



Don Willenburg

PARTNER

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RELATED SERVICES

- Environmental & Toxic Tort
- Insurance
- Employment
- Insurance – Appellate
- Appellate
- Green Technology, Solar & Renewable Energy
- Product Liability

OFFICES

- San Francisco

OVERVIEW

Don Willenburg is co-chair of the firm’s national Appellate Practice Group. Described as an “appellate luminary” by the journal *California Litigation*, he is past chair of the Appellate Practice Section of the Bar Association of San Francisco, and for the last decade-plus has chaired the amicus briefs committee of the Association of Defense Counsel of Northern California and Nevada working to advance causes important to the defense community.

Don has won appeals and writs in cases involving product liability, employment (discrimination, harassment, wrongful termination), construction defects and disputes, the “going and coming” rule, and other areas. A recent appellate success was persuading the California Supreme Court to require the

lower courts to re-visit improper rulings imposing jurisdiction over non-California defendants. He is editor of the firm's blog *Environmental and Toxic Tort Defense Insight*.

Appellate lawyering is not “just” appeals and writs. Summary judgments and other dispositive motions are part of the specialty, as is serving as “appellate monitor” in a high-stakes trial to help shape arguments and create the best record for possible appeal. And sometimes the best advice you can get from an appellate lawyer is to not pursue a writ or appeal, or a particular argument in connection with either. Even when the trial-level defeat really stings.

Don has guest lectured at the USC and Pepperdine law schools and served as Practitioner Advisor for the Appellate Advocacy class at Berkeley (2021). He has been a moot court justice at a number of law schools in Los Angeles and San Francisco. He is a frequent author and lecturer on appellate procedure, evidence, expert witnesses, SLAPP and section 998 settlement offers. He has volunteered as judge pro tem, and as a Penal Code section 1524 special master accompanying police executing search warrants that cover privileged material.

REPRESENTATIVE EXPERIENCE

Mr. Willenburg's practice has included:

- Successfully defended a school district against claims of Constitutional violations for protecting student safety regarding students wearing American flag-themed clothing at a Cinco de Mayo celebration. *Dariano v. Morgan Hill Unified Sch. Dist.*, 745 F.3d 354 (9th Cir. 2014).
- Successfully defended an award of attorney fees against a frivolous FEHA plaintiff, despite the absence of what precedent called “unwaivable requirement” for such an award. (*Robert v. Stanford University* (2014) 224 Cal.App.4th 67.)
- Briefing two cases that resulted in decisions limiting product liability by rejecting a defendant's liability for harms caused by the products of other parties “foreseeably” used near the defendant's non-defective product. (*Merrill v. Leslie Controls, Inc.* (2009) 179 Cal.App.4th 262; *Taylor v. Elliott Turbomachinery Co., Inc.* (2009) 171 Cal.App.4th 564.)
- Arguing and winning a decision from a California Court of Appeal requiring fair disclosure by plaintiffs in civil cases of documents submitted to asbestos bankruptcy trusts. (*Volkswagen of America, Inc. v. Superior Court* (2006) 139 Cal.App.4th 1481.)
- Defeating a tobacco company's attempt to force its insurer to pay for smoking lawsuits.
- Conducting an in-court sale of “Spiderman” motion picture rights.
- Structuring the financial reorganization of Seabrook nuclear power plant.
- An amicus brief persuading the California Supreme Court not to impose needless restrictions on nonprofit organizations that provide legal services. (*Frye v. Tenderloin Housing Clinic, Inc.* (2006) 38 Cal.4th 23.)

PUBLICATIONS

- “Off-site subcontractor accidents: Who’s liable?” *Daily Journal* (April 8, 2025)
- “Ramirez: responding to restrictions on the affirmative use of PMQ testimony,” *Daily Journal* (Feb. 8, 2023)
- “How to Obtain Relief When Trial Judges Won’t Render Decisions,” *For the Defense* (January 2023)
- “Making the Most of Your Table of Contents, Introduction, and Conclusion,” *For the Defense* (Nov./Dec. 2022)
- “Mayday! M’aidez! You shall reconsider your thoughts about ‘may!’,” *Daily Journal* (May 24, 2022)
- “When is ‘each defendant’ not ‘every defendant?’ Under Prop. 51,” *Daily Journal* (Aug. 19, 2020)
- “State Supreme Court ‘clarifies’ expert witness and hearsay,” *Daily Journal* (Mar. 3, 2020)
- “Legal innovation report: part promising, part unexceptionable,” *Daily Journal* (Aug. 23, 2019)
- “The California Consumer Privacy Act of 2018,” *Defense Comment* (Summer 2019)
- *People v. Sanchez*, Hearsay, and Expert Testimony, *California Litigation* (Spring 2018)
- “Anti-SLAPP Appeals: Extensions and Civility are Not Bad Faith,” *Daily Journal* (Feb. 7, 2018)
- “Product liability decision hits hard, but may not reach far,” *Daily Journal* (January 17, 2018)
- “Can’t Spell Truth Without Ruth: Book Review, Notorious RBG: The Life and Times of Ruth Bader Ginsburg,” *Defense Comment* magazine (Summer 2017)
- Quoted in “California Supreme Court decision on statute of limitations could alter certainty in courts, experts say,” *Northern California Record* (March 23, 2017)
- “What Happens in Vegas Might Be Decided by a California Court,” *Daily Journal* (February 1, 2017)
- “Hearsay ruling will affect civil cases, too,” *Daily Journal* (August 2016)
- “E-filing is Coming to Superior Courts,” *Daily Journal* (May 2016)
- “No Duty, No Problem? Strict Product Liability Applies Anyway,” *American Bar Association, Corporate Counsel News and Developments* (February 5, 2014)

PRESENTATIONS

- Year in Review (Key California Decisions), Association of Defense Counsel of Northern California and Nevada, December 2024
- Co-Presenter, Civil (mostly) Appellate Update with Justice Mark Simons, Prof. Gary Watt (Hastings), and Zahra Bocek, Contra Costa County Bar Association MCLE Spectacular, November 2024
- Appellate Developments, ADC-NCN Toxic Torts seminar, October 25, 2024
- Year in Review (Key California Decisions), Association of Defense Counsel of Northern California and Nevada, December 2023
- Co-Presenter Evidence Update with Justice Mark Simons and Prof. Gary Watt (Hastings), Contra Costa County Bar Association MCLE Spectacular, November 2023

- PMQs and Proving the Past: You Can't Get There from Hear-say — Ramirez v. Avon, and What Comes After, Association of Defense Counsel of Northern California and Nevada, July 2023
- Appellate Developments, ADC-NCN Toxic Tort Seminar, June 2, 2023
- Year in Review (Key California Decisions), Association of Defense Counsel of Northern California and Nevada, December 2022
- Co-Presenter, How to Obtain Appellate Relief When Trial Judges Won't Render Decisions with Jon B. Orndorff, Defense Research Institute, November 3, 2022
- How to be an Effective Legal Writer, Defense Research Institute, November 2, 2022
- Appellate Developments, ADC-NCN Toxic Torts seminar, June 3, 2022
- Year in Review (Key California Decisions), Association of Defense Counsel of Northern California and Nevada, December 2021
- Co-Presenter, The Supremes Said It. Now What??? A review of recent California Supreme Court cases impacting civil litigators with Justice Peter Siggins (ret.) and Prof. Gary Watt (Hastings), Contra Costa County Bar Association MCLE Spectacular, Nov. 17, 2021
- Co-Presenter, You're Not in Kansas Anymore: Five Things Litigators Must Know Before Stepping Into Arbitration with Justice Terence Bruiniers (ret.), California Lawyers Association Litigation and Appellate Summit, May 14, 2021
- Year in Review (Key California Decisions), Association of Defense Counsel of Northern California and Nevada, December 2020
- Co-Presenter, The Supremes Said That??? A Review of Recent California Supreme Court Cases Impacting Civil Litigators with Justice Peter Siggins, California Court of Appeal and Professor Gary Watt (Hastings), Contra Costa County Bar Association MCLE Spectacular, November 20, 2020
- Expert Witnesses and Hearsay: People v Sanchez. Association of Defense Counsel of Northern California and Nevada, Toxic Torts Section, April 27, 2019
- Co-Presenter, Understanding SLAPPs: Process and Procedure from Initiation through Appeal with Justice James Richman and Justice Terence Bruiniers (ret.), Hotel Nikko in San Francisco, April 5, 2019
- Co-Presenter, Sanchez, Experts and Hearsay: Tricks and Traps with Justice Louis Mauro of the California Court of Appeal and civil practitioner Kristie Sager, Association of Defense Counsel of Northern California and Nevada, Annual Meeting, December 6, 2018
- Co-Presenter, SLAPP and 998 Update: What You Don't Know or Don't Do Could Sink You with Justice Ignazio Ruvolo, California Court of Appeal (ret.) and Professor Gary Watt (Hastings), Contra Costa County Bar Association MCLE Spectacular, November 16, 2018
- The Fine Art of Legal Writing and Advocacy. Association of Defense Counsel of Northern California and Nevada, "Basic Training" series, October 18, 2018
- Key California Cases 2017-2018. California Lawyers Association Litigation and Appellate Summit, October 5, 2018

- Ethics in Appellate Advocacy – with Redding Superior Court judges Tammy Wood and Stephen Baker, and Prof. Gary Watt. Shasta-Trinity Bar Assn., Redding, CA, May 5, 2017
- What to Do and Not To Do with Technology – with California Court of Appeal Justice Jon Streeter and Harry Chamberlain. Advanced Appellate Practice Seminar, San Francisco, January 27, 2017
- Ethics in Appellate Advocacy – with California Court of Appeal Justice Jon Streeter and Gary Watt. Advanced Appellate Practice Seminar, San Francisco, January 27, 2017
- How to Turn a Loss Into a Win, and Vice Versa: Section 998 Settlement Offers – with California Court of Appeal Justice Mark Simons and Prof. Gary Watt, Association of Defense Counsel of Northern California and Nevada Annual Meeting, December 8, 2016
- Ethics in Advocacy: Attorneys Behaving Badly – with California Court of Appeal Justice Peter Siggins and Prof. Gary Watt, Contra Costa County Bar Association, MCLE Spectacular, November 18, 2016
- How to Turn a Loss Into a Win, and Vice Versa: Section 998 Settlement Offers – with Prof. Gary Watt and Beau Burbridge, Bar Association of San Francisco, November 8, 2016
- (1) What's New in Appellate Practice and Technology and (2) Protecting and Presenting the Record – Advanced Civil Appellate Conference, Pincus Presentations, February 25, 2016
- Ethics in Advocacy – Appellate and Otherwise – with Justice Peter Siggins and Prof. Gary Watt. Association of Defense Counsel of Northern California and Nevada Annual Meeting, December 10, 2015
- Perfecting and Imperfecting the Record for Appeal with Justice Mark Simons and Prof. Gary Watt, Contra Costa Bar Association MCLE Spectacular, November 20, 2015
- Expert Witnesses and Mega-Data Studies – Appraisal Institute, Northern California Chapter, May 21, 2015
- California Asbestos Appeals in 2014 – HarrisMartin Presentations, December 10, 2014
- Perfecting and Imperfecting the Record for Appeal – with Justice Mark Simons and Prof. Gary Watt. Association of Defense Counsel of Northern California and Nevada Annual Meeting. www.adcncn.org, December 4, 2014
- California: A SLAPP Happy State? – with Justice James A. Richman and Prof. Gary Watt. Contra Costa Bar Association MCLE Spectacular, November 21, 2014
- Perfecting and Imperfecting the Record for Appeal – Bridgeport Conferences, July 10, 2014

CREDENTIALS

Admissions

- United States Supreme Court
- California
- U.S. District Courts, California
- U.S Court of Appeals, First, Fifth (lapsed), Ninth, and Tenth Circuits

Memberships

- Association of Defense Counsel for Northern California and Nevada, Member, Board of Directors and Chair, Amicus Briefs Committee
- Information Technology Advisory Committee to Judicial Council of California, Member

Education

- J.D., Stanford University, 1984
 - Member, *Stanford Law Review*; *Stanford Journal of International Law*
 - Various editorial positions on *The Stanford Daily*
- B.A., *magna cum laude*, Loyola University of Chicago, 1978
 - Member, Jesuit and political science honor societies

Honors

- Top Rated Lawyer-AV® Preeminent™, Martindale-Hubbell
- *Super Lawyers*® distinction in the fields of Appellate, Personal Injury Defense: Products and Employment Litigation: Defense (2013-2020)
- *Best Lawyers in America*® “Lawyer of the Year” distinction in Appellate Practice (2025)
- *Best Lawyers in America*® distinction in Appellate Practice (2024-2025)