

# Appellate Tips for Trial Lawyers

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**California civil and criminal litigation overlap in a crucial area: preserving your record for appeal. Although this series of short articles is mainly designed for civil trial lawyers, some "best practices" apply in every trial. Keep an eye on what our appellate-lawyer writers have to say about how to preserve your trial court victory or how to lay the groundwork for a successful challenge when you've lost.**

## **Motion Practice: Meeting Deadlines For Filing Writ Petitions**

You may expect appellate proceedings to be more leisurely than rapid-fire trial work. But when it comes to filing *writ petitions* in the California Court of Appeal—particularly statutory writ petitions—there is no time to relax.

### **Know what kind of writ petition you need to file**

*Nonstatutory*, or "common law," writ petitions are those not authorized by a particular statute. They are the mechanism for challenging most trial court orders, such as demurrer and discovery rulings. They have no express filing deadline, but the appellate courts generally expect them to be filed within 60 days, the same period for notices of appeal. [\*Cal West Nurseries, Inc. v. Superior Court\*](#) (2005) 129 Cal. App. 4th 1170, 1173. Because these writs are equitable by nature, counsel should file petitions as soon as possible—delay could amount to laches.

*Statutory* writ petitions are expressly authorized by statute, and they generally have express—and sometimes jurisdictional—deadlines. These can be as short as 10 days. *E.g.*, Code of Civil Procedure, §[170.3\(d\)](#) (10 days for review of order on judicial disqualification motion); compare §[437c\(m\)\(1\)](#) (20 days for review of summary judgment/adjudication orders).

### **Ask for extra time if it's available**

Some writ statutes give the trial court power to grant a short extension of time. Code of Civil Procedure [§437c \(m\)\(1\)](#) (court can extend for 10 days on summary judgment/adjudication ruling), [§405.39](#) (same for lis pendens rulings). Some statutes require extension requests to be made before the original petition deadline, such as both of those just cited, and Code of Civil Procedure [§404.6](#) (coordination proceedings), while others do not, for example, [§418.10\(c\)](#) (motion to quash). Preparing a good writ petition takes time—*always* ask for this extension, at the hearing if possible.

### **Don't waive notice**

Writ petition deadlines generally run from service of notice of the order, with an extra five days for service by mail. *E.g.*, Code of Civil Procedure, [§170.3\(d\)](#); [§437c \(m\)\(1\)](#).) *Waiving* notice of a ruling may cause an already short statutory deadline to start running right away, so demand formal notice. And always double-check to be sure you have the correct time period and starting point for the deadline.



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