

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.

A VIEW FROM THE BENCH

Presented by:

Presiding Justice Henry J. Scudder
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

Honorable Henry J. Scudder

Henry J. Scudder is Presiding Justice of the Appellate Division, Fourth Department. Justice Scudder is a graduate of Stetson University and earned his law degree from the University of Tennessee. He began his career in private practice in Bath, New York. He later served as an Assistant District Attorney and then as First Assistant District Attorney in Steuben County.

In 1982 Justice Scudder was elected Surrogate in Steuben County. He served as Surrogate from 1982 through 1996. During that time he also presided in Supreme, County and Family Court. Judge Scudder was elected to the Supreme Court for the Seventh Judicial District in 1996, and re-elected in 2010.

In 1999 Justice Scudder was designated as an Additional Justice to the Appellate Division, Fourth Department by New York Governor George Pataki. On November 17, 2006, Justice Scudder was appointed Presiding Justice of the Appellate Division, Fourth Department by Governor Pataki. He was reappointed Presiding Justice by Governor Andrew Cuomo in 2011.

Presiding Justice Scudder serves on the Administrative Board of the Courts, with the Chief Judge of the Court of Appeals and the three other Presiding Justices of the Appellate Divisions. The Administrative Board establishes standards and policies for the New York State Court System. He is also a member of the Steuben County Bar Association, the Monroe County Bar Association, the New York State Bar Association, the New York State Supreme Court Justices Association, and the Association of Supreme Court Justices of the Seventh Judicial District. He is past President and Executive Committee Member of the New York State Surrogates Association, and a

past member of the New York State Estates, Powers and Trust Law Committee, created by the New York State Legislature to review, revise and recommend amendments to the Estates, Power and Trust Law and the Surrogate's Court Procedure Act.

Justice Scudder received the 2010 Law Day Award from the New York State Trial Lawyers Association "for his many years of service to the people of New York and his steadfast dedication to the preservation of the civil justice system." The Law Day Award is the highest honor given to an individual by the four thousand member Association.

In 2009, Presiding Justice Scudder established the Fourth Department's Policy Statement on Pro Bono Legal and Volunteer Services, the first pro bono policy for appellate court attorneys and staff in New York State. The Appellate Division, Fourth Department received the 2011 President's Pro Bono Service Award, presented annually by the New York State Bar Association, in recognition of outstanding pro bono initiatives and contributions by individual attorneys, law firms, law students, in-house counsel and government offices. In 2012, the Fourth Department received the American Bar Association's Pro Bono Publico Award, which honors lawyers, law firms, and government attorney offices for extraordinary contributions in providing pro bono legal services on behalf of the poor and disadvantaged.

**A VIEW FROM THE BENCH
SOME DO'S AND DON'TS OF APPELLATE PRACTICE**

I. Preparation of Briefs

- 1) **Do be concise. Provide a succinct overview of the facts and procedural history of the case.**

Don't reach the 70 page limit, except in the rare case where 70 pages is warranted.

- 2) **Do cite to the record by page.**
- 3) **Do recite facts accurately and without exaggeration, and Do acknowledge facts that are not in your favor.**

Don't rely on facts not contained in the record.

- 4) **Do cite to the official reports.**

Don't cite to New York Supp, Westlaw or Lexis unless the official citation is not yet available.

- 5) **Do cite cases that support your contention.**

Don't exaggerate or misstate the facts or holdings. Don't string cite.

- 6) **Do acknowledge case law that is not in your favor.**

- 7) **Do respect the lower court and opposing counsel.**

Don't bring hostility into the appellate process.

- 8) **Do have someone else read your brief before you file it.**

II. Oral Argument

- 1) Do take advantage of the opportunity to argue your case. A compelling oral argument may make the difference between victory and defeat.**

Don't submit unless the issue requires no explanation.

- 2) Do prepare. Know the record. Know the cases you cited in your brief. Know the cases your opponent cited. Update your research. Rehearse your argument. Come to the courthouse to watch oral argument.**

- 3) Do use an outline with key words and phrases.**

Don't read from a script. Don't simply repeat the contents of your brief.

- 4) Do argue your strongest, most compelling issues.**

Don't argue every issue. Don't argue an issue that is not raised in your brief.

- 5) Do show respect to your opponent.**

Don't make disparaging comments or gestures.

- 6) Do answer the Court's questions.**

Don't panic, a question is an opportunity to persuade. Do answer the question that has been asked, Don't answer the question you wish the Court had asked. Do answer the question when it is asked, Don't say "I'll get to that later."

- 7) Do listen to the Justices. If you are asked to move on, move on. If you are told the Court is familiar with the facts, Don't proceed to recite the facts.**

- 8) Do show respect to the Court at all times.**