

The Legal Writer

Drafting New York
Civil-Litigation Documents

Hon. Gerald Lebovits

New York State Bar Association publications are intended to provide current and accurate information to help attorneys maintain their professional competence. Publications are distributed with the understanding that NYSBA does not render any legal, accounting or other professional service. Attorneys using publications or orally conveyed information in dealing with a specific client's or their own legal matters should also research original sources of authority.

We consider the publication of any NYSBA practice book as the beginning of a dialogue with our readers. Periodic updates to this book will give us the opportunity to incorporate your suggestions regarding additions or corrections. Please send your comments to: Publications Director, New York State Bar Association, One Elk Street, Albany, NY 12207.

Copyright: 2015
by
New York State Bar Association
All rights reserved
ISBN: 1-57969-470-5
Product Number: 4073

CONTENTS

Part I — <i>An Overview</i>	1
Part II — <i>The Complaint</i>	11
Part III — <i>The Complaint</i>	21
Part IV — <i>The Complaint</i>	29
Part V — <i>Pleadings in Special Proceedings</i>	37
Part VI — <i>The Answer</i>	45
Part VII — <i>The Answer</i>	55
Part VIII — <i>The Answer</i>	63
Part IX — <i>The Answer</i>	75
Part X — <i>Bill of Particulars</i>	85
Part XI — <i>Interrogatories</i>	97
Part XII — <i>Responding to Interrogatories</i>	111
Part XIII — <i>Motion Practice Overview</i>	123
Part XIV — <i>Motion Practice Overview Continued</i>	133
Part XV — <i>Motions to Dismiss</i>	143
Part XVI — <i>Motions to Dismiss Continued</i>	153
Part XVII — <i>Motions to Dismiss Continued</i>	163
Part XVIII — <i>Motions to Dismiss Continued</i>	173
Part XIX — <i>Motions to Dismiss Continued</i>	183
Part XX — <i>Summary-Judgment Motions: An Overview</i>	191
Part XXI — <i>Summary-Judgment Motions Continued</i>	201
Part XXII — <i>Summary-Judgment Motions Continued</i>	213
Part XXIII — <i>Summary-Judgment Motions Continued</i>	225
Part XXIV — <i>Summary-Judgment Motions Continued</i>	235
Part XXV — <i>Notices to Admit</i>	247
Part XXVI — <i>Notices to Admit Continued</i>	259
Part XXVII — <i>Disclosure Motions</i>	271
Part XXVIII — <i>Disclosure Motions Continued</i>	281
Part XXIX — <i>Disclosure Motions Continued</i>	291
Part XXX — <i>Subpoenas</i>	303
Part XXXI — <i>Subpoenas Continued</i>	313
Part XXXII — <i>Contempt Motions</i>	321
Part XXXIII — <i>Contempt Motions Continued</i>	335
Part XXXIV — <i>Contempt Motions Continued</i>	345
Part XXXV — <i>Contempt Motions Continued</i>	355
Part XXXVI — <i>Motions to Reargue and Renew</i>	367
Part XXXVII — <i>Motions to Reargue and Renew Continued</i>	377
Part XXXVIII — <i>Motions to Vacate Default Judgments</i>	387
Part XXXIX — <i>Motions to Vacate Default Judgments Continued</i> ..	399
Part XL — <i>In Limine, Trial and Post-Trial Motions</i>	413

Part XLI — *In Limine, Trial and Post-Trial Motions Continued*..... 427
Part XLII — *In Limine, Trial, and Post-Trial Motions Continued*.. 441
Part XLIII — *Motions for Attorney Fees*..... 453
Part XLIV — *Motions for Attorney Fees Continued*..... 465
Part XLV — *Motions for Sanctions and Related Costs* 479
Part XLVI — *Best Practices for Persuasive Writing*..... 493

INTRODUCTION

The Legal Writer column first appeared in the July–August 2001 issue of the New York State Bar Association *Journal*. I had recently finished an edition of *Advanced Judicial Opinion Writing*, a handbook for New York judges and law clerks, when Howard Angione, then–editor-in-chief of the *Journal*, asked me to adapt portions of that book for a column on legal writing. The column, now in its 15th year of publication in the *Journal*, quickly expanded beyond adaptations from my opinion-writing handbook into original pieces designed for all lawyers and especially New York lawyers.

At first, each column focused on a single topic: formality vs. inflation, concision, affirmative writing, and plain English. The goal was to impart practical, real-world legal-writing suggestions that attorneys would find useful in every aspect of their professional lives. As I kept writing, topics seemed to need a deeper look. That resulted in a number of series covering (I hope) all the aspects of a single topic. This book comprises that kind of effort.

When I began writing the “Drafting New York Civil-Litigation Documents” series, I knew it would take up a number of column inches. I had no idea it would stretch over 46 issues of the *Journal*. Early in 2015, when we discussed the possibility of publishing a book of Legal Writer columns, we quickly agreed that “Drafting New York Civil-Litigation Documents” would need to be a separate book, once that series wrapped up at the end of 2015.

The point of the “Drafting New York Civil-Litigation Documents” series was to give practicing New York attorneys the tools they need to make their best case to the court — to increase their chances of winning. The point of this *Drafting New York Civil-Litigation Documents* book is to put every facet and issue of drafting discussed in the columns into a single location for easy reference. We plan on compiling other past (and future) columns to create other legal-writing books for attorneys.

I’d very much like to thank two people who worked on every column in this book: Joan Fucillo, the State Bar’s Publication Manager, and Alexandra Standish, my law clerk for more than 10 years. Extraordinary is the best, and only, way to describe their stellar advice, commitment, editing, and expertise. They’re both the co-authors of this book.

I would also like to thank Daniel McMahon, Director of Publications at the New York State Bar Association, and copy editors Alex Dickson, Reyna Eisenstark, Howard Healy, and Kate Mostaccio.

I dedicate this book to Irene Lebovits, my mother, who's less an assiduous stickler for the legal rules about which I write and more an advocate for and practitioner of the greater values of family and love.

Hon. Gerald Lebovits
New York, New York
December 2015

BIOGRAPHIES

HON. GERALD LEBOVITS

Hon. Gerald Lebovits has been a New York City judge since 2001. An acting Supreme Court justice in New York County, he previously served in Civil Court, Criminal Court, and Housing Court. He is the president of the Board of Judges of the New York City Civil Court. Before that, he was the president of the Association of Housing Court Judges.

Justice Lebovits has also taught law as an adjunct professor for 30 years—currently at Columbia, Fordham, NYU, and New York Law School and previously at St. John's University.

A prolific author, he has published several books and hundreds of articles, many of them for the New York State Bar Association.

Justice Lebovits thanks his court attorney, Alexandra Standish, for her assistance with the “Drafting New York Civil-Litigation Documents” series.

ALEXANDRA STANDISH, ESQ.

From 2005 until the present, Alexandra Standish has worked as a court attorney for Hon. Gerald Lebovits. She has worked with Justice Lebovits in the New York City Housing Part, as well as the New York City Criminal Court, Civil Court, and Supreme Court. She has drafted and researched opinions (more than 30 published decisions); researched, drafted, and edited articles including legal writing, landlord-tenant cases, and judicial ethics; managed the judge's court calendar; and trained and supervised student interns. While working for Justice Lebovits, she was an Adjunct Professor of Law at New York Law School from 2006–2009. She taught legal writing and research to first-year students.

Ms. Standish graduated with a Juris Doctor degree from New York Law School in 2001, and earned her Bachelor of Arts degree in 1998 from Barnard College, Columbia University.