

**B288091**

**IN THE COURT OF APPEAL  
OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT, DIVISION THREE**

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**1550 LAUREL OWNER'S ASSOCIATION, INC.,**

*Plaintiff and Petitioner,*

*v.*

**SUPERIOR COURT OF CALIFORNIA,**

**COUNTY OF LOS ANGELES,**

*Defendant and Respondent.*

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**STEPHEN MUNSHI,**

*Real Party in Interest.*

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PETITION FROM DECISION BY THE APPELLATE DIVISION OF THE  
LOS ANGELES SUPERIOR COURT, CASE NO. BS170721,  
VACATING ORDER OF THE LOS ANGELES SUPERIOR COURT, CASE NO. 16K12189  
HON. YOLANDA OROZCO, DEPARTMENT 77

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**APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF;  
BRIEF OF AMICUS CURIAE CALIFORNIA ACADEMY OF  
APPELLATE LAWYERS IN SUPPORT OF NEITHER PARTY**

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**LAW OFFICE OF JON B. EISENBERG**

\*JON B. EISENBERG (SBN 88278)

509 TUCKER STREET

HEALDSBURG, CALIFORNIA 95448

(707) 395-0111

jon@eisenbergappeals.com

**CALIFORNIA ACADEMY OF**

**APPELLATE LAWYERS**

SUSAN BRANDT-HAWLEY, PRES. (SBN 75907)

AMICUS CURIAE COMMITTEE

JOHN A. TAYLOR, CHAIR (SBN 129333)

MICHAEL G. COLANTUONO (SBN 143551)

DENNIS A. FISCHER (SBN 37906)

ROBERT S. GERSTEIN (SBN 35941)

REX HEINKE (SBN 66163)

LAURIE J. HEPLER (SBN 160884)

ROBIN B. JOHANSEN (SBN 79084)

ROBIN MEADOW (SBN 51126)

RICHARD A. ROTHSCHILD (SBN 67356)

ATTORNEYS FOR AMICUS CURIAE  
**CALIFORNIA ACADEMY OF APPELLATE LAWYERS**

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**APPLICATION FOR LEAVE  
TO FILE AMICUS CURIAE BRIEF**

Pursuant to rule 8.487(e) of the California Rules of Court, the California Academy of Appellate Lawyers respectfully requests leave to file the attached amicus curiae brief on the first question set forth in this court's order of March 28, 2018: "May the court order transfer after a decision of the appellate division in a writ proceeding?"

The Academy is a nonprofit elective organization of experienced appellate practitioners. Its goals include promoting and encouraging sound appellate practice and 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. The Academy has participated as amicus curiae in many cases before the California Courts of Appeal and the California Supreme Court.

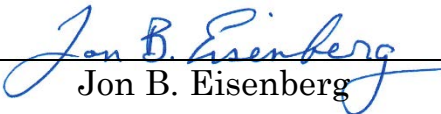
The Academy has no interest in or connection to any of the parties in this case, and the attached amicus curiae brief is not submitted in support of any party. No party or party's counsel authored this brief in whole or in part or made a monetary contribution intended to fund the preparation or submission of the brief. Other than the Academy, its members, or its counsel, no person or entity made a monetary contribution intended to fund the preparation or submission of this brief.

May 18, 2018

**LAW OFFICE OF JON B. EISENBERG**  
JON B. EISENBERG

**CALIFORNIA ACADEMY OF  
APPELLATE LAWYERS**

SUSAN BRANDT-HAWLEY  
JOHN A. TAYLOR  
MICHAEL G. COLANTUONO  
DENNIS A. FISCHER  
ROBERT S. GERSTEIN  
REX HEINKE  
LAURIE J. HEPLER  
ROBIN B. JOHANSEN  
ROBIN MEADOW  
RICHARD A. ROTHSCHILD

By:  \_\_\_\_\_  
Jon B. Eisenberg

Attorneys for Amicus Curiae  
**CALIFORNIA ACADEMY OF  
APPELLATE LAWYERS**

**BRIEF OF AMICUS CURIAE CALIFORNIA ACADEMY OF  
APPELLATE LAWYERS IN SUPPORT OF NEITHER  
PARTY**

**INTRODUCTION**

Amicus curiae California Academy of Appellate Lawyers submits this brief to apprise the court of legal authorities, not addressed by the parties, on the first question set forth in this court’s order of March 28, 2018: “May the court order transfer after a decision of the appellate division in a writ proceeding?”<sup>1</sup>

Code of Civil Procedure sections 1109 and 1110,<sup>2</sup> and case law applying those statutes, indicate that the answer is *yes*. The statutory rules of practice for civil appeals generally apply to appellate writ proceedings, and thus Code of Civil Procedure section 911, which authorizes transfer of an appeal from the appellate division of the superior court to the Court of Appeal, authorizes such transfer after a decision in a writ proceeding.

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<sup>1</sup> The California Supreme Court has acknowledged this issue without adjudicating it. (See *Humphrey v. Appellate Division* (2002) 29 Cal.4th 569, 572, fn. 4.) It has been an open question since 1998, when the California Constitution was amended, in conjunction with trial court unification, to prescribe the original and appellate jurisdiction of the appellate division of the superior court. (See Cal. Const., art. VI, §§ 10, 11.)

<sup>2</sup> All further statutory citations are to the Code of Civil Procedure.

## DISCUSSION

### **I. CODE OF CIVIL PROCEDURE SECTIONS 1109 AND 1110 MAKE THE RULES OF PRACTICE FOR CIVIL APPEALS GENERALLY APPLICABLE TO WRIT PROCEEDINGS.**

The Code of Civil Procedure is divided into four parts. Part 2 (§§ 307-1062.20) prescribes the rules of practice for a civil “action,” which the code defines as “an ordinary proceeding in a court of justice by which one party prosecutes another for the declaration, enforcement, or protection of a right, the redress or prevention of a wrong, or the punishment of a public offense.” (§ 22.) Title 13 of part 2 (§§ 901-936.1) prescribes the rules of practice for appeals in civil actions.

Part 3 (§§ 1063-1822.60) prescribes the rules of practice for a “special proceeding” of a civil nature, which the code defines as “[e]very other remedy.” (§ 23.) Petitions for a writ of mandate, prohibition, or review (also called certiorari) are special proceedings of a civil nature. (§§ 1067 [certiorari], 1085 [mandate], 1103 [prohibition].) Title 1 of part 3 (§§ 1067-1110b) prescribes the rules of practice for such writ petitions.

Within title 1 of part 3 are various specific rules of practice for writ petitions (not relevant here) and two general, controlling statutes. Section 1109 states: “Except as otherwise provided in this Title, the provisions of Part II of this Code [§§ 307-1062.20] are applicable to and constitute the rules of practice in the



proceedings mentioned in this Title.” Section 1110 states: “The provisions of Part II of this Code [§§ 307-1062.20] relative to new trials and appeals, except in so far as they are inconsistent with the provisions of this Title, apply to the proceedings mentioned in this Title.”

In this manner, sections 1109 and 1110 make the rules of practice for civil appeals applicable to writ proceedings, except as otherwise provided in or inconsistent with the rules of writ practice. (See *W.R. Grace & Co. v. California Employment Comm’n* (1944) 24 Cal.2d 720, 726 [writ of mandate “is by statute expressly subject to the rules of practice applicable to other actions when there are no provisions otherwise”].) The purpose of these and other similar provisions in the Code of Civil Procedure is “to make the ‘rules of practice’ in all of these special proceedings identical, so far as not otherwise specifically provided, with those prevailing in civil actions generally.” (*Holman v. Toten* (1942) 54 Cal.App.2d 309, 316.)

Thus, for example, the statutory provision authorizing the imposition of sanctions for prosecuting a frivolous appeal (§ 907) also authorizes the imposition of sanctions for prosecuting a frivolous writ petition. (*Jones v. Superior Court* (1994) 26 Cal.App.4th 92, 96 [“Because section 1109 makes section 907 applicable to proceedings in ‘this [t]itle,’ the phrase ‘this [t]itle’ refers to title 1, Writs of Review, Mandate, and Prohibition, and title 1 expressly covers writ petitions, section 1109 must be read to incorporate section 907 and authorize reviewing courts to impose penalties for petitions for writ of mandate which are

frivolous or taken solely for delay” (footnote omitted)].) Similarly, the statutes providing for a statement of decision in civil actions (§§ 632, 634) also apply to writ proceedings. (*Delany v. Toomey* (1952) 111 Cal.App.2d 570, 571-572.) And the rules for recovery of costs in civil actions (§§ 1021-1038) also apply to writ proceedings. (*Union Trust Co. of San Diego v. Superior Court* (1939) 13 Cal.2d 541, 543.)

## **II. THE RULES OF PRACTICE FOR TRANSFER OF AN APPEAL FROM THE APPELLATE DIVISION OF THE SUPERIOR COURT TO THE COURT OF APPEAL APPLY TO WRIT PROCEEDINGS.**

Section 911 prescribes the rules of practice for transfer of an appeal from the appellate division of the superior court to the Court of Appeal. “A court of appeal may order any case on appeal to a superior court in its district transferred to it for hearing and decision as provided by rules of the Judicial Council when the superior court certifies, or the court of appeal determines, that the transfer appears necessary to secure uniformity of decision or to settle important questions of law.” (§ 911.)

Section 911 appears in part 2 of the Code of Civil Procedure. Thus, section 1109 makes section 911’s transfer procedures applicable to writ proceedings before the appellate division of the superior court, because nothing is “otherwise provided” in title 1 of part 3. (§ 1109; see §§ 1067-1110b.) Likewise, section 1110 makes section 911’s transfer procedures

applicable to writ proceedings before the appellate division of the superior court, because those procedures are not “inconsistent with the provisions of” title 1 of part 3. (§ 1110; see §§ 1067-1110b.)

In short, because sections 1109 and 1110 make section 911 applicable to writ proceedings, this court may order transfer to itself after a decision of the appellate division in a writ proceeding.

### **III. THE COURTS OF APPEAL HAVE APPELLATE JURISDICTION OVER WRIT PROCEEDINGS IN THE APPELLATE DIVISION OF THE SUPERIOR COURT.**

Writ proceedings in the appellate division of the superior court are within this court’s appellate jurisdiction. Under the California Constitution, other than in death penalty cases, the Courts of Appeal “have appellate jurisdiction when superior courts have original jurisdiction in causes of a type within the appellate jurisdiction of the courts of appeal on June 30, 1995, *and in other cases prescribed by statute.*” (Cal. Const., art. VI, § 11, emphasis added.) This italicized phrase authorizes the Legislature to enlarge the appellate jurisdiction of the Courts of Appeal, which the Legislature has done by providing, in section 911, for transfer to the Court of Appeal after a decision on an appeal to the appellate division of the superior court. (*Snukal v. Flightways Mfg., Inc.* (2000) 23 Cal.4th 754, 771.) Because

sections 1109 and 1110 make section 911's transfer procedures applicable to writ proceedings in the appellate division of the superior court, the Legislature has likewise enlarged the appellate jurisdiction of the Courts of Appeal to include such proceedings.

Similarly, the procedures set forth in rules 8.1000-8.1018 of the California Rules of Court for "the transfer of cases within the *appellate* jurisdiction of the superior court" (Cal. Rules of Court, rule 8.1000, emphasis added) likewise apply to the transfer of cases within the *original* jurisdiction of the appellate division—that is, to writ proceedings. Section 911 provides for transfer of appeals according to "rules of the Judicial Council." Rules 8.1000-8.1018 "implement the authority of the Court of Appeal under Code of Civil Procedure section 911." (Cal. Rules of Court, rule 8.1000, Advisory Com. com.) By making section 911—which incorporates the implementing provisions of rules 8.1000-8.1018—applicable to writ proceedings, sections 1109 and 1110 extend those rules to writ proceedings.

## CONCLUSION

For the reasons discussed above, this court should conclude that it may order transfer after a decision of the appellate division in a writ proceeding.

May 18, 2018

**LAW OFFICE OF JON B. EISENBERG**  
**JON B. EISENBERG**

**CALIFORNIA ACADEMY OF  
APPELLATE LAWYERS**

SUSAN BRANDT-HAWLEY  
JOHN A. TAYLOR  
MICHAEL G. COLANTUONO  
DENNIS A. FISCHER  
ROBERT S. GERSTEIN  
REX HEINKE  
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ROBIN B. JOHANSEN  
ROBIN MEADOW  
RICHARD A. ROTHSCHILD

By:   
Jon B. Eisenberg

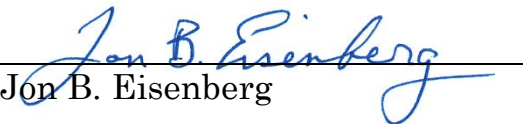
Attorneys for Amicus Curiae  
**CALIFORNIA ACADEMY OF  
APPELLATE LAWYERS**

**CERTIFICATE OF WORD COUNT**

**(Cal. Rules of Court, rule 8.504(d)(1).)**

The text of this brief consists of 1,341 words as counted by the Microsoft Word version 2010 word processing program used to generate the brief.

Dated: May 18, 2018

  
Jon B. Eisenberg

**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 3601 West Olive Avenue, 8th Floor, Burbank, California 91505-4681.

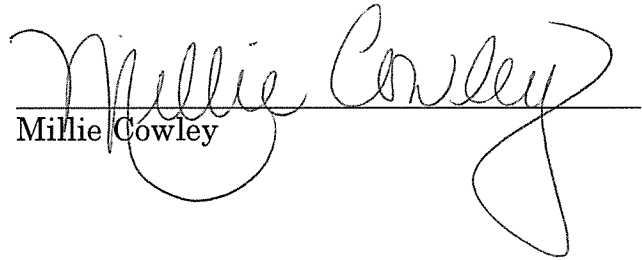
On May 18, 2018, I served true copies of the following document(s) described as **APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF; BRIEF OF AMICUS CURIAE CALIFORNIA ACADEMY OF APPELLATE LAWYERS IN SUPPORT OF NEITHER PARTY** on the interested parties in this action as follows:

**SEE ATTACHED SERVICE LIST**

**BY E-MAIL OR ELECTRONIC TRANSMISSION:** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission via Court's Electronic Filing System (EFS) operated by ImageSoft TrueFiling (TrueFiling) as indicated on the attached service list:

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

Executed on May 18, 2018, at Burbank, California.

  
\_\_\_\_\_  
Millie Cowley

## SERVICE LIST

***1550 Laurel Owner's Association, Inc. v. Superior Court for the County of  
Los Angeles  
Case No. B288091***

Individual/Counsel Served	Party Represented
Sean M. Kneafsey Kneafsey & Friend, LLP 800 Wilshire Blvd., Suite 710 Los Angeles, CA 90017	Attorneys for Real Party in Interest <b><i>Stephen Munshi</i></b>
Joseph C. Watson Law Office of Joseph Watson 930 Westbourne Dr., Ste. 410 West Hollywood, CA 90069	Attorneys for Petitioner <b><i>1550 Laurel Owner's Association, Inc.</i></b>
Michael L. Fox Duane Morris LLP Spear Tower One Market Plaza, Suite 2200 San Francisco, CA 94105-1127	Attorneys for Respondent <b><i>Superior Court of the State of California</i></b>
Hon. Yolanda Orozco Los Angeles Superior Court 111 N. Hill Street, Dept. 77 Los Angeles, CA 90012	Case Nos. BSK12189 and 16K12189 <i>Served via U.S. Mail</i>
Attn: Addie Lovelace Hon. Patti Jo McKay Los Angeles Superior Court Appellate Division 111 N. Hill Street, 6th Floor Los Angeles, CA 90012	Case Nos. BSK12189 and 16K12189 <i>Served via U.S. Mail</i>
Frederick Bennett Los Angeles Superior Court 111 N. Hill Street, Room 546 Los Angeles, CA 90012	Case Nos. BSK12189 and 16K12189 <i>Served via U.S. Mail</i>