

CALIFORNIA ACADEMY OF APPELLATE LAWYERS

May 19, 2017

Chief Justice Tani G. Cantil-Sakauye and Associate Justices
California Supreme Court
350 McAllister Street
San Francisco, California 94102

Re: *People v. Superior Court (Lara)*

(2017) 9 Cal.App.5th 753 (S241231)

Support for Review of an Issue Not Raised by Petitioner

Honorable Justices:

Pursuant to California Rule of Court 8.516(b)(2), amicus curiae California Academy of Appellate Lawyers requests that the Court review an issue not raised in the Petition, but presented in detail by the opinion in *People v. Superior Court (Lara)*: whether the procedure followed there for decision of a writ petition is constitutional and otherwise lawful. The Academy takes no position on the other issues set forth in the Petition.

The members of the Academy are experienced appellate practitioners whose common goals include promoting and encouraging sound appellate procedures designed to ensure proper and effective representation of appellate litigants, efficient administration of justice at the appellate level, and improvements in the law affecting appellate litigation.

Lara classifies a written opinion denying a writ petition as a decision on a “cause,” with law-of-the-case effect, despite the lack of an alternative writ or order to show cause, or an opportunity for oral argument. (9 Cal.App.5th at pp. 771-772.) The opinion acknowledges its innovation—begun in *Frisk v. Superior Court* (2011) 200 Cal.App.4th 402—and offers a rationale aimed to justify it. (*Lara*, 9 Cal.App.5th at pp. 757-773; see esp. *id.* at pp. 762-763 [“[W]e fail to see how the issuance of an alternative writ is a precondition to the creation of a cause regardless of whether a

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petition is granted or denied, at least when a court follows a procedure such as the one we are following here.”])

The legitimacy of this new approach is an important question of law warranting review. (Cal. Rules of Court, Rule 8.500(b)(1).) This is so for the same reasons that this Court previously reviewed procedural safeguards that must attend decisions on writ petitions, and the effect to be accorded decisions that grant or deny relief. (See, e.g., *Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171; *Kowis v. Howard* (1992) 3 Cal.4th 888; *Brown, Winfield & Canzoneri, Inc. v. Superior Court* (2010) 47 Cal.4th 1233.) Appellate courts must know whether the process *Lara* employed is a lawful option for deciding writ petitions. Counsel and litigants must know whether a writ petition may create law of the case if denied without an alternative writ or order to show cause.

Without taking a position on the merits of this issue, the Academy suggests that depublication of *Lara* (as proposed in a letter on file) would not satisfactorily resolve the question of its legitimacy. New decisions adopting *Lara*'s approach are certain to appear. This Court can determine the propriety of *Lara*'s approach only by reviewing that issue, and it should do so.

Respectfully submitted:



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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 5900 Wilshire Boulevard, 12th Floor, Los Angeles, California 90036.

On May 19, 2017, I served the foregoing document described as: **AMICUS LETTER** on the parties in this action by serving:

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(X) By Envelope: by placing a true copy thereof enclosed in sealed envelopes addressed as above and delivering such envelopes:

(X) By Mail: I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with United States Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

Executed on May 19, 2017, at Los Angeles, California.

(X) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.



Charice L. Lawrie