal despite clerk’s refusal to “file”:** See *Spears v. Spears* (2023) 97 CA5th 1294, 1300, 316 CR3d 451, 457—where first notice of appeal was premature and therefore invalid, clerk should have filed second notice of appeal timely received my mail, instead of rejecting and returning it.

[3:162.5] **Calculating filing deadline for Civil Case Information Statement:** The Civil Case Information Statement must be filed within 15 days after the appellate court clerks *assign the appeal a case number*. [Amended CRC 8.100(g)(1)]

CHAPTER 4

DESIGNATION OF THE RECORD

Reporter’s Transcripts

[4:64] **Conflict between minute order and reporter’s**

transcript: Where a conflict exists between a minute order and the reporter's transcript, the appellate court will usually regard the transcript as the official record. [See *Garner v. BNSF Ry. Co.* (2024) 98 CA5th 660, 668, 316 CR3d 862, 868]

CHAPTER 5

MOTIONS, APPLICATIONS AND REQUESTS

Involuntary Dismissal

[5:20.1] **Wholly deficient opening brief:** See *Estate of Sanchez* (2023) 95 CA5th 331, 339-344, 313 CR3d 109, 117-121—opening brief stricken and appeal dismissed where personal representative could not act for benefit of estate's beneficiaries without retaining counsel.

Mootness

Events causing mootness

- [5:26.1] **Judgment granting permanent injunction renders appeal from preliminary injunction moot:** See *Anderson v. County of Santa Barbara* (2023) 94 CA5th 554, 567, 312 CR3d 43, 55.
- [5:29] **Subsequent legislation:** But see *Shaw v. Los Angeles Unified School Dist.* (2023) 95 CA5th 740, 773-774, 313 CR3d 617, 645—“enactment of subsequent legislation does *not* automatically render a matter moot. The key question is still whether a court can grant effective relief in a case” (internal quotes and citations omitted; emphasis in original)]
- [5:30.5] **New legislation:** But see *Make UC a Good Neighbor v. Regents of Univ. of Calif.* (2024) 16 C5th 43, 65, 321 CR3d 409, 426—mootness doctrine irrelevant where intervening legislative change (applicable on review of CEQA mandamus action; see ¶8:183) made it impossible for plaintiff to prevail on merits.

Public interest exception

- [5:32.1] **Election issues:** “Questions involving ballot access and whether votes for a particular candidate will be counted, go to the heart of our democracy and are of substantial and continuing public interest.” [*Weber v. Sup.Ct. (Fong)* (2024) 101 CA5th 342, 350, 320 CR3d 201, 207]
- [5:32.3a] **Delegation of legislative power:** Despite abatement of the COVID-19 pandemic and rescission of the Governor's “Blueprint for a Safer Economy,” which implemented a color-coded, risk-based framework for tightening and loosening restrictions on public activities, the court decided whether the Emergency Services Act (Gov.C. §8550 et seq.) unconstitutionally delegates legislative power to the Governor. [*Ghost Golf, Inc. v. Newsom* (2024) 102 CA5th 88, 100-101, 321 CR3d 203, 210-211]
- [5:32.3b] **WCAB practice of granting petitions for reconsideration without deciding whether reconsideration was warranted:** Petitioners filed a writ proceeding challenging the Workers' Compensation Appeals Board's routine practice of granting

petitions for reconsideration for “further study” without first deciding whether reconsideration was actually warranted—a practice the petitioners alleged was an unauthorized way to extend the 60-day deadline to rule on reconsideration petitions. Although the writ was mooted when the Board issued a final determination on the petitions for reconsideration while the writ was pending, the Court of Appeal granted the petition, finding that the issue was both one of public interest and likely to evade review. [*Early v. Workers’ Compensation App. Bd.* (2023) 94 CA5th 1, 8-10, 311 CR3d 760, 763-765]

Authority to Take Additional Evidence

[5:184.1; 5:184.3] **No consideration of postjudgment evidence in ICWA cases:** Absent extraordinary circumstances, the appellate court may not consider postjudgment evidence to conclude that an inadequate inquiry to determine the applicability of the Indian Child Welfare Act (ICWA, 25 USC §1901 et seq.) was harmless. Additionally, evidence of postjudgment ICWA inquiry “is not a proper subject of [record] augmentation or judicial notice.” [*In re Kenneth D.* (2024) 16 C5th 1087, 1094-1095, 1106, 324 CR3d 259, 261-262, 271]

CHAPTER 6

SETTLEMENT CONFERENCES AND MEDIATION

Mediation

[6:65.5; 6:124.22a] **Mediation Program in Division One of Fourth Appellate District:** Division One of the Fourth Appellate District (San Diego) offers a “Civil Mediation Program” in which, upon request, the court designates retired Court of Appeal justices to serve as mediators in eligible civil appeals. Participation in the program is free of cost to the litigants and requires the agreement of all parties. This program replaces the former litigant-initiated (voluntary) settlement program. [See www.courts.ca.gov, Court Programs, Div. 1—San Diego, Civil Mediation Program]

CHAPTER 8

SCOPE AND LIMITS OF APPELLATE REVIEW

Interplay of Statement of Decision

[8:23.1] **Doctrine of “implied findings”—ambiguities and omissions:** See *Marriage of Motiska & Ford* (2023) 96 CA5th 1291, 1300-1301, 315 CR3d 89, 95-96—where trial court found that transfer of business for \$1 was donation rather than sale, appellant’s failure to object meant appellate court “must imply all necessary adverse findings” on issue.

“Abuse of Discretion” Standard

[8:95k] **Discovery rulings:** Appellate courts apply the abuse of discretion standard in reviewing whether to permit discovery on the issue of personal jurisdiction. [*Hardell v. Vanzyl* (2024) 102 CA5th 960, 968, 322 CR3d 228, 234]

[8:96.4] **Motions in limine:** But see *Garner v. BNSF Ry. Co.* (2024)

98 CA5th 660, 674, 316 CR3d 862, 873—de novo review where grant of motion in limine was “ ‘functional equivalent’ of an order granting nonsuit.”

[8:98] **Class certification:** Compare *Maarten v. Cohanad* (2023) 95 CA5th 596, 608-609, 313 CR3d 587, 593—where trial court decides issue of class certification on demurrer (i.e., by determining as a matter of law that, assuming truth of factual allegations in complaint, there is no reasonable possibility that requirements for class certification will be satisfied), ordinary principles governing review of order sustaining demurrer apply.

[8:99.2b] **Child support orders—failure to state reasons compared:** See *Marriage of Cole* (2023) 94 CA5th 450, 461, 312 CR3d 220, 229, fn. 7 (affirming despite lack of express statement by trial court that it was departing from guideline based on “special circumstances” because court’s findings were aligned with special circumstances identified in case law, and findings were supported by substantial evidence).

[8:103] **Continuances:** See *Marriage of Tara & Robert D.* (2024) 99 CA5th 871, 881, 888, 318 CR3d 255, 263-264, 269—denial of continuance abuse of discretion where husband’s counsel withdrew immediately before trial (but error not prejudicial).

[8:104a] **Forum non conveniens—split of authority re ruling based on contractual forum selection:** See *Schmidt v. Trinut Farm Mgmt., Inc.* (2023) 92 CA5th 997, 1005-1006, 309 CR3d 877, 883 (collecting cases on split of authority re standard of review for order to enforce forum selection clause).

[8:104.15] **Mandatory intervention:** Orders denying mandatory intervention under CCP §387(d)(1) have generated conflicting precedents on whether the proper review standard is de novo or abuse of discretion. [*State Water Bd. Cases* (2023) 97 CA5th 1035, 1043, 316 CR3d 170, 175 (noting split and indicating that review is likely de novo but declining to resolve issue)]

[8:104.46] **Trial court’s choice of remedy:** The trial court’s choice from among legally permissible remedies is reviewed for abuse of discretion. [*Natural Resources Defense Council, Inc. v. City of Los Angeles* (2023) 98 CA5th 1176, 1233, 317 CR3d 497, 540-541; see also *People ex rel. International Ass’n of Firefighters, Local 1319, AFL-CIO v. City of Palo Alto* (2024) 102 CA5th 602, 620-627, 321 CR3d 670, 683-689]

“Independent Review” Standard

[8:114.7b] **Application of law to undisputed facts:** In the absence of a factual dispute, a court reviews the scope of an agent’s authority de novo. [*Harrod v. Country Oaks Partners, LLC* (2024) 15 C5th 939, 951, 319 CR3d 400, 406]

[8:114.9i] **Foreign law:** The appellate court determines the meaning of foreign statutory and decisional law de novo. [*Marriage of V.S. & V.K.* (2023) 97 CA5th 219, 231, 315 CR3d 255, 264-265 & fn. 9]

[8:114.9j] **CCP §170.6 peremptory challenge:** Courts review de novo orders granting or denying a CCP §170.6 peremptory challenge

“[b]ecause the trial court exercises no discretion when considering a section 170.6 motion.” [*Lorch v. Sup.Ct. (Kia Motors America, Inc.)* (2024) 101 CA5th 1266, 1274, 320 CR3d 897, 903]

Standards of Appellate Review

[8:127.2] **Adjudicatory decisions of agencies of constitutional origins:** While the Public Utilities Commission is a constitutional body whose decisions are presumed valid, Pub.Util.C. §1760 provides for independent review of challenges based on state or federal constitutional rights. [*Kerman Telephone Co. v. Public Utilities Comm’n* (2023) 94 CA5th 920, 931, 312 CR3d 559, 566]

[8:128.4a] **Adjudicatory decisions in CEQA cases:** On appeal challenging an agency’s finding that a statutory CEQA exemption applies, the appellate court reviews the administrative record to see whether substantial evidence supports each element of the exemption. [*Hilltop Group, Inc. v. County of San Diego* (2024) 99 CA5th 890, 909-911, 318 CR3d 336, 353-354; *California Const. & Industrial Materials Ass’n v. County of Ventura* (2023) 97 CA5th 1, 12, 315 CR3d 190, 198]

[8:130.5] **Community property characterization:** Whether the trial court has employed the proper standard for tracing community and separate property is question of law reviewed de novo. [*Marriage of Simonis* (2023) 95 CA5th 1129, 1141-1142, 314 CR3d 91, 99-100]

[8:158.1] **Remand from grant of new trial based on court’s misinterpretation of law?** One court of appeal faced with a grant of new trial based on the trial court’s misinterpretation of applicable law considered whether it could remand for the trial court to determine the issue of prejudice based on a correct understanding of the law. Noting a split in authority, the appellate court concluded it could not do so, because CCP §660 sets a mandatory, jurisdictional outer limit to rule on a new trial motion. [*TRC Operating Co., Inc. v. Chevron USA, Inc.* (2024) 102 CA5th 1040, 1079-1083, 322 CR3d 353, 381-384, rev.grntd. 9/25/24 (Case No. S286233) (cited pursuant to CRC 8.1115(e)) (reversing because presumption of prejudice from juror misconduct was rebutted)] *Caution:* The California Supreme Court granted review of *TRC Operating Co., Inc.* to decide whether CCP §660 precludes remand for further proceedings in the trial court on a motion for new trial.

Waiver by Inaction

[8:270.2a] **Failure to object to verdict form:** Objections to the verdict form generally must be asserted before the jury is discharged. [*TRC Operating Co., Inc. v. Chevron USA, Inc.*, supra, 102 CA5th at 1115, 322 CR3d at 410, rev.grntd. 9/25/24 (Case No. S286233) (cited pursuant to CRC 8.1115(e))]

[8:279.6] **Waiver of issue by failure to exhaust administrative remedies:** “Parties must exhaust, at each level of the administrative process, the issues and arguments they want to pursue further,” and the failure to do so waives judicial consideration of those arguments. [*Kern County Hosp. Auth. v. Public Employment Relations Bd.* (2024) 100 CA5th 860, 883, 319 CR3d 430, 448, fn. 17]

[8:279.7] **Waiver of unpled allegations by failure to amend fol-**

lowing demurrer sustained with leave to amend: Where plaintiff elects not to amend following demurrer sustained with leave to amend, but instead to stand on the complaint and appeal from the ensuring dismissal order, the reviewing court will treat failure to amend as a waiver of unpled allegations. [*Shaw v. Los Angeles Unified School Dist.* (2023) 95 CA5th 740, 753, 313 CR3d 617, 630]

Limits on Reversal or Modification—“Prejudicial Error” Rule

[8:310] **Waiver of right to jury trial—showing of prejudice required:** Where a party validly waives its right to a jury trial and the trial court later denied relief from that waiver, reversal requires a showing of prejudice. [*TriCoast Builders, Inc. v. Fonnegra* (2024) 15 C5th 766, 787-788, 318 CR3d 282, 296-297]

[8:319.17] **Review of ICWA inquiry:** Where the trial court fails to ensure proper ICWA inquiry into a child’s possible Indian heritage before terminating parental rights, the order must be conditionally reversed with directions to the child welfare agency to conduct an adequate inquiry supported by record documentation. If, on remand, the trial court determines, based on sufficient evidence and record documentation, that the ensuring inquiry was proper and the ICWA does not apply, then any error is cured and the judgment will be reinstated. If the ensuing inquiry reveals a reason to know that the child has possible Indian heritage, the tribe has been notified, and the tribe determines that the child is a member or citizen (or eligible for membership or citizenship) of an Indian tribe, then the judgment must be reversed. [*In re Dezi C.* (2024) 16 C5th 1112, 1137-1138, 1151-1152, 324 CR3d 275, 289-290, 302 & fn. 18 (resolving former 5-way split of authority on reversibility, and disapproving 18 cases)]

Absent exceptional circumstances, the appellate court may not consider postjudgment evidence to conclude that an error in the requisite inquiry was harmless. The sufficiency of an ICWA inquiry must be determined by the trial court in the first instance. [*In re Kenneth D.* (2024) 16 C5th 1087, 1094, 1102, 324 CR3d 259, 261-262, 268; also discussed at ¶5:184.1 and 5:184.3 of these Highlights Summaries]

There remains a split of authority on a distinct question: the standard of review for a trial court’s factual finding that the ICWA does not apply at all. Some appellate courts use a straightforward substantial evidence test. Other courts apply a hybrid test, reviewing for substantial evidence as to whether there is a reason to know the child has possible Indian heritage, and for abuse of discretion in determining whether the agency conducted a proper inquiry. [*In re Dezi C.*, supra, 16 C5th at 1134, 324 CR3d at 839 (describing but declining to resolve split); *In re Kenneth D.*, supra, 16 C5th at 1101, 324 CR3d at 267 (same)]

CHAPTER 9

APPELLATE BRIEFS

Respondent’s Brief

[9:70] **Asserting “harmless error”:** See *Brinsmead v. Elk Grove Unified School Dist.* (2023) 95 CA5th 583, 587-588, 313 CR3d 576, 580—where respondent had raised multiple grounds for demurrer,

but its appellate brief addressed only grounds on which trial court relied, court of appeal deemed respondent to have abandoned alternative grounds, and reversed.

Standard of Review

[9:144] **Sufficiency of the evidence:** Most appeals challenging sufficiency of the evidence are filed by defendants challenging plaintiff's evidence. But if, instead, appellant bore the burden of proof at trial and challenges a finding that it failed to meet that burden, a significant modification to the substantial evidence rule impacts the briefing. Appellant's opening brief must show that appellant's evidence was (1) uncontradicted and unimpeached and (2) of such a character and weight as to leave no room for judicial determination that it was sufficient to support a finding for appellant. [*Symons Emergency Specialties v. City of Riverside* (2024) 99 CA5th 583, 597, 318 CR3d 47, 58; see ¶8:76.5]

Amicus Curiae Briefs

[9:207.1] **Filing deadline:** If no respondent's brief is filed, the application and amicus curiae brief are due within *34 days* after respondent's brief "could have been filed." The presiding justice may allow later filing upon a showing of good cause. [Amended CRC 8.200(c)(1) (eff. 1/1/25)]

[9:209.2] **Attorney General amicus brief:** Likewise, if no respondent's brief is filed, the Attorney General's amicus brief must be served and filed within *34 days* after the respondent's brief could have been filed. [Amended CRC 8.200(c)(7) (eff. 1/1/25)]

[9:210.1] **Amici may raise new issues supporting affirmance:** See *Lacy v. City & County of San Francisco* (2023) 94 CA5th 238, 261, 312 CR3d 391, 410-411.

CHAPTER 11

DECISION

Disposition

[11:53] **Modification:** Occasionally, a disposition will state that it is reversing the judgment when in legal effect it is actually modifying the judgment. "[W]here an order stated in terms of reversal amends a trial court order on remand to state what it should have stated on th[e] date of the original order, it is in law and in fact, a modification." [*Vines v. O'Reilly Auto Enterprises, LLC* (2024) 101 CA5th 693, 701-702, 320 CR3d 513, 520; see ¶11:48]

Reversal

[11:68.2] **Split of authority whether dependent fee awards must be separately appealed:** See *Williams v. Doctors Med. Center of Modesto, Inc.* (2024) 100 CA5th 1117, 1144, 319 CR3d 741, 764 (discussing split and collecting cases)—given conflicting case authority and "normal appellate practice," court could not conclude that second appeal was improperly filed.

[11:73d] **Directions to enter proper judgment conditioned on**

outcome after retrial: On reversal of a CCP §1021.5 attorney fee award based on the trial court’s failure to apply the correct legal standard, the appellate court remanded for a redetermination whether the awardees were entitled to fees. If so, the trial court was directed to reinstate the fee award in the amount previously determined, together with any later-incurred fees. [*Grossmont Union High School Dist. v. Diego Plus Ed. Corp.* (2023) 98 CA5th 552, 592, 316 CR3d 721, 756]

[11:74.1] **Directions to address issues not previously reached:** Where the court reverses a judgment or appealable order determining a motion or petition based on a threshold issue, the court may remand with directions for the trial court to address in the first instance those issues that it did not previously reach. [*Ramirez v. Golden Queen Mining Co., LLC* (2024) 102 CA5th 821, 837, 322 CR3d 30, 42 (reversing trial court’s finding that no arbitration agreement existed and remanding for determination of conscionability defense)]

CHAPTER 13

REVIEW BY CALIFORNIA SUPREME COURT

Finality of Decision

[13:199] **Court power to shorten finality period:** See *Legislature of State of Calif. v. Weber* (2024) 16 C5th 237, 278, 321 CR3d 883, 909—supreme court opinion and judgment enjoining placement of initiative constitutional amendment on ballot became final 5 days after filing “[i]n light of the time constraints under which the Secretary of State is required to act.”

[13:202.2] **Scope of court of appeal’s jurisdiction on remand:** See *Boormeester v. Carry* (2024) 100 CA5th 383, 386, 318 CR3d 909, 912—court of appeal “bound” by supreme court’s instructions regarding further proceedings.

CHAPTER 14

POSTAPPEAL MATTERS

Doctrine of “Law of the Case”

[14:174] **Appellate opinion need not be published:** See *Truck Ins. Exchange v. Kaiser Cement & Gypsum Corp.* (2024) 16 C5th 67, 81, 321 CR3d 761, 771, fn. 5.

[14:174.5] **May apply where prior appeal is from issuance of preliminary injunction:** See *Symons Emergency Specialties v. City of Riverside* (2024) 99 CA5th 583, 603, 318 CR3d 47, 63, fn. 8.

Stare Decisis

[14:191] **Appellate courts may overrule own precedent:** Appellate courts may overrule their own precedent “in appropriate and rare cases” where the prior opinion reflects judicial error warranting correction. [*Cohen v. Sup.Ct. (Schwartz)* (2024) 102 CA5th 706, 719-720, 322 CR3d 62, 74, rev.grntd. on other grounds 9/18/24 (Case No. S285484) (cited pursuant to CRC 8.1115(e))—in considering whether to overrule prior decision, questions of reliance on that decision by parties, society, and legislative bodies are crucial consideration]

[14:192] **Lower courts bound by Calif. supreme court authority, no matter how old:** See *Tran v. Nguyen* (2023) 97 CA5th 523, 531, 315 CR3d 607, 614.

CHAPTER 15

WRITS

No “Adequate Remedy” at Law

[15:6.2] **Exceptional circumstances warranting writ review:** Although a judgment regarding the timing of a state agency’s authority to enforce changes to consumer privacy rights was appealable, writ review was appropriate because a novel issue of law, of widespread interest, required prompt resolution. [*California Privacy Protection Agency v. Sup.Ct. (California Chamber of Commerce)* (2024) 99 CA5th 705, 719-720, 318 CR3d 90, 100-101]

[15:11.15] **Certain Workers’ Compensation Appeals Board orders granting reconsideration:** A petition for review of the Workers’ Compensation Appeals Board’s final order would not be an adequate legal remedy because it “could do no more than nullify the proceedings following the grant of reconsideration” and thus would not address the actual issue: the board’s improper granting of reconsideration for “further study”—regardless whether the statutory criteria for reconsideration were actually met in a given case—as an end-run around the 60-day deadline to determine such petitions. [*Earley v. Workers’ Compensation App. Bd.* (2023) 94 CA5th 1, 17, 311 CR3d 760, 770]

Writ of Mandate

[15:48.6] **Order compelling arbitration:** “Unusual circumstances” justifying writ review of order compelling arbitration existed where manufacturer of a medical device and related mobile app failed to establish the formation of an enforceable arbitration agreement based on the app’s electronic terms of use agreement. [*Herzog v. Sup.Ct. (Dexcom, Inc.)* (2024) 101 CA5th 1280, 1292, 321 CR3d 93, 104, fn. 5]

Writ of Prohibition

[15:70] **Denial of jury trial right:** See *TriCoast Builders, Inc. v. Fonnegra* (2024) 15 C5th 766, 785-786, 318 CR3d 282, 295—challenging denial of jury trial right via writ petition before trial avoids repetitive litigation and promotes judicial economy.

Particular Statutory Writs

[15:132.1] **Certain orders re inspection of public records:** A statutory writ is the exclusive means by which to obtain appellate review of such orders, and the extended 40-day deadline is “mandatory and jurisdictional.” [*Committee to Support Recall of Gascon v. Logan* (2023) 94 CA5th 352, 367-371, 312 CR3d 160, 170-174 (internal quotes omitted)]

Alternative Writ

[15:157.1a] **Discharge and dismissal for mootness:** Compare *Cohen v. Sup.Ct. (Schwartz)* (2024) 102 CA5th 706, 714-715, 322

CR3d 62, 70-71, rev.gmtd. on other grounds 9/18/24 (Case No. S285484) (cited pursuant to CRC 8.1115(e))—writ petition challenging denial or demurrer as to 2 causes of action not mooted by real party’s expressed “wish” to dismiss both causes, which was not tantamount to dismissal.

CHAPTER 16
APPEALS TO SUPERIOR COURT

Briefs

[16:30.1] **Form briefs:** Appellant or respondent may use an optional Judicial Council form brief, which may not exceed 25 pages. This page limit includes any attachments, which must comply with formatting requirements prescribed in CRC 8.883(c) [Amended CRC 8.883(b)(4) (eff. 1/1/25)] The forms are intended to assist self-represented litigants and attorneys who are unfamiliar with appellate practice.

The following are new Judicial Council forms, effective 1/1/25, available on the California Courts website (www.courts.ca.gov): Appellant’s Opening Brief—Limited Civil Case (optional Judicial Council form APP-200), Respondent’s Brief—Limited Civil Case (optional Judicial Council form APP-201) and Appellant’s Reply Brief—Limited Civil Case (optional Judicial Council form APP-202).