MINUTES OF THE MEETING OF THE APPELLATE COURTS SECTION
OF THE LOS ANGELES COUNTY BAR ASSOCIATION
Thursday, February 16, 2017, 4:30 p.m. to 6:00 p.m.
Court of Appeal, Second District, Courtroom
300 S. Spring Street, Los Angeles, California 90013

“The Argument Clinic: Learn Oral Argument Strategies from Justices and
Former Justices”

Moderator:
Tyna Orren, Esq., Orren & Orren

Arguing Counsel:
The Hon. Margaret M. Grignon (Ret.)
The Hon. Miriam A. Vogel (Ret.)

Judicial Panelists:
The Hon. Brian M. Hoffstadt, Associate Justice, Court of Appeal, 2nd. Dist., Div. 2
The Hon. Jeffrey W. Johnson, Associate Justice, Court of Appeal, 2nd Dist., Div. 1
The Hon. Patti Kitching (Ret.)

Attendees:
George Abele                      Sarvenaz Bahar                      Daniel Barer
Heather Beatty                   Lisa Berger                         Anna Birenbaum
Blitehe Bock                     Marina Bogorad                      Holly Boyer
Stephen Caine                    Frances Campbell                    David Carico
Gretchen Carpenter               Douglas Collodel                        Amy Cooper
Thomas Dunlap                    Gregory Ellis                        Stuart Esner
Dennis Fischer                   Anne Grignon                        Ricia Hager
Bassil Hamideh                   Jennifer Hashmall                 Rachel Hobbs
Edward Hoffman                   Anne Huarte                         Vikki Hufnagel
Mark Irvine                      Shaun Jacobs                        Zareh Jaltorossian
Laurence Jay                     John Jensen                         Thomas Joadines
Kyle Jones                       Rene Judkiewicz                  Jeralyn Keller
Patti Kitching                   Jens Koepke                         Paul Kuwashara
Matthew Levinson                 Zi Lin                               Joanna McCallum
Robert Moss                      Yao Mou                              Richard Nakamura
Lowell Orren                     Brad Pauley                         Kenneth Pedroza
Joseph Persoff                   Norman Pine                         Andrew Pruitt
Zee Rodriguez                    James Ryan                         Mark Schaeffer
Counsel presented a mock oral argument to the judicial panel in the courtroom in the already decided Supreme Court case, *Loeffler v. Target Corporation*. Justice Grignon represented the plaintiffs, and Justice Vogel represented the defendants. Counsel and the panel engaged in a spirited oral argument. Then, both counsel and the panelists entertained questions from the moderator and the audience concerning the oral argument.

Highlights Of Answers By Panelists and Counsel: (1) Rebuttal by appellant’s counsel should be limited to four or five points; (2) Humor can be a good idea, but only if the context of the case makes it appropriate and it is not a substitute for competence; (3) Don’t worry about reading what the intent of the judge’s questions is, just answer it forthrightly; (4) Supplemental briefing is rare but possible, more often resolved by Government Code letter; (5) Common and sometimes fatal oral argument negatives include failure of counsel to respond to a question, misrepresenting the record and mischaracterizing the law; (6) A tentative bench opinion is rarely reversed after argument but sometimes (10%); (7) if you have a cold bench, just make your key points and sit down; and (8) Collegiality is important, so avoid facial grimaces and show respect for opposing counsel and trial judge.

Approved on April 3, 2017

/s/

Jens B. Koepke, Secretary, Appellate Courts Section