

**SAMPLE PETITION FOR REHEARING
(FOR AN ISSUE NOT ADDRESSED BY EITHER PARTY)**

ARGUMENT

I. The Court Is Required to Grant This Petition for Rehearing Because A Court of Appeal May Not Render A Decision Based Upon An Issue Which Was Not Proposed Or Briefed By Any Party To The Proceeding, Without First Affording The Parties An Opportunity To Present Their Views On The Matter Through Supplemental Briefing.

Government Code section 68081 provides that before an appellate court “renders a decision in a proceeding other than a summary denial of a petition for an extraordinary writ, based upon an issue which was not proposed or briefed by any party to the proceeding, the court shall afford the parties an opportunity to present their views on the matter through supplemental briefing. If the court fails to afford that opportunity, a rehearing shall be ordered upon timely petition of any party.” Because that did not happen here, a rehearing is mandatory.

In *California Casualty Ins. Co. v. Appellate Department* (1996) 46 Cal.App.4th 1145, 1147, the Second District Court of Appeal observed, “This is a small case, as cases go, but it raises a significant principle: judges, including appellate judges, are required to follow the law. In this case, the Appellate Department of the Los Angeles Superior Court decided a case on a point not raised by the parties, and without notice to the parties that it might do so.” (*Ibid.*) The problem here is exactly the problem for

which the Court of Appeal in California Casualty found error: after considering and ruling on the issues that were raised, the superior court appellate division there went on to decide the case on an issue no one had raised, and about which the court had failed to inform the parties that it might consider. (*Id.* at 1149.) The Court of Appeal continued, “Whatever might be said of the merit of the procedural deficiencies in the appeal, it was error to decide the case without warning the parties that the court was considering that ground, and giving them an opportunity to brief it.” (*Ibid.*, citing *Adoption of Alexander S.* (1988) 44 Cal.3d 857, 864.) In California Casualty, the appellate department of the superior court then denied a rehearing, which the Court of Appeal also assigned as error: Having made that error, it committed another. The statute specifies petitioner’s entitlement to rehearing upon timely application, pointing out the error. Such a petition was filed, but it was denied..(*Ibid.*)

[INSERT ISSUE HERE] This issue was never proposed or briefed by any party to the proceeding. Therefore, at a minimum, this petition must be granted for the purpose of supplemental briefing on the issue.