

## **Using the Writ Process**

By Keith J. Staten

When the DMV has taken an action against your driving privileges, you should always request a hearing if afforded one. There are several issues in dispute and having the opportunity to address these issues at the hearing will set up a challenge if you fail to succeed at the hearing.

The Writ of Mandate procedure under CCP sections 1094.5 or 1085 will allow you to appeal the decision of an administrative agency (DMV). You may also be able to prevent the suspension of the license even though the period of suspension has started. Using the Ex Parte Request for a Stay procedure, you can gain a stay of the license suspension pending the outcome of your appeal by Writ of Mandate. If you gain a stay, you may be able to continue driving for up to a year. It will depend on how fast you set the hearing on the Writ of Mandate.

By pursuing the Writ process, you may be able to overturn the decision of the DMV hearing officer. When you file a writ, you are asking the Superior Court Judge to review the record made by the DMV at the hearing, and based on the law and arguments, find that the hearing officer made a wrong decision based on the state of the facts and law.

When you appear at the DMV hearing, you must make the proper objections and arguments in the hearing and on the record in order to preserve the issues for the Writ. It is good to hire counsel or consult with one to have the issues stated at the hearing and preserved on the record.

Although using the Writ process can be expensive (from \$750 to \$5,000), it can result in reversing the DMV hearing officer's decision and allow you to drive for a substantial period of time after the suspension was scheduled to begin.

Consult with me about this option even if you did not have counsel at the hearing or in court.