COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

GARY ALLEN JOHNSON,

Petitioner,

v.

APPELLATE DIVISION OF THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CRUZ,

Respondent.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Real Party in Interest.

6 Civil No. H039764

Santa Cruz County Superior Court
Case Nos. AP001660 & M64170

BRIEF OF AMICUS CURIAE BY THE CALIFORNIA ACADEMY OF APPELLATE LAWYERS IN SUPPORT OF PETITIONER GARY ALLEN JOHNSON

Appeal from a Judgment of the Superior Court
Of the State of California, County of Santa Cruz
Ariadne Symons and Paul Burdick, Judges

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TO BE FILED IN THE COURT OF APPEAL

APP-008

COURT OF APPEAL, Sixth APPELLATE DISTRICT, DIVISION	Court of Appeal Case Number: H039764
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): CALIFORNIA ACADEMY OF APPELLATE LAWYERS JAY-ALLEN EISEN, SBN: 042788 2431 CAPITOL AVENUE SACRAMENTO, CALIFORNIA 95816 TELEPHONE NO.: 916-444-6171 FAX NO. (Optional): 916-441-5810 E-MAIL ADDRESS (Optional): jae@eisenlegal.com ATTORNEY FOR (Name): Amicus Curiae, CA Academy of Appellate Lawyers	Superior Court Case Number: AP001660 & M64170 FOR COURT USE ONLY
APPELLANT/PETITIONER: Gary Allen Johnson RESPONDENT/REAL PARTY IN INTEREST: Santa Cruz County Sup. Court, et al.	

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

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1. This form is being submitted on behalf of the following party (*name*): Amicus Curiae, CA Academy of Appellate Lawyers

2. a. ☑ There are no interested entities or persons that must be listed in this certificate under rule 8.208.

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(1)	
(2)	
(3)	
(4)	
(5)	

☐ Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: January 23, 2014

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INTRODUCTION

The late Judge Frank M. Coffin, former Chief Judge of the First Circuit United States Court of Appeals observed, "'The whole reason for there being more than one judge on an appellate court is that the different perceptions, premises, logic, and values of *three or more* judges ensure a better judgment.'" (Coffin, The Ways of a Judge (1980) at p 174, quoted in *Moles v. Regents of University of California* (1982) 32 Cal.3d 867, 873.

Contrary to this precept, the respondent Appellate Division of the Superior Court, Santa Cruz County, has decided that two judges are sufficient to constitute an appellate court. Although Code of Civil Procedure section 77 provides that the appellate division consists of three judges, the court reads the statute to allow a two-judge appellate division and provide for three judges as a maximum number, not a minimum.[1]

The court is wrong. Subdivision (b) of section 77 requires that three judges shall participate in hearing and deciding cases. The legislative history of section 77 confirms that it is intended to require the appellate division to sit as a three-judge court. California Rules of Court governing the appellate division and which have the force of legislation implicitly, if not necessarily, require a three-judge panel. The cases on which the respondent ap-

[1] All statutory citations are to the Code of Civil Procedure unless otherwise indicated.

pellate division relies in holding that two judges are sufficient do not support the holding.

I

UNDER CODE OF CIVIL PROCEDURE SECTION 77 THREE JUDGES MUST HEAR AND DECIDE ALL APPEALS AND WRIT PETITIONS IN THE APPELLATE DIVISION

Code of Civil Procedure section 77 establishes the superior court appellate division. Subdivision (a) provides, "In every county and city and county, there is an appellate division of the superior court *consisting of three judges* or, when the Chief Justice finds it necessary, four judges." (Emphasis added.) The statute contains no exception allowing an appellate division to consist of fewer than three judges.

Subdivision (b) of section 77 contains the key language: "In each appellate division, no more than three judges shall participate in a hearing or decision. The presiding judge of the division shall designate the *three judges who shall participate*." (Emphasis added.) On superficial reading, the first sentence might seem to prescribe a maximum number of judges in an appellate division, allowing only two judges to hear and decide cases. The purpose of the first sentence, however, is only to account for appellate divisions in which the Chief Justice has found it necessary to exercise authority under subdivision (a) to appoint four judges. The first sentence

specifies that only three of them may hear and decide a case, not the entire division.

And the first sentence of subdivision (b) cannot be read in isolation. As this Court has held, "'"[t]he meaning of a statute may not be determined from a single word or sentence; the words must be construed in context . . . ; each sentence must be read not in isolation but in light of the statutory scheme. . . ."'" (*In re L.A.* (2009) 180 Cal.App.4th 413, 426-427 [quoting *People v. Shabazz* (2006) 38 Cal.4th 55, 67–68].) The opening words of subdivision (b) itself make its provisions applicable "[i]n each appellate division. . . ." Nothing in subdivision (b) states or suggests that its terms are limited to appellate divisions with four judges.

The first sentence of subdivision (b) must, therefore, be read together with the second sentence, which is unequivocal and mandatory: "*three judges . . . shall participate*" in a hearing or decision (emphasis added). The meaning of the language is plain. A panel of only two judges who hear and decide a case violates the explicit command of section 77, subdivision (b) that, in each appellate division, three judges must participate in hearing and deciding cases.

II
LEGISLATIVE HISTORY CONFIRMS THAT A PANEL OF THREE JUDGES MUST HEAR AND DECIDE CASES IN AN APPELLATE DIVISION[2]

Respondent's discussion of the legislative history glosses over the most significant portions. In fact, the Legislature at one time authorized two-judge, even one-judge appellate departments in superior courts with fewer than three judges. But, as the following history will show, the Legislature subsequently mandated three-judge appellate department panels in all counties. And, the current language of section 77, subdivision (b) was explicitly intended to require an appellate division to sit in three-judge panels.

In 1929, the Legislature created the superior court appellate department in Code of Civil Procedure section 77, which provided merely that superior courts had appellate jurisdiction of cases arising in municipal, justice and other inferior courts. (Stats. 1929, ch. 465, § 2; respondent's request for judicial notice, Exh. A.[3]) A companion bill adopted section 77a, establishing an appellate department of three judges in every superior court in a county or city and county that also had a municipal court. (Stats. 1929, ch. 465, § 1, Exh. B.) Section 2 of the same bill adopted section 77b, which generally required "the presence of two judges of such department" to

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[2] The Academy joins in respondent's motion for judicial notice of the relevant legislative history documents.

[3] All further exhibit citations are to the exhibits of which respondent has requested judicial notice.

transact the appellate department's business and also required "the concurrence of two judges" to pronounce a judgment.

In 1953, Government Code section 69540 was enacted, providing for an appellate department in superior courts that had three or more judges. (Stats. 1953, ch. 206, § 1, Exh. C.) A statute adopted later that year further amended section 69540 to authorize the chair of the Judicial Council to designate four judges to sit in the appellate department of any superior court with more than 50 departments—in effect, in Los Angeles County—with the proviso that "in such case no more than three of the judges so designated shall participate in the hearing or decision of any matter coming before the department. . . ." (Stats. 1953, ch. 1387, § 1, Exh. D.)

In 1955, the Legislature repealed Code of Civil Procedure sections 77a and 77b and Government Code section 69540 and consolidated the rules governing appellate departments in section 77. (Stats. 1955, ch. 527, § 1, Exh. E.) Among other things, new subdivision (b) of section 77 provided the authority to appoint four judges to the appellate department in large superior courts, with a maximum of three judges to hear and decide cases.

Significantly, but not discussed by respondent, subdivision (b) also provided that in superior courts with fewer than three judges, "the senior or sole judge of such court shall convene the same as necessary to hear cases on appeal. . . ." The amendment, in other words, authorized one- and two-

judge appellate department panels in superior courts with less than three judges.

Six years later, in a statute respondent includes in its legislative history exhibits but does not mention in its argument, the Legislature abolished one- and two-judge appellate departments. (Stats. 1961, ch. 937, § 1, Exh. F.) Section 77 was rewritten to provide:

> "(b) The appellate department in a county in which there is only one judge of the superior court shall consist of such judge who shall be the presiding judge and two additional judges who shall be designated by the Chairman of the Judicial Council. . . .
>
> "(c) The appellate department in a county with two judges of the superior court shall consist of such judges, one of whom shall be designated as presiding judge by the Chairman of the Judicial Council, and one additional judge designated by the Chairman of the Judicial Council."

Id.[4]

The Legislature, thus, repealed the authorization for appellate departments of fewer than three judges that it had adopted in 1955, requiring appellate departments in all counties, even those with only one or two supe-

[4] The judge or judges appointed to bring an appellate department to three judges could be from another county or retired from any California court. *Id.*

rior court judges, to be composed of three judges.[5] Senator Grunsky, author of the measure, AB 866, explained the underlying philosophy in urging the Governor to sign it into law. "If the number of judges in a court is less than three, the sole or senior judge sits as the Appellate Department, a practice inconsistent with the usual Federal and State tradition of multi-judge appellate departments." (Exh. K to respondent's request for judicial notice; see *State of California v. Altus Finance, S.A.* (2005) 36 Cal.4th 1284, 1296 [considering legislative sponsor's letter urging Governor to sign bill into law and describing its effect]; *Young v. McCoy* (2007) 147 Cal.App.4th 1078, 1086, fn. 8 [same]).)

The State Bar summarized the provision in its review of that year's legislation: "In all counties, including where before only one judge sat as the appellate department, an appellate department shall now consist of a *three-judge panel.*" (*Selected 1960-1961, California Legislation* (September-October 1961) 36 Journal of the State Bar of California at page 701; emphasis added.) Professor Clark Kelso subsequently wrote in his analysis of California's appellate courts, "The appellate department sits in *three-judge panels. . . .*" Kelso, A Report on the California Appellate System (1994) 45 Hast.L.J. 433, 438 (emphasis added).

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[5] The only exception is section 77, subdivision (h), which authorizes one judge of the appellate division to hear traffic infraction appeals.

Any doubt whether section 77 requires three-judge appellate division panels in every county was erased when current subdivision (b) was adopted in 1998. (Stats. 1998, ch. 931, § 21.) The Law Revision Commission proposed the language as part of the statute adopted to implement the constitutional revision that year, Proposition 220, which unified the trial courts and created the appellate division. (28 Cal.L.Rev.Comm. Reports (1998) 51, 55, 59-61.) The commission was explicit in stating, "Subdivision (b) continues the rule that *the appellate division sits in panels of three*." (*Id.*, p. 137, emphasis added.)

In short, "[t]he appellate division of the superior court consists of three-judge appellate panels. (Code Civ. Proc., § 77, subd. (b).) In functioning as an appellate court, the appellate division sits as a three-judge court to hear and decide cases." (*In re Ramirez* (2001) 89 Cal.App.4th 1312, 1319-1320, review denied.)

III

THE CALIFORNIA RULES OF COURT IMPLICITLY REQUIRE THAT AN APPELLATE DIVISION PANEL CONSIST OF THREE JUDGES

Subdivisions (f) and (g) of section 77 authorize the Judicial Council to prescribe the powers of the appellate division and its practice and procedure. The California Rules of Court implicitly, if not necessarily, require at least three judges in an appellate division panel. (*Cf., People v. Brigham*

(1979) 25 Cal.3d 283, 287 [Rules of Court implicitly recognize right to oral argument on appeal].)

Rule 8.887(a) allows an appellate division to decide an appeal without written opinion. But, if the court issues an opinion, it "must identify the participating judges, including the author of the *majority* opinion and of any concurring or dissenting opinion, or the judges participating in a 'by the court' opinion." (Emphasis added.) Likewise, under rule 8.935(a)(2), effective January 1 of this year, if an appellate division issues a written opinion on a writ petition, the opinion "must identify the participating judges, including the author of any *majority* opinion and of any concurring or dissenting opinion, or the judges participating in a 'by the court' decision." (Emphasis added.)

It follows that, if only two appellate division judges participate in hearing and deciding an appeal or writ petition, there can never be a majority opinion. Instead, the result in every case would be either a unanimous opinion of the two, or an evenly split decision. There must be a third judge before there can ever be a majority.

The same principle is found in rule 8.1005(a)(2), which allows the appellate division to certify a case for transfer to the court of appeal "by a *majority* of the appellate division judges to whom the case has been assigned or who decided the appeal or, *if the case has not yet been assigned, by any two appellate division judges*." (Emphasis added.) At least three

judges are necessary before there can be a majority to certify a case for transfer. Thus, the italicized phrase adds the necessary implication that, when a case has been assigned, it will have been assigned to more than two judges.

Rule 8.1105(b) provides that appellate divisions, as well as courts of appeal, may publish opinions in the Official Reports "if a *majority* of the rendering court certifies the opinion for publication before the decision is final in that court." And under subparagraph (c)(9), an opinion should be certified for publication if it "[i]s accompanied by a separate opinion concurring or dissenting on a legal issue, and publication of the *majority and separate opinions* would make a significant contribution to the development of the law." (Emphasis added.) Yet again, without three judges, there can never be a majority opinion. And, as section 77, subdivision (d) requires the concurrence of two judges of the appellate division, on a two-judge panel there can never be a majority opinion with a separate dissenting or concurring opinion.

Subdivisions (f) and (g) of section 77 specifically authorize the Judicial Council to promulgate these rules governing the practices and procedures of the appellate division. These rules of court implementing section 77 have the force of legislation and are entitled to great weight and judicial deference. (*Sara M. v. Superior Court* (2005) 36 Cal.4th 998, 1011-1014.)

A two-judge appellate panel leads to an anomalous, if not absurd, result. If the two judges cannot agree, there is an evenly split decision on the merits. Therefore, there is no decision at all, since section 77, subdivision (d) provides, "The concurrence of two judges of the appellate division of the superior court shall be necessary to render the decision in every case. . . ." If there are only two justices who cannot agree, there is no decision and the judgment is necessarily affirmed. (See 9 Witkin, Cal. Proc. 5th (2008) Appeal, section 778, p. 848; *cf., Amwest Surety Ins. Co. v. Wilson* (1995) 11 Cal.4th 1243, 1266 [where court of appeal's decision did not clearly indicate two justices concurred in grounds, decision failed to comply with constitutional requirement that reasons for decision be stated in writing].) Thus, when an appellate division case is decided by only two judges who disagree, *one* superior court judge, the one whose decision is to uphold the judgment, has the unilateral power to affirm *another* superior court judge.

This is contrary to the very nature of an appellate court. As Judge Coffin noted in The Ways of a Judge,"'[T]he shrewd judgment of the architects of our state and federal judicial system that an appellate judge is no wiser than a trial judge. [The appellate court's] only claim to superior judgment lies in numbers: three, five, seven or nine heads are usually better than one.'" (*Id.* at p. 58, quoted in *U.S. v. McConney* (9th Cir. 1984) 728 F.2d 1195, 1201, fn. 8, overruled on other grounds, *Estate of Merchant v. C.I.R.* (9th

Cir. 1991) 947 F.2d 1390, 1392-1393 (9th Cir.1991); see also *Griffin v. United States* (D.C. 1992) 618 A.2d 114, 117 [same].)

An appellate court consisting of only two judges, a court in which a single superior court judge can unilaterally affirm another superior court judge's decision, does not comport with that purpose.

IV
CASES CITED BY RESPONDENT DO NOT SUPPORT THE ORDER FOR A TWO-JUDGE APPELLATE DIVISION PANEL

In holding that an appellate division panel may consist of two judges, respondent relied on the portion of the first sentence of section 77, subdivision (b) stating that "no more than three judges shall participate in a hearing or decision." (Exh. D.) The court reasoned that, as the statute does not say that "at least three" judges must hear and decide cases, three judges are only the maximum number and, therefore, two are sufficient. *Id.*

The first flaw in that analysis is that it overlooks the second sentence of subdivision (b), violating the rule against determining the meaning of a statute from a single sentence in isolation. (*In re L.A.* (2009) 180 Cal.App.4th 413, at pp. 426-427.) Respondent ignores the second sentence which, in conjunction with the first, requires the presiding judge of "each" appellate division to "designate the three judges who shall participate" in hearing and deciding cases.

Respondent attempted to bolster its analysis by citing *Ets-Hoken v. Appellate Department* (1941) 42 Cal.App.2d 326, 328. The case is an anachronism. It construed former section 77b, which was repealed almost 60 years ago and, contrary to respondent's assertion (preliminary opposition at p. 3), was not "similarly-worded" to present section 77, subdivision (b).

When *Ets-Hokin* was decided in 1941, former section 77a established appellate departments of three judges while section 77b required "the presence of two judges of such department" to transact the court's business and pronounce a judgment. (Stats. 1929, ch. 465.) The *Ets-Hokin* court construed that language to fix three judges as the maximum number to hear and decide cases while permitting appellate department panels with only two judges.

As previously discussed, however, sections 77a and 77b were repealed in 1955 when all provisions governing appellate departments were consolidated in section 77. (Stats. 1955, ch. 527, § 1, Exh. E.) And neither former section 77a nor section 77b contained language in any way similar to the current language of section 77, subdivision (b) requiring that in "each appellate division" the presiding judge must designate "the three judges who shall participate" in hearing and deciding cases.

Bracey v. Gray (1945) 71 Cal.App.2d 206, 210, which respondent cites in its preliminary opposition, likewise construed the extinct sections 77a and 77b and is as much a museum piece as *Ets-Hokin*.

In *People v. Castellano* (1978) 79 Cal.App.3d 844, 861-862, the court held that two justices of the court of appeal may hear and determine an appeal in the absence of a third. The court interpreted California Constitution article VI, section 3, which establishes at least one division in each appellate district and provides that each division "shall conduct itself as a 3-judge court. Concurrence of 2 judges present at the argument is necessary for a judgment."

The *Castellano* court noted that article VI, section 3 as originally proposed by the Constitutional Revision Commission would have provided that a division "'has the power of a court of appeal *and shall sit in panels of 3 judges. . . .*'" 79 Cal.App.3d at 862 (court's italics). As adopted, section 3 substituted for that phrase the present language that a division "shall conduct itself as a 3-judge court." The court concluded that the difference in language was significant and construed section 3 "to provide a maximum, rather than a minimum of three judges to conduct the court's proceedings. Since the Constitution retains the requirement two judges present at argument must concur in a judgment, we construe that as the minimum provision." *Id.*

In *Moles*, the Supreme Court acknowledged *Castellano* and described its holding in a footnote, but did not decide or suggest whether *Castellano* is correct. (*Moles*, 32 Cal.3d at 873, fn. 6.) The court had no occasion to consider the question because it held *Castellano* irrelevant to the issue at hand in *Moles*. (*Id.*)

Castellano does not bear scrutiny. Article VI, section 3 requires that a division of a court of appeal "shall conduct itself as a 3-judge court." There is no exception allowing the court to conduct itself as less than a 3-judge court to hear and decide cases.

Moreover, there is no constitutional provision or statute governing the court of appeal that parallels section 77, subdivision (b) and requires the presiding justice of each division to designate three justices to participate in a hearing or decision.

On the other hand, California Rules of Court, rule 8.264(a)(2) requires that a court of appeal's "decision by opinion must identify the participating justices, including the author of the *majority* opinion and of any concurring or dissenting opinion, or the justices participating in a 'by the court' opinion." (Emphasis added.) The rule directly parallels rule 8.887(a) imposing the same requirement that an opinion identify "the author of the majority opinion. . . ." And, as noted earlier rule 8.1105(b) applies to both appellate divisions and courts of appeal in allowing "a majority of the rendering court" to certify an opinion for publication in the Offi-

cial Reports. As with the appellate division, unless there are at least three justices, there can never be a majority opinion, only a unanimous opinion or an evenly split opinion.

Courts of appeal since *Castellano* have repeatedly held that a panel of three justices is necessary to decide a case on the merits. Thus, a court of appeal's ruling, such as on a motion, "will not become the 'law of the case' in a pending appeal unless it reflects a decision on the merits *considered by a panel of three justices*, ultimately acquiesced in by a majority." *Delmonico v. Laidlaw Waste Systems, Inc.* (1992) 5 Cal.App.4th 81, 88, fn. 1; *Dakota Payphone, LLC v. Alcaraz* (2011) 192 Cal.App.4th 493, 509, fn. 6 (citing *Delmonico*); *In re Salvador M.* (2005) 133 Cal.App.4th 1415, 1420, fn. 3 (quoting *Delmonico*; as ruling on motion was signed only by acting presiding justice, it "was not 'a decision on the merits considered by a panel of three justices [and] ultimately acquiesced in by a majority'" and full three-judge panel could reconsider it).[6]

Thus, as a leading treatise on California appellate practice states, under article VI, section 3, "regardless of the number of justices assigned to a particular district or division, each case must be heard by a panel of *three*, and any determination of the merits that is to bind the parties must have the

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[6] In *In re Michael S.* (1987) 188 Cal.App.3d 1448 only two justices signed the decision because the third justice on the case became ill. *Id.* at 1468 at fn. 6. All three justices heard the argument, however, and the panel's decision was unanimous. *Id.*

agreement of *two* justices." Eisenberg, Horvitz & Wiener, Cal. Prac. Guide: Civ. App. & Writs § 11:3 (2013) (italics in original). The same holds true in the appellate division.

Article VI, section 3 imposes a constitutional requirement that the court of appeal conduct itself as a three-judge court. Section 77, subdivision (b), imposes the same requirement legislatively, as do the rules of court having the force of legislation. As with the court of appeal, the appellate division must hear and decide cases as a three-judge panel.[7]

CONCLUSION

In urging the Governor to sign the bill that abolished one- and two-judge appellate departments and established three-judge appellate departments, Senator Grunsky invoked the long tradition of multi-judge appellate courts throughout the state and federal court systems. (Exh. K to respondent's request for judicial notice.)

The respondent appellate division seeks to operate as a two-judge court to economize. The goal is worthy, but section 77 and the rules of court do not permit the appellate division to do so by judicial fiat. *Cf.*, *Ass'n for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal..3d

[7] In contrast, the California Supreme Court is neither constitutionally nor legislatively required to conduct itself as a seven-judge court. So, after the death of Justice Stanley Mosk the court properly conducted itself as a six-judge court to decide cases in which he had heard oral argument. (See, e.g., *Conservatorship of Wendland* (2001) 26 Cal.4th 519.)

384 (service cubacks to meet budgetary crisis invalid where not authorized by statute).

If appellate divisions of two judges are to be permitted, it must be by act of the Legislature, which enacted subdivision (b) of section 77 to require that the appellate department in every superior court sit as a three-judge court. As the 1955 amendment to subdivision (b), which authorized appellate departments of less than three judges, demonstrates, had the Legislature intended the present subdivision (b) to allow appellate division panels of fewer than three judges, "it would have said so; it unquestionably knew the words to employ." *Ass'n for Retarded Citizens*, 38 Cal.3d at p. 393. The appellate division cannot judicially rewrite the statute. *Adoption of Kelsey S.*,1 Cal. 4th 816, 830 (1992).

The appellate division handles appeals from limited jurisdiction cases. That does not mean that the parties in those cases should be given limited justice on appeal.

This Court should grant the appropriate writ directing the respondent appellate department to vacate its decision on the merits of Mr. Johnson's appeal and to reconvene as a three-judge court to hear and decide the case as the Legislature directs.

Dated: January 23, 2014

CALIFORNIA ACADEMY OF APPELLATE LAWYERS
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By: _____
JAY-ALLEN EISEN,
Attorneys for Amicus Curiae,
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CERTIFICATION

I certify, pursuant to rule 8.204, Subdivision (c)(1), California Rules of Court, that the attached **Brief of Amicus Curiae by the California Academy of Appellate Lawyers in Support of Petitioner Gary Allen Johnson** contains 4,091 words, as measured by the word count of the computer program used to prepare this brief.

Dated: January 23, 2014

JAY-ALLEN EISEN LAW CORPORATION

By: _____
JAY-ALLEN EISEN

PROOF OF SERVICE (CCP Sections 1013a, 2015.5)

I, Michelle Micciche, declare:

I am employed in the County of Sacramento, State of California. I am over the age of eighteen years and not a party to the within cause. My business address is 2431 Capitol Avenue, Sacramento, California 95816.

On Thursday, January 23, 2014, I served the within **BRIEF OF AMICUS CURIAE BY THE CALIFORNIA ACADEMY OF APPELLATE LAWYERS IN SUPPORT OF PETITIONER GARY ALLEN JOHNSON** on the interested parties in said action by depositing true copies, enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail addressed as follows:

Rick W. Jarvis **Jarvis, Fay, Doporto & Gibson, LLP** **492 Ninth Street, Suite 310** **Oakland, CA 94607** **[Attorneys for Respondent:** **Superior Court of California,** **County of Santa Cruz]**	**Edwin A. Frey** **4630 Soquel Drive, Suite 12** **Soquel, CA 95073** **[Attorney for Petitioner:** **Gary Allen Johnson]**
Office of the Attorney General **455 Golden Gate Avenue, Suite 11000** **San Francisco, CA 94102** **[Attorney for Real Party in Interest:** **The People of the State of California]**	**Joyce E. Angell** **Office of the District Attorney** **701 Ocean Street, Room 200** **Santa Cruz, CA 95060** **[Attorney for Real Party in Interest:** **The People of the State of California]**
Clerk of the Court **Santa Cruz County Superior Court** **350 McAllister Street** **San Francisco, CA 94102**	**California Supreme Court** **[via electronic filing pursuant to** **Cal. Rules of Court, rule 8.212]**

There is delivery by United States mail at each of the places so addressed, or there is regular communication by mail between the place of mailing and each of the places so addressed.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on January 23, 2014 at Sacramento, California.

Michelle Micciche

MICHELLE MICCICHE