

## QUESTIONS FOR COUNSEL

### For Plaintiff

- ① Assuming, for the sake of argument, that Plaintiff's premise is true – that unpublished cases are not reviewed by the California Supreme Court because they don't create a need to secure uniformity of decision – why is it a denial of due process to refuse discretionary review of cases which the Court of Appeal already decided do not create new or important law under the criteria of C.R.C. 8.1105(c)?
- ② Does Plaintiff's equal protection challenge allege that Rule 8.1115(a) makes an unlawful distinction between litigants whose cases the Court of Appeal determined meet the criteria of the publication rule, C.R.C. 8.1105(c), and those litigants whose cases don't?
- ③ Does Plaintiff allege, with this action, that the Court of Appeal intentionally and wrongfully issued an unpublished opinion in *Hild v. Southern California Edison* in order to avoid review by the California Supreme Court?
- ④ How can unpublished appellate opinions be “selectively prospective” if, under the criteria of C.R.C. 8.1105(c), they do not establish new law? To the extent Plaintiff argues that some unpublished opinions do establish new law, isn't that an argument that the Court of Appeal has misapplied the criteria in Rule 8.1105(c)?
- ⑤ To have standing, a plaintiff seeking declaratory or injunctive relief must demonstrate that he is “realistically threatened by a repetition of the violation.” *Gest v. Bradbury*, 443 F.3d 1177, 1181 (9th Cir. 1996). How can Plaintiff meet this standard?

### For Defendant

The Supreme Court has held that in the equal protection context, loss of a chance to compete for a benefit on equal footing with other similarly situated individuals is an injury. *Northeastern Fla. Chapter of Associated Gen. Contractors v. City of Jacksonville*, 508 U.S. 656, 666 (1993). Hasn't Plaintiff alleged that kind of injury?

### For Both Parties

- ⑥ Would an action brought by a different person seeking precisely the same relief be barred under *Rooker-Feldman*? Why or why not?