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# Horvitz & Levy

## Scott P. Dixler—Associate, Appellate Litigation

Scott Dixler has significant experience working as appellate and trial counsel to defend public entities, employers, premises owners, financial services entities and others in matters involving catastrophic injuries, class actions, business torts, intellectual property, contracts, securities, antitrust, and discrimination claims.

Before joining Horvitz & Levy, Mr. Dixler served as a law clerk to the Honorable William H. Pauley III of the United States District Court for the Southern District of New York and the Honorable Milan D. Smith, Jr. of the United States Court of Appeals for the Ninth Circuit. Prior to his clerkships, Mr. Dixler gained experience as a litigation associate at Cravath, Swaine & Moore LLP in New York.

Mr. Dixler did his undergraduate studies at Brown University, where he won the Irving Lysander Foster Premium for excellence in French, was an early inductee into Phi Beta Kappa, and graduated *magna cum laude*. Mr. Dixler earned his law degree from Harvard Law School, where he graduated *cum laude*. While at Harvard, Mr. Dixler served as an Editor of the Harvard Journal of Law & Public Policy. In 2016 and 2017, Mr. Dixler was selected as a Southern California Rising Star in the field of Appellate Law.

### Please provide an overview of what, substantively, your practice area entails.

As an appellate attorney, my practice focuses on acting as lead counsel on appeals in state and federal court. I review the entire record of the proceedings below and work with the client to develop a strategy for seeking appellate relief, or, if the client won below, maintaining victory at trial. Most of my time is spent reviewing the record, conducting in-depth legal research, and drafting the appellate briefs. I also present oral argument in court, and, once a decision is issued, analyze the opinion and consult with my client on the appropriate response to the opinion. If either side seeks review in the Supreme Court, I represent my client in all aspects of those proceedings as well.

### What types of clients do you represent?

I represent a broad range of clients including private businesses, government entities, and individuals. For example, I have represented a general contractor in construction defect litigation, a national restaurant chain in a personal injury case, and the former owner of a regional hospital in a malicious prosecution action.

### What types of cases/deals do you work on?

I've worked on a broad variety of cases. Currently, I'm working on employment discrimination cases, a labor law case, and

cases involving serious personal injury and wrongful death. Most of my cases are in the California Court of Appeal or the United States Court of Appeals for the Ninth Circuit, but I have also litigated in the United States Court of Appeals for the Federal Circuit. Our firm does not have departments that specialize in particular areas of the law, so in future years I expect to do work in many other substantive areas.

### How did you decide to practice in your area?

I've always enjoyed legal research and writing, and I especially enjoyed my experience clerking for a federal appellate judge. After my clerkship, I decided to pursue a career in appellate litigation.

### What is a typical day or week like in your practice area?

My days are generally filled with legal research, record review, or drafting legal briefs. When not doing those, I am editing and revising my briefs. We are a very collaborative office, so most days also involve discussing legal theories and approaches with other attorneys in the office.

When a case that I briefed is scheduled for oral argument, which generally happens only once in the life of the appeal, my regular weekly activities are set aside and I spend the entire week focused on preparing to present oral argument, first at a moot court, then in the Court of Appeals.

### **What is the best thing about your practice area?**

Being an appellate lawyer gives me the opportunity to focus on legal questions with potentially broad applications. It also allows me to focus on my strengths—legal research, writing, and strategic thinking.

### **What is the most challenging aspect of your practice area?**

Appellate practice can be lonely. The vast bulk of my time is spent conducting legal research and writing briefs, and those tasks must be done alone. That said, our office is very collaborative, and I greatly value the opportunity to discuss legal theories and approaches with my colleagues.

### **What training, classes, experience, or skills development would you recommend to someone who wishes to enter your practice area?**

While it is possible to be an excellent appellate lawyer without having done a judicial clerkship, it is difficult to get a position specializing in appeals without having done one. Clerkships provide young lawyers with unparalleled opportunities to gain research and writing experience, as well as insights into the judicial decision-making process.

### **What misconceptions exist about your practice area? What do you wish you had known before joining your practice area?**

Appellate litigation is more practical and less academic than many lawyers realize. The goal of any appellate litigator is first and foremost to win on the client's behalf. While some wins result in published opinions with broad precedential implica-

tions, others end in unpublished decisions that merely apply existing legal principles.

### **What is unique about your practice area at your firm, and how has it evolved since you have been at the firm?**

Appellate practice is unique because cases are generally decided on the papers, with a single court appearance, and cases are generally decided by a panel of three judges. There is no development or presentation of new evidence, and there is no jury.

One area that has evolved is that clients are more frequently involving us in cases earlier in the litigation. Clients may bring us in to consult with their trial counsel on dispositive trial motions (such as demurrers or summary judgment motions) that are likely to be the subject of an appeal. They also may bring us in to consult with trial counsel during trial to help develop and preserve potential issues for appeal. Involving us at this stage can improve our ability to help a client during an appeal, as we have the chance to help determine how the trial record will appear to the appellate court. Once the appeal has begun, the record is fixed and we have no ability to go back and make changes that, in hindsight, would have been very helpful.

### **What activities do you enjoy when you are not in the office, and how do you make time for them?**

I enjoy traveling, eating out, and playing strategic games. One benefit of appellate practice is that deadlines are generally set far in advance, so I can make time to pursue my personal interests.

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*Scott Dixler, Associate*