

MCLE presentation by Ben Vance of the California Supreme Court

Summary by ADI Staff Attorney Patricia Ihara

On June 22, 2017, Ben Vance a staff attorney at the California Supreme Court (CSC), gave an MCLE presentation at ADI on “When Petitions For Review Go Wrong: Common Problems and Solutions.” If you missed it, or want to hear it again, you can find the audio webinar and an outline of the seminar on the ADI website in the MCLE materials.

While the outline covers the main points of the presentation, Mr. Vance offered a number of good tips for both new and experienced practitioners:

PETITIONS FOR REVIEW:

- When requesting a grant of review, don’t assume that the reader knows anything about your case. The CSC wants to know “why did the Court of Appeal err?”
- A cut-and-paste of the AOB arguments is seldom helpful. In a petition that stands-out, the problem is clearly identified and the writing is “crisp and clear.”
- Don’t short shrift a prejudice analysis. Prejudice is “essential.” In a petition for review, you are trying to convince the CSC to grant the petition. The more you can flesh out the prejudice analysis the better. Explaining why the Court of Appeal’s prejudice analysis is wrong is particularly important in IAC claims.
- If there is a serious error in the Court of Appeal’s analysis, for example, it missed a controlling authority, overlooked critical evidence, or petitioner presented a prima facie case in a habeas petition but the Court of Appeal summarily denied it, you can request a “grant and transfer.”

WRITS:

- When the Court of Appeal denies a petition for writ of habeas corpus and you want to challenge the Court of Appeal’s decision, you must file a petition for review. But, if the Court of Appeal issues a summary denial, you can either petition for review or file an original writ in the CSC. If you file an original writ, you can add new legal arguments and new evidence. Because an original writ will be on a different time track from the direct appeal, it needs to stand alone and provide the CSC with all the necessary supporting documents. Assume the CSC does not have the record on appeal.

STYLE:

- “You can’t go wrong” if you use the California Style Manual.
- It is fine to use “appellant” or “defendant” in a petition for review of the direct appeal. Use “petitioner” when the petition involves review of a petition.

GRANT AND HOLD:

- If your case is on “grant and hold” with other cases and the issue in your case is different from that of the lead case, you can send a letter to the court requesting co-lead status, or, you can ask that your issue be addressed in the lead case. Alternatively, you can file an amicus brief. When multiple cases presenting the same issue are on grant and hold, in deciding which case should be the lead case, the CSC might choose the best briefed case as the lead case.

DEPUBLICATION:

- Prior to Chief Justice George’s court, the CSC used the depublication process to shape the law. Since then, it has cut back on the number of cases it depublishes. Typically, the CSC depublishes cases when it disagrees with the reasoning or conclusions of the Court of Appeal when the issue is not of statewide importance to remove borderline or clearly erroneous opinions.

We encourage all panel attorneys to attend the quarterly noon presentations, in person or remotely, as they offer an invaluable opportunity to get answers to your questions and MCLE credit. But, even if you are not looking for MCLE credit, check out the MCLE offerings on the ADI website. There is a wide-array of topics with speakers who offer candid insights into what we need to know to provide the best representation for our clients.