

FEDERAL APPEALS
Jurisdiction and Practice
2025

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ISBN 978-1-668-74047-7

What's New in this Edition

The 2025 Edition of this work continues to provide current information on appellate jurisdiction and practice in the federal courts. We have added significant new case authority and expanded the substantive discussion on a number of topics.

Specific changes include:

- Analysis of dozens of recent court decisions bearing on appellate practice in diverse ways, including grounds for appealing and the standards of review applicable to administrative agency cases, manufactured jurisdiction, the “final judgment rule,” collateral orders in civil cases, tolling of the notice of appeal deadline, and appellate motion practice, among other topics.
- Updated statistics on circuit caseloads, dispositions, oral argument frequency and rehearing grants.

We continue to review and revise this work to make it more helpful and easier to use for appellate practitioners. We hope that our readers will feel free to contact us with suggestions for additions or revisions in coming editions.

Dedication

To David F. Herr, a highly regarded appellate lawyer and long-term editor of this treatise, whose contributions to the practice and understanding of appellate law will leave a profound and lasting impact.

Acknowledgments

The current edition of this treatise owes a great debt to its prior editors and all those who contributed to their ongoing efforts. As new editors to this treatise, we feel this debt keenly. Our modest contributions add to the significant efforts of the original authors and editors—husband and wife, Professor Michael E. Tigar and Jane B. Tigar, who over the course of two decades, built this treatise into one of the leading authorities on federal appellate practice in the United States. In 2001, Minnesota attorneys Eric J. Magnuson and David F. Herr were handed the baton and took over as editors. Eric, former Chief Justice of the Minnesota Supreme Court and current partner at Robins Kaplan LLP, and David, an accomplished appellate lawyer and the author of numerous books on appellate practice and complex commercial litigation, made significant contributions to the publication, adding chapters to discuss a wide range of topics, including the structure of the federal appellate courts, preparing for and perfecting an appeal, Supreme Court practice, and the impact of the federal appellate courts’ evolving electronic filing systems. After twenty years, the editing baton was passed to us.

Our enthusiasm at being asked to take over as editors, however, has been tempered by circumstances. David passed away on December 22, 2021, after a six-month battle with amyotrophic lateral sclerosis (“ALS”). A longtime partner at Maslon LLP, David authored more than a dozen publications on Minnesota and federal law while also helping draft and amend rules that guide and govern how civil disputes in Minnesota are litigated and adjudicated. His contributions to the practice of appellate law—and to this treatise—will be missed.

* * *

Our experience in writing books on appellate practice and procedure is limited. This marks the first national appellate treatise in which either of us has had a role in shaping. But we have both been involved in—and fascinated by—federal appellate practice and procedure for decades. This began when we were law clerks for the Honorable Harry Pregerson of the Ninth Circuit near the beginning of our careers. This experience allowed us to peek behind the curtain and obtain a greater understanding of the federal appellate system, its rules, and its procedures. Career moves allowed us to continue in federal appellate work, either as an Assistant U.S. Attorney and Chief of Criminal Appeals in the country’s largest federal district (Jean-Claude) or as counsel to foreign sovereigns and their agencies and instrumentalities at all levels of the federal court system (Sarah). We were both selected as Appellate Lawyer Representatives to the Ninth Circuit Judicial Conference—Sarah from 2008 to 2011 and Jean-Claude from 2017 to the present—which provided opportunities to collaborate with judges and court staff on potential improvements to Ninth Circuit practice and procedure, as well as the opportunity to contribute to the Appellate Lawyer

Representatives' Guide to Practice in the United States Court of Appeals for the Ninth Circuit, which provides both guidance and insights into the fundamentals of Ninth Circuit practice and is published on the court's website. Having made further career changes—Jean-Claude to private practice and Sarah first to academia and then back to the judiciary as a judicial ethics advisor for the California judiciary—we believe that our collective forty-plus years of federal appellate experience will allow us to offer helpful additions and revisions to what has already become an authoritative tome on practice before the federal appellate courts.

Not only did we benefit greatly from the work done by the prior authors, but we would not have been able to accomplish the task of updating this edition of the treatise without significant substantive assistance from various attorneys and aspiring attorneys from Bryan Cave Leighton Paisner LLP—Jennifer D'Addabbo, Celeste Charlet, Naomi Franklin, Liam Heffernan, Janisha Pealer, Grace Rowden, Jermeha Williams, and Kieran Woerner.

Finally, we note the significant support provided by Thomson Reuters, and especially our Editor, Carrie Petersen, who modeled patience in working with two over-scheduled lawyers during the beginning of their tenure as editors. Because Thomson Reuters has decided to make this volume an annual publication, it is our aim to refine and revise different portions of the treatise every year, to better ensure that every chapter in the treatise remains up-to-date and relevant.

Like the esteemed prior editors, we tried—and will continue to try—to make our first national treatise on appellate jurisdiction and practice a combination of the best of the prior work and our new contributions. Rather than omit the wisdom of the prior editors, we made revisions and additions based on our own experiences and insights that we believe will be useful to readers. While this treatise provides an outlet for our thoughts, experience, and research, it is first and foremost, intended to be a useful tool for the reader. If you have any suggestions regarding topics that might benefit from additional discussion or closer analysis, please let us know. We would love to hear from you so that we can help make this treatise better as time goes on.

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Los Angeles | October 2024



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