

NEW YORK CIVIL APPELLATE PRACTICE

Third Edition

By

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In Memory of

Our authors and former author who have died since
the last edition of this book:

Henry G. Miller—one of the nation’s great trial
lawyers and the most honorable man many of us
have ever met.

Lawrence T. D’Aloise, Jr.—a wonderful and
thoughtful litigator who died far too young.

The Hon. George Bundy Smith—an exceptional
judge whose judicial acumen was exceeded only by
his compassion.

Requiescant in Pace.

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PREFACE

Intended primarily for the practicing attorney, this book should also prove useful to judges and students. It describes each of the steps required to take and perfect an appeal to the various appellate courts in the State of New York, as well as motions, stays, and injunctions; Article 78 transfers; and incidental practice, including sanctions, engagement of counsel, fees, poor persons, and special rules in particular appeals and proceedings.

This third edition has been occasioned by the adoption of statewide rules of practice for the Appellate Division, the greatest change in New York appellate practice in decades. Effective September 17, 2018, those rules, set forth in 22 NYCRR Part 1250, have, for the first time, established a uniform practice for appeals in the Appellate Division throughout the state. In addition, the rules of each department, supplementing the statewide rules, are keyed to those statewide rules. Thus, for example, 22 NYCRR §§ 600.4, 670.4, 850.4, 1000.4, and 1250.4 all address motion practice. This revised edition reflects all of these changes, as well as case law developments and statutory amendments. As before, we have sought to make this volume as useful and as easy to use as possible. For that reason, we encourage readers to forward to us, in care of Thomson Reuters, 610 Opperman Drive, Eagan, MN 55123, any additions, corrections, or suggestions.

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ABOUT THE AUTHORS

MARK DAVIES has taught New York Practice as an Adjunct Professor of Law for over 30 years at Fordham Law School. In addition to teaching practice-related courses, both full time and part time, at Fordham and St. John's, Professor Davies has practiced in large and small law firms, specializing in municipal litigation and appeals, and for 22 years served as Executive Director and Counsel of the New York City Conflicts of Interest Board, the ethics board for the City of New York. He also serves as an advisor on the Principles of Law, Government Ethics, for the American Law Institute and as co-chair of the Ethics and Professional Responsibility Committee of the NYS Bar Association Local and State Government Law Section, of which he is a former chair. A 1975 graduate of Columbia Law School, Professor Davies is the author of numerous articles and book chapters on procedure and ethics and the former editor of the West's McKinney's Forms for the CPLR.

MARIANNE STECICH graduated in 1978 from New York University Law School, where she was on the staff of the Law Review and an Arthur Garfield Hayes civil Liberties Fellow. After working for two years in the litigation department of a large firm, she taught legal writing and moot court at N.Y.U. Law School for three years. For the past 37 years, she has been in private practice in Tarrytown, New York, where she specializes in municipal work and appeals in all areas. She has briefed and argued cases in the Court of Appeals, the Appellate Division and the Appellate Term. In addition, she has written numerous articles and co-authored *The Rights of Single People*, an ACLU Handbook.

RISA I. GOLD, a graduate of Boston University School of Law (J.D. 1988), has served as a Principal Court Attorney at the Appellate Division, First Judicial Department since 1990. This publication was prepared in her personal capacity and does not purport to reflect the opinions or views of the Court.

THE LATE HENRY G. MILLER was the senior partner in the law firm of Clark, Gagliardi & Miller P.C., White Plains, New York. A graduate of St. John's College and Law School, Mr. Miller was actively involved in trial and appellate practice for over 55 years. Mr. Miller was a past President of the New York Bar Association, a past Regent of the American College of Trial Lawyers and a past Director of the International Academy of Trial Lawyers. Mr. Miller lectured regularly on trial practice.

THE LATE LAWRENCE T. D'ALOISE, JR. was a partner in the law firm of Clark, Gagliardi & Miller P.C., White Plains, New York. A graduate of Holy Cross College and Villanova Law School, Mr. D'Aloise briefed and argued appeals in the New York State and Federal Courts for over 40 years. Mr. D'Aloise was a member of national and local appellate advocacy committees and lectured on appellate practice.



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