

§ 470C.54 Petition for Writ of Mandate to Enforce Request for
Records under Public Records Act [Gov. Code § 6259]

[1] FORM

SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____

_____, [name],
Petitioner,
vs. _____ [name],
Respondents.

NO. _____
PETITION FOR WRIT OF
MANDATE

Petitioner respectfully represents:

1. Petitioner, _____, is a resident of _____ County, California.
[If petitioner is not an individual, state petitioner's identity as corporation,
partnership, or other entity].

2. Respondent _____ [identify, e.g., Air Resources Board of the State
of California] is _____ [status of respondent in state government, e.g.,
an administrative agency within the California Environmental Protection
Agency, which is a department in the Resources Agency of the state
government].

3. On _____ [date], Petitioner completed and filed with defendant
agency a written request to inspect or receive copies of the following public
records: _____ [describe records as stated in request]. Petitioner's
request reasonably described these records and was made in accordance
with defendant agency's rules stating the time, place and procedures for
obtaining _____ [access to or copies of] public records. Copies of
plaintiff's request are herein enclosed as Exhibit _____ and made a part
thereof.

4. Respondent agency maintained these records at the agency office in
Sacramento, California.

5. On _____ [date], Respondent agency refused to permit Petitioner to
inspect or receive copies of these records. Respondent agency claimed that
the records were exempt from disclosure under the public interest exemp-
tion to the Public Records Act [Gov. Code § 6255]. A copy of Respondent
agency's decision to prohibit disclosure is attached as Exhibit _____.

6. Petitioner claims that the public interest exemption does not prohibit
disclosure of these records, and that Petitioner is entitled to disclosure of
these records under the Public Records Act [Gov. Code § 6253]. The
information contained in these records is not subject to the public interest
exemption because _____ [specify].

7. Petitioner _____ [has tendered or was at all times herein mentioned ready to tender] \$_____ in fees to cover respondent agency's costs in providing _____ [access to or copies of] the aforementioned records.

8. Respondent agency has refused to provide petitioner with _____ [access to or copies of] these records.

9. Respondent agency is obligated to disclose these records to Petitioner under the Public Records Act [Gov. Code § 6253].

10. Petitioner has exhausted all administrative remedies provided by Respondent agency in that _____ [describe steps taken by plaintiff seeking administrative remedies provided by defendant agency's internal procedures, and defendant's denial of such remedies at each step].

11. Petitioner has no adequate remedies at law in that _____ [specify facts in addition to those previously alleged showing inadequacy of any legal remedy to which petitioner might be entitled, e.g., monetary damages will not compensate petitioner for deprivation of access to the information which petitioner is seeking].

12. Petitioner has incurred costs in the amount of \$_____ and reasonable attorney's fees in the amount of \$_____.

WHEREFORE, petitioner prays judgment as follows:

[1. *If alternative writ procedure is used:* For an alternative writ of mandate directing respondent agency disclose the public records requested by Petitioner or to show cause why respondent agency should not do so;]

2. For a peremptory writ of mandate _____ [to the same effect as the alternative writ except for the order to show cause or set out terms at length as in Paragraph 1 of this prayer, omitting words relating to order to show cause];

3. For costs and reasonable attorney's fees, in addition to any other relief granted or other costs awarded;

4. For costs of suit herein incurred [and for reasonable litigation expenses]; and

5. For such other and further relief as the court may deem proper.

By: _____ [signature]

Attorney for Petitioner

VERIFICATION

I, _____ [name], am the petitioner in the above-entitled proceeding. I have read the foregoing petition and know the contents thereof. The same is true of my own knowledge except as to those matters which are therein alleged on information and belief, and as to those matters, I believe it to be true.

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

_____ [date]

_____ [signature]

[2] Use of Form

The form in [1], *above*, is a petition for a writ of mandate for use by the person aggrieved to obtain judicial review of a state agency decision to withhold disclosure of a public record under the Public Records Act [Gov. Code § 6259(a)].

For discussion and forms regarding declaratory relief, *see* Ch. 182, *Declaratory Relief*. For discussion of mandate proceedings, *see* Ch. 358, *Mandate and Prohibition*, which also contains forms that may be adapted to seek relief under Gov. Code § 6258. For a detailed discussion of injunctions, *see* Ch. 303, *Injunctions*.

[3] Verification

A verification is required [Code Civ. Proc. § 1086]. The requirements for a verification are set out in Code Civ. Proc. § 446 [see Code Civ. Proc. § 1109; *see also* Code Civ. Proc. § 2015.5 (form of declaration under penalty of perjury)]. If the petition was inadvertently not verified, the court may allow an amendment for the purpose of supplying a verification [Franchise Tax Bd. v. Municipal Court (1975) 45 Cal. App. 3d 377, 384, 119 Cal. Rptr. 552].

[4] Caption and Introduction

The petition will be filed in the superior court. The caption will, therefore, reflect that fact and identify the county where the petition is filed [see Code Civ. Proc. §§ 422.30 (caption of pleading), 1109]. In setting out the title of the proceeding [see Code Civ. Proc. §§ 422.30 (caption of pleading), 1109], counsel should describe the respondent as an administrative agency without using any individual's name. Generally, the petition should name as respondent the decision-making authority of the agency [Elliott v. Contractors' State License Board (1990) 224 Cal. App. 3d 1048, 1056, 274 Cal. Rptr. 286], particularly since the petitioner may otherwise run the risk of denial of the writ for failure to state a cause of action because the appropriate agency decision-making authority is not named as a party [see Elliott v. Contractors' State License Bd. (1990) 224 Cal. App. 3d 1048, 1050, 1056 (declining to consider whether petitioner's failure to name appropriate decision-making authority would have been sufficient reason, standing alone, to deny writ)].

The parties are customarily called "petitioner" and "respondent" because the initial pleading is customarily called a "petition" [see Code Civ. Proc.

§ 1086]. The parties may be called "plaintiff" and "defendant" [Code Civ. Proc. § 1063], but this is seldom done. If there are two or more petitioners or respondents, all must be identified in the caption of the petition [Code Civ. Proc. §§ 422.40, 1109].

The character of the proceeding, which must be briefly stated in the caption [see Cal. Rules of Ct., Rule 201(f)(6)], is sufficiently described by the phrase "PETITION FOR WRIT OF MANDATE [Code Civ. Proc. § 1086]." Generally, there is no requirement that the petition expressly refer to Code Civ. Proc. § 1086. Whether or not a local rule requires it, inclusion of a citation to Code Civ. Proc. § 1086 in the caption is advisable because it will avoid confusion [see *Grimes v. Hoschler* (1974) 12 Cal. 3d 305, 308 n.3, 115 Cal. Rptr. 625, 525 P.2d 65]. It is customary to begin the petition with an introductory phrase such as "Petitioner respectfully represents" or, more simply, "Petitioner alleges."

[5] Essential Allegations

The petition must state facts tending to show the following:

- The Respondent agency is obligated to disclose the records under the Public Records Act [Gov. Code §§ 6253, 6259(b)]
- The Respondent agencies refusal to disclose the records is not justified under the exemption provisions of the Public Records Act [Gov. Code §§ 6254, 6255]
- The petitioner is beneficially interested in issuance of the writ—that is, he or she has standing to sue [see Code Civ. Proc. § 1086].
- The petitioner has exhausted administrative remedies [see *Abelleira v. District Court of Appeal* (1941) 17 Cal. 2d 280, 291-296, 109 P.2d 942].
- The petitioner has no plain and speedy remedy in the ordinary course of law [see Code Civ. Proc. § 1086].

[6] Identity of Petitioner

If the petitioner is not a natural person, the petition should allege the petitioner's identity as an existing legal entity entitled to sue (i.e., to come into court) [see *Parker v. Bowron* (1953) 40 Cal. 2d 344, 351, 254 P.2d 6]. This is sometimes referred to as the capacity to sue.

[7] Petitioner's Standing to Sue

A petition for writ of mandate will be granted only where it is necessary to protect a substantial right and only when it is shown that some substantial damage will be suffered by the petitioner if the petition is denied. The writ will not be issued except on the verified petition of a person beneficially interested [see Code Civ. Proc. § 1086]; it will not be issued where the petitioner fails to show that it will subserve or protect some right or interest

of his or hers; it will not be issued where it is apparent that the petitioner has no direct interest in the act sought to be coerced and that no benefit can accrue to him or her from its performance. Therefore, it is necessary for the petitioner to allege facts showing that he or she has some right or interest in the act sought to be coerced. In other words, the petitioner must show in his or her petition that he or she has standing to sue. This is the nature of the requirement concerning beneficial interest [see *Parker v. Bowron* (1953) 40 Cal. 2d 344, 351, 254 P.2d 6 (distinguishing capacity and standing to sue)].

[8] Attorneys' Fees

Attorneys fees and costs are recoverable by a prevailing plaintiff, and by a defendant when plaintiff's claim is clearly frivolous [Gov. Code § 6259(d)].

[9] Prayer for Relief

The prayer must necessarily be framed in terms of the relief which the court may give in light of what the petitioner will prove. An alternative writ will be requested unless the notice procedure is used. The petitioner should specify what terms he or she desires in the alternative writ.

A peremptory writ should be requested, of course. If the notice procedure is used instead of the alternative writ procedure, the desired terms of the peremptory writ should be recited. If an alternative writ is sought, however, it is sufficient to refer to the terms of the alternative writ (except for the language respecting the order to show cause).

Attorney's fees and reasonable litigation expenses should be requested if they can properly be sought, and a request for costs should be included.

[10] Service

When a petition for a writ of mandate is filed, it must be accompanied by proof of service of a copy of the petition on the respondent and the real party in interest named in the petition. The petition is served according to the provisions of Code Civ. Proc. §§ 1010-1020 governing the service of papers generally. However, if a petition is sought pursuant to the provisions of Code Civ. Proc. § 1088.5 (filed in a trial court and no alternative writ sought), proof of service need not be filed with the petition, and the action may be filed and served in the same manner as an ordinary action. When the real party in respondent's interest is a board or commission, the service must be made on the presiding officer, or on the secretary, or on a majority of the members, of the board or commission [Code Civ. Proc. § 1107].

[11] Cross References

For discussion and forms regarding declaratory relief, see Ch. 182, *Declaratory Relief*

For discussion of mandate proceedings, *see* Ch. 358, *Mandate and Prohibition*, which also contains forms that may be adapted to seek relief under Gov. Code § 6258

For a detailed discussion of injunctions, *see* Ch. 303, *Injunctions*

For other forms for use in mandate proceedings, including writs of mandate, alternative, and peremptory writs, *see* Ch. 474C, *Procedures in Reviewing Agency Decisions*.

For forms of allegations of petitioner's (or plaintiff's) capacity to sue, *see* Ch. 20, *Allegations Commonly Used*

For alternative forms of captions and introductions, and discussion of the subject, *see* Ch. 108, *Captions and Introductions*

For discussion and forms of verification, *see* Ch. 572, *Verification*

For memoranda of points of points and authorities supporting and opposing petitions for writs of mandate generally, *see* CALIFORNIA POINTS AND AUTHORITIES, Ch. 150, *Mandate and Prohibition* (Matthew Bender).

For memoranda of points and authorities supporting and opposing petitions for administrative mandate, *see* CALIFORNIA POINTS AND AUTHORITIES, Ch. 195, *Public Administrative Law* (Matthew Bender)