

❖ Introduction

Chief Judge D. Brooks Smith

The judges of the United States Court of Appeals for the Third Circuit are rightly proud of their court's history and traditions. We also are diligent in assuring that the court's jurisprudence is coherent, consistent, and unaffected by the merely transitory. Third Circuit precedent is carefully crafted, and our judges are vigilant in seeing that this precedent is always respected by judge and lawyer alike.

We judges are keenly aware of the invaluable role that lawyers play in the hallowed process of shaping our legal traditions. Here in the Third Circuit, we treasure the dialogue between bench and bar that is at the heart of oral argument. While we do not believe every case requires oral argument, we do believe that each case deserves careful preparation—not only by advocates but also by the judges who will hear and decide the case. And a thoughtful, carefully written brief is always the best way to quickly get our attention. Effective advocacy, both written and oral, are skills Third Circuit judges quickly recognize and greatly appreciate.

Prior editions of PBI's appellate practice manual for the Third Circuit have included a dedication, in honor of Judge Edward R. Becker, written by then Chief Judge Anthony J. Scirica, and an introduction from Judge Ruggero J. Aldisert, which are included in this volume. Those three names—Aldisert, Becker, and Scirica—do not simply dot America's legal landscape; they are among the judges who have dominated that landscape for decades. It is a privilege for me, as the Third Circuit's thirteenth chief judge, to contribute this brief introduction to a volume that is, as Judge Aldisert has characterized it, “the *vade mecum* for all lawyers writing briefs and devising oral arguments” in our court.

As all of us know, admission to the bar does not include a comprehensive instruction manual. And even if it did, there would not be enough pages to cover the manifold issues that confront a busy practitioner. Having been a trial lawyer many years ago (we did not refer to ourselves as “litigators” then), I later spent 14 years as a United States district judge and have now reached a tenure of the same length on the court of appeals. Just as I learned that the art of judging is profoundly different at the appellate level from what it is in a trial court, so I realize is the art of appellate practice. This new edition of PBI's *Third Circuit Appellate Practice Manual* will be a valuable resource to both the experienced advocate and novice alike. It covers everything from the most practical of concerns, like becoming familiar with our court's clerk's office, to the critical issue of standard of review—the application of which, I like to say, often does the “heavy lifting” on appeal. It includes a new contribution written by our distinguished colleague Judge Thomas L. Ambro on the subject of appellate judging (see “Thoughts on Appellate Practice,” below), as well as a section in chapter 28 by one of our newest members of the court, Judge Cheryl Ann Krause, on her transition from practice to the appellate bench.

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The contributors to this manual bring such a depth of experience to the subject matter about which they write, that every lawyer who picks up this volume ought to see each chapter as a “must read.” I know I do, and I am grateful that co-editors James C. Martin and Nancy Winkelman, together with the various contributors, have given us a volume that itself nourishes the Third Circuit traditions that I have referred to.

On behalf of the judges of the Third Circuit, I thank all who made this invaluable publication possible.