

Essentially Appellate

Navigating the Appellate Landscape in Jurisdictions Nationwide And Knowing What to Avoid (or Not)

Appellate Practice Compendium

Edited By Dana C. Livingston

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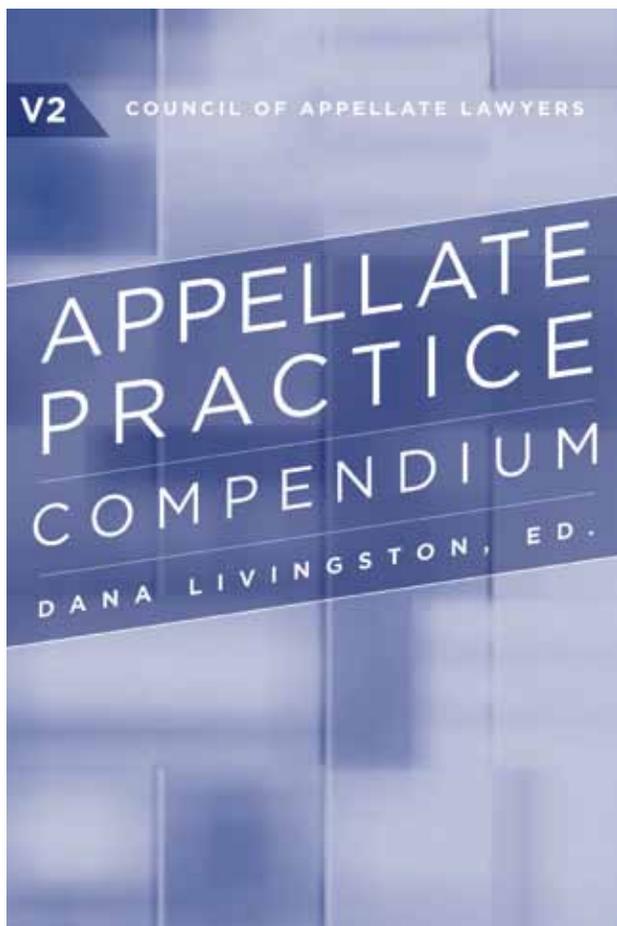
An easy-to-read guide to appellate rules and requirements, the “Appellate Practice Compendium” is sure to save you time and angst. Perhaps it will save you from missing a deadline, waiving an issue or bouncing a brief. Or it may prevent a *faux pas* before a panel. Since it covers every jurisdiction in the country, it will be especially valuable when venturing to a distant court.

Years in the making – yet current – it is the product of the American Bar Association’s Council of Appellate Lawyers. In the interest of full disclosure, I sit on the Council’s Board. But for a reviewer, a favorable bias (in my opinion) is anything but a handicap. It’s a spur to appreciation, an incentive to recognize good work. We all know restaurant reviewers who somehow can never find a perfect meal; they seem to forget the biological imperative to eat. Beware the incorrigible curmudgeon.

The “Compendium” has a chapter for each federal and state jurisdiction. Every chapter is written by a seasoned local practitioner. Each follows an identical structure. Main topic headings include subjects such as “admission,” “record composition and transmittal,” “filing and service requirements,” “briefs,” and “oral arguments,” along with a number of subheadings. The structure conveys the essential information in an easily

comprehensible manner.

The very first section of every chapter is “Top Tips for Out-of-State Practitioners.” Often this is the author’s bullet list of pitfalls and booby traps. In Pennsylvania, we’re warned about the courts’ penchant for procedural waivers, particularly under Pa. R. A. P. § 1925. In Minnesota, be sure to deliver your



brief by U.S. Mail and not FedEx. In the Second Circuit, better file a pre-argument statement and transcript-order within 14 days or face dismissal. In South Carolina, don’t bother with interlocutory appeals – there are none to speak of.

Often, too, the message in Top Tips is welcoming. In Connecticut, “the clerk’s office is friendly, courteous, patient and eager to help.” Likewise, our own Third Circuit “has a well-deserved reputation as a friendly court in which to practice” and the clerk’s office has no interest in “playing ‘gotcha’ with appellate counsel.” But even so, there’s no license to relax at oral argument simply because you’re in the home stadium: “Be thoroughly and exquisitely prepared ...” Likewise, be advised, in the state system, “all three Pennsylvania appellate courts are ‘hot’....”

Both the Third Circuit and Pennsylvania chapters are valuable tools for local practice. The first is by Schnader Harrison Segal & Lewis LLP’s Nancy Winkelman and the second by Duane Morris LLPs’ Robert Byer. Both authors rely on source material beyond the appellate rules, such as internal operating procedures, court websites, and their own substantial experience. They spotlight key information that will simplify and elevate your work.

Also useful is David Frederick’s chapter on the U.S. Supreme Court. Even if you are not among the cadre of Supreme Court specialists, Frederick’s chapter will be indispensable when you inevitably file or contest a *cert* petition. He is excellent on how to frame a petition. And if you’re deciding whether to file an opposition or waive filing one, he’ll ensure that

you make the right choice.

Along with its utilitarian purpose, the “Compendium” is fascinating as a catalog of customs. In Pennsylvania, for example, it’s bad form for local counsel to introduce a *pro hac* lawyer at oral argument, for the court prefers

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that the arguing attorney cut to the chase without preliminaries. But in Delaware such an introduction is essential. In New Jersey not only is such an introduction essential, but we’re warned that out-of-state counsel should argue only when absolutely necessary.

Sometimes, the identity of the panel is kept under wraps. Again in Delaware, and the Fourth Circuit, you won’t discover who is sitting until they ascend to the bench. Yet the Third Circuit discloses the panel with the argument notice. In other jurisdictions, there’s a peculiar day when panels are announced, such as 12 p.m. on the Thursday the week before

argument in the Second Circuit.

In Alaska and North Dakota, an appeal to the state’s Supreme Court is a matter of right, for there are no intermediate appellate courts. In both states, your appeal will be heard by all five justices.

And in the Fourth Circuit, at the conclusion of argument, the judges descend from the bench to shake counsels’ hands. On this, the “Compendium” offers the *pro hac* attorney pragmatic advice: “Do not act surprised.”

At bottom, we’re all too aware that a misunderstanding of local custom can put the most sophisticated, intrepid traveler in dire straits. It wasn’t for the

balmy beaches that Captain Cook never left Hawaii.

In short, the “Compendium” explicitly and succinctly advises on what to do when in Rome.

And lest we get too cocky in our local jurisdiction, take heed: sometimes Rome is home. ■

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