

S 5269091 (2021)

**IN THE
SUPREME COURT OF CALIFORNIA**

JON B. EISENBERG,

Petitioner,

v.

**COURT OF APPEAL FOR THE THIRD APPELLATE DISTRICT,
JUSTICE VANCE W. RAYE in his official capacity as
Administrative Presiding Justice of the Court of Appeal for the
Third Appellate District, and JUDICIAL COUNCIL OF
CALIFORNIA,**

Respondents.

**PETITION FOR WRIT OF MANDATE;
MEMORANDUM;
DECLARATION OF JON B. EISENBERG;
EXHIBITS**

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INTRODUCTION

This original writ petition seeks to compel the Court of Appeal for the Third Appellate District to afford statutorily mandated calendar preference to all criminal appeals—a

ministerial duty the court has systemically failed to perform for the past decade. Since 2018, the court has denied calendar preference for at least 278 criminal appeals, with cases languishing from 12 to 99 months after being fully briefed. In some cases, the defendants had already served part or all of a reversed prison term or sentence enhancement—an egregious failure of the appellate process.

Systemic inordinate delay in adjudicating criminal appeals is unconstitutional—a denial of due process. Where a right of appeal is afforded, the adjudicatory process must be timely.

Currently, the Court of Appeal for the Third Appellate

District has yet to calendar at least 66 criminal appeals that have been fully briefed for 12 to 41 months. Expeditious action by this Court is essential to protect dozens of inmates who are threatened with irreparable injury—or the worsening of irreparable injury already suffered—from denial of their constitutional right to timely appellate review.

This systemic denial of statutory and constitutional rights is a stain on the integrity of California's appellate process. This Court should not condone it by inaction.

PETITION FOR WRIT OF MANDATE

A. Jurisdiction.

1. The California Supreme Court has jurisdiction to adjudicate this original writ petition pursuant to article VI,

section 10 of the California Constitution. (See, e.g., *Patterson v.*

Padilla (2019) 8 Cal.5th 220, 247, fn. 20; *Lockyer v. City and County*

of San Francisco (2004) 33 Cal.4th 1055, 1066–1067.) This exercise

of original jurisdiction is necessary because the Court of Appeal for

the Third Appellate District is a respondent. Expeditions

adjudication is essential to protect dozens of incarcerated

defendants facing irreparable injury from the denial of timely

appellate review.

B. Parties.

2. Petitioner Jon B. Eisenberg is a member of the State

Bar of California and a resident of Healdsburg. He brings this

action under Code of Civil Procedure section 1085 to compel

respondents to perform mandatory statutory and constitutional

duties, for which he has public interest standing. (*Save the Plastic*

Bag Coalition v. City of Manhattan Beach (2011) 52 Cal.4th 155,

166 [where question is one of public right and purpose is to enforce

a public duty, petitioner has “public interest standing” and need not

show beneficial interest in result]; accord, *Citizens for Amending*

844.)
appeals. (*Abdullah B. v. Superior Court* (1982) 135 Cal.App.3d 838,

the plaintiffs—must be given calendar preference over all civil
state are parties.” Thus, criminal appeals—in which the People are
appeals to be calendared “after cases in which the people of the
civil appeals calendar preference over all others, requires those
6. Code of Civil Procedure section 44, which gives certain

C. Pertinent Legal Authority.

Judicial Branch, p. 8, available at <www.courts.ca.gov/3045.htm>.)
efficient processing of all cases.” (*Id.*, Strategic Plan for California’s
include measures to “[e]nsure . . . the fair, timely, effective, and
<www.courts.ca.gov/policyadmin-jc.htm>.) Its responsibilities
courts. (California Courts website, Judicial Council, available at
impartial, and accessible administration of justice” in all California
and “is responsible for ensuring the consistent, independent,
Judicial Council) “is the policymaking body of the California courts”

5. Respondent Judicial Council of California (hereafter
the Third Appellate District and is sued in his official capacity.
Raye) is Administrative Presiding Justice of the Court of Appeal for

4. Respondent Justice Vance W. Raye (hereafter Justice
court having jurisdiction over 23 Northern California counties.
District (hereafter Third District) is an intermediate state appellate

3. Respondent Court of Appeal for the Third Appellate

1175.)
Proposition L v. City of Pomona (2018) 28 Cal.App.5th 1159, 1173–

7. Article VI, section 6(d) of the California Constitution requires respondent Judicial Council to "improve the administration of justice," "make recommendations to the courts," and "adopt rules for court administration, practice and procedure, and perform other functions prescribed by statute."
8. As a matter of federal constitutional law, "if a State has created appellate courts as 'an integral part of the ... system for finally adjudicating the guilt or innocence of a defendant,' [citation], the procedures used in deciding appeals must comport with the demands of the Due Process and Equal Protection Clauses of the [U.S.] Constitution." (*Evitts v. Lucity* (1985) 469 U.S. 387, 393.) This means a state's criminal appellate process must be *timely*. "[F]ederal courts have held that undue delay in processing an appeal may rise to the level of a violation of due process." (*Daniel v. State* (Wyo. 2003) 78 P.3d 205, 218 [citing cases].) The Tenth Circuit has enunciated a general rule that delay in adjudicating a noncapital criminal appeal for more than two years after filing of the notice of appeal, including more than 11 months from the completion of briefing to the opinion's filing, raises a rebuttable presumption of prejudice from an ineffective appellate process. (*Harris v. Champion* (10th Cir. 1994) 15 F.3d 1538, 1555-1561 & fn. 11; accord, e.g., *U.S. ex rel. Green v. Washington* (N.D. Ill. 1996) 917 F.Supp. 1238, 1277.)
9. The California Constitution's guarantee of due process (Cal. Const., art. I, § 7) likewise requires timely adjudication of criminal appeals. "[T]he proper and efficient administration of the

penal laws of the state, due regard being had to established procedure, demands a speedy resolution of all appeals taken in criminal cases.” (*People v. Measor* (1912) 20 Cal.App. 339, 341.)

D. Facts.

10. For the entirety of Justice Raye’s decade-long tenure as the Third District’s Administrative Presiding Justice, that court has failed to perform its statutory duty to accord calendar preference to all criminal appeals and its constitutional duty to ensure that the criminal appellate process is timely, thus presumptively prejudicing the defendants in inordinately delayed appeals.

11. Since 2018, the Third District has delayed calendaring at least 278 fully briefed criminal appeals for at least 12 months and as long as 99 months.

a. From 2018 to the present, 212 such criminal appeals were calendared subsequent to civil appeals that were fully briefed more recently, thus presumptively prejudicing the defendants in those criminal appeals. (See Eisenberg Decl., exh. 1.)

b. At least 66 additional criminal appeals currently pending in the Third District are now fully briefed yet have remained uncalendared for at least 12 months and as long as 41 months, despite the ongoing calendaring of civil appeals that were fully briefed more recently, thus presumptively prejudicing the defendants in those criminal appeals.

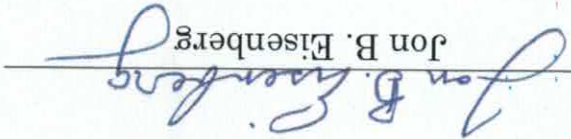
12. These systemic delays have operated to deny hundreds of criminal defendants the right to a timely appellate process.

E. Basis for Relief.

13. This Court may issue a writ of mandate pursuant to Code of Civil Procedure section 1085 to compel a public entity or officer to perform a ministerial duty. (*County of Los Angeles v. City of Los Angeles* (2013) 214 Cal.App.4th 643, 653.) A ministerial duty may be created "either by statute or by constitutional compulsion." (*Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 446.) "A ministerial act is an act that a public officer is required to perform in a prescribed manner in obedience to the mandate of legal authority and without regard to his own judgment or opinion concerning such act's propriety or impropriety, when a given state of facts exists." (*Rodriguez v. Solis* (1991) 1 Cal.App.4th 495, 501-502.)

14. This petition seeks a writ of mandate pursuant to Code of Civil Procedure section 1085 to compel performance of the statutory duty to accord calendar preference to all criminal appeals. (Code Civ. Proc., § 44.)

In Propria Persona

By:  Jon B. Eisenberg

LAW OFFICE OF JON B. EISENBERG
JON B. EISENBERG

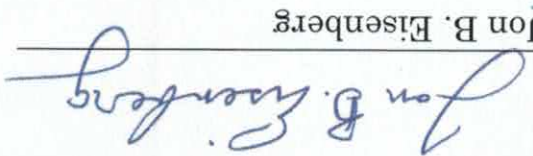
July 6, 2021

3. Grant such other relief as may be just and proper.
 2. Issue a writ of mandate directing respondent judicial Council of California to ensure that respondents Court of Appeal for the Third Appellate District and Justice W. Raye comply with Code of Civil Procedure section 44.
 1. Issue a writ of mandate directing respondents Court of Appeal for the Third Appellate District and Justice W. Raye to (a) comply with Code of Civil Procedure section 44 by giving calendar preference to all criminal appeals, and (b) promptly calendar the 66 pending criminal appeals referenced in exhibit 2 to the Declaration of Jon B. Eisenberg.
- Petitioner prays that this Court:

PRAYER

VERIFICATION

I, Jon B. Eisenberg, declare as follows:
I am the petitioner in this proceeding and wrote the foregoing petition. The facts alleged in the petition are within my own knowledge, and I know these facts to be true.
I declare under penalty of perjury that the foregoing is true and correct and that this verification was executed on July 6, 2021 in Healdsburg, California.



Jon B. Eisenberg

Although there is no federal constitutional right of appeal, "if a State has created appellate courts as 'an integral part of the ... system for finally adjudicating the guilt or innocence of a

II. SYSTEMIC DELAY IN THE CRIMINAL APPELLATE PROCESS IS UNCONSTITUTIONAL.

Courts of Appeal usually means three or four months later. on the next available oral argument calendar—which in most Thus, once a criminal appeal is fully briefed, it must be placed (1982) 135 Cal.App.3d 838, 844, quoting Code Civ. Proc., § 44.) the people of the state are parties." (*Abdullah B. v. Superior Court* criminal appeals receive priority because they are cases 'in which mandating calendar preference for all criminal appeals. "Adult of the state are parties." (*Ibid.*) These provisions have the effect of must be placed on the calendar "next after cases in which the people certain defamation cases. (*Ibid.*) Second, prioritized civil appeals hearing in the courts of appeal" for probate, contested election and civil and criminal appeals. First, the statute requires "preference in priority in calendaring appeals—among civil appeals, and between Code of Civil Procedure section 44 prescribes two forms of

I. CODE OF CIVIL PROCEDURE SECTION 44 GIVES CALENDAR PREFERENCE TO CRIMINAL APPEALS.

MEMORANDUM

defendant, [citation], the procedures used in deciding appeals must comport with the demands of the Due Process and Equal Protection Clauses of the [U.S.] Constitution.” (*Evitts v. Lucey* (1985) 469 U.S. 387, 393.) This means a state’s criminal appellate process must be *timely*. “[F]ederal courts have held that undue delay in processing an appeal may rise to the level of a violation of due process.” (*Daniel v. State* (Wy. 2003) 78 P.3d 205, 218 [citing cases].) “[A]n appeal that is inordinately delayed is ... a ‘meaningless ritual.’” (*Harris v. Champion* (10th Cir. 1994) 15 F.3d 1538, 1558 (*Harris*)).

The Tenth Circuit has enunciated a general rule that delay in adjudicating a noncapital criminal appeal for more than two years after filing of the notice of appeal—including more than 11 months from the completion of briefing to the filing of the opinion—“gives rise to a presumption that the state appellate process is ineffective.” (*Harris, supra*, 15 F.3d 1538 at pp. 1555–1561 & fn. 11.) This “rebuttable presumption of prejudice” is applied where “such delays are chronic and systemic and have resulted in the wholesale denial of the right to a reasonably timely appeal.” (*U.S. ex rel. Green v. Washington* (N.D. Ill. 1996) 917 F.Supp. 1238, 1277 (*Green*)).

“Delays of such magnitude produce an unacceptable threat to the integrity of the appellate process.” (*Id.* at p. 1272.)

The most obvious and egregious prejudice from inordinate delay in a criminal appeal occurs when the defendant has already served part or all of a reversed prison term or sentence enhancement—which has happened more than a few times in the

Third District. (See *post*, pp. 20–22.) In such instances, the right of appeal is wholly subverted.

Prejudice can also occur when delay impairs the defendant's right to a retrial or resentencing after reversal—for example, due to faded memories or lost evidence. (*Harris, supra*, 15 F.3d at p. 1547.) And harm can occur even if a long-delayed appeal eventually proves to be unsuccessful—in the form of emotional damage from the “increased anxiety, mistrust, hopelessness, fear, and depression” that “results from the very thwarting of the hope that liberty will be restored through a right that the State has guaranteed—the appellate process.” (*Green, supra*, 917 F.2d at pp. 1277–1278.)

The rule should be no different under article I, section 7 of the California Constitution. “[T]he proper and efficient administration of the penal laws of the state, due regard being had to established procedure, demands a speedy resolution of all appeals taken in criminal cases.” (*People v. Measor* (1912) 20 Cal.App. 339, 341.)

III. THE THIRD DISTRICT IS SYSTEMICALLY DENYING
STATUTORY CALENDAR PREFERENCE FOR MANY
CRIMINAL APPEALS.

A. Hundreds of Criminal Appeals Have Been Denied
Calendar Preference, With Dozens Yet to be
Calendarred.

Justice Raye was appointed to the Third District in 1991 and became its Administrative Presiding Justice in 2010. His predecessor as Administrative Presiding Justice retired in September 2010. That same month, the Third District commenced a decade-long practice of failing to accord calendar preference to many criminal appeals.¹

From September 2010 to March 2012, Justice Raye authored four decisions in criminal appeals with lapses of 17 to 25 months from fully briefed to submission for decision. (Eisenberg Decl., exh. 5 [docket entries for four appeals].) Thereafter, the number of substantially delayed Third District criminal appeals steadily rose,

¹ Previously, such delay was rare. Petitioner has found only two Third District criminal appeals that were prejudicially delayed during the two years preceding Justice Raye's appointment as Administrative Presiding Justice. (*People v. Petit* (No. C057047, opn, filed May 10, 2010) [18 months from fully briefed to submission for decision; adding 112 days conduct credit after sentence completed] [Eisenberg Decl. No. 3]; *People v. Garcia* (No. C057636, opn, filed Jan. 15, 2010) [14 months from fully briefed to submission for decision; striking 8-month sentence enhancement after sentence completed] [Eisenberg Decl., exh. 4].)

² Petitioner determined the numbers of delayed criminal appeals recounted in this petition by manually reviewing online docket entries for some 20,000 Third District filings. Given the limitations of that methodology, the true numbers are likely higher. The Third District's internal records can complete the picture.

with longer delays. In 2012–2013, Justice Raye authored 17 decisions in criminal appeals with lapses of 13 to 36 months from fully briefed to submission for decision. (Eisenberg Decl., exh. 6 [docket entries for 17 appeals].)

By 2018, in cases authored by Justice Raye and other Third District justices, the court was failing to accord calendar preference to dozens of criminal appeals annually, some with extraordinary delays. From 2018 to the present, at least 212 criminal appeals had lapses of 12 to 99 months from fully briefed to submission for decision. (Eisenberg Decl., exh. 1 [docket entries for 212 appeals].)² Each was calendared months or years after the calendaring of civil appeals that were fully briefed long after those criminal appeals were fully briefed. (Compare Eisenberg Decl., exh. 7 [docket entries for selected criminal appeals fully briefed in 2016-2017 and submitted for decision 46 to 60 months later] with Eisenberg Decl., exh. 8 [docket entries for selected civil appeals fully briefed in 2017–2020 and submitted for decision six weeks to six months later].) Other Third District criminal appeals, however, *have* been accorded calendar preference.

As of this writing, at least 66 fully briefed Third District criminal appeals have yet to be calendared, with lapses of 12 to 41 months from fully briefed to submission for decision. (Eisenberg

Decl., exh. 2 [docket entries for 66 appeals].³ Meanwhile, the Third District continues to calendar civil appeals that have been fully briefed for as few as four to eight months. (Eisenberg Decl., exh. 9 [Third District calendars for March–June 2021].)⁴

B. Calendar Preference Failures Have Prejudiced Many Defendants.

Each of the 278 delayed criminal appeals referenced in this petition exceeds the *Harris* threshold for the rebuttable presumption of prejudice from unconstitutional delay—more than two years from notice of appeal to filing of opinion, including more than 11 months after completion of briefing. (See *ante*, p. 16.) In some of those cases, actual prejudice is demonstrated by the fact that the defendant had already served part or all of a reversed prison term or sentence enhancement by the time of adjudication. For example:

³ This despite the fact that, according to the Third District's clerk/executive officer, "tentative opinions have already been prepared" in many of those cases. (Maclachlan, *California Supreme Court won't transfer cases from 3rd District, despite delays*, S.F. Daily J. (Mar. 18, 2021).)

⁴ The Third District has also failed to accord calendar preference to some probate appeals, as Code of Civil Procedure section 44 also requires. (Eisenberg Decl., exh. 10 [docket entries for four probate appeals with 17 to 21 months from case fully briefed to submission for decision].)

- In *People v. Kalac* (No. C088713, opn. filed June 16, 2021) [16 months from fully briefed to submission for decision], the Third District struck a one-year sentence enhancement only after it had been served. The People had conceded the point from the outset. (Eisenberg Decl., exh. 11.)
 - In *People v. Speegle* (No. C080074, appeal dismissed May 20, 2021) [53 months from fully briefed to dismissal of appeal], the Third District dismissed as moot the defendant's appeal from an order denying his transfer out of Napa State Hospital for outpatient treatment—because he had completed his seven-year commitment pending the appeal. (Eisenberg Decl., exh. 12)
 - In *People v. Weathers* (No. C079704, opn. filed May 10, 2021) [41 months from fully briefed to submission for decision], the Third District struck a partially served 10-year sentence enhancement. Again, the People had conceded the point. (Eisenberg Decl., exh. 13.)⁵
- ⁵ *Weathers* is especially noteworthy because, by contrast, in an almost simultaneously filed appeal presenting the same conceded issue, a different Third District panel ruled just 81 days after the concession, thus giving that defendant the benefit of the courts decision. (*People v. Woods* (No. C081813, opn. filed Jan. 26, 2018) [Eisenberg Decl., exh. 14].)

These systemic failures of calendar preference for Third District criminal appeals may lack bad intent, but they have effectively operated to implement a proposal the Legislature

C. These Systemic Failures Were Presaged.

The extraordinary delay in these cases, resulting in defendants having served part or all of a wrongly imposed sentence, is an egregious failure of the appellate process.

- In *People v. Kent* (No. C062322, opn. filed Mar. 28, 2018) [78 months from fully briefed to submission for decision], the Third District struck an already served eight-month sentence enhancement. (Eisenberg Decl., exh. 17.)
- In *People v. Johnson* (No. C080001, opn. filed Dec. 1, 2020) [24 months from fully briefed to submission for decision], the Third District struck an already served five-year sentence enhancement. (Eisenberg Decl., exh. 16.)
- In *People v. Wrobel* (No. C080296, opn. filed April 30, 2021) [52 months from fully briefed to submission for decision], the Third District reversed a 44-month prison sentence and remanded for misdemeanor sentencing only after the defendant had completed the sentence. (Eisenberg Decl., exh. 15.)

rejected four decades ago—that in criminal cases there should be no absolute right of appeal at all, much less calendar preference.

In 1979, this Court held that the Court of Appeal may not summarily affirm a criminal conviction without full briefing and the right to oral argument, as guaranteed by statute and the California Constitution. (*People v. Brigham* (1979) 25 Cal.3d 283, 285–289.)

In 1981, Justice Raye, at the time Senior Assistant Attorney General for Legislative Affairs, urged the Legislature to supersede *Brigham*, testifying in support of a bill the Attorney General's office was sponsoring—Senate Bill No. 1197 (1981–1982 Reg. Sess.)

[Eisenberg Decl., exh. 18]—which would have eliminated appeals as a matter of right in criminal cases and made criminal appellate review conditioned on the trial judge's discretionary issuance of a "certificate of appeal." The bill failed.

Immediately before Justice Raye's testimony, Court of Appeal Justice Winslow Christian testified in opposition to summary affirmation of criminal convictions and urged the Legislature not to alter the statutory calendar preference for criminal appeals, stating: "[T]hat's a priority that I think is sound. It should not be changed." Justice Raye then testified:

- "[W]e think there should be some limitation on the right to appeal in consideration of the fact that over 90 percent of criminal appeals result in affirmance and a substantial number of that 90 percent could be characterized as frivolous appeals."

(*Court of Appeal Efficiency: Hearing Before the Assembly Judiciary and Criminal Justice Comms., Assembly doc. 1981, no. 945 (Cal. 1981), pp. 27–29 [Justice Christian], 45–50 [Justice Raye], available at <https://digitalcommons.law.ggu.edu/cgi/viewcontent.cgi?article=1225&context=caldocs_assembly> [Eisenberg Decl., exh. 19].)*

A month before this legislative hearing, Justice Raye wrote to members of the Senate opposing an ultimately successful bill to increase the number of Court of Appeal justices statewide. (Assem.

- Under proposed Senate Bill No. 1197, “[a]ppel would be only by a certificate of appeal granted by a trial court... Another proposal that we’re considering is vesting discretion not with the trial court but with the court of appeal to decide whether an appeal, on its face, presents substantial issues that warrant consideration by a panel [of] the court of appeal ... and the court of appeal would have discretion to refuse to entertain an appeal.”
- “We think this Committee should consider a procedure whereby our office on behalf of the people can move for [summary affirmance] of appeals filed with the court of appeal. We attempted to do this under existing law about three years ago and regrettably the Supreme Court ruled the procedure ... improper as not being authorized and in fact being at odds with court rules and with statute ... The case name is *People v. Brigham*.”

Bill No. 1538 (1981-1982 Reg. Sess.) Justice Raye argued that “the more appropriate remedy is to curtail the filing of the frivolous appeal” and “[t]he Courts of Appeal must also become selective in the cases they hear.” (Vance W. Raye, Letter to Members of the Senate re Assem. Bill No. 1538 (1981-1982 Reg. Sess.) Sept. 11, 1981, emphasis added [Eisenberg Decl., exh. 20].)

During Justice Raye’s tenure as Administrative Presiding Justice, the Third District has only selectively complied with Code of Civil Procedure section 44, thus effectively undermining *Brigham* by withholding meaningful appellate review in many criminal appeals—sometimes with serious consequences.

IV. MANDATE LIES TO COMPEL STATUTORY COMPLIANCE.

This Court has original jurisdiction to adjudicate this petition. (Cal. Const., art. VI, § 10; Code Civ. Proc., § 1085; see, e.g., *Patterson v. Padilla* (2019) 8 Cal.5th 220, 247, fn. 20; *Lockyer v. City and County of San Francisco* (2004) 33 Cal.4th 1055, 1066-1067.) Under such jurisdiction, mandate lies to compel public entities and officers to perform ministerial duties. A ministerial duty may be created “either by statute or by constitutional compulsion.” (*Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 446.) “A ministerial act is an act that a public officer is required to perform in a prescribed manner in obedience to the mandate of legal authority and without regard to his own judgment or opinion concerning such act’s propriety or impropriety, when a

given state of facts exists.” (*Rodriguez v. Solis* (1991) 1 Cal.App.4th 495, 501–502 (*Rodriguez*).

The statutory duty of appellate courts to accord calendar preference to every criminal appeal (Code Civ. Proc., § 44) is plainly ministerial. The “act” they are “required to perform in a prescribed manner” (*Rodriguez, supra*, 1 Cal.App.4th at pp. 501–502) is to put fully briefed criminal appeals on the next available calendar. The “given state of facts” (*ibid.*) is a criminal appeal having become fully briefed. Code of Civil Procedure section 44 affords no discretion “concerning such act’s propriety or impropriety.” (*Rodriguez, supra*, at pp. 501–502.)

The gravity of the Third District’s mismanagement of its criminal docket amply justifies exercise of this Court’s original jurisdiction to compel compliance with Code of Civil Procedure section 44. Expeditious restoration of statutorily mandated calendar preference for all Third District criminal appeals is essential to protect dozens of inmates currently facing irreparable injury—or the worsening of irreparable injury already suffered—from denial of their constitutional right to timely appellate review.

CONCLUSION

For the foregoing reasons, this Court should grant relief as prayed in the petition.

In Propria Persona

By: Jon B. Eisenberg
Jon B. Eisenberg

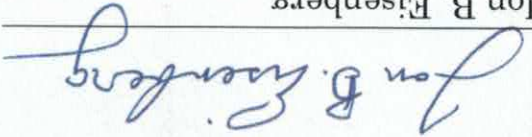
LAW OFFICE OF JON B.
EISENBERG
JON B. EISENBERG

July 6, 2021

CERTIFICATE OF WORD COUNT

The text of this petition consists of 4,049 words as counted by the Microsoft Word version 2019 word processing program used to generate the petition.

Dated: July 6, 2021



Jon B. Eisenberg

APPENDIX A
SUBSTANTIALLY DELAYED CRIMINAL APPEALS
CALENDARED IN 2018-2021

<u>CASE NO.</u>	<u>DEFENDANT</u>	<u>NOA*</u>	<u>CFB**</u>	<u>OPN***</u>
1. C062332	Kent	07/01/09	08/29/11	03/28/18
2. C066714	Garcia	11/19/09	05/03/13	12/18/19
3. C066914	Flores	12/15/10	02/28/12	01/30/18
4. C068036	Sanchez	04/20/11	07/17/13	08/07/18
5. C069187	Cooper	09/09/11	12/28/12	10/29/19
6. C069229	Cardenas	09/13/11	03/27/14	08/14/18
7. C069663	Vang	11/07/11	12/18/12	06/29/18
8. C069945	Flannery	12/12/11	11/08/12	04/16/21
9. C070136	Santay	04/25/12	05/22/13	06/12/18
10. C071466	J.R.	06/22/12	05/10/13	05/14/20
11. C072239	Naylor	10/09/12	04/26/13	07/31/19
12. C072773	Alston	12/20/12	04/10/14	12/28/18
13. C072907	Jones	12/24/12	07/29/13	12/21/18
14. C073673	Ferger	04/29/13	12/30/13	08/31/18
15. C073796	Gutierrez	05/15/13	10/29/13	04/02/18
16. C074051	Carter	06/14/13	02/24/14	09/05/18
17. C074101	Thomas	06/20/13	01/24/14	03/14/18
18. C074267	Blessett	07/12/13	03/02/15	04/30/18
19. C074335	Lydon	07/19/13	04/21/15	12/16/20
20. C074411	Koenig	07/31/13	12/07/16	12/15/20
21. C074438	Penn	08/07/13	10/09/14	02/23/18
22. C074524	Turner	08/16/13	09/08/14	04/15/21
23. C074620	Kumar	08/27/13	02/17/15	08/16/19
24. C074919	Thurman	10/07/13	06/23/14	02/22/19
25. C074940	Haven	10/11/13	06/21/15	08/28/19
26. C075194	Daniels	11/14/13	05/04/15	03/06/18
27. C075423	Smith	12/11/13	09/15/14	07/17/18
28. C075910	Caviness	01/27/14	07/10/17	08/05/20
29. C076124	Jacob	03/21/14	06/22/15	05/03/18
30. C076187	Murphy	04/10/14	11/30/15	01/05/18
31. C076292	Long	04/18/14	03/03/16	07/20/18
32. C076567	Martinez-Costa	05/23/14	09/11/15	06/13/18
33. C076574	Ebert-Stallworth	05/30/14	10/01/15	01/22/18
34. C076691	Kehrer	06/02/14	09/25/15	03/10/21

*Notice of appeal.
** Case fully briefed.
***Opinion.

35.	C076755	Perez	06/18/14	11/30/16	02/04/20
36.	C076773	Prakash	06/25/14	07/13/15	12/17/19
37.	C077018	Riberal	07/23/14	06/26/17	09/29/20
38.	C077096	Bodiford	08/06/14	08/28/15	10/26/18
39.	C077197	Watson	08/18/14	09/14/15	04/07/21
40.	C077279	Ladewig	09/03/14	05/13/16	06/29/21
41.	C077490	Aguirre	09/26/14	08/01/18	pending
42.	C077506	Monroe	09/30/14	07/12/16	08/23/18
43.	C077516	Bradford	10/03/14	11/09/15	01/15/19
44.	C077542	Batty	10/03/14	11/19/15	04/065/18
45.	C077560	Lake	10/14/14	11/12/15	03/22/19
46.	C077621	Stinson	10/15/14	08/21/15	01/16/19
47.	C077666	Lucero	10/24/14	11/17/15	10/25/19
48.	C077711	Warner	10/14/14	06/14/16	05/07/19
49.	C077813	Henry	11/07/14	01/11/16	08/01/18
50.	C077915	Tellez	11/25/14	11/29/16	01/16/19
51.	C077992	Winkler	12/08/14	03/29/16	11/02/20
52.	C078010	Carter	12/11/14	10/19/16	10/30/18
53.	C078140	Rhodes	01/05/15	03/17/16	08/02/18
54.	C078142	Gardea	01/05/15	06/12/17	11/19/20
55.	C078301	MacCallum	01/20/15	03/04/16	07/13/18
56.	C078306	Foley	01/27/15	07/15/15	04/30/18
57.	C078368	Chen	01/29/15	12/07/15	06/29/21
58.	C078388	Wakefield	02/02/15	10/16/15	06/06/18
59.	C078614	Sanford	02/23/15	01/12/17	12/04/20
60.	C078623	Jones	03/02/15	08/25/16	09/28/18
61.	C078749	Inabnit	03/13/15	10/26/15	09/18/18
62.	C078817	Mendoza	03/17/15	10/24/16	12/03/18
63.	C078823	Rumrill	03/12/15	11/25/15	07/03/18
64.	C078854	Fernut	03/13/15	06/21/16	08/27/18
65.	C078900	Abdub-Salam	04/03/15	05/24/16	11/19/18
66.	C078930	Brown	04/02/15	12/09/15	04/05/18
67.	C079134	Hull	04/27/15	03/15/16	01/31/19
68.	C079168	Bermudez	05/07/15	01/19/17	09/25/19
69.	C079181	Powell	05/01/15	08/05/16	04/28/21
70.	C079211	McKnight	05/08/15	11/05/15	04/01/21
71.	C079303	Mullins	04/20/15	12/23/15	03/04/20
72.	C079327	Phillips	05/21/15	09/07/16	03/25/19
73.	C079455	Caranna	06/08/15	05/11/16	09/12/18
74.	C079484	Brown	06/15/15	02/15/17	12/28/20
75.	C079497	Holland	05/12/15	05/24/16	06/15/18
76.	C079554	Flores	06/11/15	05/31/16	12/10/18
77.	C079633	Woodson	06/24/15	07/28/16	01/07/21
78.	C079704	Weathers	06/30/15	09/23/16	05/10/21

79.	C079715	Webster	06/19/15	07/13/16	07/03/19
80.	C079746	Saephan	07/08/15	01/11/16	09/14/18
81.	C079815	Upchurch	07/17/15	03/15/17	10/23/19
82.	C079838	Hellman	07/20/15	01/11/17	04/26/19
83.	C080001	Johnson	07/16/15	08/24/18	12/01/20
84.	C080074	Speegle	07/31/15	11/30/16	05/20/21
85.	C080194	Bell	08/31/15	01/20/16	03/04/19
86.	C080295	Clark	09/21/15	07/26/16	12/09/20
87.	C080296	Wrobel	09/28/15	12/29/16	04/30/21
88.	C080488	Phea	10/08/15	11/22/16	11/28/18
89.	C080547	Devoy	10/26/15	08/09/16	12/04/18
90.	C080564	Discar	10/29/15	01/04/17	11/08/19
91.	C080816	Diaz	12/02/15	02/27/17	07/29/19
92.	C080861	Fernandez	12/01/15	01/30/17	01/20/21
93.	C080890	Maxwell	12/07/15	09/07/17	12/11/20
94.	C080913	Hayhurst	12/15/15	05/03/17	01/14/20
95.	C080915	Polk	12/15/15	03/21/17	08/31/20
96.	C080968	Taylor	12/23/15	10/11/16	07/02/19
97.	C080976	Rodgers	12/24/15	05/19/17	05/04/21
98.	C081038	Hampton	01/07/16	06/05/17	11/01/19
99.	C081210	Wrobel	01/21/16	12/20/16	04/30/21
100.	C081332	Wong	01/17/16	04/14/17	pending
101.	C081371	Scrivens	10/19/15	05/18/17	04/16/21
102.	C081515	B.G.	03/01/16	11/07/16	09/04/20
103.	C081566	Smiley	03/15/16	12/07/17	06/26/20
104.	C081690	Clapp	03/28/16	04/04/17	04/05/21
105.	C081809	Robertson	03/30/16	01/30/17	09/28/20
106.	C081846	Jarrell	03/25/16	05/04/18	04/28/20
107.	C081903	Scott	04/18/16	10/05/17	12/11/20
108.	C082028	Frazier	05/13/16	07/05/17	02/23/21
109.	C082070	Cummings	05/16/16	06/13/17	04/08/21
110.	C082186	Reneaux	05/27/16	08/14/17	06/17/20
111.	C082202	Whiten	06/03/16	03/20/17	05/18/21
112.	C082451	Lemons	07/01/16	03/22/18	05/18/21
113.	C082454	Sanders	07/13/16	04/24/17	03/29/21
114.	C082461	Howze	07/16/16	03/14/17	03/10/21
115.	C082558	Easley	07/21/16	04/13/17	02/23/21
116.	C082597	Clay	07/21/16	04/04/17	12/09/19
117.	C082599	Revels	07/26/16	01/25/17	09/30/20
118.	C082637	Martinez	07/21/16	02/15/17	02/18/20
119.	C082691	Malott	08/10/16	06/22/17	10/23/20
120.	C082696	White	08/05/16	09/05/17	12/10/19
121.	C082704	Ding	08/09/16	02/05/18	02/25/21
122.	C082707	Thompson	08/11/16	05/03/17	08/12/20

123.	C082726	Martinez	08/16/16	03/22/17	01/06/20
124.	C082779	Fries	08/16/16	02/10/17	03/13/20
125.	C082793	Warren	08/16/16	06/27/17	11/22/19
126.	C082836	Griffin	08/25/16	08/07/17	01/10/20
127.	C082871	Sohal	08/22/16	03/07/18	03/18/21
128.	C082895	Williams	08/25/16	02/16/17	12/09/19
129.	C082933	Wiley	08/25/16	02/21/17	02/21/20
130.	C082998	Daniels	09/12/16	04/26/17	05/03/21
131.	C083092	Montanez	09/16/16	08/15/17	05/03/21
132.	C083127	Deponte	09/15/16	08/07/17	04/05/21
133.	C083282	Andrade	10/19/16	11/29/17	12/30/19
134.	C083291	Ashbey	10/20/16	08/31/17	04/28/20
135.	C083349	Dorris	11/01/16	05/08/17	01/10/20
136.	C083364	Lee	11/03/16	07/06/17	05/20/21
137.	C083382	Sanders	08/18/16	06/15/17	02/26/21
138.	C083401	Hasley	11/07/16	07/11/17	07/01/19
139.	C083563	Hixson	12/01/16	06/27/17	06/19/20
140.	C083602	Borhanh	12/14/16	06/07/19	03/16/21
141.	C083652	Warren	12/12/16	11/06/18	04/26/21
142.	C083695	Nunn	12/20/16	05/31/18	03/02/21
143.	C083696	Sprague	11/23/16	07/17/17	03/19/21
144.	C083816	Vasquez	01/06/17	07/25/18	04/20/21
145.	C083898	Martinez	12/22/16	08/13/18	10/02/20
146.	C083931	Cavasso	01/12/17	11/13/18	03/26/21
147.	C083989	Bryson	01/23/17	02/07/18	02/25/21
148.	C084090	Delgado	02/14/17	03/08/18	03/05/21
149.	C084177	Robinson	01/01/17	02/13/18	pending
150.	C084183	Caylor	02/24/17	03/25/19	05/20/21
151.	C084192	Taylor	03/06/17	07/24/19	03/01/21
152.	C084227	Gomez-Garcia	03/09/17	02/14/19	03/30/21
153.	C084385	Rodriguez	03/30/17	04/03/19	03/16/21
154.	C084401	Hamilton	03/30/17	03/25/19	05/20/21
155.	C084423	Reuschel	03/30/17	10/19/17	12/29/20
156.	C084480	Smith	04/06/17	11/09/17	01/31/20
157.	C084505	Cummings	03/28/17	07/16/19	03/03/21
158.	C084561	Saechao	06/28/17	01/24/18	02/26/21
159.	C085017	Wheeler	06/29/17	06/07/18	05/27/21
160.	C085040	Sydnor	06/23/17	04/16/18	04/19/21
161.	C085067	Tannenbaum	07/19/17	03/01/18	02/24/21
162.	C085158	Paisano	07/22/17	06/08/18	10/29/20
163.	C085171	Sobb	09/01/17	05/23/18	03/30/21
164.	C085500	Roberson	09/06/17	05/23/18	03/30/21
165.	C085621	Lewis	09/12/17	03/22/19	05/18/21
166.	C085659	Fields	09/29/17	10/18/18	06/30/21

167.	C085668	Gray	09/29/17	03/13/19	04/19/21
168.	C085703	Ibarra	10/04/17	07/18/18	02/25/21
169.	C085760	Jacob	09/26/17	09/06/19	05/27/21
170.	C085773	Ibarra	10/20/17	02/2018	05/04/21
171.	C085784	Way	10/16/17	10/19/18	03/08/21
172.	C085893	Lozano	10/27/17	04/16/19	04/27/21
173.	C086024	McGarry	11/14/17	04/05/19	06/18/21
174.	C086245	Villalpando-Lua	12/28/17	02/15/19	05/05/21
175.	C086297	Bruno	01/05/18	09/12/18	01/27/21
176.	C086362	Rang	01/24/18	09/23/19	06/30/21
177.	C086379	Espey	01/22/18	01/07/19	05/21/21
178.	C086434	Jackson	01/25/18	08/20/18	05/05/21
179.	C086731	Kelly	03/08/18	03/07/19	06/16/21
180.	C086798	Monroy	03/26/18	03/18/20	06/01/21
181.	C086828	Bonilla-Rodriguez	03/27/18	04/22/19	03/18/21
182.	C086876	Garrison	04/05/18	01/02/19	04/28/21
183.	C086981	Lane	04/23/18	10/21/19	06/11/21
184.	C087003	Gonsalves	04/20/18	07/05/19	05/05/21
185.	C087046	Valdez	04/27/18	12/20/19	06/11/21
186.	C087195	Pharr	05/16/18	12/13/19	05/03/21
187.	C087257	Love	05/24/18	09/09/19	05/19/21
188.	C087380	Mack	06/18/18	02/19/19	06/30/21
189.	C087494	Jones	06/28/18	01/10/20	06/02/21
190.	C087505	Ceton	07/06/18	12/18/18	03/12/21
191.	C087550	Brady	07/10/18	02/25/19	03/03/21
192.	C087717	Nguyen	08/02/18	10/10/19	05/16/21
193.	C087840	Basham	08/27/18	01/06/20	05/18/21
194.	C087893	Guidotti	09/04/18	05/10/19	06/25/21
195.	C088131	Hines	10/11/18	09/19/19	pending
196.	C088191	Hurst	10/16/18	12/02/19	pending
197.	C088231	White	10/18/18	07/29/19	05/04/21
198.	C088251	Sickman	10/26/18	08/27/19	05/10/21
199.	C088497	Rivera	12/05/18	09/23/19	06/11/21
200.	C088522	Cooper	12/07/18	12/27/19	06/23/21
201.	C088533	Sansing	12/17/18	08/20/19	06/08/21
202.	C088677	Watkins	01/08/19	11/04/19	05/21/21
203.	C088713	Kalac	01/18/19	08/28/19	06/16/21
204.	C088796	Thornton	01/29/19	11/19/21	06/23/21
205.	C088842	A.F.	01/28/19	11/05/19	05/07/21
206.	C089046	Clark	03/07/19	03/24/20	04/05/21
207.	C089151	Moody	03/26/19	11/04/19	06/23/21
208.	C089263	Douphus	04/11/19	12/26/19	06/30/21

209. C089300	I.B.	04/18/19	11/06/19	05/07/21
210. C089321	Gatson	04/16/19	12/16/19	06/25/21
211. C089817	Konstantinov	06/25/19	02/03/20	05/21/21
212. C089915	Xiong	07/05/19	11/21/19	06/17/21

**APPENDIX B
UNCALENDARED CRIMINAL APPEALS
PENDING MORE THAN TWO YEARS**

<u>CASE NO.</u>	<u>DEFENDANT</u>	<u>NOA*</u>	<u>CFB**</u>
1. C080269	Vue	09/11/15	06/11/18
2. C081843	Roberts	04/12/16	02/28/18
3. C084075	Brunson	01/09/17	03/29/19
4. C086081	Hampton	12/05/17	06/25/19
5. C086308	Johnson	01/17/18	12/20/19
6. C086444	Banks	01/31/18	09/06/19
7. C086481	Elder	01/24/18	11/15/18
8. C086508	Ramos-Munoz	02/05/18	06/06/19
9. C086562	Gonzalez	02/23/18	12/13/19
10. C086735	Feinga	03/14/18	04/02/19
11. C086844	Payne	04/03/18	08/19/19
12. C086916	Trejo	04/17/18	11/12/19
13. C086934	Gordon	04/16/18	006/7/19
14. C086940	Boston	04/18/18	11/12/19
15. C086993	Testazghi	04/19/18	12/12/19
16. C087027	Graham	04/20/18	04/15/19
17. C087120	Navarro	05/14/18	01/07/20
18. C087191	Schuller	05/15/18	10/03/19
19. C087286	Ralls	05/31/18	02/07/20
20. C087400	Fain	06/11/18	10/08/19
21. C087437	Storrs	06/12/18	08/29/19
22. C087459	Hola	06/22/18	11/25/19
23. C087504	Miles	06/26/18	05/22/20
24. C087530	Kelly	07/06/18	09/05/19
25. C087689	Jones	07/30/18	04/30/20
26. C087737	Hymas	08/01/18	10/10/19
27. C087740	Lynch	08/08/18	11/14/19
28. C087798	Tyler	08/20/18	11/01/19
29. C087827	Contreras	08/27/18	11/12/19
30. C087851	Gonzalez	08/27/18	11/18/19
31. C087887	Lenz	08/27/18	01/07/20
32. C087900	Ingram	08/29/18	02/27/20
33. C087924	C.C.	08/30/18	07/17/19

*Notice of appeal.
**Case fully briefed.

34.	C087972	Bailey	09/14/18	01/14/20
35.	C087974	Rodriguez	09/17/18	08/28/19
36.	C088045	Kaihea	09/26/18	10/11/19
37.	C088207	Fee	10/23/18	02/04/20
38.	C088228	Curtis	10/26/18	09/11/19
39.	C088230	Evans	10/30/18	03/10/20
40.	C088246	Fluker	10/31/18	02/03/20
41.	C088450	Gibson	12/03/18	01/15/20
42.	C088553	Marsh	12/21/18	03/19/20
43.	C088638	McClanahan	01/02/19	10/80/19
44.	C088686	Froste	01/08/19	03/09/20
45.	C088699	Lindstrom	01/09/19	06/01/20
46.	C088716	Mami	01/14/19	11/08/19
47.	C088794	Lobato-Lopez	01/25/19	11/19/19
48.	C088854	Taylor	02/05/19	09/18/19
49.	C088889	Potter	01/14/19	10/11/19
50.	C088913	Alvidrez	02/22/19	05/27/20
51.	C088950	Moppins	02/27/19	12/09/19
52.	C088958	Wright	02/14/19	01/03/20
53.	C089347	Jackson	04/18/19	12/30/19
54.	C089355	McBroom	04/22/19	04/29/20
55.	C089357	Pin	04/19/19	11/15/19
56.	C089437	Riley	05/03/19	01/02/20
57.	C089464	Barefield	05/07/19	11/12/19
58.	C089499	Martinez-Costa	05/13/19	12/26/19
59.	C089581	Adeock	05/20/19	05/11/20
60.	C089718	Ledbetter	06/07/19	05/20/21
61.	C089721	Kelley	06/17/19	01/24/20
62.	C089738	Benzon	06/17/19	05/18/20
63.	C089776	Martinez	06/20/19	01/03/20
64.	C089921	Yang	07/03/19	05/13/20
65.	C089979	Shires	07/17/19	11/25/19
66.	C090009	Roessler	07/17/19	07/06/20

BY OVERNIGHT PRIORITY MAIL: By placing a true copy thereof enclosed in a sealed envelope. The envelope was mailed with postage thereon fully prepaid. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal

Judicial Council of California
455 Golden Gate Avenue
San Francisco, CA 94102-3688
Telephone: (415) 865-4200

Honorable Vance W. Raye
Administrative Presiding Justice
Third Appellate District
914 Capitol Mall,
Sacramento, CA 95814
Telephone: (916) 654-0209

Third Appellate District
914 Capitol Mall,
Sacramento, CA 95814
Telephone: (916) 654-0209

I am a resident in the County of Nevada, State of California. I am over the age of 18 and not a party to the within action. My address is 16931 Oscar Drive, Grass Valley, California 95949. On July 6, 2021, I served the document(s) described as **PETITION FOR WRIT OF MANDATE;** **MEMORANDUM** on the interested parties in this action addressed as follows:

I, Ashley A. Lloyd, declare:

Supreme Court of California Case No. _____

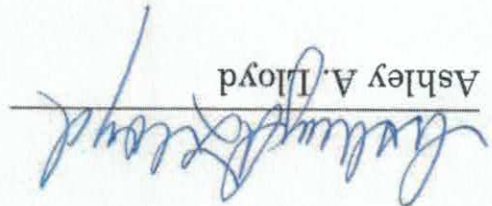
*Jon B. Eisenberg v. Court of Appeal for the
Third Appellate District, et al.*

PROOF OF SERVICE

Service on that same day with postage thereon fully prepaid at Grass Valley, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after service of deposit for mailing in affidavit.

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

Executed on July 6, 2021, at Grass Valley, California.


Ashley A. Lloyd

Eisenberg Reply

I have not previously responded to allegations made by Jon Eisenberg. The allegations were made to news media, I thought it best to restrict my response to the Commission, believing as I did that the Commission could sort through the various accusations, some overblown and some not, and act appropriately.

I have decided that his latest claims, set forth in a petition to the Supreme Court, are of a different sort. His claims are simply wrong. He claims the Third District is "systemically" denying statutory calendar preferences for many criminal appeals. Not so. There are a multitude of statutes providing calendar preferences for various categories of cases, and other priorities are established by motions in individual cases. There is no "systemic" denial of calendar preferences. Preferences are accorded when mandated.

Perhaps, what Mr. Eisenberg fails to appreciate is the volume of cases handled by our court. According to Mr. Eisenberg, "once a criminal case is fully briefed, it must be placed on the next available oral argument calendar—which in most Courts of Appeal usually means three or four months later." There is no basis for Mr. Eisenberg's rule. Our caseload is such that many criminal cases must wait in line behind other criminal cases before being assigned to an attorney and judge for the preparation of an opinion.

We do not place cases on calendar until a tentative opinion is prepared and the parties request oral argument or we set it for argument without a request. Mr. Eisenberg complains about 278 appeals purportedly denied calendar preference since 2018. Nearly 3,000 criminal appeals were filed with our court during that period of time, each of which was accorded calendar preference. We could not comply with Mr. Eisenberg's suggested timeline without a substantial increase in personnel.

Mr. Eisenberg claims a decade-long practice of failing to accord calendar preference commenced with my appointment as presiding justice in September 2010. He claims to have found only two criminal appeals that were "prejudicially delayed" during the two years preceding my appointment. I personally reviewed Judicial Council reports dating back to 1999 documenting the time to filing opinions in criminal appeals from close of briefing or notice of appeal. I cannot assess Mr. Eisenberg's claim of "prejudicial delay" but the Judicial Council reports would not support a claim that delays increased following my appointment.

Finally, I am disappointed with Mr. Eisenberg's claim that the systemic failures of which he complains were "presaged" by testimony I delivered before a legislative committee four decades ago on behalf of a measure supported by the Attorney General. I was doing my job as a staff member speaking on behalf of the Attorney General and don't recall the bill, which would have apparently eliminated appeals as a matter of right in criminal cases. Mr. Eisenberg seems to suggest my remarks reflect a bias which lingers and led me to be hostile to calendar preferences for criminal appeals. Nothing could be further from the truth.



October 28, 2021

RECEIVED

OCT 28 2021

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Hon. Rob Bonta
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Anabel Renteria
Initiative Coordinator

Dear Attorney General Bonta:

Pursuant to Elections Code Section 9005, we have reviewed the proposed statutory initiative regarding child custody and juvenile dependency (A.G. File No. 21-0019).

Background

Jury Trials. Both the U.S. Constitution and the California Constitution state that individuals possess the right to a jury trial in criminal cases and certain civil cases. Under current law, in civil cases where individuals are pursuing the recovery of property or compensation for damages, issues of fact must be tried by a jury unless the jury trial is waived. The California Constitution specifies that juries in criminal and civil cases will typically consist of 12 individuals. Jury decisions in criminal cases must be unanimous, while jury decisions in civil cases can be made with the agreement of 75 percent of the jurors. Currently, jury trials are not used in California for family law cases (such as child custody proceedings) or juvenile dependency cases.

Child Custody. Child custody broadly refers to an individual's rights and responsibilities related to children. There are two types of child custody:

- **Legal Custody.** Legal custody refers to who has the authority to make decisions related to the child's health, education, and welfare. This can include decisions about where the child lives and goes to school, as well as decisions about certain activities, such as those related to religion or travel. If two people (such as the child's parents) have joint legal custody, then both are able to make the above decisions either separately or together. An individual with sole legal custody is the only one who can make such decisions.
- **Physical Custody.** Physical custody refers to whom the child lives with. If two people have joint physical custody, then the child lives with both individuals. An individual with sole physical custody lives with the child all or most of the time. Often, individuals who do not have physical custody of the child have specified visitation rights with the child instead.

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Proposal

Under this measure, an individual has the right to demand a jury trial during any child custody proceeding. The measure also specifies that the court may not contradict a jury's verdict. In addition, the measure states that in civil cases where individuals are seeking "to retain legal rights to their child(ren)," issues of fact must be tried by a jury unless a jury trial is waived. Finally, the measure grants individuals the right to seek a jury trial in juvenile dependency jurisdictional hearings. As discussed earlier, these particular hearings are held to determine whether allegations of child abuse or neglect are substantiated and if the child should be made a dependent of the court.

Fiscal Effects

This measure would have varying fiscal impacts on state and local governments. These impacts would depend on how this measure is interpreted and implemented by the courts, as well as the number of jury trials that would occur as a result of the measure.

State Court Impacts. This measure would result in both one-time and ongoing fiscal impacts on the state courts. Since jury trials are currently not available in child custody proceedings or jurisdictional hearings, the courts would incur minor one-time costs to develop regulations and procedures to allow for such jury trials. It is also likely that some courts could incur one-time costs to modify some existing courtrooms that currently hear such cases, but are not constructed to accommodate a jury. The ongoing fiscal effect of this measure is less certain as it would significantly depend on how the measure is interpreted and implemented by the courts, as well as how individuals respond to its provisions. For example, the measure does not specify whether there is a limit on the number of times a single individual may demand a jury trial in child custody proceedings.

On the one hand, the measure would increase state court costs to the extent that proceedings which currently are decided by a judge are instead decided by a jury. This is because courts would incur additional workload to select and instruct the jury, as well as to rule on what information may be presented to the jury. Longer jurisdictional hearings could also add to the workload of state-funded attorneys representing children and/or parents in juvenile dependency cases. In addition, the measure could result in individuals who otherwise would have reached agreement in uncontested child custody cases now choosing to go to court. To the extent that the measure results in a substantial number of jury trials for child custody proceedings or jurisdictional hearings, the various costs above could potentially reach the tens of millions of dollars annually.

On the other hand, the measure could reduce court costs to the extent that the ability to demand a jury trial serves as an incentive for individuals to (1) resolve child custody disputes outside of court or (2) reach agreement on custody decisions more quickly—thereby reducing court involvement and workload. In view of the above, the ongoing net fiscal impact of this measure on state courts is uncertain.