March 18, 2014

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

Re: *County of Los Angeles v. Superior Court* (2013) 222 Cal.App.4th 434
California Supreme Court Case No. S216134
Letter in Support of Petition for Review (Rule 8.500(g))

TO THE HONORABLE CHIEF JUSTICE TANI CANTIL-SAKAUYE AND THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:

The California State Association of Counties ("CSAC") and the California Association of Public Administrators, Public Guardians, and Public Conservators ("CAPAPGPC") support the Petition for Review filed by the County of Los Angeles in the above-named case.[1]

The Court of Appeal's holding that a court can order a public conservator to file a petition for conservatorship that the public conservator has concluded to be unwarranted deserves this Court's review. (*County of Los Angeles v. Superior Court* (2013) 222 Cal.App.4th 434, 451-454.) This holding is in direct conflict with *People v. Karriker* (2007) 149 Cal.App.4th 763, and it rests on two errors of statutory interpretation. First, by failing to give the phrase "initiate conservatorship proceedings" the same meaning it has in other statutes in pari materia with Penal Code section 1370, the Court of Appeal erroneously sets section 1370 in needless and improper tension with the remainder of the statutory scheme. Second, the Court of Appeal's interpretation unnecessarily renders section 1370 in violation of the separation of powers requirement in Article III, section 1 of the California Constitution. The *Karriker* court's contrary interpretation of the same language in the same code section – holding that the court may order the public conservator to initiate a conservatorship investigation but may not control its discretion to determine whether to file a petition – suffers neither of these infirmities and should continue to govern the interpretation of section 1370 without contradiction. Accordingly, we respectfully urge the Court grant Los Angeles County's Petition for Review.

[1] CSAC and CAPAPGPC have also separately requested depublication pursuant to rule 8.1125.

I. THE INTERESTS OF THE PARTIES SUPPORTING REVIEW

CSAC is a non-profit corporation whose membership consists of the 58 California counties. CSAC's Litigation Overview Committee, comprised of county counsels throughout the state, has determined that this case is a matter affecting all counties, because the Court of Appeal's decision improperly deprives county officers of their executive discretion and misdirects county authority to the state judiciary.

CAPAPGPC is a non-profit corporation whose membership is composed of local government officials and employees who provide services to the public through the offices of Public Administrators, Public Guardians and Public Conservators in all 58 California counties. Collectively, these agencies act as the legal guardian or conservator for over 15,000 California residents. CAPAPGPC monitors litigation that is of concern to public administrators, public guardians and public conservators throughout the state, and it has likewise determined that this case is a matter that will impact its members on a statewide basis. It is concerned that the split of authority caused by Court of Appeal's decision will create practical confusion for conservators and impinge on the rights of the potential conservatees, whose freedom from unjustified commitment the Lanterman-Petris-Short Act ("LPS Act") entrusts public conservators to protect.

II. THE SECOND DISTRICT'S HOLDING IN THIS CASE IS IN DIRECT CONFLICT WITH *PEOPLE v. KARRIKER*, IN WHICH THE FIRST DISTRICT REACHED THE OPPOSITE CONCLUSION ON THE SAME QUESTION OF LAW.

The issue in this case is whether the Superior Court properly exercised its power of mandate to order the Los Angeles Public Guardian, who also acts as that county's public conservator, to file a petition for conservatorship under the LPS Act, which governs the conservatorship process for persons who are gravely disabled as a result of a mental disorder. (*See* Welf. & Inst. Code §§ 5350 *et seq*.[2]) In the first part of its opinion, the Court of Appeal held that the Public Guardian abused its discretion by declining to file a petition for a Murphy conservatorship[3] because its decision was

[2] Except as otherwise indicated, all further statutory references are to the Welfare & Institutions Code.

[3] A "Murphy conservatorship" can be established under the LPS Act upon proof by the public conservator that the proposed conservatee: (1) is under indictment or information for a violent felony; (2) has been found mentally incompetent to stand trial under Section 1368 of the Penal Code; (3) has no substantial likelihood of regaining the ability to understand the criminal proceedings and assist defense counsel in a rational manner; and (4) due to a mental disorder, continues to pose a substantial risk of physical harm to others. (*See* § 5000(h)(1)(B) as construed by this Court in *Conservatorship of Hofferber* (1980) 28 Cal.3d 161, 176-177.) Because of the loss of liberty and substantial stigma involved, the conservator must prove the fourth element

founded on a mistake of law.[4] But rather than remand to the Public Guardian with instructions to exercise its discretion on the basis of a corrected understanding of the law,[5] the Court of Appeal next interpreted subdivision (c)(2) of Penal Code section 1370 to vest that filing discretion in the superior court, not in the public conservator at all. (*County of Los Angeles v. Superior Court*, supra, 222 Cal.App.4th at pp. 453-454.) Accordingly, it reasoned, the Superior Court did not act in excess of its mandamus authority by requiring the public conservator to file a petition, because filing the petition was a mandatory duty, not a discretionary act whose outcome was beyond a court's power to compel. *Ibid*.) The Court of Appeal explained:

> Penal Code section 1370 provides that … when such a defendant is found by the court to be gravely disabled as defined by section 5008, subdivision (h)(1)(B), "the court shall order the conservatorship investigator ... to initiate conservatorship proceedings" under the LPS Act. (Pen.Code, § 1370, subd. (c)(2).) We believe that under this provision the initiation of conservatorship proceedings refers to petitioning for conservatorship under the LPS Act, enabling the court to appoint counsel for the defendant and to commence the investigation and investigator's report that is mandated by section 5354. Then, as provided by section 5354, upon consideration of the report and any other evidence presented to it, the court may render judgment—either following or diverging from the conservatorship investigator's recommendation. (*Id.* at p. 454.)

This holding by the Second District Court of Appeal is in direct conflict with the First District's contrary interpretation of the public conservator's duties and discretion in response to the same superior court order under Penal Code section 1370(c)(2). (*People v. Karriker*, *supra*, 149 Cal.App.4th at p. 782.) As that court explained,

> When an incompetent defendant has been returned to court and "it appears to the court that the defendant is gravely disabled ... the court shall order the conservatorship investigator ... to initiate conservatorship proceedings." (Pen.Code, § 1370, subd. (c)(2) [ellipses in original].) … [T]he Conservator argues that this section authorizes the court only to refer the matter to her office for investigation, which is the initiation of conservatorship proceedings,

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beyond a reasonable doubt, and if the issue is decided by a jury, the jury's verdict must be unanimous. (*Hofferber*, *supra*, 28 Cal.3d at p. 178.)

[4] CSAC and CAPAPGPC take no position on this issue.

[5] This would be the usual procedure in mandamus proceedings. (*See Common Cause v. Bd. of Supervisors* (1989) 49 Cal.3d 432, 442 ["Mandamus will not lie to control an exercise of discretion, i.e., to compel an official to exercise discretion in a particular manner. Mandamus may issue, however, to compel an official both to exercise his discretion (if he is required by law to do so) and to exercise it under a proper interpretation of the applicable law."].)

> and does not authorize the court to order her to file a petition to impose a conservatorship … [which] is vested solely in her discretion. We agree. (*Ibid.*)

Further, although a court may be called upon to rule on a petition, "the court may not control the discretion conferred upon another to determine whether to seek such relief" in the first instance. (*Id*. at p. 787.)

Despite the obvious conflict between the holdings in these two cases on precisely the same point of law, the Court of Appeal in *County of Los Angeles* contends that its interpretation of Penal Code section 1370(c)(2) can be harmonized with *People v. Karriker*. (*County of Los Angeles v. Superior Court*, *supra*, 222 Cal.App.4th at p.454.) That simply is not so. Although the Court of Appeal fully acknowledges *Karriker*'s holding that the public conservator retains the sole discretion to determine whether to file a conservatorship petition, it claims to distinguish *Karriker* on the basis that the public conservator in that case had not abused its discretion in declining to file a legally unwarranted petition, whereas the Los Angeles Public Guardian had abused its discretion in determining that a petition would be unwarranted by relying on an erroneous view of the law. (*Id*. at pp 452-453.) Accordingly, the Court of Appeal explains, *Karriker* stands solely for the proposition that the superior court lacks the authority to order the public conservator to file a petition that the public conservator *correctly* declines to file. But that rule does not apply to the different facts before it, where the public conservator *incorrectly* exercised its discretion. (*Id*. at p. 454.) In that instance, the Court of Appeal concludes, *Karriker* is no barrier to its holding that the superior court does have the statutory authority to require the public conservator to file a petition. (*Ibid*.)

The Court of Appeal's attempt to reconcile its holding with *Karriker* falls flat for two reasons. First, the appearance of harmony it creates between the two decisions is false. While both courts do, as a general matter, acknowledge the discretion of the public conservator, the *County of Los Angeles* decision limits that discretion to making a recommendation to the court as to whether a conservatorship is warranted, but gives the superior court the discretion to determine whether a petition must be filed. *Karriker*, on the other hand, concludes that the public conservator alone has the discretion to decide whether to file a petition, and that the superior court cannot order it to do so. By eliding these two very different analyses into a seemingly like consideration of whether the public conservator abused its discretion, the Court of Appeal creates the surface misimpression that the two decisions are in harmony on their approach to the law. In fact, the opposite is true.

The Court of Appeal's attempt to distinguish the two decisions is also unconvincing, because it relies on nothing more than different facts to justify a different legal rule. This is precisely backwards. Statutory interpretation is a pure question of law, and does not depend on the facts to which the statute will apply. (*California Teachers Assn. v. San Diego Community College Dist.* (1981) 28 Cal.3d 692, 699.) The general

rule provided by the statute may lead to different results in different cases depending on how the rule applies to the facts, but that legal rule neither depends on the facts nor changes with the outcome.

In short, the Court of Appeal's reassurances of compatibility between the two decisions notwithstanding, its holding locating the discretion to file a conservatorship petition in the superior court is in irreconcilable conflict with *People v. Karriker* and its holding locating the same discretion solely in the public conservator. This split of authority requires this Court's resolution.

III. THE COURT OF APPEAL VIOLATED FUNDAMENTAL RULES OF STATUTORY CONSTRUCTION BY FAILING TO READ SECTION 1370(C)(2) IN CONTEXT AND PREFERRING AN UNCONSTITUTIONAL INTERPRETATION TO A CONSTITUTIONAL ONE.

The Court of Appeal's holding that the superior court, and not the public conservator, has the discretion to decide whether a conservatorship petition must be filed, flows from its erroneous interpretation of the phrase "initiate conservatorship proceedings" in Penal Code section 1370. Although the Court of Appeal should have interpreted that statutory language in the context of related statutes, it instead construed the phrase in virtual isolation and adopted an interpretation that is in clear tension with other statutory provisions. And where the Court of Appeal should have avoided an interpretation that would place the statute in conflict with the Constitution, the unconstitutional interpretation is the one it embraced.

A. The Court of Appeal Erred By Failing To Interpret The Meaning Of The Phrase "Initiate Conservatorship Proceedings" In A Manner Consistent With Related Statutes.

There are at least two ways to understand what the public conservator must do when the superior court orders it to "initiate *conservatorship proceedings*" under Penal Code section 1370(c)(2). On its face, that phrase could mean that the public conservator must file the petition that will commence the "*legal proceedings*." On the other hand, it could also mean the conservator must begin the "*conservatorship process*" set forth in sections 5350 *et seq.*, which may or may not result in legal proceedings. Because the statutory language is susceptible on its face to both of these interpretations, it is ambiguous, and it falls to the courts to use established principles of statutory construction to discern which meaning best comports with the Legislature's probable intent. (*People v. Connor* (2004) 115 Cal.App.4th 669, 678.)

One such rule of construction is the principle that statutes on the same subject or dealing with the same subject matter are statutes *in pari materia,* and they should be

construed together as one statute. (*City of Huntington Beach v. Board of Administration* (1992) 4 Cal.4th 462, 468.) So interpreted, "all parts of a statute should be read together and construed in a manner that gives effect to each, yet does not lead to disharmony with the others." (*Ibid*.) Accordingly, when statutes are in pari materia, like phrases should be given like meanings. (*See People v. Coker* (2004) 120 Cal.App.4th 581, 588.)

Here, the Court of Appeal erred when it failed to harmonize its interpretation of the superior court's authority to order the conservator "*to initiate conservatorship proceedings*" with the many related statutes bearing on conservatorship proceedings. Indeed, Penal Code section 1370 explicitly references the wider statutory scheme of which it is a part. In pertinent part, subsection (c)(2) provides:

> [When] it appears to the court that the defendant is gravely disabled, as defined in subparagraph (B) of paragraph (1) of subdivision (h) of Section 5008 of the Welfare and Institutions Code, the court shall order the conservatorship investigator of the county of commitment of the defendant to *initiate conservatorship proceedings* for the defendant *pursuant to Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code*. (emphasis added)

Chapter 3, in turn, comprises Welfare and Institutions Code sections 5350 through 5371. These sections set forth a conservatorship process that begins when the public conservator receives a recommendation indicating that an individual may be in need of a conservatorship. (§ 5354.) The conservator then conducts an investigation into the circumstances of the affected individual. (§ 5350(f).) If the public conservator "concurs with the recommendation," he or she then files a petition to establish a conservatorship with the court. (§ 5352).

Of particular importance here, section 5352.5 of Chapter 3 is expressly titled "Initiation of Proceedings" and describes another way in which persons being held under Penal Code section 1370 can enter into conservatorship. It provides that "[c]onservatorship proceedings may be initiated" for such persons upon the recommendation of the medical director to the conservatorship investigator. (§ 5352.5.) As just explained, under Chapter 3, a recommendation prompts a conservatorship investigation, but a petition only follows if the conservator agrees with the recommendation. If this is what it means to "initiate conservatorship proceedings" under Chapter 3, then the same phrase in Penal Code section 1370—using the same words, referencing the same conservatorship proceedings, and addressing the same population—must be construed to mean the same thing.

The Court of Appeal's conclusion that it can order the public conservator to file a petition, and even order a conservatorship over the public conservator's contrary recommendation, likewise does not square with the procedural requirements that the

petition be verified, that the conservator prove the proposed conservatee's grave disability beyond a reasonable doubt, and that the court must terminate the conservatorship if the conservator reports that the conservatee is no longer gravely disabled. Probate Code section 1021(a)(1) requires a petition for conservatorship to be verified, meaning that the public conservator or his or her counsel must sign, under oath, a statement attesting that the allegations in the petition are warranted and have factual support. (Code of Civ. Proc. § 128.7(b)(2) & (3).) Clearly, a public conservator cannot both attest that the petition for conservatorship is warranted and hold the belief that the same conservatorship is *un*warranted. Similarly, a finder of fact could not properly conclude that the conservator had proven the need for a conservatorship beyond a reasonable doubt when the conservator's own report provided evidence to the contrary. Moreover, even if the court's own strength of conviction led it to overlook these barriers and order a conservatorship, once a progress review revealed to the public conservator that the conservatee was no longer gravely disabled, § 5352.6 requires the public conservator to report its conclusion to the court and provides that the conservatorship "shall be terminated." (§ 5352.6.) Not one of these provisions can be reconciled with the Court of Appeal's interpretation of Penal Code § 1370(c)(2).

Where, as here, a proposed statutory interpretation affirmatively disharmonizes like terms in like statutes, and where, as here, it conflicts with statutory procedural requirements, it is plainly incorrect.

B. The Court Of Appeal Also Erred By Interpreting Penal Code Section 1370 In Such A Way As To Render It Constitutionally Infirm.

The Court of Appeal also erred by construing Section 1370(c)(2) in such a way as to render it unconstitutional under the separation of powers doctrine. As this Court has explained, "a court must, whenever possible, construe a statute so as to preserve its constitutional validity. (*Hutnick v. United States Fidelity & Guaranty Co.* (1988) 47 Cal.3d 456, 466, 253 Cal.Rptr. 236, 763 P.2d 1326; *People v. Davenport* (1985) 41 Cal.3d 247, 264, 221 Cal.Rptr. 794, 710 P.2d 861.) We presume that the Legislature understands the constitutional limits on its power and intends that legislation respect those limits." (*Kraus v. Trinity Management Services, Inc.* (2000) 23 Cal.4th 116, 129.)

The Court of Appeal failed to follow this principle of statutory construction when it adopted an interpretation that assigned executive power to the judicial branch, in violation of the separation of powers doctrine. California Constitution Article III, section 1 provides that:

> The powers of the government of the State of California shall be divided into three separate departments -- the legislative, executive, and judicial; and no person charged with the exercise of powers properly belonging to one of these departments shall exercise any

> functions appertaining to either of the others, except as in this Constitution expressly directed or permitted. (Cal. Const., art. III, § 1.)

Deciding whether to institute judicial proceedings is just such an executive branch function forbidden to the courts under the constitution. As explained in *People v. Cimarusti* (1978) 81 Cal.App.3d 314, 322, "[i]t is well established that where a prosecutor is vested with discretionary power in the investigation and prosecution of charges a court cannot control this discretionary power even by mandamus." The same principle applies to civil proceedings, which are "analogous to a criminal proceeding with respect to the division of power between the executive and judicial branches of the government." (*Id*. at p. 323.) Accordingly, in both civil and criminal proceedings, "the charging function [lies] within the exclusive control of the executive." (*Ibid*.; see also *In re Lee G.* (1991) 1 Cal.App.4th 17, 29-30 ["In effect, county counsel is acting as a prosecutor in the civil certification proceedings"].)

Because the Court of Appeal's interpretation of what it means for the conservator to "initiate conservatorship proceedings" leads to the unconstitutional result of a court wielding executive branch power, it is plain that the Court of Appeal's approach is wrong – provided, of course, that there is a reasonable alternative interpretation that does not conflict with the constitution. Here, for some of the reasons we have touched on briefly and for the many additional reasons eloquently explained by the First District in support of its decision in *People v. Karriker*, *supra*, there unquestionably is. The Second District should have followed *Karriker*, not departed from it.

For all of these reasons, CSAC and CAPAPGPC respectfully request that this Court grant Los Angeles County's Petition for Review, and hold that this issue was properly decided by the First District in *People v. Karriker*, *supra.*

Respectfully submitted,

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Proof of Service Attached