

EVIDENCE IN
NEW YORK STATE AND
FEDERAL COURTS
SECOND EDITION

Volume 5

By

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Dedication

TO

**Ellen, who has provided great support.
R.A.B.**

**My wife Nancy.
V.C.A.**

Preface to Second Edition

This edition of the book, like its predecessor, presents New York evidence law in a modern analytical framework. It contains a complete exposition of the law of evidence in New York, followed by a summary of the corresponding law under the Federal Rules of Evidence. In the federal sections of the book, special emphasis is given to the rulings of the United States Court of Appeals for the Second Circuit. This parallel arrangement of state and federal law not only facilitates trial practice in both court systems but also provides a quick and ready source of potential guidance for the resolution of unsettled or evolving issues under New York law.

As it is, the law of evidence in New York consists of a mix of rules derived from caselaw, Article 45 of the Civil Practice Law and Rules (CPLR), Article 60 of the Criminal Procedure Law (CPL), and other scattered statutes and rules. For the most part, this edition eliminates comparisons to the proposed New York Evidence Code, which was last submitted to the Legislature during the 1991-1992 session. In the intervening years, the proposed Code has had little influence on the evolution of New York evidence law, and the Legislature has shown no interest in adopting the Code.

In this edition, we have incorporated material appearing in the annual pocket parts from 2001 to 2010 as well as new developments during 2011. The burgeoning decisional law, especially in the areas of expert testimony, hearsay, and the right of confrontation, has led us to revise and expand relevant sections of the book. In addition, the book contains all recent amendments to the Federal Rules of Evidence, including their restyling, which is expected to take effect December 1, 2011. The restyling is discussed in greater detail in § 1:1.

We are grateful to those who have assisted in the production of this edition. At Albany Law School, Sherri Meyer's secretarial services were invaluable, and equal appreciation is extended to Deborah Kelly, head of Secretarial Services at St. John's. Also at St. John's, Dean's Fellow Steven Saal provided outstanding research assistance.

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EVIDENCE IN
NEW YORK STATE AND
FEDERAL COURTS
SECOND EDITION

Volume 5A

By

ROBERT A. BARKER
VINCENT C. ALEXANDER

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Dedication

TO

**Ellen, who has provided great support.
R.A.B.**

**My wife Nancy.
V.C.A.**

Preface to Second Edition

This edition of the book, like its predecessor, presents New York evidence law in a modern analytical framework. It contains a complete exposition of the law of evidence in New York, followed by a summary of the corresponding law under the Federal Rules of Evidence. In the federal sections of the book, special emphasis is given to the rulings of the United States Court of Appeals for the Second Circuit. This parallel arrangement of state and federal law not only facilitates trial practice in both court systems but also provides a quick and ready source of potential guidance for the resolution of unsettled or evolving issues under New York law.

As it is, the law of evidence in New York consists of a mix of rules derived from caselaw, Article 45 of the Civil Practice Law and Rules (CPLR), Article 60 of the Criminal Procedure Law (CPL), and other scattered statutes and rules. For the most part, this edition eliminates comparisons to the proposed New York Evidence Code, which was last submitted to the Legislature during the 1991-1992 session. In the intervening years, the proposed Code has had little influence on the evolution of New York evidence law, and the Legislature has shown no interest in adopting the Code.

In this edition, we have incorporated material appearing in the annual pocket parts from 2001 to 2010 as well as new developments during 2011. The burgeoning decisional law, especially in the areas of expert testimony, hearsay, and the right of confrontation, has led us to revise and expand relevant sections of the book. In addition, the book contains all recent amendments to the Federal Rules of Evidence, including their restyling, which is expected to take effect December 1, 2011. The restyling is discussed in greater detail in § 1:1.

We are grateful to those who have assisted in the production of this edition. At Albany Law School, Sherri Meyer's secretarial services were invaluable, and equal appreciation is extended to Deborah Kelly, head of Secretarial Services at St. John's. Also at St. John's, Dean's Fellow Steven Saal provided outstanding research assistance.

Robert A. Barker
Vincent C. Alexander

September 2011

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