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Ninth Circuit Practice Guide

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Book Review

Why is this book review different from all others? First, you needn't worry about whether to "buy" the book at issue – it is free and available on the internet. Second, there will be little discussion about the book's author – because there is no author.

The work presented here is *The Appellate Lawyer Representatives' Guide to Practice in the United States Court of Appeal [sic] For the Ninth Circuit*. This 112-page guide was posted on the Ninth Circuit's website last month. The website-page devoted to the guide explains:

The Appellate Lawyer Representatives' Ninth Circuit Practice Guide provides an outline of the appellate process and detailed information about many court procedures. While not an official publication, the guide was developed in consultation with court staff and is freely available here: www.ca9.uscourts.gov/AppellatePracticeGuide. The guide was developed by the Ninth Circuit's Appellate Lawyer Representatives, a group of highly experienced and respected practitioners appointed by Ninth Circuit Chief Judge Alex Kozinski to advise the court on procedural and other matters. While intended for lawyers, the guide also would likely be of benefit to journalists, students and educators, pro se litigants and others interested in the workings of the court.

Thus, the guide has no single author, but – like the King James Bible and the U.S. Constitution – is the product of a dedicated and skilled committee. The guide's introduction notes that it is a "work in progress" and welcomes suggestions for improvement by e-mail to ALRPracticeGuide@ca9.uscourts.gov. ("ALR" here refers to Appellate Lawyers Representatives, not the more usual American Law Reports, but we'll leave any

confusion about that to West publishing to address.) The "work in progress" designation is being taken seriously, because the version currently posted and dated October 22 already contains edits modifying the original version posted October 18. (An initial suggestion from the peanut gallery: Correct the title to accurately name the Ninth Circuit Court of Appeals.)

The guide contains twenty "chapters" essentially in an outline format with short paragraphs and "practice tips" interspersed throughout. Many of the point headings take the form of a question, so the guide strongly resembles the hybrid offspring of a very exhaustive FAQ page and an annotated set of rules. The chapters introduce the court, how appeals are processed, and follows the appellate lifecycle (covering civil, criminal, immigration, and habeas matters) from filing a notice of appeal to post-

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decision matters. The last seven chapters consist of filing checklists and a list of other resources.

The very first practice tip (on page 13, in the chapter on “filing an appeal”) is to another free guide on the court’s website, the Ninth Circuit Appellate Jurisdiction Outline

(www.ca9.uscourts.gov/guides/appellate_jurisdiction.php). This highlights the fact that the guide is meant to be a quick introduction, review, and starting point. In no way will its present incarnation replace or even seriously challenge the existing practices guides, such as the *Rutter Group Practice Guide: Federal Ninth Circuit Civil Appellate Practice* or Ulrich’s *Federal Appellate Practice: Ninth Circuit* (West 2d ed.) – but it was never meant to do so.

Rather, the guide is just that: a quick guided tour of the governing rules and practices. Lawyers familiar with the basics of Ninth

Circuit practice may not learn much, but they are not the intended audience. For lawyers and pro pers with little or no experience, the guide’s outline, practice tidbits, and checklists should prove very helpful in understanding how to accomplish necessary tasks and clarifying the relevant rules, which can be difficult to follow when reading a vacuum.

The practice tips pick up steam in the chapter on “drafting the brief” and “oral argument,” because they move beyond cross-referencing other guides or reiterating commentary on the rules, to provide sound advice for improved appellate practice. For instance, tips encourage the use of full sentences in headings, the use of an introduction (which isn’t specially addressed in the rules), and supply advice about crafting an effective statement of facts. Similarly helpful tips on oral argument are also included. To be sure, these tips are concise and somewhat fundamental. But again, they should

prove very useful to neophyte appellate practitioners. Lawyers may also find it valuable to share the guide with their paralegals, legal secretaries or other filing assistants, who may derive benefit from both the procedural and substantive discussion as well as the filing checklists. Finally, you just can’t beat the price.

The bar and public owe congratulations and thanks to the ALRs for devoting many hours of time and attention to creating this new addition to the library of Ninth Circuit practice guides. No doubt future versions will become even more useful. ♡

Benjamin G. Shatz co-chairs the Appellate Practice Group at Manatt, Phelps & Phillips in Los Angeles. A certified appellate specialist, Mr. Shatz is a past chair of the State Bar Committee on Appellate Courts and the L.A. County Bar’s Appellate Courts Committee. He serves on ASCDC’s amicus committee.



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