SC-300-INFO Information on Writ Proceedings in Small Claims Cases

GENERAL INFORMATION

1 What does this information sheet cover?

This information sheet tells you about **writ proceedings**—proceedings in which a person is asking for a writ of mandate, prohibition, or review—in small claims cases. Please read this information sheet before you fill out *Petition for Writ (Small Claims)* (form SC-300). This information sheet does not cover everything you may need to know about writ proceedings. It is only meant to give you a general idea of the writ process. To learn more, you should read the California Rules of Court identified below, which set out the procedures for writ proceedings in the different courts that consider request for writs in small claims cases.

This information sheet does NOT provide information about motions to vacate a judgment or appeals in small claims cases, or about requests for writs on all types of rulings in a small claims case.

- For information about making a motion to cancel or correct a judgment in small claims court, please see Code of Civil Procedure sections 116.720–116.745 and *Notice of Motion to Vacate Judgment and Declaration* (form SC-135).

- For information about appealing a small claims judgment, which you can only do if you disagree with a judgment ordering you to pay money, please see Code of Civil Procedure sections 116.710, 116.750–116.795, rules 8.950–8.966 of the California Rules of Court and *What to Do After the Court Decides Your Small Claims Case* (form SC-200-INFO).

While this information sheet provides general information about writs and writ procedures, the procedures it describes do NOT apply to writs in all small claims cases. These procedures only apply to requests for writs relating to actions of the small claims court *other* than postjudgment enforcement actions. These requests will be considered by a single judge from the appellate division of the superior court. The procedures are set out in more detail in rules 8.970–8.977 of the California Rules of Court.

- For information about requests for writs relating to postjudgment enforcement actions, see rules 8.930–8.936 of the California Rules of Court and *Information on Writ Proceedings in Misdemeanor, Infraction, and Limited Civil Cases* (form APP-150-INFO). Matters relating to enforcement of small claims judgments are treated in the same manner as enforcement of judgments in limited (smaller) civil cases.

- For information about requests for writs relating to actions of the superior court on small claims appeals, see rules 8.485–8.493 of the California Rules of Court. Those requests should be made to the Court of Appeal.

You can get these rules and forms at any courthouse or county law library or online at *www.courts.ca.gov/rules* for the rules or *www.courts.ca.gov/forms* for the forms. You can get copies of statutes at any county law library or online *leginfo.legislature.ca.gov/faces/codes.xhtml*.

2 What is a writ?

A writ is an order from a higher court telling a lower court to do something the law says the lower court must do, or not to do something the law says the lower court does not have the power to do. In writ proceedings in the appellate division, the lower court is the small claims court that took the action or issued the order being challenged.

In this information sheet, we call the lower court the "small claims court."

3 Are there different kinds of writs?

Yes. There are three main kinds of writs:

- Writs of mandate (sometimes called "mandamus"), which are orders telling the small claims court to do something.

- Writs of prohibition, which are orders telling the small claims court *not* to do something.

- Writs of review (sometimes called "certiorari"), which are orders telling the small claims court that a judge in the appellate division will review certain

kinds of actions already taken by the small claims court.

There are laws (statutes) that you should read concerning each type of writ: see California Code of Civil Procedure sections 1084–1097 about writs of mandate, sections 1102–1105 about writs of prohibition, and sections 1067–1077 about writs of review.

4 Is a writ proceeding the same as an appeal?

No. Generally, in an **appeal,** the higher court *must* consider the parties' arguments and decide whether the trial court made the legal error claimed by the appealing party and whether the trial court's decision should be overturned based on that error (this is called a "decision on the merits"). In choosing to go to small claims court, the party filing a claim agreed to give up the right to an appeal in exchange for a less formal and less expensive way of proceeding. The defendant in a small claim case does have the right to an appeal, in the form of a new trial, and if the defendant asks for one, the higher court *must* allow a new trial on all the claims in the case, with each side presenting evidence.

In a **writ proceeding,** the appellate division judge is *not* required to make a decision on the merits or hold a new trial. Even if the small claims court made a legal error, the appellate division judge can decide not to consider that error, and usually will not. Most requests for writs are denied without a decision on the merits (this is called a "summary denial"). Because of this, a writ proceeding is often called a proceeding for "*extraordinary*" relief, while a judgment by the small claims court, or possibly a new trial at superior court for the defendant, is the *ordinary* way that small claims court cases end.

5 Is a writ proceeding a new trial?

No. **A writ proceeding is NOT a new trial.** The appellate division judge will not consider new evidence, such as the testimony of new witnesses. Instead, if he or she does not summarily deny the request for a writ, the appellate division judge reviews what happened in the small claims court and the small claims court's ruling to see if the small claims court made the legal error claimed by the person asking for the writ. In conducting this review, the appellate division judge presumes that the small claims court's ruling is correct; the person who requests the writ must show the appellate division judge that the small claims court made the legal error the person is claiming.

6 Can a writ be used to address *any* errors made by a small claims court?

No.

Writs are not generally granted regarding small claims cases. The small claims courts exists to provide a speedy and inexpensive way for a party to obtain a judgment. This works in part by limiting what a party can do after the small claims court makes its rulings.

When a person or business chooses to make a claim in small claims court, rather than filing in a different level of the superior court, that party—the plaintiff—gives up the right to ask for an appeal of the small claims court's rulings. This is a trade-off for the faster, less formal, and less expensive court proceedings. As a result, appellate courts have been reluctant to consider requests for writs in small claims cases.

A defendant in a small claims case does have the right to appeal the initial small claims court decisions and get a new trial in the superior court. Because the defendant already has this right to have the case heard again, including putting on the evidence and being represented by an attorney if defendant wants to hire one, appellate courts are unlikely to see any need for a writ instead.

However, the appellate division judge does have the discretion to consider a request for an extraordinary writ challenging a ruling in a small claims case. For example, the judge may do so if he or she considers the issue raised to be of statewide importance, or in order to make sure that the small claims division is generally being consistent in how it is acting under the law. Not every legal or factual error made by a small claims judge will form a ground for the granting of a writ.

Writs can only address certain legal errors. Writs can only address the following types of legal errors made by a small claims court:

- The small claims court has a legal duty to act but:
  - Refuses to act
  - Has not done what the law says it must do

- Has acted in a way the law says it does not have the power to act

- The small claims court has performed or says it is going to perform a judicial function (like deciding a person's rights under law in a particular case) in a way that the court does not have the legal power to do.

7 Can the appellate division consider a request for a writ in *any* small claims case?

No. Different courts have the power (called "jurisdiction") to consider requests for writs in different types of cases. Requests for writs in small claims cases may be considered in one of three different ways, depending on the stage of the case:

- Requests for writs relating to actions of the small claims division *other* than postjudgment enforcement orders are considered by a single judge in the appellate division. This covers requests for writs on any rulings relating to the initial small claims trial, including the judgment.

- Requests for writs relating to superior court actions in small claims cases on appeal are not considered by the appellate division, but by the Court of Appeal.

- Requests for writs relating to the enforcement of a judgment in a small claims case, whether the judgment was issued at the small claims hearing or at a new trial in the superior court, are considered by the appellate division.

8 Who are the parties in a writ proceeding?

If you are asking for the writ, you are called the PETITIONER. You should read "Information for the Petitioner," beginning on the right side of this page.

The court the petitioner is asking to be ordered to do or not to do something is called the RESPONDENT. In writ proceedings challenging rulings in small claims cases, the small claims court is the respondent.
Any other party in the small claims court case who would be affected by a ruling regarding the request for a writ is a REAL PARTY IN INTEREST. If you are a real party in interest, you should read "Information for a Real Party in Interest," beginning on page 8.

9 Do I need a lawyer to represent me in a writ proceeding?

You do not *have* to have a lawyer; you are allowed to represent yourself in a writ proceeding in the appellate division. But writ proceedings can be very complicated and you will have to follow the same rules that lawyers have to follow. If you have any questions about the writ procedures, you should talk to a lawyer. In limited civil cases and infraction cases, you must hire a lawyer at your own expense if you want one (the court cannot provide one). You can get information about finding a lawyer on the California Courts Online Self-Help Center at *www.courts.ca.gov/selfhelp-lowcosthelp.htm.* You may also get help from the small claims advisors in your county if available. Ask the court how to contact them or look for contact information at *www.courts.ca.gov /selfhelp-advisors.htm.*

INFORMATION FOR THE PETITIONER

This part of the information sheet is written for the petitioner—the party asking for the writ. It explains some of the rules and procedures relating to asking for a writ. The information may also be helpful to a real party in interest. There is more information for a real party in interest starting on page 8 of this information sheet.

10 Who can ask for a writ?

Parties—the plaintiff or defendant— are usually the only ones that ask for writs challenging small claims court rulings. However, in most cases, a person who was not a party does have the legal right to ask for a writ if that person has a "beneficial interest" in the small claims court's ruling. A "beneficial interest" means that the person has a specific right or interest affected by the ruling that goes beyond the general rights or interests the public may have in the ruling.

11 How do I ask for a writ?

To ask for a writ you must serve and file a petition for a writ (see below for an explanation of how to "serve and file" a petition). A petition is a formal request that the

appellate division issue a writ. A petition for a writ explains to the appellate division what happened in the small claims court, what legal error you (the petitioner) believe the small claims court made, why you have no other adequate remedy at law, and what order you are requesting the appellate division to make.

(12) How do I prepare a writ petition?

If you are represented by a lawyer, your lawyer will prepare your petition for a writ. If you are not represented by a lawyer, you must use *Petition for Writ (Small Claims)* (form SC-300) to prepare your petition. You can get it at any courthouse or county law library or online at *www.courts.ca.gov/forms.* This form asks you to fill in the information that needs to be in a writ petition.

a. Description of your interest in the small claims court's ruling

Your petition needs to tell the appellate division judge why you have a right to ask for a writ in the case. As discussed above, usually only a person who was a party in the small claims court case asks for a writ challenging a ruling in that case. If you were a party in the small claims court case, say that in your petition. If you were not a party, you will need to describe what "beneficial interest" you have in the small claims court's ruling. A "beneficial interest" means that you have a specific right or interest affected by the ruling that goes beyond the general rights or interests the public may have in the ruling. To show the appellate division judge that you have a beneficial interest in the ruling you want to challenge, you must describe how the ruling will affect you in a direct and negative way.

b. Description of the legal error you believe the small claims court made

Your petition will need to tell the appellate division judge what legal error you believe the small claims court made. Not every mistake a small claims court might make can be addressed by a writ. You must show that the small claims court made one of the following types of legal errors:

- The small claims court has a legal duty to act but:
  - Refuses to act
  - Has not done what the law says it must do
  - Has acted in a way the law says it does not have the power to act
- The small claims court has performed or says it is going to perform a judicial function (like deciding a person's rights under law in a particular case) in a way that the court does not have the legal power to do.

To show the appellate division judge that the small claims court made one of these legal errors, you will need to:

- Show that the small claims court has the legal duty or the power to act or not act in a particular way. You will need to tell the appellate division judge what legal authority—what constitutional provision, statute, rule, or published court decision—establishes the small claims court's legal duty or power to act or not act in that way.
- Show the appellate division judge that the small claims court has not acted in the way that this legal authority says the court is required to act. You will need to tell the appellate division judge what happened in the small claims court that shows that the small claims court did not act in the way it was required to. If the petition raises an issue that would require the appellate division judge to consider what was said in the small claims court, you will need to write a complete and accurate summary of what was said by you and others, including the court, that is relevant to your request for a writ.
- You can provide this information and the summary of what was said at item 10 of the petition and, as instructed there, you can add additional pages if more room is needed. Note that you will be providing this information, and everything in the petition, under penalty of perjury.

c. Description of why you need the writ

One of the most important parts of your petition is explaining to the appellate division why you need the writ you have requested. Remember, the appellate division judge does not have to grant your petition just because the small claims court made an error. You must convince the appellate division that it is important for it to issue the writ.

Your petition needs to show that a writ is the only way to fix the small claims court's error. To convince the court you need the writ, you will need to show the appellate division judge that you have no way to fix the small claims court's error other than through a writ (this is called having "no adequate remedy at law").

This will be hard to show if the small claims court's ruling can be appealed and a new trial held. If you are a defendant and the ruling you are challenging can be appealed, the appellate division will generally consider this new trial to be a good enough way to fix the small claims court's ruling (an "adequate remedy"). You will need to show the appellate division judge how you will be harmed by the small claims court's error in a way that cannot be fixed by the new trial if the appellate division judge does not issue the writ (this is called "irreparable" injury or harm). For example, the harm you want to prevent may happen before the new trial can be held.

Even if you cannot appeal the ruling you are objecting to, the appellate division judge still does not have to grant the petition. As described above, small claims decisions are meant to be speedy and inexpensive, so appellate review is generally not granted in these cases. You will need to explain why your case should be treated differently.

d. Description of the order you want the appellate division to make

Your petition needs to describe what you are asking the appellate division judge to order the small claims court to do or not do. Writ petitions usually ask that the small claims court be ordered to cancel ("vacate") its ruling, issue a new ruling, or not take any steps to enforce its ruling.

If you want the appellate division judge to order the small claims court not to do anything more until the appellate division judge decides whether to grant the writ you are requesting, you must ask for a "stay." If you want a stay, you should first ask the small claims court for a stay. You should tell the appellate division judge whether you asked the small claims court for a stay. If you did not ask the small claims court for a stay, you should tell the appellate division judge why you did not do this. This information is requested in the petition form.

If you ask the appellate division judge for a stay, make sure you also check the "Stay requested" box on the first page of the *Petition for Writ (Small Claims)* (form SC-300) and complete item 12c on that form.

e. Verifying the petition

Petitions for writs must be "verified." This means that the petitioner (or in certain circumstances the petitioner's attorney) must declare under penalty of perjury that the facts stated in the petition are true and correct, must sign the petition, and must indicate the date that the petition was signed. On the last page of the *Petition for Writ (Small Claims)* (form SC-300), there is a place for you to verify your petition.

13 Is there anything else that I need to serve and file with my petition?

Yes. Along with the petition, you must serve and file documents showing what happened in the small claims court (see below for an explanation of how to serve and file the petition and other documents). Because the appellate division judge was not there in the small claims court, copies of certain documents from that court that show what happened must be sent to the appellate division judge. These are called "supporting documents." You must also serve any other party in this case, the real party in interest, with a copy of this form *Information on Writ Proceedings in Small Claims Cases* (form SC-300-INFO).

Copies of documents from the small claims court. Copies of the following documents from the small claims court must also be included in the supporting documents:

- The small claims court ruling or judgment being challenged in the petition
- All documents and exhibits submitted to the small claims court supporting and opposing your position
- Any other documents or portions of documents submitted to the small claims court that are necessary for a complete understanding of the case and of the ruling being challenged

What if I cannot get copies of the documents from the small claims court because of an emergency? Rule 8.972 of the California Rules of Court provides that in

extraordinary circumstances the petition may be filed without copies of the documents from the small claims court. If the petition is filed without these documents, you must explain in your petition the urgency and the circumstances making the documents unavailable.

Format of the supporting documents. Supporting documents must be put in the format required by rule 8.972 of the California Rules of Court. You should carefully read rule 8.972. You can get a copy of rule 8.972 at any courthouse or county law library or online at *www.courts.ca.gov/rules.*

(14) Is there a deadline to ask for a writ?

Yes. There are laws (statutes) that require that certain kind of rulings may only be challenged using a writ proceeding. These are called "statutory writs" and the statute usually sets the deadline for serving and filing the petition. For example, a writ challenging a ruling on a motion to disqualify a judge (see California Code of Civil Procedure section 170.3(d)) must be filed within 10 days after notice to the parties of the decision. You will need to check whether there is a statute providing a deadline for filing a challenge to the specific ruling you are challenging. (You can find copies of statutes at any county law library or online at *leginfo.legislature.ca.gov /faces/codes.xhtml*).

If there is not a statute specifically providing for a writ proceeding to challenge a particular ruling, or if the statute does not set a deadline, you should file the petition as soon as possible and not later than 30 days after the court makes the ruling that you are challenging in the petition. While there is no absolute deadline for filing these petitions, writ petitions are usually used when it is urgent that the small claims court's error be fixed. Remember, the appellate division judge is not required to grant your petition even if the small claims court made an error. If you delay in filing your petition, it may make the appellate division judge think that it is not really urgent that the small claims court's error be fixed and the appellate division judge may deny your petition. If there are extraordinary circumstances that delayed the filing of your petition, you should explain these circumstances to the appellate division judge in your petition.

(15) How do I "serve" my petition?

Rule 8.972(d) requires that the petition with the attached supporting documents, along with a copy of this form, be served on any named real party in interest and that the petition be served on the respondent small claims court. "Serving" a petition on a party means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver ("serve") the petition to the real party in interest and the respondent court in the way required by law.
- Make a record that the petition has been served. This record is called a "proof of service." *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. The proof of service must show who served the petition, who was served with the petition, how the petition was served (by mail or in person), and the date the petition was served.

You can get more information about how to serve court documents and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at *www.courts.ca.gov /selfhelp-serving.htm.*

(16) How do I file my petition?

To file a petition for a writ, you must bring or mail the original petition, including the supporting documents and the proof of service, to the clerk for the appellate division of the superior court that made the ruling you are challenging. If the superior court has more than one courthouse location, you should call the clerk at the courthouse where the ruling you are challenging was made to ask where to file your petition.

You should make a copy of all the documents you are planning to file for your own records before you file them with the court. It is a good idea to bring or mail an extra copy of the petition to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

(17) Do I have to pay to file a petition?

Yes. You should ask the clerk for the appellate division where you are filing the petition what this fee is. If you cannot afford to pay this filing fee, you can ask the court to waive this fee. To do this, you must fill out a *Request*

to Waive Court Fees (form FW-001). You can get form FW-001 at any courthouse or county law library or online at *www.courts.ca.gov/forms.* You can file this application either before you file your petition or with your petition. The court will review this application and decide whether to waive the filing fee.

(18) What happens after I file my petition?

Within 10 days after you serve and file your petition, the respondent or any real party in interest can serve and file a preliminary opposition to the petition.

The appellate division judge does not have to wait for an opposition before acting on a petition for a writ, however. Without waiting, the appellate division judge can:

a. Issue a stay.

b. Summarily deny the petition.

c. Issue an alternative writ or order to show cause.

d. Notify the parties that he or she is considering issuing a peremptory writ in the first instance.

e. Issue a peremptory writ in the first instance if such relief was expressly requested in the petition.

Read below for more information about these options.

a. Stay of small claims court proceedings

A stay is an order from the appellate division judge telling the small claims court not to do anything more until the appellate division judge decides whether to grant your petition. A stay puts the small claims court proceedings on temporary hold.

b. Summary denial

A "summary denial" means that the appellate division judge denies the petition without deciding whether the small claims court made the legal error claimed by the petitioner or whether the writ requested by the petitioner should be issued based on that error. No reasons need to be given for a summary denial. Most petitions for writs are denied in this way.

c. Alternative writ or order to show cause

An "alternative writ" is an order telling the small claims court either to do what the petitioner has requested in the petition (or some modified form of what the petitioner requested) or to show the appellate division judge why the small claims court should not be ordered to do what the petitioner requested. An "order to show cause" is similar; it is an order telling the small claims court to show the appellate division judge why the small claims court should not be ordered to do what the petitioner requested in the petition (or some modified form of what the petitioner requested). The appellate division judge will issue an alternative writ or an order to show cause only if the petitioner has shown that he or she has no adequate remedy at law and the appellate division judge has decided that the petitioner may have shown that the small claims court made a legal error that needs to be fixed.

If the appellate division judge issues an alternative writ and the small claims court does what the petitioner requested (or a modified form of what the petitioner requested as ordered by the appellate division judge), then no further action by the appellate division judge is needed and the appellate division may dismiss the petition.

If the small claims court does not comply with an alternative writ, however, or if the appellate division judge issues an order to show cause, then the respondent court or a real party in interest can file a response to the appellate division judge's order (called a "return") that explains why the small claims court should not be ordered to do what the petitioner requested. The return must be served and filed within the time specified by the appellate division judge or, if no time is specified, within 30 days from the date the alternative writ or order to show cause was issued. The petitioner will then have an opportunity to serve and file a reply within 15 days after the return is filed. The appellate division judge may set the matter for oral argument. When all the papers have been served and filed (or the time to serve and file them has passed) and any oral argument is completed, the appellate division will decide the case.

d. Peremptory writ in the first instance

A "peremptory writ in the first instance" is an order telling the small claims court to do what the petitioner

has requested (or some modified form of what the petitioner requested) that is issued without the appellate division judge first issuing an alternative writ or order to show cause. It is very rare for the appellate division judge to issue a peremptory writ in the first instance, and this will not be done unless the respondent and real parties in interest have received notice that the judge might do so, either through the petitioner expressly asking for such relief in the petition or by the judge giving the respondent court and any real party in interest notice and a chance to file an opposition.

The respondent court or a real party in interest can file a response to the appellate division judge's notice (called an "opposition") that explains why the small claims court should not be ordered to do what the petitioner has requested. The opposition must be served and filed within the time specified by the appellate division judge or, if no time is specified, within 30 days from the date the notice was issued. The petitioner will then have a chance to serve and file a reply within 15 days after the opposition is filed. The appellate division judge may then set the matter for oral argument. When all the papers have been served and filed (or the time to serve and file them has passed) and any oral argument is completed, the appellate division judge will decide the case.

INFORMATION FOR A REAL PARTY IN INTEREST

This part of the information sheet is written for a real party in interest—a party from the small claims court case other than the petitioner who will be affected by a ruling on a petition for a writ. It explains some of the rules and procedures relating to responding to a petition for a writ. The information may also be helpful to the petitioner.

(19) I have received a copy of a petition for a writ in a case in which I am a party. Do I need to do anything?

You do not *have* to do anything. The Code of Civil Procedure and California Rules of Court give you the right to file a preliminary opposition to a petition for a writ within 10 days after the petition is served and filed, but you are not required to do this. The appellate division judge can take certain actions without waiting for any opposition, including:

- Summarily denying the petition
- Issuing an alternative writ or order to show cause
- Notifying the parties that the judge is considering issuing a peremptory writ in the first instance
- Issuing a peremptory writ in the first instance if such relief was expressly requested in the petition.

Read the response in section (18) for more information about these options.

Most petitions for writs are summarily denied, often within a few days after they are filed. If you have not already received something from the appellate division judge saying what action the judge is taking on the petition, it is a good idea to call the appellate division to see if the petition has been denied before you decide whether and how to respond.

This would also be a good time to talk to a lawyer. You do not *have* to have a lawyer; you are allowed to represent yourself in a writ proceeding in the appellate division. But writ proceedings can be very complicated and you will have to follow the same rules that lawyers have to follow. If you have any questions about writ proceedings or about whether and how you should respond to a writ petition, you should talk to a lawyer. You must hire a lawyer at your own expense if you want one (the court cannot provide one). You can get information about finding a lawyer on the California Courts Online Self-Help Center at *www.courts.ca.gov /selfhelp-lowcosthelp.htm.* You may also get help from the small claims advisors in your county if available. Ask the court how to contact them or look for contact information at *www.courts.ca.gov/selfhelp-advisors.htm*.

If the petition has not already been summarily denied, you may, but are not required to, serve and file a preliminary opposition to the petition within 10 days after the petition was served and filed. The appellate division judge will seldom grant a writ without first issuing an alternative writ, an order to show cause, or a notice that the judge is considering issuing a peremptory writ. In all these circumstances, you will get notice from the court and have a chance to file a response. Note that

the appellate division judge may issue a peremptory writ without notice if the petitioner expressly asked the court to do so in the petition, that is, asked the court to issue a peremptory writ in the first instance. If the petitioner did that, you may want to consider whether to file a preliminary opposition, to explain why you believe the small claims court made no legal error and why the petitioner is not entitled to a writ.

If you decide to file a preliminary opposition, you must serve that preliminary opposition on all the other parties to the writ proceeding. "Serving and filing" an opposition means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver ("serve") the preliminary opposition to the other parties in the way required by law.

- Make a record that the preliminary opposition has been served. This record is called a "proof of service." *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. The proof of service must show who served the preliminary opposition, who was served with the preliminary opposition, how the preliminary opposition was served (by mail or in person), and the date the preliminary opposition was served.

- File the original preliminary opposition and the proof of service with the appellate division. You should make a copy of the preliminary opposition you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the preliminary opposition to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court documents and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at *www.courts.ca.gov /selfhelp-serving.htm.*

20 I have received a copy of an alternative writ or an order to show cause issued by the appellate division judge. Do I need to do anything?

Yes. Unless the small claims court has already done what the alternative writ told it to do, you should serve and file a response called a "return."

As explained above, the appellate division judge will issue an alternative writ or an order to show cause only if the appellate division judge has decided that the petitioner may have shown that the small claims court made a legal error that needs to be fixed. An "alternative writ" is an order telling the small claims court either to do what the petitioner has requested in the petition (or some modified form of what the petitioner requested) or to show the appellate division judge why the small claims court should not be ordered to do what the petitioner requested. An "order to show cause" is similar; it is an order telling the small claims court to show the appellate division judge why the small claims court should not be ordered to do what the petitioner requested in the petition (or some modified form of what the petitioner requested).

If the appellate division judge issues an alternative writ and the small claims court does what the petitioner requested (or a modified form of what the petitioner requested as ordered by the appellate division judge), then no further action by the appellate division judge is needed and the appellate division judge may dismiss the petition. If the small claims court does not comply with an alternative writ, however, or if the appellate division judge issues an order to show cause, then the small claims court or the real party in interest may serve and file a response to the appellate division judge's order, called a "return."

A return is your argument to the appellate division judge about why the small claims court should not be ordered to do what the petitioner has requested. If you are represented by a lawyer in the writ proceeding, your lawyer will prepare your return. If you are not represented by a lawyer, you will need to prepare your own return. A return is a legal response, either your argument about why the writ is legally inadequate or an "answer." An answer is used to admit or deny the facts alleged in the petition, to add to or correct the facts, and

to explain any legal defenses to the legal arguments made by the petitioner. You should read California Code of Civil Procedure sections 430.10–431.30 for more information about responses and answers. You can get copies of these statutes at any county law library or online at *leginfo.legislature.ca.gov/faces/codes.xhtml*. A return can also include additional supporting documents not already filed by the petitioner.

If you do not file a return when the appellate division judge issues an alternative writ or order to show cause, it does not mean that the appellate division judge is required to issue the writ requested by the petitioner. However, the appellate division judge will treat the facts stated by the petitioner in the petition as true, which makes it more likely the appellate division judge will issue the requested writ.

Unless the appellate division judge sets a different filing deadline in the alternative writ or order to show cause, you must serve and file your return within 30 days after the appellate division judge issues the alternative writ or order to show cause. The return must be served on all the other parties to the writ proceeding. "Serving and filing" the return means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver ("serve") the return to the other parties in the way required by law.
- Make a record that the return has been served. This record is called a "proof of service." *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. The proof of service must show who served the return, who was served with the return, how the return was served (by mail or in person), and the date the return was served.
- File the original return and the proof of service with the appellate division. You should make a copy of the return you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the return to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court documents and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at *www.courts.ca.gov /selfhelp-serving.htm.*

(21) I have received a copy of a notice from the appellate division judge indicating it is considering issuing a peremptory writ in the first instance. Do I need to do anything?

Yes. You should serve and file a response called an "opposition."

As explained in the answer to question (18) , a "peremptory writ in the first instance" is an order telling the small claims court to do what the petitioner has requested (or some modified form of what the petitioner requested as ordered by the appellate division judge) that is issued without the appellate division judge first issuing an alternative writ or order to show cause. The appellate division judge will seldom issue a peremptory writ in the first instance without first giving the parties notice and a chance to file an opposition. However, when the appellate division judge issues such a notice, it means that the appellate division judge is strongly considering granting the writ requested by the petitioner.

An opposition is your argument to the appellate division judge about why the small claims court should not be ordered to do what the petitioner has requested. If you are represented by a lawyer in the writ proceeding, your lawyer will prepare your opposition. If you are not represented by a lawyer, you will need to prepare your own opposition. An opposition is a response to the legal arguments made by the petitioner. Unless the appellate division judge sets a different deadline in the notice that the judge is considering issuing a peremptory writ, you must serve and file your opposition within 30 days after the appellate division issues the notice. The opposition must be served on all the other parties to the writ proceeding. "Serving and filing" the opposition means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver ("serve") the opposition to the other parties in the way required by law.
- Make a record that the opposition has been served. This record is called a "proof of service." *Proof of Service (Appellate Division)* (form APP-109) can be

used to make this record. The proof of service must show who served the opposition, who was served with the opposition, how the opposition was served (by mail or in person), and the date the opposition was served.

- File the original opposition and the proof of service with the appellate division. You should make a copy of the opposition you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the opposition to the clerk when you file your original, and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court documents and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at *www.courts.ca.gov /selfhelp-serving.htm.*

22 What happens after I serve and file my return or opposition?

After you file a return or opposition, the petitioner has 15 days to serve and file a reply. The appellate division judge may also set the matter for oral argument. When all the papers have been filed (or the time to file them has passed) and any oral argument is completed, the appellate division judge will decide the case.