



Practitioner's Handbook for
**Appeals to the
Appellate Division**
of the State of New York
Third Edition

Hon. Alan D. Scheinkman

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ABOUT THE AUTHOR

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Alan D. Scheinkman is a retired State Supreme Court Justice who is presently affiliated with National Arbitration and Mediation (NAM). Justice Scheinkman served as the Presiding Justice of the Appellate Division, Second Department, as Administrative Judge for the Ninth Judicial District, and as Associate Justice of the Appellate Term for the Ninth and Tenth Judicial Districts. Prior to his judicial service, he devoted much of his legal practice to litigation and appeals.

Justice Scheinkman received his undergraduate degree from George Washington University and his J.D. from St. John's University School of law. After law school, he served as law clerk for Judge Matthew J. Jasen of the New York Court of Appeals. One of the highlights of Justice Scheinkman's judicial career was the opportunity to serve by designation as a Judge of the Court of Appeals on an important criminal appeal. Justice Scheinkman has also served as Westchester County Attorney, Associate Minority Counsel of the New York State Senate, and as Associate Counsel to the New York State Temporary Commission on the Recodification of the Family Court Act.

Justice Scheinkman served as a reporter to, and later a member of, the Committee on Pattern Jury Instructions—Civil of the Association of Supreme Court Justices. He was a co-author, with the late Professor David D. Siegel, on the Second Edition of the *Practitioner's Handbook for Appeals to the Appellate Division of the State of New York* and on the Third Edition of the *Practitioner's Handbook for Appeals to the Court of Appeals*. Justice Scheinkman is the author of *New York Law Domestic Relations* (now in its Second Edition) and was for many years the author of McKinney's *Practice Commentaries to the New York Domestic Relations Law*. He is a member of the Chief Judge's Commercial Division Advisory Council and has served as the Chair of the New York State Bar Association's Task Force on the New York Bar Examination.

PREFACE TO THE THIRD EDITION

In 1979, a Committee of the New York State Bar Association and Members of the New York State Judiciary prepared and published the Practitioner's Handbook for Appeals to the Appellate Divisions of the State of New York. The work proved immensely valuable to the practicing bar as a practical guide to handling appeals in New York State and copies of it were to be found in law offices and libraries throughout the State. Over the ensuing twenty-five years, statutory changes, rules revisions and developments in technology rendered the Handbook somewhat outdated. The number of readily available copies also diminished.

For these reasons, in 2005, the New York State Bar Association decided it would be appropriate to bring the Handbook current through the publication of a Second Edition. It was a great honor and responsibility for me to have been given the privilege of undertaking the research and drafting of the Second Edition. In preparing the Second Edition, I retained the structure, much still-trenchant substance, of the original materials which had been written primarily by Professor David D. Siegel of the Albany Law School. We are all indebted to Professor Siegel, who was the leading authority on New York practice, for his myriad of contributions to the Bar over his career and whose specific work on the First Edition continues to shine through these pages, undimmed by the passage of over forty years. I wish to express my deep appreciation for Professor Siegel's great generosity toward me and the profound influence he had on my own professional career. I miss him terribly.

Since the publication of the Second Edition sixteen years ago, many developments have taken place which changed the New York State appellate landscape in profound ways. Perhaps the most significant, and perhaps also the most unlikely, was the December 2017 adoption of Practice Rules of the Appellate Division. The Four Departments were able to coalesce around a set of rules to govern procedure in our primary intermediate appellate courts. While each Department has local variations on some limited aspects of the Practice Rules, there is now a more common and consistent set of rules, making it easier for attorneys who practice in multiple Departments. This was no small achievement. As a result of it, though, virtually all of the Department rules cited in the Second Edition have been superseded and the effectiveness of much of the Second Edition nullified. Entire subsections which described individual Departmental perfection and briefing practices were rendered superfluous. Further, technology has continued its relentless advance. While the Departments

had websites in 2005, the information available on them was a fraction of what it is today. And today we have virtual oral arguments; documents are now routinely e-filed or filed in digital format; and email communication has become the order of the day. So, once again, the New York State Bar Association decided it was time for another Edition and I was again honored to be selected to superintend this worthy endeavor.

In preparing the Third Edition, I was able to draw upon the invaluable contributions of the members of the Association's Committee on Courts of Appellate Jurisdiction, ably chaired by Cheryl Korman and Timothy Murphy. Several committee members gave freely of their time to work on individual portions of the manuscript. While these efforts are acknowledged in the appropriate portions of the Handbook, I would like to thank all of those involved for their assistance in the updating of the Handbook: John A. Cirando, Drew R. Dubrin, Patrick J. Long, Randa D. Maher, Michael Miller, Kevin A. Reilly, Robert S. Rosborough IV, Violet E. Samuels and William B. Stock. I wish to express appreciation to Elliott Scheinberg for his work. A substantial debt of gratitude is owed to Dan McMahon, Publications Director of the New York State Bar Association, who I was privileged to work with over many years and who exhibited extraordinary patience, persistence, and resilience during the undertaking of this project. I also wish to thank Kathryn Calista of the Association's staff.

The Clerks of each of the four Appellate Departments reviewed manuscript drafts and provided important insights into the practices of their respective courts and made valuable comments and suggestions to improve the manuscript. Deep appreciation is expressed to Susanna Molina Rojas of the First Department, Robert Mayberger of the Third Department, Mark Bennett of the Fourth Department, and Aprilanne Agostino of the Second Department, who I took out of order so that I could also acknowledge her invaluable assistance to me during my tenure on that Court. However, it is recognized that the participation of the Clerks, as invaluable as it was, in no way confers their imprimatur, or that of their Courts, on this manual.

I also wish to comment on a slight change in the title of this Handbook. An important correction is the deletion of the "s" at the end of the word Appellate Division. There is but one Appellate Division, though it sits in four Departments.

It is my hope that this Third Edition will measure up to the high standards established by the First Edition and that it will provide material assistance to the attorneys practicing in the Appellate Division of the Supreme Court of the State of New York and, by so doing, contribute, at least in a small way, to the hard and diligent work of the Appellate Division in administering justice in this State.

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