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Availability of Appellate Writ Relief

§16.118 b. Right to Privacy

In determining whether to grant writ review, courts continue to place emphasis on the right to privacy embodied in Cal Const art I, §1. For example, in *Palay v Superior Court* (1993) 18 CA4th 919, the court issued an alternative writ because the case involved an issue of first impression in the areas of privilege and constitutional privacy that was also “of general importance to the trial court and the profession.” 18 CA4th at 925. The question presented was whether a nonlitigant mother may, in an action by her son for negligence against a hospital and doctors, assert her statutory privilege and constitutional right of privacy to prevent discovery of her prenatal records. See also *Starbucks Corp. v Superior Court* (2011) 194 CA4th 820 (trial court allowed precertification discovery requiring Starbucks to review job applications to identify applicants with prior marijuana convictions and disclose information to class counsel; disclosure would harm putative class member’s privacy rights); *Alch v Superior Court* (2008) 165 CA4th 1412, 1422 (trial court denied discovery on privacy grounds; writ issued because trial court failed to properly weigh interests and should have allowed some discovery); *Kahn v Superior Court* (1987) 188 CA3d 752, 769 (trial court ordered university professor to be deposed about confidential faculty meeting concerning petitioner’s possible permanent appointment to teaching position; mandate issued to set aside that order based on professor’s right to privacy).

Courts have issued writs on a wide range of privacy issues, including

- **Financial privacy.** Courts have held that the right to privacy gives a litigant a presumptive right to a protective order restricting the use of discovered personal financial data. *Moskowitz v Superior Court* (1982) 137 CA3d 313, 317; *Richards v Superior Court* (1978) 86 CA3d 265, 272. But see *GT, Inc. v Superior Court* (1984) 151 CA3d 748, 754 (no presumption applied when corporate financial information sought concerning antitrust and unfair competition allegations).
- **Tax data.** A writ may issue to overturn an order requiring disclosure of data contained in sales tax returns. *Sav-On Drugs, Inc. v Superior Court* (1975) 15 C3d 1, 5 (writ of prohibition issued).
- **Sexual privacy.** A plaintiff does not surrender her right to privacy by bringing a sexual harassment suit. *Vinson v Superior Court* (1987) 43 C3d 833, 842 (writ of mandate issued).

limiting discovery of plaintiff's sexual history and setting standards for such inquiries in future cases). See also *Fults v Superior Court* (1979) 88 CA3d 899, 903 (writ of mandate issued limiting inquiry into mother's sexual history in paternity suit). In *John B. v Superior Court* (2006) 38 C4th 1177, 1181, a wife sought discovery of her husband's medical records and sexual history to confirm her allegations that he knowingly or negligently infected her with HIV. The husband filed a writ petition after the trial court permitted broad discovery into his sexual history and medical records. The supreme court limited discovery to protect the identities of the husband's previous sexual partners, denied requests for admissions concerning his lifestyle, and temporally limited discovery to the period of possible infection.

- **Marital privacy.** The marital relationship is a foundation for the right to privacy. *Tylo v Superior Court* (1997) 55 CA4th 1379, 1388 (in wrongful termination suit based on pregnancy discrimination, court of appeal issued writ of mandate; trial court erred in ordering plaintiff to answer deposition questions relating to possible emotional distress arising out of her marital relationship).
- **Associational privacy.** The right to associational privacy may also be protected by a writ. See *Britt v Superior Court* (1978) 20 C3d 844, 859 (writ of mandate issued to prevent forced disclosure of information on political affiliation, which violated freedom of association); *Church of Hakeem, Inc. v Superior Court* (1980) 110 CA3d 384, 387 (writ of prohibition issued nullifying contempt order and discovery order for refusal to disclose membership list in answer to interrogatories, on ground that disclosure order violated right of associational privacy of innocent nonlitigant church members). But see *Bodenheimer v Superior Court* (1980) 108 CA3d 885, 889 (writ petition denied; in defamation action, question concerning petitioner's membership in defendant organization did not violate right to associational privacy); *Davies v Superior Court* (1984) 36 C3d 291, 300 (petition for writ of mandate denied because trial court and real party in interest complied with alternative writ; nonetheless, in automobile accident case, court of appeal decided that information about other accidents at that location that did not disclose identifying material was not privileged, disapproving long line of contrary cases).
- **Medical privacy.** See *Ombudsman Servs. of N. Cal. v Superior Court* (2007) 154 CA4th 1233, 1239 (mandate issued to prevent disclosure of records of long-term care facility not involving deceased plaintiff and his representatives); *Doyle v Superior Court* (1996) 50 CA4th 1878, 1887 (writ of mandate issued; plaintiff's allegation of past emotional distress did not place her mental condition in controversy and did not justify order for mental exam); *Jones v Superior Court* (1981) 119 CA3d 534, 544 (writs denied; right to privacy; physician-patient privilege). See also *John B. v Superior Court*, *supra*.
- **Juvenile records.** See *R.S. v Superior Court* (2009) 172 CA4th 1049 (denying writ challenging order permitting disclosure of Child Abuse Services Team's tape of victim in juvenile's court file subject to protective order; trial court did not abuse its discretion in balancing competing interests).
- **Privileged communications or information.** On possible writ review of discovery orders impinging on privileged communications or information, see §§16.120–16.122.

PRACTICE TIP► It is essential to ask the appellate court to stay a discovery order requiring the disclosure of private or privileged information in connection with the filing of a writ petition. Without a stay, compliance with the discovery order may render the matter moot. On requesting a stay in appellate court writ proceedings, see chap 19.



For further discussion, see [California Civil Writ Practice: Availability of Appellate Writ Relief](#), chapter 16 (Cal CEB). Available in print and through [OnLAW](#).

Get a thorough understanding of all aspects of preparing, filing, or opposing a writ petition in the Superior Court, Appellate Court, and Supreme Court of California. Topics covered include: Action by superior court and challenging the decision, availability of appellate writ relief, review of court of appeal's decision, and petitions in the California Supreme Court.