



Josephine K. Petrick

Senior Counsel

Josephine is an Appellate Specialist certified by the California State Bar, and Senior Counsel with Hanson Bridgett's Appellate Practice Group. She represents companies, governmental organizations, nonprofits, and other litigants in all manner of civil appeals and writs, and advises clients and trial litigators on strategy and dispositive legal issues.

Before joining Hanson Bridgett, Josephine served as law clerk to the Honorable James L. Dennis on the U.S. Court of Appeals for the Fifth Circuit. She began her career at the appellate litigation boutique Horvitz & Levy LLP, and has worked at the litigation boutiques of Kaufhold Gaskin LLP and Kanner & Whiteley LLC.

In addition to appellate litigation, Josephine has experience litigating complex and high-stakes business, commercial, securities, consumer, and environmental matters. Previously, she served on the litigation teams successfully representing State Attorneys General in complex matters, including the Deepwater Horizon litigation, of unprecedented scale. Josephine brings her litigation experience to bear in counseling clients and trial litigators on strategy and important legal issues arising in the trial courts.

Josephine also frequently authors amicus briefs on behalf of clients, and maintains an active pro bono practice.

Josephine received a B.A. in Linguistics from the University of California at Berkeley (Highest Honors and Phi Beta Kappa) and a J.D. from the University of California, Hastings College of the Law (magna cum laude and Order of the Coif). She was a Senior Articles Editor of the Hastings Law Journal, was a member of the Moot Court Board, served as an intern for Judge Edward Chen on the U.S. District Court for the Northern District of California, and as a student she briefed and argued a winning Ninth Circuit appeal with the Hastings Appellate Project.

Josephine is licensed to practice in California and Louisiana, and is admitted to practice before the U.S. Supreme Court, and numerous federal Courts of Appeals across the country.

Published Decisions

Spencer v. Mowat, 46 Cal. App. 5th 1024 (2020): Secured victory for clients seeking to secure equal, public access to the California coast, in appeal testing the scope and limits of California's anti-SLAPP law in the context of civil conspiracy claims.

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Women's Impact Network, Member

Practices/Industries

Appellate

Insurance Recovery

Litigation & Dispute Resolution

PolyOne Corp. v. Westlake Vinyls, Inc., 937 F.3d 692 (6th Cir. 2019): Litigated novel question of arbitration law regarding application of *Hall St. Assocs., L.L.C. v. Mattel, Inc.*, 552 U.S. 576 (2008), in Federal Arbitration Act appeal arising from CERCLA contribution action.

Schwan v. Permann, 28 Cal. App. 5th 678 (2018): Represented clients in case of first impression regarding doctrine of testamentary impossibility as applied to conditional bequests in a trust.

Representative Work—Appeals

Arbitration: Obtained appellate victory for international apparel brand in patent licensing dispute, successfully persuading the Federal Circuit not to expand the reach of Ninth Circuit precedent overturning certain arbitral awards due to arbitrators' fractional ownership interest in *JAMS. Levi Strauss & Co. v. Aqua Dynamics, Inc.*, No. 21-1871, 2022 WL 61164 (Fed. Cir. Jan. 6, 2022).

Insurance: Litigated novel issue regarding the scope of attorney fees available in insurance bad-faith cases under *Brandt v. Superior Court*, 37 Cal. 3d 813, 693 P.2d 796 (1985), securing favorable settlement for client following briefing and oral argument. *Sahadi v. Liberty Mut. Ins.*, No. 19-17015 (9th Cir. Apr. 7, 2021).

Insurance: Representing policyholder in appeal testing scope and limits of business-interruption insurance policy in the wake of the Coronavirus pandemic, where policy contains provision for "virus coverage." *Kevin Barry Fine Art v. Hartford-Sentinel* (9th Cir.) (ongoing).

Public Agencies: Through amicus brief filed on behalf of Southern California Regional Rail Authority, helped persuade the California Supreme Court to preserve the historical definition of the term "public works" for purposes of labor and employment law, in a decision that will positively affect public agencies throughout California and beyond. *Busker v. Wabtec Corp.*, 492 P.3d 963 (Cal. 2021).

Civil Rights: In published opinion, secured victory for clients seeking to secure equal, public access to the California coast, in appeal testing the scope and limits of California's anti-SLAPP law in the context of civil conspiracy claims. *Spencer v. Mowat*, 46 Cal. App. 5th 1024 (2020).

Trusts and Estates: Obtained appellate victory for client in case addressing the scope and applicability of a conditional bequest in a trust. *Ostrosky v. Permann*, No. A158057, 2020 WL 5511315 (Cal. Ct. App. Sept. 14, 2020). Litigated novel question of doctrine of testamentary impossibility, in case leading to published appellate opinion. *Schwan v. Permann*, 28 Cal. App. 5th 678 (2018).

Healthcare: Through amicus brief filed on behalf of nonprofit organization, helped persuade the Ninth Circuit to uphold California's determination of death laws against constitutional challenges, resulting in opinion that favorably cited authority and arguments advanced in client's amicus brief. *Fonseca v. Smith*, No. 17-17153, 2020 WL 5569459 (9th Cir. Sept. 17, 2020).

Government: Obtained appellate victory on behalf of major regional rail authority, resulting in opinion affirming balance between State "sunshine" laws and public security needs. *L.A. Times Commc'ns LLC v. S. Cal. Reg'l Rail Auth.*, No. B280021, 2019 WL 4127260 (Cal. Ct. App. Aug. 30, 2019).

Arbitration: Litigated novel question of arbitration law in Federal Arbitration Act appeal arising from CERCLA contribution action. *PolyOne Corp. v. Westlake Vinyls, Inc.*, 937 F.3d 692 (6th Cir. 2019).

Government: Through amicus brief filed on behalf of major intermunicipal organizations, helped persuade the Ninth

Circuit to reject proposed limitations on municipal immunity from antitrust liability. *AmeriCare MedServices, Inc. v. City of Anaheim*, 735 F. App'x 473 (9th Cir. 2018).

Consumer Class Actions: Obtained favorable opinion holding that consumer could not state deceptive marketing claims regarding client's "almond milk" products, despite federal regulations narrowly defining "milk." *Painter v. Blue Diamond Growers*, 757 F. App'x 517 (9th Cir. 2018).

Constitutional Law: Represented behavioral science and economics scholars, including Nobel Prize recipient, as amici in U.S. Supreme Court case concerning interplay between free speech and equal protection rights. *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm'n*, 138 S. Ct. 1719, 201 L. Ed. 2d 35 (2018).

Anti-SLAPP: Secured favorable settlement and dismissal of complaint in full following filing of client's opening brief on appeal regarding lower court's erroneous denial of client's anti-SLAPP motion. *Wag Hotels, Inc. v. Puglisi*, No. A146927 (Cal. Ct. App. 2015-2017).

Copyright: Contributed to appellate brief in matter involving novel application of the copyright misuse doctrine. *Omega S.A. v. Costco Wholesale Corp.*, 776 F.3d 692 (9th Cir. 2015).

Pro Bono: Represented diverse group of amici curiae in right to education appeal in support of students seeking equal access to educational opportunity. *Reed v. California*, 208 Cal. App. 4th 322 (2012).

Pro Bono: As certified law student presenting briefing and oral argument in the Ninth Circuit, won appeal of order dismissing client's Truth in Lending Act claims. *Matza v. Countrywide Home Loans, Inc.*, 433 F. App'x 591 (9th Cir. May 18, 2011).

Representative Work—Trial Strategy and Motion Practice

Media/First Amendment: Represent online media company in action brought by prominent public figure seeking to use the judicial system to unveil the identity of an online user with respect to user's post of widespread public interest. *Robert F. Kennedy, Jr. v. Kos Media, LLC*, No. HG21107215 (Alameda Superior Court) (ongoing).

Punitive Damages: As appellate/post-trial counsel, obtained a conditional remittitur reducing a \$2.1 million punitive damage award to one third of the original award. (S.F. Superior Court).

Insurance: Obtained summary judgment in federal court in favor of policyholder, with ruling that the defendant had a duty to defend in the underlying class action. *Scottsdale Indem. Co. v. Quality Med. Imaging of California, Inc.*, No. 218CV00313APGVCF, 2018 WL 5258622 (D. Nev. Oct. 22, 2018).

Class Actions: Defeated class certification in consumer class action against national retailer. *Cover v. Windsor Surry Co.*, No. 14-CV-05262-WHO, 2017 WL 9837932 (N.D. Cal. July 24, 2017).

RICO: On behalf of tribal leaders, won dismissal with prejudice of third-party complaint in complex federal RICO action with hundreds of millions at stake. *Paskenta Band of Nomlaki Indians v. Crosby*, No. 2:15-cv-00538-MCE-CMK, 2016 WL 3854237 (E.D. Cal. July 15, 2016).

Securities: Successfully represented directors, officers, companies, and investment funds in variety of securities and derivative actions, including putative class actions.

Environmental: Served as appellate advisor of litigation team in complex environmental class action and FCA suit.

(N.D. Cal.).

Environmental: Served as appellate and law-and-motion representative of litigation team in large-scale environmental case through historic, record-breaking settlement on behalf of the State of Louisiana. In re Deepwater Horizon, MDL No. 2179, Nos. 10-3059 & 11-0516 (E.D. La. 2010-2015).

Environmental: Served as appellate and law-and-motion representative of litigation team in large-scale environmental case from trial, post-trial briefing, through record-breaking settlement on behalf of the State of New Jersey. N.J. Dep't Env'tl. Prot. v. ExxonMobil Corp., Nos. UNN-L3026-04 & UNN-L-1650-05 (N.J. Sup. Ct. Law Div. 2014-2015).

Select Amicus Briefs

Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm'n, 138 S. Ct. 1719, 201 L. Ed. 2d 35 (2018): Represented behavioral science and economics scholars, including Nobel Prize recipient, as amici in U.S. Supreme Court case concerning interplay between free speech and equal protection rights.

Busker v. Wabtec Corp., 492 P.3d 963 (Cal. 2021): Through amicus brief filed on behalf of Southern California Regional Rail Authority, helped persuade the California Supreme Court to preserve the historical definition of the term "public works" for purposes of labor and employment law, in a decision that will positively affect public agencies throughout California and beyond. Amici's arguments were favorably noted by the Justices at oral argument.

Fonseca v. Smith, 827 F. App'x 685 (9th Cir. 2020): Represented nonprofit group Compassion & Choices in Ninth Circuit appeal, in which the court held that the plaintiffs lacked standing to maintain their challenge to California's Uniform Determination of Death Act (CUDDA). Incorporating points from client's amicus brief, the court observed that it is an accepted medical standard that brain death constitutes death, and that California has defined brain death as "death" since 1974, citing Barber v. Superior Court, 147 Cal. App. 3d 1006, 1013 n.1 (1983).

AmeriCare MedServices, Inc. v. City of Anaheim, 735 F. App'x 473 (9th Cir. 2018): Represented municipal organizations as amici curiae in appeal addressing contours of antitrust and municipal immunity doctrines.

Reed v. California, 208 Cal. App. 4th 322 (2012): Represented diverse group of amici curiae in right to education appeal in support of students seeking equal access to educational opportunity.

Publications

"Jumping the Gun: What Happens If a Notice of Appeal Is Filed While Post-Trial Motions Are Pending?," *Appellate Insight* (September 2021)

"*Busker v. Wabtec* – California Supreme Court Rules That On-Board Work Is Not Public Works," *Appellate Alert* (August 2021)

"May Arbitration Awards Violate Public Policy?," *Daily Journal* (July 2021)

"Chevron/Auer Deference," *In-House Defense Quarterly* (June 2021)

"What Can Oral Argument Preparation Teach Us About Effective Briefing?," *Appellate Insight Blog* (April 2021)

"Manufacturing Appellate Jurisdiction: A Dangerous Gambt," *The Recorder* (February 2021)

"Queen's Bench Past President Presiding Justice Barbara J.R. Jones Retires From the Court of Appeal After Trailblazing Career," *Queen's Bench Public Announcement* (December 2020)

"Federal Anti-SLAPP Law Year in Review – 2019 Roundup," *Appellate Insight Blog* (March 2020)

"Amicus Briefs: Friend of the District Court, Too?," *Appellate Insight Blog* (September 2019)

"Federal Class Action Appeals – What's the Deadline to Petition to Appeal When a Motion for Reconsideration Is Filed?" *Appellate Insight Blog* (December 2018)

"Arbitration Clauses, What's in Yours?" *Appellate Insight Blog* (April 2018)

"Must One Contest a Tentative Ruling?" *Appellate Insight Blog* (February 2018)

"Masterpiece Cakeshop': Drawing Lines to Ensure Tolerance Runs in All Directions," *The Recorder* (December 2017)

"Peremptory Challenge Denied? Take a Writ," *Appellate Insight Blog* (November 2017)

"MCLE: SLAPP Update," *California Lawyer* (December 2012)

"Why we need a federal anti-SLAPP law," *Daily Journal* (June 2012)

"The Wide-Ranging Applications of California Anti-SLAPP Law," *Law360: Expert Analysis* (February 2012)

"The Standing Doctrine's Dirty Little Secret," *107 Nw. U. L. Rev.* 169 (2012)

"Uncertainty looms over anti-SLAPP issues," *Daily Journal* (December 2011)

Presentations

"CCP §998 Offers: Powerful Settlement Tool, Or Trap For the Unwary?," Hanson Bridgett California MCLE Program (October 2021)

"The Future of Chevron/Auer Deference," The Bar Association of San Francisco's Appellate Law Section Webinar (October 2021)

"Manufacturing Federal Appellate Jurisdiction," The Bar Association of San Francisco's Appellate Law Section Webinar (June 2021)

"Defending SLAPP Suits: Widening Circuit Split, Anti-SLAPP Motions, Cease and Desist Letters, Amended State Laws," Strafford Webinar (March 2021)

"Appellate Litigation: What Lies Ahead in 2019 and Beyond," The Knowledge Group (April 2019)

Press

"Fed. Circ. Won't Touch Levi's Win In Royalty Arbitration," Law360 (January 2022)

"Hartford Unit Fights Gallery's Virus Coverage Suit At 9th Circ.," Law360 (August 2021)

Honors & Awards

California Lawyers Association, Wiley W. Manuel Pro Bono Legal Services Award (2019–2021)

Professional Affiliations

Bar Association of San Francisco, Appellate Law Section, Executive Committee Member

Queen's Bench Bar Association of the Greater Bay Area, Treasurer & Amicus Committee Co-Chair, and Board Member

Judicial Clerkships

Law Clerk to the Honorable Judge James L. Dennis, U.S. Court of Appeals for the Fifth Circuit (2012–2014)

Judicial Intern to the Honorable Judge Edward Chen, U.S. District Court, Northern District of California

Academic Distinctions

U.C. Hastings Law Journal, Senior Editor

Moot Court Board, Member

Order of the Coif, Member

Thurston Society, Member

Outstanding Pro Bono Award, Top Student in Federal Courts, Conflict of Laws, International Commercial Arbitration, Jurisprudence, and Legal Ethics

Education

J.D., magna cum laude, University of California, Hastings College of the Law (2011)

B.A., highest honors, University of California, Berkeley (2008)

Admissions and Courts

California

Louisiana

Supreme Court of the United States

U.S. Court of Appeals for the Ninth Circuit

U.S. Court of Appeals for the Sixth Circuit

U.S. Court of Appeals for the Tenth Circuit

U.S. Court of Appeals for the Federal Circuit

U.S. District Court for the Northern District of California

U.S. District Court for the Eastern District of California

Other district courts across the country *pro hac vice*

Professional Licenses

Certified Appellate Specialist