

Mandamus: Recent Trends and Developments

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Overview

- ❑ “Statistics.”
- ❑ Procedural snafus.
- ❑ The building blocks of an exceptional case (or not).
- ❑ Current Issues.



“STATISTICS”

- ❑ Oral argument.
- ❑ Grant Rate.
- ❑ Types of issues when granted.



PROCEDURAL SNAFUS

- Wrong form of appeal. Forms not fungible.
 - Is the order a final judgment?
 - Is interlocutory review available?
 - Are the statutory or common law requirements for mandamus review met?



PROCEDURAL SNAFUS

- ❑ Wrong respondent. “[J]udge of a district or county court...”
 - Not an associate judge.
 - Perhaps successor judges.
 - “judge of a district court who is acting as a magistrate at a court of inquiry”
- ❑ Wrong court. “[I]n the court of appeals district...”



PROCEDURAL SNAFUS

- No 52.3(j) certification.
- The record.
 - Sworn or certified.
 - File-stamped if possible.
 - Supports relief requested.
 - Transcript or Rule 52.7(a)(1) certification.
 - Seeking to order trial court to rule.
 - Supplement after opinion.



Mandamus Requirements

- ❑ Abuse of discretion or violation of legal duty imposed by law;
and
- ❑ Inadequate remedy by appeal.



Inadequate Remedy by Appeal

- Historical (1958, 1992).
 - No review of incidental trial court rulings.
 - Must involve more than mere expense or delay of awaiting appeal.
- Benefits > Detriments (of mandamus) (2004).
 - Not categorical or ad hoc.
- Exceptional Circumstances/Balancing test (2009-10).



Detriments of mandamus review

- ❑ Interferes with trial court proceedings.
- ❑ Distracts appellate resources from issues not important to ultimate disposition or uniform development of law.
- ❑ Adds unproductively to expense and delay of civil litigation.



Benefits of mandamus review

- Review of significant rulings in exceptional cases, e.g.,
 - Preserve important substantive and procedural rights.
 - Appellate courts give needed guidance on issues that would evade review.
 - Spare private parties and public time and money utterly wasted enduring eventual reversal of improperly conducted proceedings.



General Categories

- ❑ Void orders.
- ❑ Forum selection clauses.
- ❑ Forum non conveniens.
- ❑ Certain discovery orders.
- ❑ Exclusive administrative jurisdiction.
- ❑ Caveat: “if otherwise warranted.”

OTHER RULINGS: BUILDING BLOCKS FOR BALANCING TEST

- Categorical or preservation of...
 - public policy or interest (*administration of justice, statutory scheme, child's best interests*) or
 - private right (*constitutional, statutory, contractual, property*).
- Utter waste of resources.
- Issue would evade appellate review.
- Guidance on the law needed.



Current Issues: New Trial Grant

- Grant of new trial.
 - State reasons.
 - Review of grounds?
 - Practical considerations.



Current Issues: Arbitration

- Review of FAA Arbitration Orders by Interlocutory Appeal.
 - CPRC § 51.016. Effective 9/1/09.
 - “would be permitted by 9 U.S.C. § 16.”
 - Interlocutory perfection deadlines apply.
 - Supreme court jurisdiction to review?



Current Issues: Docket Control

- Increased review of transfer, severance, intervention, and nonsuit orders.
 - Refusal to strike intervention.
 - Severance/bifurcation.
 - Nonsuit after transfer of venue.
 - Joinder.
 - RTPs.



Current Issues: Discovery

- Traditional Discovery Categories.
 - Inability to cure discovery error (e.g., privileged document disclosure).
 - Severely compromises claim or defense.
 - Disallowed discovery/evades appellate review.
 - McAllen—balancing test. Narrower? Broader?
- Contrast federal general lack of availability of review of attorney-client privileged documents rulings.



Current Issues: Privacy

- Pre-Suit Discovery.
- Net Worth Discovery.
 - Scope.
 - Legal Basis. Factual Basis.
 - Post Judgment.
- Computer Forensic Discovery.
 - *Weekley* requirements.
 - Privacy concerns.
 - Order of rulings.



□ *Thank you.*