Supreme Court of the State of New York

APPELLATE DIVISION

Fourth Judicial Department

Attorneys for Children Program

Presents

APPELLATE TRAINING FOR ATTORNEYS FOR CHILDREN

March 26, 2013

THE APPELLATE DIVISION, FOURTH DEPARTMENT
presents:

APPELLATE TRAINING FOR ATTORNEYS FOR CHILDREN

Tuesday, March 26, 2013

Canandaigua Inn on the Lake
Canandaigua, New York

8:45 a.m.	Registration
9:15 a.m.	Welcome **Presiding Justice Henry J. Scudder** Appellate Division, Fourth Department **Tracy M. Hamilton, Esq.** Director, Office of Attorneys for Children Appellate Division, Fourth Department
9:30 a.m.	A View From the Bench **Presiding Justice Henry J. Scudder** Appellate Division, Fourth Department
10:00 a.m.	A View From the Clerk's Office (Including Tips From A-Z) **Frances Cafarell, Esq.** Clerk, Appellate Division, Fourth Department
10:45 a.m.	Break
11:00 a.m.	Compiling the Record on Appeal **David Foster, Esq.** Principal Appellate Court Attorney Appellate Division, Fourth Department
11:45 p.m.	Lunch (provided)
12:45 p.m.	Effective Brief Writing **Mary Hope Benedict, Esq.** Principal Law Clerk to Presiding Justice Henry J. Scudder Appellate Division, Fourth Department **Craig Peterson, Esq.** Chief Appellate Court Attorney Appellate Division, Fourth Department

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1:45 p.m.	Motion Practice **Alan Ross**, **Esq.** Deputy Clerk, Appellate Division, Fourth Department
2:30 p.m.	Break
2:45 p.m.	Role of Child's Attorney on Appeal/Ethics **Tanya Conley, Esq.** Attorney for Children Legal Aid of Rochester **Andrea Tomaino, Esq.** Principal Attorney Attorney Grievance Committee, Fourth Department
3:45 p.m.	Conclusion

The Appellate Division, Fourth Department has been certified by the New York State Continuing Legal Education Board as an Accredited Provider of continuing legal education in the State of New York from March 2, 2011 to March 1, 2014. This program has been approved for a total of five and one-half (5.5) credit hours, of which two and one-half (2.5) credit hours can be applied toward the skills requirement, two (2.0) credit hours can be applied toward the professional practice (family law) requirement, and one (1) credit hour can be applied toward the ethics and professionalism requirement. This program is suitable for experienced or newly admitted attorneys.

EFFECTIVE BRIEF WRITING

Presented by:

Mary Hope Benedict, Esq.
Principal Law Clerk to Presiding Justice Henry J. Scudder
Appellate Division, Fourth Department
Supreme Court of the State of New York

Craig Peterson, Esq.
Chief Appellate Court Attorney
Appellate Division, Fourth Department
Supreme Court of the State of New York

Attorneys for Children Program
The Appellate Division, Fourth Department

Appellate Training for Attorneys for Children
Canandaigua, NY
March 26, 2013

Mary Hope Benedict

Mary Hope Benedict is Senior Principal Law Clerk to Presiding Justice Henry J. Scudder and has been Justice Scudder's law clerk for more than 20 years. Prior to her employment as Justice Scudder's law clerk, she was employed by the Steuben County Law Department as an Assistant County Attorney and prosecuted juvenile delinquent cases, and abuse and neglect matters in Family Court. Ms. Benedict is a graduate of University of Buffalo Law School and LeMoyne College.

Craig Peterson

Craig Peterson is the chief appellate court attorney for the New York State Supreme Court, Appellate Division, Fourth Department. Mr. Peterson is a graduate of Cornell University and the State University of New York at Buffalo School of Law. Mr. Peterson was employed by the Erie County District Attorney and the law firm of Smith, Murphy and Schoepperle before becoming the chief appellate court attorney in 1984. Mr. Peterson has previously lectured on appellate practice at New York State Bar Association, Monroe County Bar Association, Erie County Bar Association and Buffalo Law School Alumni Association seminars.

Mary Hope Benedict
Senior Principal Law Clerk
to Presiding Justice Scudder

Craig Peterson
Chief Appellate Court Attorney
March 2013

I. The Brief – The Mechanics

A. Requirements of Statute and Court Rules

CPLR 5528 - Contents of Briefs

Appellant's Brief - the appellant's brief should contain:

- table of Contents

- concise statement of the questions involved, separately numbered, followed by the answer, if any, of the trial court

- concise statement of the nature of the case and the relevant facts, with appropriate citation to the pages of the record on appeal

- the argument for the appellant, divided into points with appropriate headings

Respondent's Brief

- should follow the same format, except that a counter-statement of the facts or the questions involved are included only if the respondent disagrees with the appellant's statements

B. CPLR 5529 - Form of Briefs

- should be printed or copied in black ink on white paper, 8½ x 11 inches

- pages should be numbered

- all citations should be to the official reports, if any; for citation form, follow the New York Law Reports Style Manual [2012 Edition]

C. Fourth Department Rules - 22 NYCRR 1000.4 (f)

- briefs shall be bound on the left side

- appellant's or respondent's brief shall not exceed 70 pages

- the cover of the brief shall contain the title; the name, address and telephone number of the person submitting the brief; the index number; the Appellate Division docket number if one has been assigned; and in the upper right-hand corner, the name of the person requesting oral argument and the time requested

- the cover of the brief of the Attorney for the Child should be white, regardless whether appealing or responding

- footnotes in briefs are not allowed in the Fourth Department

II. Writing an Effective Brief - Do's and Don'ts

A. <u>Appellants</u>

- read and comply with statutory (CPLR 5528; 5529) and Fourth Department rules (22 NYCRR 1000.4)

- carefully consider your issues and exercise professional judgment in deciding which issues to raise

- begin your summary of the record with a factual overview to provide context for the reader, i.e. what the case is about, what is being litigated and the reason(s) for the appeal

- tailor your fact summary, with page cites to the record, to the issues you are raising on appeal

- do not misrepresent record

- do not rely on material outside of the record or attach such material to your brief - it is improper and the added material will be subject to a motion to strike (*see Kwiatkowski v Bertoldo*, 13 AD3d 1208 [4th Dept 2004]; *Fisk v Slye*, 234 AD2d 983 [4th Dept 1996]).

- issues should be ordered in a logical fashion

- discussion should follow the order of issues

- first state the ruling of the trial court, then demonstrate preservation by reference to record; if no preservation, state so clearly and request Court to exercise its jurisdiction in the interest of justice (*see generally Merrill v Albany Med. Ctr. Hosp.*, 71 NY2d 990, 991 [1988]).

- briefly state relevant facts with page cites to record

- legal argument should accurately state holdings of cases cited

- address damaging facts or law contrary to your position by distinguishing the cases

- try to cite Fourth Department or Court of Appeals cases

- avoid string citing

- follow New York Style Manual

- state conclusion and request for relief clearly

- avoid needless use of legalese

- edit, edit, edit

B. <u>Respondents</u>

- Facts - factual summary may be more perfunctory if appellant has accurately summarized the salient facts

- Issues - you should generally follow the points raised by appellant; If that procedure is impractical, make sure that your discussion references the appellant's brief with a page citation (App Br, ##) - You cannot raise new points or seek affirmative relief if you have not cross-appealed, but you may argue alternative grounds for affirmance; address preservation

- Discussion - cite cases supporting trial court's ruling and distinguish cases cited by appellant

- Briefly state facts and state rule supporting affirmance

C. <u>Reply Brief</u>

- You cannot raise new points in a reply brief; you may only respond to points raised in the respondent's brief

III. Making Your Brief More Effective - Oral Argument

- oral argument is a good idea in all but the most routine cases

- be respectful of trial court judge and your opponent

- do not spend much time on facts; concentrate on your legal points, arguing your strongest points first

- reference any new, controlling case law since it may have been several months since you filed your brief

- if a Justice has a question, answer it immediately and directly, then return to your argument

- know when to sit down

- rebuttal argument is not permitted, but you may file a post-argument submission (*see* 22 NYCRR 1000.11 [g])

- notify the Court immediately if your case settles or a subsequent order will affect the appeal (*see* 22 NYCRR 1000.18 [c])