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FOR THE

CASE #: G063371

State Of Califol

FOURTH APPELLATE DISTRICT, DIVISION THREE

Orange County Association for Mental Health dba Mental Health Association of
Orange County, a California Nonprofit Corporation; BT Investment Properties, LLC, a
California Limited Liability Company; Lunyea Willis, an individual

Petitioners,

v.

Superior Court of the State Of California, County of Orange

Respondent.

City of Santa Ana, a Charter City And Municipal Corporation and the People of the
State of California, by the City Attorney for the City of Santa Ana

Real Parties in Interest

From The Orange County Superior Court
Honorable John C. Gastelum, Telephone 657.622.5211
Case No 30-2020-01124174-CU-MC-CJC

Petition for Writ of Mandate or Other Appropriate Relief; Memorandum of Point and Authorities; Supporting Exhibits Filed Under Separate Cover

SHEPPARD, MULLIN, RICHTER &
HAMPTON LLP

*Isaiah Z. Weedn, CBN 229111

iweedn@sheppardmullin.com

Todd E. Lundell, CBN 250813

tlundell@sheppardmullin.com

Zachary J. Golda, CBN 327532

zgolda@sheppardmullin.com

650 Town Center Drive, 10th Floor

Costa Mesa, California 92626

Telephone: 714.513.5100

PUBLIC LAW CENTER

Jonathan D. Bremen, CBN 329807

jbremen@publiclawcenter.org

601 Civic Center Drive West

Santa Ana, CA 92701

Telephone: 714.541.1010

Attorneys for Petitioners Orange County Association for Mental Health dba Mental
Health Association of Orange County, and BT Investment Properties, LLC

DISABILITY RIGHTS CALIFORNIA

*Lili V. Graham, CBN 284264

Lili.Graham@disabilityrightsca.org

Lucia J. Choi, CBN 307384

Lucia.Choi@disabilityrightsca.org

Navneet K. Grewal, CBN 251930

Navneet.Grewal@disabilityrightsca.org

350 South Bixel Street, Suite 290

Los Angeles, CA 90017

Telephone: 213.213.8000

Attorneys for Petitioner Lunyea Willis

Certificate of Interested Entities Or Persons

Pursuant to Rule 8.208, Petitioners Orange County Association for Mental Health dba Mental Health Association of Orange County (“MHA”) and BT Investment Properties, LLC certifies:

(i) MHA is a publicly-owned non-profit, and no entity or person has an ownership interest of 10 percent or more in MHA, and

(ii) Robert Brown is the only person with 10 percent or more ownership interest in BT Investment.

Dated: November 29, 2023

SHEPPARD, MULLIN, RICHTER &
HAMPTON LLP
Isaiah Z. Weedn
Todd E. Lundell
Zachary J. Golda

By: /s/ Todd E. Lundell
Todd E. Lundell
Attorneys for Petitioners Orange
County Association for Mental
Health dba Mental Health
Association of Orange County
and BT Investment Properties,
LLC

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Introduction: Why a Writ Should Issue

This case is about the City of Santa Ana’s (the “City”) efforts to expel a non-profit, County of Orange-contracted mental health clinic for unhoused individuals—a clinic that has operated with the City’s explicit consent from the same location on South Main Street in Santa Ana for over 20 years—through the vehicle of a public nuisance lawsuit. Petitioners Orange County Association for Mental Health dba Mental Health Association of Orange County (“MHA”), BT Investment Properties, LLC (“BT”), and Lunyea Willis (collectively, “Petitioners”) are represented by *pro bono* counsel and are, respectively, the non-profit clinic operator, the clinic’s landlord, and one of the clinic’s patients.

The case has been pending since January 2020 and the long-awaited, serially-continued trial began on June 7, 2023. During the next five months, the parties collectively called twenty-four witness over the course of fourteen trial days. On November 16, 2023, the fourteenth day of trial, Petitioners called Supervisor Andrew Do of the Orange County Board of Supervisors to testify. Supervisor Do testified during the morning session and then the trial court recessed for the lunch break.

When the parties returned from the lunch break, the trial court announced that it was *sua sponte* recusing itself due to a previously unknown conflict and immediately declared a mistrial. The putative conflict was that Supervisor Do is married to the Hon. Cheri T. Pham, who is the current Assistant Presiding Judge of the Orange County Superior Court. The trial court did

not ask for the parties views on whether Supervisor Do's marriage to Judge Pham required disqualification and a mistrial, and did not ask whether the parties would waive the disqualification under Code of Civil Procedure section 170.3(b). The trial court simply decided, over the lunch break, to unilaterally disqualify itself and require the parties to start over before another court.

This Court's immediate review is both necessary and appropriate. The trial court's decision recusing itself and declaring a mistrial is not reviewable by appeal. Therefore, this petition is the only remedy available for Petitioners to obtain any redress. The parties have already poured vast resources into preparing and trying this case, which involves an issue of significant public interest, and Petitioners will suffer irreparable harm if they are forced to start over before another judge. This is particularly true because the trial court's rationale for recusing itself—the fact that a third-party witness is married to Judge Pham—will effectively force Petitioners to litigate this case in a foreign jurisdiction where Judge Pham does not act as Assistant Presiding Judge. The parties should not face such serious consequences without at least having an opportunity to be heard before this Court

Moreover, although the trial court was likely trying to take a cautious approach by stepping aside and recusing itself, the law simply does not support disqualification under these circumstances. As further detailed in Petitioners' supporting

Memorandum of Points & Authorities, a third-party witness' relationship with the trial court's Assistant Presiding Judge (and not a relationship with the judge actually presiding over the trial) is not a basis for mandatory recusal. The law does not impute any personal knowledge to the trial court based on such an attenuated relationship, and no objective person could reasonably doubt the trial court's ability to remain impartial under these circumstances. Thus, the trial court had an ongoing duty to continue hearing the case.

Further, even if Supervisor Do's marriage to Judge Pham created some conflict meriting disqualification (and it did not), the parties should be found to have waived that conflict. Supervisor Do was disclosed as a witness more than three years ago during discovery and was identified as a trial witness on the parties' joint witness list filed ten months ago. Supervisor Do and Judge Pham have been married for many years and the fact of their marriage is publicly known in Orange County generally and likely well-known in the Orange County legal and local government communities. Moreover, the Orange County Superior Court publicly announced Judge Pham's election as Assistant Presiding Judge in a September 21, 2022, press release.

Accordingly, all of the circumstances comprising the putative conflict that the trial court determined merited a mandatory recusal and a mistrial were publicly known four months before the parties filed their joint witness list in January 2023, nine months before the first day of trial, and over a year

before Supervisor Do was called to testify. None of the parties ever objected to Supervisor Do's testimony on the basis of a supposed judicial conflict or suggested that the trial court's recusal was necessary in light of Supervisor Do's relationship with Judge Pham. Had they been afforded the opportunity to do so, Petitioners (and perhaps the Real Parties in Interest as well) would have raised these facts with the trial court and would have waived any purported conflict.

Therefore, this Court should review this petition on the merits and, after doing so, should issue a writ of mandate requiring the trial court to vacate its recusal and mistrial declaration.

**PETITION FOR WRIT OF MANDATE AND/OR
PROHIBITION OR OTHER APPROPRIATE RELIEF**

**To the Honorable Presiding Justice and the
Honorable Justices of the Court of Appeal, Fourth
District:**

Petitioners Orange County Association for Mental Health dba Mental Health Association of Orange County ("MHA"), BT Investment Properties, LLC ("BT"), and Lunyea Willis (collectively, "Petitioners") petition this Court for a writ of mandate or other appropriate relief directed to the respondent Superior Court of the State of California for the County of Orange and allege by this verified petition:

Authenticity of Exhibits

1. All exhibits accompanying this petition are true and correct copies of original documents on file with the respondent Superior Court except the following exhibits which are authenticated by counsel's accompanying declaration:

- Exhibit 2: a true and correct copy of the April 24, 2002 letter from the Santa Ana City Attorney to MHA's then-counsel which was marked for identification as Exhibit 15 for trial and whose authenticity was stipulated to by the parties. [See 1Ex Tab 10 at 197:16-17.]
- Exhibits 6-8: true and correct copies of MHA's responses to the City's interrogatories served in this case.
- Exhibit 12: a true and correct copy of the rough transcript of the trial court proceedings on November 15, 2023, which was the only version available at the time of this filing. Petitioners will submit a certified copy of the transcript via supplemental filing when it is available.
- Exhibit 13: a true and correct copy of the transcript of the trial court proceedings on November 16, 2023.
- Exhibit 15: a true and correct copy of a profile of the Hon. Cheri T. Pham that appeared in the *Los Angeles Daily Journal* and the *San Francisco Daily Journal* on May 3, 2011.

- Exhibit 16: a true and correct copy of a press release entitled “Supervisor Andrew Do Sworn Into Office” which is available on Supervisor Do’s official Board of Supervisor’s website at <https://bos1.ocgov.com/Supervisor-Andrew-Do-Sworn-Into-Office>.
- Exhibit 17: a true and correct copy of a press release entitled “Andrew Do Elected as 1st District Supervisor” which is available on Supervisor Do’s official Board of Supervisor’s website at <https://bos1.ocgov.com/pr-1-27-2015>.
- Exhibit 18: a true and correct copy of a press release entitled “Swearing in Ceremony” which includes a photo of the Hon. Cheri Pham administering the Oath of Office to Supervisor Do with their daughters looking on, which is available on Supervisor Do’s official Board of Supervisor’s website at <https://bos1.ocgov.com/node/120>.
- Exhibit 19: a true and correct copy of a September 21, 2022 press release entitled “Judges Elect Hon. Maria D. Hernandez as Presiding Judge and Hon. Cheri T. Pham as Assistant Presiding Judge” which is available on the Superior Court of California County of Orange’s website at https://www.occourts.org/system/files/general/press_release_new_pj_apj_2023elect.pdf.

The exhibits are paginated consecutively, and page references in this petition are to the consecutive pagination.

Beneficial Interest of Petitioners; Capacities of Respondent and Real Parties-in-Interest

2. Petitioners are parties in the action now pending in respondent Superior Court, *City of Santa Ana et al. v. Orange County Assoc. for Mental Health dba Mental Health Assoc. of Orange County et al.* (Orange County Superior Court Case No. 30-2020-01124174-CU-MC-CJC). Specifically, MHA is a defendant and cross-complainant, BT is a defendant, and Willis is an intervening defendant. Petitioners are represented by *pro bono* counsel.

3. MHA is a nonprofit corporation that, among other things, provides mental health treatment for homeless individuals with serious and persistent psychiatric disorders pursuant to various contracts with the County of Orange (the “County”). One of MHA’s facilities is the so-called “Homeless Multi-Service Center”, which is located at 2416 S. Main Street, Santa Ana, CA 92701 (the “MSC”). [1Ex. Tab 5 at 37:18-38:2.]

4. BT is the owner of the real property commonly referred to as 2416 S. Main Street, Santa Ana, CA 92701 and MHA’s landlord for the MSC. [1Ex. Tab 4 at 20:26-21:2.]

5. Ms. Willis is an MHA patient who receives services at the MSC.

6. Respondent is the Superior Court of the State of California for the County of Orange.

7. Real parties in interest City of Santa Ana (a charter city and municipal corporation) (the “City”) and the People of the State of California (by the City Attorney for the City of Santa Ana) are plaintiffs in the action. In addition, the City is a cross-defendant pursuant to MHA’s cross-complaint for declaratory relief.

Summary of Facts and Procedural History

A. MHA sued the City over 20 years ago for the right to operate the MSC

8. More than 20 years ago, in April 2002, MHA and one of its clients sued the City based on, among other things, the City’s decisions to (i) deny MHA a certificate of occupancy to operate the MSC and (ii) issue MHA a Notice of Violation and Notice to Abate Public Nuisance stating that MHA could not operate the MSC without approval from the City’s Planning Department and without a conditional use permit and new certificate of occupancy (the “2002 Lawsuit”). [1Ex. Tab 1 at 12:7-25.] Among other things, MHA contended its operation of the MSC was protected by California Welfare and Institutions Code § 5120.¹ [*Id.* at 13:3-24.]

¹ Pursuant to the State of California’s “declared and established” policy to ensure that “the care and treatment of mental patients be provided in the local community,” Section 5120 precludes cities and counties from discriminating “in the enactment, enforcement, or administration of any zoning laws,

9. MHA and the City quickly settled the lawsuit. As reflected in the City Attorney's April 24, 2022 letter to MHA's counsel, the City agreed to withdraw its Notice of Violation and Notice to Abate Public Nuisance and to issue MHA a certificate of occupancy for the MSC. [1Ex. Tab 2 at 19-20.] Significantly, the City explicitly stated: "The City agrees that Welfare and Institutions Code § 5120 applies in this case." [*Id.* at 19.]

10. Based on the City's agreement and representations, MHA dismissed the 2002 Lawsuit. [1Ex. Tab 3.]

B. The City's 2020 nuisance lawsuit

11. In January 2020, the City filed this lawsuit against MHA and its MSC landlord, BT, alleging two public nuisance causes of action. [1Ex. Tab 4.] First, the City alleged MHA and BT caused excessive numbers of emergency services calls and neighbor complaints. [*Id.* at 34:20-35:3.] Second, the City alleged the MSC was operating in violation of the City's Zoning Code. [*Id.* at 36:7-37:2.]

12. In response, MHA filed a cross-complaint against the City for declaratory and injunctive relief. [1Ex. Tab 5.] MHA relied on, among other things, the City's prior agreement that Section 5120 protects MHA's operation of the MSC and sought

ordinances, or rules and regulations between the use of property for the treatment of general hospital or nursing home patients and the use of property for the psychiatric care and treatment of patients, both inpatient and outpatient."

corresponding declaratory and injunctive relief. [*Id.* at 43:20-47:25.] The case has been “at issue” for over three years.

C. MHA repeatedly identified Supervisor Andrew Do as a witness with no objection from any other party or the trial court

13. MHA identified Supervisor Andrew Do as a witness on multiple occasions during the discovery process. For example, MHA’s Responses to the City’s Form Interrogatories (served on August 7, 2020) referenced Supervisor Do as a witness five times. [1Ex. Tab 6 at 59:12, 70:14, 71:27, 81:14, and 82:25.] MHA’s Responses to the City’s Special Interrogatories (also served on August 7, 2020) also referenced Supervisor Do as a witness. [1Ex. Tab 7 at 120:14.] And MHA’s Supplemental Responses to the City’s Form Interrogatories (served on October 26, 2020) referenced Supervisor Do as a witness an additional ten times. [1Ex. Tab 8 at 162:27, 163:24, 164:13, 165:1, 166:17, 174:3, 175:2, 176:1, 176:28, 177:27.]

14. Supervisor Do was elected to the Orange County Board of Supervisors in 2015 and has dedicated substantial efforts while in office to designing and implementing a county-wide strategy to address the overlapping challenges of homelessness and community mental health. [1Ex. Tab 13 at 393:10-394:10, 396:20-408:15.] During the course of this work, Supervisor Do has become very familiar with, among other things, MHA and the MSC facility as well as the history of discussions between MHA, the City, and the County concerning the MSC and the County and MHA’s efforts to address the City’s

purported concerns about the MSC. [*See id.* at 410:19-417:16, 420:17-444:14.]

15. Despite knowing he would be called as a percipient witness, the City did not notice Supervisor Do's deposition or seek to subpoena documents from him during the course of discovery. Petitioners are not aware of any efforts by the City to interview Supervisor Do before trial or otherwise ascertain the scope of his knowledge, assess his credibility, or determine whether he had any connections to the trial court that might raise judicial conflict issues.

16. Supervisor Do is a legitimate percipient witness for a number of reasons, including the following: (i) Supervisor Do has working knowledge of the intersecting issues of homelessness and community mental healthcare and is able to testify about the County of Orange's multi-year strategy for addressing these issues [1Ex. Tab 13 at 393:10-394:10, 396:20-408:15.]; (ii) Supervisor Do is familiar with MHA and its mental health treatment program and is able to testify to how MHA's program fits in to the County of Orange's strategy for addressing homelessness and community mental healthcare issues in his official capacity; (iii) Supervisor Do is familiar with the City's nuisance complaints about MHA supposedly causing excessive emergency services calls and neighbor complaints and Supervisor Do addressed substantively identical complaints by the City during a public meeting of the Orange County Board of Supervisors in June 2018; and (iv) Supervisor Do testified to

factual information regarding MHA, stating that the discussed details were made publicly, in accordance with the Brown Act, and not matters beyond his firsthand knowledge. [*See id.* at 404:9-18, 410:19-417:16, 420:17-444:14, .] Supervisor Do's testimony is relevant to various issues at the heart of this lawsuit including, among other things, whether the MSC is protected from discriminatory zoning ordinances pursuant to Section 5120, the causation element of the City's nuisance cause of action (that is, whether the MHA actually caused an increase in service calls or neighborhood complaints), and whether the seriousness of the harm allegedly caused by MHA outweighs the social utility of MHA's mental health treatment program. (*See* CACI No. 2020. Public Nuisance—Essential Factual Elements.)

17. In addition to identifying Supervisor Do as a witness during discovery, Petitioners timely identified Supervisor Do as a trial witness during the pretrial meet and confer process, and he was listed in the parties' Joint Trial Witness List filed in January 2023. [1Ex. Tab 9 at 190:11-14; Tab 11 at 239 (wherein the parties' counsel jointly acknowledge preparation and submission of a joint witness list).]

18. Furthermore, the relevant portions of the transcript and recording of the public meeting of the Orange County Board of Supervisors in June 2018 as well as the correspondence the City sent Supervisor Do regarding MHA in advance of that meeting were identified as trial exhibits. [1Ex. Tab 10 at 230:11-

22 (ref. Trial Ex. 593), 231:2-13 (ref. Trial Ex. 595), 235:7-13 (ref. Trial Ex. 618).]

19. The trial was continued multiple times after the parties' pretrial meet and confer and joint filings in January 2023 and four months would pass before motions in limine were heard in May 2023. But none of the parties filed a motion in limine or otherwise objected to Supervisor Do's testimony or the related trial exhibits prior to trial. Nor did the trial court raise any issue with Supervisor Do's testimony.

D. The unfinished fourteen-day trial

20. Trial finally began in early June 2023 and continued over fourteen days during the following six months. [See ROA 532, 534, 539, 540, 542, 577-579, 582, 585-587, 593, 595 (trial held June 7-8 and 21-23, October 25-27, November 1-2, 8-9, and 15-16).]

21. After calling fourteen witnesses, the City concluded its case-in-chief on the tenth day of trial, November 2, 2023, and Petitioners jointly moved for judgment under Code of Civil Procedure section 631.8. The trial court took the motion under submission, and Petitioners called their first witness that same day. Petitioners called ten more witnesses over the subsequent four trial days. Petitioners called their eleventh witness, Supervisor Do, at approximately 9:00 a.m. on November 16. [See 1Ex Tab 13 at 389.]

22. Though they had known Supervisor Do would be a trial witness for at least ten months and had known him to be a potential trial witness for over three years, the City waited until November 15 to object to Supervisor Do's testimony, less than twenty-four hours before the scheduled testimony. [See 1 Ex Tab 12 at 376-382.] The City asserted a variety of objections. Significantly, none of them concerned the identity of Supervisor Do's spouse. [Ibid.] The trial court overruled the City's objections and stated that it would hear Supervisor Do's testimony. [Ibid.]

23. Supervisor Do was the first and only witness called on November 16. He testified under oath until the lunch recess at noon and was set to resume his testimony after the lunch recess, at 1:30 p.m.

E. The recusal and mistrial declaration

24. After the lunch recess, the trial court convened a counsel-only hearing. After explaining that he learned over lunch that Supervisor Do was married to Judge Pham, the trial court stated that he was recusing himself from the case and declaring a mistrial. The court did not ask for counsel's views on whether Supervisor Do's relationship with Judge Pham required disqualification, and did not ask whether the parties would waive the disqualification under Code of Civil Procedure section 170.3(b). The Court simply stated the facts, recused itself, and declared a mistrial. The following on-the-record exchange captures the entire discussion of the matter:

The Court: All right. I note all counsel are present.

All right. Counselors, today I received a telephone call, beginning of the lunch hour, from our Acting Presiding Judge, indicating he had received a personal case disclosure. And pursuant to that, I have been notified that the witness who has been testifying here, Mr. Do, is apparently married to one of my colleagues, an Orange County Superior Court Judge, Cheri Pham. And she's not only a colleague, she's our current Assistant Presiding Judge.

So I'm disclosing that on the record to all parties now. With some of the nodding, it appears you all knew that—at least some of you did.

[MHA/BT's counsel] Mr. Weedn: I didn't know.

[The City's counsel] Mr. McEwen: I was agreeing with that as being disclosed.

The Court: All right. You were nodding your head. So I'm not sure you're saying that you knew that or just acknowledging that I'm disclosing it?

Mr. McEwen: Acknowledging that you're disclosing it.

The Court: All right. I knew Mr. Do was a supervisor. Obviously you all knew that too. But I don't know who my colleagues are married to. There's a few exceptions, probably less than a handful. I don't know who is married to who. So it didn't even occur to me to inquire or get that information.

And I've spent the last 90 minutes here or so considering the circumstances and pouring over the ethical rules that I think are applicable here.

Again, I want to stress I didn't know about [any] of this information until today. Certainly, Mr. Do didn't say anything when he took the stand, which under better circumstances, I would have hoped he might have.

But after consideration of all the circumstances and the applicable ethical rules, *I have concluded that I cannot be fair and impartial. I'm going to recuse myself from this case and declare a mistrial.*

[1Ex. Tab 13 at 482:5-483:15; *see also* Tab 14 at 486 (November 17, 2023 minute order acknowledging mistrial declaration and setting a status conference for January 26, 2024); Tab 20 at 502-503 (trial court's minutes summarizing proceedings on November 16, 2023, including trial court's recusal and declaration of mistrial).]

25. As reflected in the transcript, the City's counsel did not make any statement on the record to indicate whether they or their client were aware of the fact that Supervisor Do and Judge Pham were married prior to the trial court's disclosure. But Supervisor Do and Judge Pham's marriage was not a secret. If the City and their counsel² were not already aware of it when Supervisor Do was identified as a witness over three years ago, they would have discovered it through fairly rudimentary internet research. In fact, Judge Pham administered Supervisor

² The City's counsel-of-record in this case are its own City Attorney as well as two Orange County-based partners from Burke, Williams, & Sorensen, LLP, Mark Austin and Stephen McEwen. Notably, Austin and McEwen specialize in representing public entities, particularly in Orange County. Austin's firm bio reflects that "[h]e has represented the City of Anaheim, the City of Irvine, [and] the City of Dana Point." (<https://www.bwslaw.com/meet-our-people/mark-j-austin/>.) McEwen's firm bio reflects that "[h]e previously served as City Attorney for...Laguna Woods and Assistant City Attorney for...Stanton." (<https://www.bwslaw.com/meet-our-people/stephen-a-mcewen/>.)

Do's Oath of Office when he was first elected to the Orange County Board of Supervisors, a fact that was prominently featured in multiple press releases about Supervisor Do taking office. [See 1Ex. Tabs 16-18 at 490-499; *see also* Tab 15 at 489 (May 3, 2011 Daily Journal Profile of Judge Pham noting "her husband Andrew Hoang Do," his former "post as a Garden Grove councilman," and his previous work as Orange County Supervisor Janet Nguyen's chief of staff).]

26. Likewise, Judge Pham's election to her position as Assistant Presiding Judge of the Orange County Superior Court was not a secret. It was the subject of a September 21, 2022 press release entitled "Judges Elect Hon. Maria D. Hernandez as Presiding Judge and Hon. Cheri T. Pham as Assistant Presiding Judge." [1Ex. Tab 19 at 500-501.]

27. Accordingly, when the parties filed their joint witness list identifying Supervisor Do in January 2023, it was publicly known (and likely well-known in the Orange County legal and local government communities) that (i) Supervisor Do and Judge Pham had been married for many years and (ii) Judge Pham had been elected Assistant Presiding Judge of the Orange County Superior Court four months prior. Despite these facts being publicly known, neither the parties nor the trial court raised any concerns about the trial court proceeding with the trial based on the fact that Supervisor Do (a third-party witness) is married to the Assistant Presiding Judge of the Orange County Superior Court.

28. Even if a party *had* raised an objection to the trial court presiding over the trial due to Supervisor Do and Judge Pham's relationship, the existence of that relationship does not merit a mandatory recusal. If mandatory recusal is required in this case, it would mean that every other Orange County Superior Court judge who might preside over a case involving a third-party witness in a romantic relationship with or related to the Assistant Presiding Judge (or, presumably, the Presiding Judge) would likewise have to recuse themselves from that case, resulting in a *de facto, sua sponte* motion for change of venue in all such cases. Given the relatively limited scope of the powers afforded to the Assistant Presiding Judge and the practical impossibility of imposing such a sprawling disqualification standard, that would be an exceedingly inappropriate result.

29. As reflected in the transcript, the trial court did not provide any prior notice of the putative conflict concerning Supervisor Do's testimony, did not identify any facts concerning the purported conflict beyond Supervisor Do and Judge Pham's marriage, and did not solicit any feedback from the parties or provide an opportunity for the parties to be heard or waive the purported conflict before recusing itself. As of the filing of this Petition, none of the parties have raised any formal objection to the trial court proceeding with trial notwithstanding the putative conflict. And even if a party had raised such an objection, the circumstances are such that the objection should be deemed waived.

Timeliness of Petition

30. Code of Civil Procedure section 170.3(d) provides: “The determination of the question of the disqualification of a judge is not an appealable order and may be reviewed only by a writ of mandate from the appropriate court of appeal sought only by the parties to the proceeding. The petition for the writ shall be filed and served within 10 days after service of written notice of entry of the court's order determining the question of disqualification. If the notice of entry is served by mail, that time shall be extended as provided in subdivision (a) of Section 1013.”

31. This writ petition is timely as it was filed within 10 days of the clerk serving written notice of the mistrial declaration on November 17, 2023. [1Ex. Tab 14 at 486-487.]

Basis for Relief

32. The trial court erred by determining that a judicial conflict necessitating a mandatory recusal existed based on the fact that Supervisor Do (a third-party witness) is married to Judge Pham, the Assistant Presiding Judge of the Orange County Superior Court. Even if a conflict arguably existed, the circumstances of that potential conflict were publicly known and may well have been actually known by the parties and/or their counsel long before trial commenced. By proceeding with trial, the parties waived the purported conflict. The trial court erred in summarily recusing itself and declaring a mistrial.

Perfection of Remedies

33. Under Code of Civil Procedure section 170.3(d), “[t]he determination of the question of the disqualification of a judge is not an appealable order and may be reviewed only by a writ of mandate from the appropriate court of appeal sought only by the parties to the proceeding.” Accordingly, Petitioners have exhausted their remedies at the trial court and have no other avenue to obtain prompt relief from the trial court’s erroneous ruling except by seeking writ review from this Court.

Inadequacy of Other Remedies

34. Petitioners have no plain, speedy, and adequate remedy at law, other than the relief sought by this petition. Code Civ. Proc. § 1086. The trial court’s recusal and the resulting mistrial declaration are not appealable, and there is no possibility the trial court’s order could be corrected in later trial court proceedings. Petitioners are represented by *pro bono* counsel and later trial court proceedings will require a do-over of a trial that has already lasted fourteen days over the course of five months—a staggering waste of the court’s and the parties’ time and resources based on a putative conflict that does not rise to the level of mandatory recusal and that all parties waived by proceeding with trial despite the circumstances pertaining to the purported conflict being publicly known long before commencement of trial.

Prayer for Relief

Wherefore, Petitioners pray that this court:

A. Issue a peremptory writ of mandate, prohibition or other relief in the first instance, directing Respondent Superior Court to set aside and vacate its November 16, 2023 recusal and resulting mistrial declaration.

B. Issue an alternative writ commanding the Respondent Superior Court to set aside and vacate its November 16, 2023 recusal and resulting mistrial declaration or, in the alternative, to show cause before this Court why a writ of mandate should not issue.

C. Award Petitioners their costs in this proceeding.

D. Grant such other and further relief as it may deem just and appropriate.

Dated: September 27, 2023

PUBLIC LAW CENTER
Jonathan D. Bremen

SHEPPARD MULLIN RICHTER &
HAMPTON LLP
Isaiah Z. Weedn
Todd E. Lundell
Zachary J. Golda

By: /s/ Todd E. Lundell
Todd E. Lundell
Attorneys for Petitioners Orange
County Association for Mental
Health dba Mental Health
Association of Orange County
and BT Investment Properties,
LLC

DISABILITY RIGHTS
CALIFORNIA
Lili V. Graham
Lucia J. Choi
Navneet K. Grewal

By: /s/ Lili V. Graham
Lili V. Graham
Attorneys for Petitioner Lunyea
Willis

Verification

I, Isaiah Z. Weedn, hereby declare:

I am an attorney admitted to practice law in California and am attorney of record for Petitioners Orange County Association for Mental Health dba Mental Health Association of Orange County and BT Investment Properties, LLC. I have read the foregoing petition for writ of mandate and know its contents. The facts stated in the petition are within my own knowledge and I know these facts to be true. Because the petition is based on the pleadings, transcripts of hearings conducted in the Respondent Superior Court, discovery responses provided in this lawsuit, and publicly-available information concerning an officer of the Respondent Superior Court, I, rather than Petitioners, verify this petition.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this verification is executed at Santa Ana, California on November 26, 2023.

/s/ Isaiah Z. Weedn
Isaiah Z. Weedn

Declaration of Isaiah Z. Weedn

I, Isaiah Z. Weedn, hereby declare:

1. I am an attorney admitted to practice law in California. I am a special counsel of the law firm Sheppard, Mullin, Richter & Hampton, LLP, which is *pro bono* attorney of record for Petitioners Orange County Association for Mental Health dba Mental Health Association of Orange County (“MHA”) and BT Investment Properties, LLC (“BT”). I am the lawyer in our firm primarily responsible for the handling of this case and have been since MHA and BT made their first appearance in this case. The facts stated herein are of my own personal knowledge, and I can competently testify to them.

2. The document submitted as Exhibit 2 to this Petition for Writ of Mandate is a true and correct copy of the April 24, 2002 letter from the Santa Ana City Attorney to MHA’s then-counsel which was marked for identification as Exhibit 15 for trial and whose authenticity was stipulated to by the parties. [See 1Ex Tab 10 at 197:16-17.]

3. The documents submitted as Exhibits 6-8 to this Petition for Writ of Mandate are true and correct copies of MHA’s responses to the City of Santa Ana’s interrogatories served in this case. I signed each set of responses as MHA’s counsel of record.

4. The document submitted as Exhibit 12 to this Petition for Writ of Mandate is a true and correct copy of the rough transcript of the trial court proceedings on November 15,

2023, which was the only version available at the time of this filing. Petitioners will submit a certified copy of the transcript via supplemental filing when it is available.

5. The document submitted as Exhibit 13 to this Petition for Writ of Mandate is a true and correct copy of the transcript of the trial court proceedings on November 16, 2023.

6. The document submitted as Exhibit 15 to this Petition for Writ of Mandate is a true and correct copy of a profile of the Hon. Cheri T. Pham that I am informed and believe appeared in the *Los Angeles Daily Journal* and the *San Francisco Daily Journal* on May 3, 2011.

7. The document submitted as Exhibit 16 to this Petition for Writ of Mandate is a true and correct copy of a press release entitled “Supervisor Andrew Do Sworn Into Office,” which I printed from Supervisor Do’s official Board of Supervisor’s website at <https://bos1.ocgov.com/Supervisor-Andrew-Do-Sworn-Into-Office>.

8. The document submitted as Exhibit 17 to this Petition for Writ of Mandate is a true and correct copy of a press release entitled “Andrew Do Elected as 1st District Supervisor,” which I printed from Supervisor Do’s official Board of Supervisor’s website at <https://bos1.ocgov.com/pr-1-27-2015>.

9. The document submitted as Exhibit 18 to this Petition for Writ of Mandate is a true and correct copy of a press release entitled “Swearing in Ceremony,” which includes a photo

of the Hon. Cheri Pham administering the Oath of Office to Supervisor Do with their daughters looking on, which I printed from Supervisor Do's official Board of Supervisor's website at <https://bos1.ocgov.com/node/120>.

10. The document submitted as Exhibit 19 to this Petition for Writ of Mandate is a true and correct copy of a September 21, 2022 press release entitled "Judges Elect Hon. Maria D. Hernandez as Presiding Judge and Hon. Cheri T. Pham as Assistant Presiding Judge," which I printed from the Superior Court of California County of Orange's website at https://www.occourts.org/system/files/general/press_release_new_pj_apj_2023elect.pdf.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration is executed at Santa Ana, California on November 26, 2023.

/s/ Isaiah Z. Weedn
Isaiah Z. Weedn

**Memorandum of Points and Authorities
in Support of the Petition**

I.

Writ Review is Both Necessary and Appropriate

The Supreme Court “has stated general criteria for determining the propriety of an extraordinary writ.” *Omaha Indemnity Co. v. Superior Court* (1989) 209 Cal.App.3d 1266, 1273. Review of the trial court’s order here is appropriate under those criteria for several reasons.

First, a writ of mandate is appropriate where “the party seeking the writ lacks an adequate means, such as a direct appeal, by which to attain relief . . .” or “the petitioner will suffer harm or prejudice in a manner that cannot be corrected on appeal.” *Id.* at 1274; *see also* Code Civ. Proc. § 1086 (“The writ must be issued in all cases where there is not a plain, speedy, and adequate remedy, in the ordinary course of law.”). Here, under Code of Civil Procedure section 170.3(d), “[t]he determination of the question of the disqualification of a judge *is not an appealable order* and may be reviewed *only by a writ of mandate* from the appropriate court of appeal sought only by the parties to the proceeding.” (Emphasis added). Accordingly, by statute, a writ of mandate is the only remedy available to Petitioners to address the trial court’s erroneous recusal and mistrial declaration.

Second, not only is this writ petition the only avenue for Petitioners to seek relief, but Petitioners will suffer irreparable harm absent this Court’s review. *Omaha Indemnity, supra*,

209 Cal.App.3d at 1274. The parties have already spent significant time and resources trying this case, resources that cannot be recouped if the trial court's declaration of a mistrial stands. Moreover, the trial court's rationale for recusing itself means that either (i) this case will need to be retried in another county, where Judge Pham does not act as Assistant Presiding Judge, or (ii) Supervisor Do will not be able to testify in any retrial, despite his relevance as a percipient witness of both the facts and policies at issue in this case. MHA's ability to operate a homeless mental health clinic in Santa Ana is an issue of significant interest to the parties and also to the local community. Given the unique relevance of Supervisor Do's testimony, and the significant resources already expended in this litigation, the parties should not be required to start over and relitigate this case in a foreign jurisdiction without this Court at least taking the opportunity to determine the propriety of the trial court's recusal and declaration of a mistrial.

Finally, writ review of an interlocutory order is appropriate where "a significant issue of law is raised." *Casterson v. Superior Court* (2002) 101 Cal.App.4th 177, 182. That is certainly the case here. Indeed, the issue presented here is a question of first impression. Petitioners are aware of no published decision holding, as the trial court effectively did here, that the Presiding Judge of a Superior Court's relationship to a third-party witness in a case pending in the same court (much less an Assistant Presiding Judge's relationship to a third-party witness) is an automatic ground for mandatory recusal of all other judges of

that court. The novelty and significance of this issue make this an appropriate case to decide by writ review. *Noe v. Superior Court* (2015) 237 Cal.App.4th 316, 325 (holding that “writ review is appropriate because the petition presents a significant issue of first impression” and “[n]o published California decision has construed” the statute at issue in the way the trial court had); *Pugliese v. Superior Court* (2007) 146 Cal.App.4th 1444, 1448 (“Writ review is appropriate where the petition presents a significant issue of first impression.”); *Los Angeles Gay & Lesbian Ctr.* (2011) 194 Cal.App.4th 288, 300 (“review is appropriate where the order raises an issue of first impression of general importance to the legal community.”).

For all these reasons, this Court should review this writ on the merits and decide the significant legal issue presented herein.

II.

The Trial Court Erred In Determining That Its Recusal Was Mandatory And Therefore The Resulting Declaration of Mistrial Was In Error

This writ petition presents a question of law based on undisputed facts, requiring interpretation of Code of Civil Procedure § 170.1’s standards for judicial disqualification. This Court’s review is, therefore, de novo. *Le Gault v. Erickson* (1999) 70 Cal.App.4th 369, 372 (“It is well settled that the interpretation and application of a statutory scheme to an undisputed set of facts is a question of law . . . which is subject to de novo review on appeal” (internal quotation marks omitted)); *see also Wechsler v. Superior Ct.* (2014) 224 Cal.App.4th 384, 391-92 (“the

weight of authority supports that where, as here, the relevant facts are undisputed, a de novo review standard applies to a section 170.1(a)(6)(A)(iii) challenge to a claimed appearance of partiality”) (collecting cases).

A. Recusal Was Not Mandatory

After considering the issue only briefly (over lunch) and without the views of the parties, the trial court *sua sponte* concluded that it could not be impartial and that its recusal was therefore mandatory based solely on the fact that a third-party witness is married to the Assistant Presiding Judge. The trial court did not specify which subsection of Code of Civil Procedure § 170.1 it believed to be applicable, but there are effectively two possibilities:

1. Subdivision (a)(1) based on the trial court’s “personal knowledge of disputed evidentiary facts concerning the proceeding” because “[a] judge shall be deemed to have personal knowledge within the meaning of this paragraph if the judge, or the spouse of the judge, or a person within the third degree of relationship to either of them, or the spouse of such a person is to the judge's knowledge likely to be a material witness in the proceeding”;

2. Subdivision (a)(6)(A)(iii) based on the trial court’s belief that “[a] person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial.”

As explained further below, neither of these subsections required the trial court to recuse itself under the circumstances of this case. Moreover, “[a] judge has a duty to decide any proceeding in which he or she is not disqualified.” Code Civ. Proc. § 170. “The duty of a judge to sit where not disqualified is equally as strong as the duty not to sit when disqualified.” *Bassett Unified Sch. Dist. v. Superior Court* (2023) 89 Cal.App.5th 273, 286. Therefore, the trial court’s recusal itself and the resulting declaration of mistrial were in error.

1. Recusal was not mandatory based on the trial court’s “personal knowledge”

A judge has “personal knowledge . . . if the judge, or the spouse of the judge, or a person within the third degree of relationship to either of them, or the spouse of such a person is to the judge’s knowledge likely to be a material witness in the proceeding.” Code Civ. Proc., § 170.1(a)(1)(B).

California law is clear that “the third degree of relationship shall be calculated according to the civil law system.” Cal. Code Civ. Proc. § 170.5(d). Degrees of relationship calculated according to the civil law system refer to relationships of consanguinity or marriage. *People v. Williams* (1997) 16 Cal.4th 635, 653. In *People v. Williams*, the judge’s “daughter’s husband’s nephew” testified at trial as a witness for the prosecution. 16 Cal.4th at 651. The Supreme Court of California held the witness was not a “person within the third degree of relationship” within meaning of Code of Civil Procedure section 170.1. *Id.* at 652. In so holding, the court observed that either the judge and his son-in-law’s

nephew “are not related at all because there is no blood relationship between them [citations omitted], or their relationship is in the fifth degree.” *Id.* at 653 (citing Code Civ. Proc., § 170.5(d)).

Here, the fact that Supervisor Do testified as a witness does not impute any personal knowledge to the trial court by reason of his marriage to Judge Pham. The relationship between the trial court and Supervisor Do is extremely attenuated and, based on the trial court’s statements on the record, was unknown to the trial court until approximately 90 minutes before the trial court announced its recusal and declared a mistrial.³ The trial court does not have any direct relationship with Supervisor Do. Supervisor Do is merely a third-party witness who happens to be married to the trial court’s colleague. Because there is no

³ “Counselors, today I received a telephone call, beginning of the lunch hour, from our Acting Presiding Judge, indicating he had received a personal case disclosure. And pursuant to that, I have been notified that the witness who has been testifying here, Mr. Do, is apparently married to one of my colleagues, an Orange County Superior Court Judge, Cheri Pham. And she’s not only a colleague, she’s our current Assistant Presiding Judge.

So I’m disclosing that on the record to all parties now. With some of the nodding, it appears you all knew that—or at least some of you did. ¶ [...] ¶

All right. I knew Mr. Do was a supervisor. Obviously you all knew that too. But I don’t know who my colleagues are married to. There’s a few exceptions, probably less than a handful. I don’t know who is married to who. So it didn’t even occur to me to inquire or get that information.”

[1Ex. Tab 13 at 482:7-483:4.]

relationship by either consanguinity or marriage between the trial court and Supervisor Do, section 170.1, subd. (a)(1)(B) provides no basis for disqualification. There is no relationship here that is sufficient to impute to the trial court any “personal knowledge of disputed evidentiary facts concerning the proceeding.” Accordingly, recusal based on CCP § 170.1(a)(1) was not appropriate.

2. Recusal was not mandatory based on potential doubts about the trial court’s impartiality under the applicable “average person” standard

The standard for disqualification provided for in Code of Civil Procedure section 170.1(a)(6)(iii) is fundamentally an objective one, and “not based on the judge’s personal view of his own impartiality.” *United Farm Workers of Am. v. Superior Ct.* (1985) 170 Cal.App.3d 97, 104. Thus, “a judge faced with a potential ground for disqualification ought to consider how his participation in a given case looks to the average person on the street.” *Ibid.* (internal quotation marks omitted).

Importantly, the “average person” standard “must not be so broadly construed that it becomes, in effect, presumptive, so that recusal is mandated upon the merest unsubstantiated suggestion of personal bias or prejudice.” *Bassett Unified School Dist. v. Superior Court* (2023) 89 Cal.App.5th 273, 286. “Judicial responsibility does not require shrinking every time an advocate asserts the objective and fair judge *appears* to be biased. The duty of a judge to sit where not disqualified is equally as strong

as the duty not to sit when disqualified.” *Wechsler, supra*, 224 Cal.App.4th at 391 (quoting *Haworth v. Superior Court* (2010) 50 Cal.4th 372, 392).

When considering judicial disqualification based on whether a reasonable member of the public would fairly entertain doubts that the judge is impartial, the “reasonable person” is not someone who is hypersensitive or unduly suspicious, but rather is a well-informed, thoughtful observer. *Id.* at 390. The facts and circumstances bearing on a judge’s possible partiality must be considered at the time the impartiality of the court is questioned. *United Farm Workers, supra*, 170 Cal.App.3d at 105. Where, as here, the facts are not in dispute, the issue of how an objective person would view the judge’s ability to be impartial is a legal question that is reviewed de novo. *Bassett Unified Sch. Dist., supra*, 89 Cal.App.5th at 287.

For the reasons stated above, the relationship between the trial court and Supervisor Do is so attenuated that no bias or prejudice can be implied. Supervisor Do is a third-party, percipient witness. He is not a party, has no financial or other beneficial interest in the outcome of the case, and has no direct relation to Judge Gastelum. The mere fact that a third-party witness is married to the Assistant Presiding Judge cannot by itself be sufficient to require disqualification of all Orange County judges from this case.

Moreover, because “all judges are drawn from the ranks of the legal profession, such prior relationships are neither unusual

nor dispositive” of disqualification. *Wechsler, supra*, 224 Cal.App.4th at 393. “The proper performance of judicial duties does not require a judge to withdraw from society and live an ascetic, antiseptic and socially sterile life.” *United Farm Workers, supra*, 170 Cal.App.3d at 100.⁴

For example, in *United Farm Workers* the defendant moved to disqualify the trial judge after 32 days of trial. The judge recollected—upon his memory being refreshed by testimony—that his wife had worked for plaintiff for two days during the period of the strike which was at issue at trial. Like the case at hand, *United Farm Workers* was a bench trial. The trial court denied the motion to disqualify, and the defendant petitioned for a writ of mandate. The court of appeal held that the fact that the trial judge's wife had worked for plaintiff during the strike did not warrant disqualification where the judge had forgotten about his wife's work until nearly two months into trial and the judge's conduct during trial did not support inference of partiality. *See generally United Farm Workers, supra*, 170 Cal.App.3d 97.

⁴ Federal law is in accord with California's standards on this issue. “The fact . . . that the Court may be personally familiar, or even friends, with potential witnesses does not make him predisposed in favor of them to the point where recusal is required. If such familiarity, or friendship, were an appropriate standard for determining when recusal is necessary, either very few cases could be heard by the federal judiciary or, ‘federal judges would be rendered hermits upon their appointment.’ (Citation omitted.) More pertinently, such familiarity with witnesses is not and does not even imply ‘personal bias or prejudice’ against or for a party.” *Hirschkop v. Virginia State Bar Assn.* (E.D. Va. 1975) 406 F. Supp. 721, 725.

Similarly, in *Wechsler*, the judge’s act of officiating the wedding of the prosecutor’s daughter in a purely official capacity, along with intermittent social and professional contacts, was insufficient to show an appearance of bias. *Wechsler, supra*, 224 Cal.App.4th at 394. In contrast, in *People v. Cowan*, a trial judge properly recused himself when the judge’s close friendship with two prosecution witnesses would give rise to a doubt that the judge would be able to be impartial. *People v. Cowan* (2010) 50 Cal.4th 401.

Here, mandatory recusal based on purported doubts about the trial court’s impartiality was not justified under the “average person” standard. The putative disqualifying relationship here is significantly more attenuated than *United Farm Workers* where the Court of Appeal determined recusal was *not* warranted. Unlike *United Farm Workers*, where the trial court’s spouse actually worked for one of the parties during the period at issue during the trial, *there is no relationship* between the trial court or his family and Supervisor Do (a third-party witness) much less any of the actual parties to this case.

And an “average person” would not impute any impartiality to the trial court based on the fact that Supervisor Do is married to the Assistant Presiding Judge because the Assistant Presiding Judge has no power over the trial court. *See* Local Rules— Superior Court of California, County of Orange, Rule 154.C. (“The Assistant Presiding Judge shall have the responsibility for such duties as are delegated by the Presiding Judge. The

Assistant Presiding Judge will also, during the absence or inability to act of the Presiding Judge, be the Acting Presiding Judge of the Superior Court and exercise the powers and carry out the duties of the Presiding Judge as prescribed by law and court rules.”).⁵ The mere fact that the Assistant Presiding Judge’s spouse is appearing as a third-party witness before another judge does not create a reasonable doubt that the judge can be fair and impartial.

B. The Parties Waived Any Purported Judicial Conflict

Even if there had been a judicial conflict meriting disqualification (and there was not), all parties waived that conflict by proceeding with the trial.

A party who seeks to disqualify a judge must do so “*at the earliest practicable opportunity* after discovery of the facts constituting the ground for disqualification.” Cal. Code Civ. Proc. § 170.3; *Magana v. Superior Court* (2018) 22 Cal.App.5th 840, 856 (holding that statement of disqualification was untimely and objections waived where “all of the purported facts it recites as a basis for recusing the trial judge related to events that had occurred nearly one month earlier . . . when the case was first assigned . . . for trial”). For fifty years, California courts have

⁵ Notably, though the Presiding Judge was apparently absent the day that the trial court learned of the purported conflict and recused itself, the Presiding Judge had designated an Acting Presiding Judge *who was not* the Assistant Presiding Judge Pham. [See 1Ex. Tab 14 at 486 (“JUDICIAL OFFICER PRESIDING: Acting Presiding Judge Erick L. Larsh”).]

consistently denied untimely statements of disqualification under a theory of waiver.⁶ *N. Am. Title Co. v. Superior Court of Fresno Cnty.* (2023) 91 Cal.App.5th 948, 981-82 (collecting cases).

A delay in seeking to disqualify a judge “constitutes forfeiture or an implied waiver of the disqualification.” *Tri Counties Bank v. Superior Court* (2008) 167 Cal.App.4th 1332, 1337 (motion to disqualify judge for improperly undertaking independent investigation of facts denied when party was aware of misconduct but only raised issue after adverse ruling in case); *see also Hayward v. Superior Court* (2016) 2 Cal.App.5th 10, 49 (“parties can waive disqualification by their conduct where they are aware of grounds for disqualification but continue to participate in the proceedings without raising the objection”). “In other words, a party should not be allowed to gamble on a favorable decision and then raise such an objection in the event he is disappointed in the result.” *Magana v. Superior Court* (2018) 22 Cal.App.5th 840, 856.

Here all of the facts and circumstances from which the putative judicial conflict arose were publicly known months before the first day of trial—June 7, 2023—and over a year before the witness in question was called to testify. When the parties filed their joint witness list identifying Supervisor Do in January

⁶ The only non-waivable bases for disqualification are listed in section 170.3, subd. (b)(2); for personal bias or prejudice toward a party or where the judge served as an attorney or material witness in the matter in controversy. Neither basis for disqualification exists here.

2023, it was publicly known (and likely well-known in the Orange County legal and local government communities) that (i) Supervisor Do and Judge Pham had been married for many years [1Ex. Tabs 15-18] and (ii) Judge Pham had been elected Assistant Presiding Judge of the Orange County Superior Court four months before. [1Ex. Tab 19.]

Despite these facts being publicly known, neither the parties nor the trial court raised any concerns about the trial court proceeding with the trial based on the fact that Supervisor Do is married to Judge Pham. Accordingly, even if Supervisor Do's status as Judge Pham's spouse constituted valid grounds to disqualify the trial court from presiding over trial of this matter, that basis for disqualification was waived when the parties did not raise it before trial commenced.

Moreover, any conclusion that the parties retained the right to disqualify the trial court based on Supervisor Do and Judge Pham's relationship and Judge Pham's position as Assistant Presiding Judge would be particularly problematic because it would amount to a *de facto* right to move for a change of venue during trial. Code of Civil Procedure section 397 states that "[t]he court may, *on motion*, change the place of trial . . . (b) When there is reason to believe that an impartial trial cannot be had therein; . . . [and/or] (d) When from any cause there is no judge of the court qualified to act." Section 397(b), (d) (emphasis added). Notably, the trial court does not have the power to transfer venue on its own motion. *See Hamilton v. Superior Ct.*

(1974) 37 Cal.App.3d 418, 423-24 (“There was no motion filed stating grounds supplied by necessary affidavits to which petitioner could respond. The change of venue was made by respondent Superior Court of San Mateo County *sua sponte*. . . . Under the circumstances, therefore, respondent Superior Court of San Mateo County was without authority to transfer the case to respondent Superior Court of Santa Clara County.”).

Here, the putative disqualifying conflict—a third-party witness is married to the Assistant Presiding Judge—would apply equally to every Orange County Superior Court judge (except, perhaps, the Presiding Judge). Again, the facts that (i) Supervisor Do and Judge Pham are married and (ii) Judge Pham was elected to be Assistant Presiding Judge of the Orange County Superior Court were publicly known approximately nine months before the first day of trial. If any party believed they could not receive a fair trial in Orange County Superior Court because Supervisor Do is married to the Assistant Presiding Judge, it was incumbent upon that party to move for a change of venue *before* trial commenced. None of the parties did so and it is highly prejudicial to allow the trial court to *de facto* transfer venue on its own motion on the fourteenth day of trial.

Conclusion

For the foregoing reasons, this Court should grant the requested writ.

Dated: November 27, 2023

PUBLIC LAW CENTER
Jonathan D. Bremen

SHEPPARD MULLIN RICHTER &
HAMPTON LLP
Isaiah Z. Weedn
Todd E. Lundell
Zachary J. Golda

By: /s/ Todd E. Lundell
Todd E. Lundell

Attorneys for Petitioners Orange
County Association for Mental
Health dba Mental Health
Association of Orange County
and BT Investment Properties,
LLC

DISABILITY RIGHTS
CALIFORNIA
Lili V. Graham
Lucia J. Choi
Navneet K. Grewal

By: /s/ Lili V. Graham
Lili V. Graham

Attorneys for Petitioner Lunyea
Willis

Certificate of Word Count

The undersigned certifies that pursuant to the word count feature of the word processing program used to prepare this petition, it contains 9,190 words, exclusive of the matters that may be omitted under Rules 8.204(c)(3) and 8.486(a)(6).

Dated: November 27, 2023

SHEPPARD MULLIN RICHTER &
HAMPTON LLP
Isaiah Z. Weedn
Todd E. Lundell
Zachary J. Golda

By: /s/ Todd E. Lundell
Todd E. Lundell

Proof of Service

STATE OF CALIFORNIA, COUNTY OF ORANGE

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 Orange, State of California. My business address is 650 Town Center Drive, 10th Floor, Costa Mesa, CA 92626.

On November 27, 2023, I served true copies of the following document(s) described as **Petition for Writ of Mandate or Other Appropriate Relief; Memorandum of Point and Authorities; Supporting Exhibits Filed Under Separate Cover** on the interested parties in this action as follows:

See Attached Service List

BY ELECTRONIC SERVICE: 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), I provided the document(s) listed above electronically on the TRUE FILING Website to the parties on the Service List maintained on the TRUE FILING Website for this case, or on the attached Service List. TRUE FILING is the on-line e-service provider designated in this case. Participants in the case who are not registered TRUE FILING users will be served by mail or by other means permitted by the court rules.

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

Executed on November 27, 2023, at Costa Mesa, California.

/s/ Laurie Palmer
Laurie Palmer

SERVICE LIST

Kyle Nellesen
Jose Montoya
CITY OF SANTA ANA
20 Civic Center Plaza, M-29
P.O. Box 1988
Santa Ana, CA 92702
Telephone: 714.647.5201
Facsimile: 714.647.6515
Email: jmontoya@santa-ana.org
knellesen@santa-ana.org
cc: sstclair@santa-ana.org

Stephen A. McEwen
Mark J. Austin
BURKE WILLIAMS & SORENSEN, LLP
18300 Von Karman Avenue, Suite 650
Irvine, CA 92612-1032
Telephone: 949.863.3363
Facsimile: 949.863.3350
Email: smcewen@bwslaw.com
maustin@bwslaw.com
cc: jvaldez@bwslaw.com

Lili Graham
Lucia Choi
Navneet K. Grewal
DISABILITY RIGHTS CALIFORNIA
350 South Bixel Street, Suite 290
Los Angeles, CA 90017
Telephone: 213.213.8000
Facsimile: 213.213.8001
Email: Lili.Graham@disabilityrightsca.org
Lucia.Choi@disabilityrightsca.org
Navneet.Grewal@disabilityrightsca.org

Kenneth W. Babcock
Jonathan D. Bremen
PUBLIC LAW CENTER
601 Civic Center Drive West
Santa Ana, CA 92701
Telephone: 714.541.1010
Facsimile: 714.541.5157
Email: kbabcock@publiclawcenter.org
jbremen@publiclawcenter.org

Orange County Superior Court
Hon. Erick L. Larch
Central Justice Center
700 Civic Center Drive
Santa Ana, CA 92701

STATE OF CALIFORNIA
California Court of Appeal, Fourth
Appellate District Division 3

PROOF OF SERVICE

STATE OF CALIFORNIA
California Court of Appeal, Fourth
Appellate District Division 3

Case Name: **Orange County Association for Mental Health,
et al. v. Superior Court of the State of California,
County of Orange**

Case Number: **TEMP-S3108BV5**

Lower Court Case Number:

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve: **tlundell@sheppardmullin.com**

3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
ISI_CASE_INIT_FORM_DT	Case Initiation Form
PETITION - PETITION FOR WRIT OF MANDATE/PROHIBITION	MHA Writ Petition
MISCELLANEOUS - ADDITIONAL DOCUMENTS	Exhibits ISO Petition for Writ of Mandate

Service Recipients:

Person Served	Email Address	Type	Date / Time
Isaih Weedn 229111	iweedn@sheppardmullin.com	e-Serve	11/27/2023 1:40:20 PM
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Jonathan Bremen	jbremen@publiclawcenter.org	e-Serve	11/27/2023 1:40:20 PM
Lili Graham 284264	lili.graham@disabilityrightsca.org	e-Serve	11/27/2023 1:40:20 PM
Lucia J. Choi 307384	lucia.choi@disabilityrightsca.org	e-Serve	11/27/2023 1:40:20 PM
Kyle Mellesen	knellesen@santa-ana.org	e-Serve	11/27/2023 1:40:20 PM

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Jose Montoya	jmontoya@santa-ana.org	e-Serve	11/27/2023 1:40:20 PM
Stephen McEdwe	smcewen@bwlsaw.com	e-Serve	11/27/2023 1:40:20 PM
Mark Austin	maustin@bwslaw.com	e-Serve	11/27/2023 1:40:20 PM
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This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

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

11/27/2023

Date

/s/Todd Lundell

Signature

Lundell, Todd (250813)

Last Name, First Name (PNum)

Sheppard Mullin Richter & Hampton, LLC

Law Firm