

1986

Review of Virginia Lawyers Practice Handbook: Appellate Practice: Virginia and Federal Courts

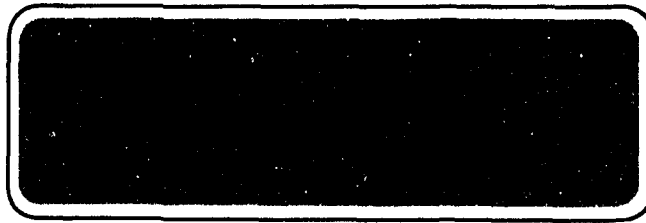
William Hamilton Bryson

University of Richmond, hbryson@richmond.eduFollow this and additional works at: <http://scholarship.richmond.edu/law-faculty-publications>Part of the [Courts Commons](#)

Recommended Citation

W. Hamilton Bryson, *Review of Virginia Lawyers Practice Handbook: Appellate Practice: Virginia and Federal Courts*, Va. B. Ass'n J., Fall 1986, at 19 (book review).

This Book Review is brought to you for free and open access by the School of Law at UR Scholarship Repository. It has been accepted for inclusion in Law Faculty Publications by an authorized administrator of UR Scholarship Repository. For more information, please contact scholarshiprepository@richmond.edu.



Virginia Lawyers Practice Handbook: Appellate Practice: Virginia and Federal Courts. Committee on Continuing Legal Education of the Virginia Law Foundation (1986). 254 pages.

Appellate Practice: Virginia and Federal Courts (1986) which is published by the Committee on Continuing Legal Education of the Virginia Law Foundation should be carefully studied by every trial lawyer in Virginia and should remain readily accessible to him or her for reference purposes. Although this loose-leaf handbook does not cover appeals from district courts and administrative agencies to circuit courts, all other types of judicial appeals are dealt with in detail. Chapter One by Professor Clark Williams is a careful and concise survey of the statute law that has erected and defined the jurisdictions of the various courts of the Commonwealth.

Chapter Two deals with the perfecting of appeals to the Court of Appeals of Virginia and to the Supreme Court of Virginia. In the first part of this chapter, Lewis Booker and Jerry Slonaker discuss in detail the general principles of appellate practice discussing among other things the necessity of making objections, "protecting the record," and recognizing appealable cases. The second part of this chapter goes into the mechanics of appeals in the two levels of appellate courts. These distinguished practitioners give numerous specific examples and helpful hints. Every point made in this chapter is supported by appropriate citations to statutes, rules of court, and case authority, and the chapter concludes with an appendix that is a table of steps to be followed. This table gives the mechanical information and deadlines for the various papers and briefs necessary for an appeal. In Chapter Three, Terrence Ney discusses appeals to the United States Court of Appeals for the Fourth Circuit. The appendix to this chapter reprints the Local Rules and the Internal Operating Procedures of the Fourth Circuit.

Chapter Four by Daniel Hartnett of Accomack covers the original jurisdiction of the appellate courts of Virginia, the extraordinary writ of mandamus to

lower court judges to exercise their jurisdiction, and the writ of prohibition not to exceed their jurisdiction. These procedures are described in detail. (The discussion of interlocutory orders in equity is somewhat duplicative of that in Chapter Two.) Federal practices as to mandamus and prohibition are also discussed with many helpful comments, but writs of habeas corpus are only briefly mentioned here being beyond the scope of this publication.

The first four chapters of this book discuss primarily the rules of law while the last three focus upon tactics and the strategies of appeals. William Poff gives some excellent advice on the writing of appellate briefs. Chapter Six by Henry Fitzgerald is a leisurely and discursive piece on oral argument. In addition to being enjoyable reading, it is full of insight and sound advice. This chapter and the last one, which is by Mr. Justice George M. Cochran and Judge Harrison L. Winter, urge upon the reader the importance of the oral argument. The trend, which these three gentlemen regret, is for more and more poor oral arguments to lead the judges to determine appeals more and more on the briefs alone. Judge Winter points out that only 17% of the appeals in his court that are fully briefed are followed by any oral argument. Part of the problem may be frivolous appeals of right by indigent criminals, but clearly a part is the uselessness of a poorly prepared oral presentation of the points in issue. This book gives the specific remedies to anyone willing to apply them.

One readily agrees with the opinion of Mr. Poff on page 5-28: "If you cannot take the time to summarize the testimony in your own words, either associate counsel or abandon the appeal." The thrust of this entire book is that one should not cut corners in the practice of law; thus Mr. Poff's words could easily be enlarged to include more. In another and broader context Mr. Poff might have said: "If you cannot take the time to prepare something or anything, either associate counsel or abandon it."

A lot of time, effort, and experience has gone into the compilation of this handbook. The citations to authority will aid considerably in research, and the

points of advice will protect the innocent practitioner from many a fatal trap. Here is a book that is well worth the time spent studying it, and its price will be quickly repaid.

—W. Hamilton Bryson

Virginia Administrative Law and Practice, 1986 Edition; Virginia Law Foundation, 1985.

For the lawyer practicing before any of Virginia's governmental boards or agencies, the most important tool in the arsenal is a road map. The attorney must know where to go, know how to find information, and learn the relationship between the substantive and procedural law. The 1986 Edition of the Virginia Lawyers Practice Handbook, *Virginia Administrative Law and Practice* (Virginia Law Foundation, 1985) provides an excellent road map for practice before seventeen Virginia boards, agencies and commissions. As such, it is a necessary addition to the library of the Virginia lawyer who practices before administrative bodies. Editors Amy R. Templeton of Washington, D.C. and David F. Peters of Richmond have compiled the only treatise on the practice of Virginia Administrative Law. But the Handbook goes further. It provides the practitioner with invaluable insight as to the rulemaking and adjudicative processes of state agencies, as well as the theoretical and philosophical underpinnings of regulation.

This is the second edition of the Handbook. The first edition was published in December 1980 and supplemented in March 1983. The publishing of the second edition came at a perfect time. First, it coincided with the successful Continuing Legal Education program held in December 1985 entitled "Virginia Administrative Process Act: Making It Work for Your Clients." Second, it coincided with the passage of legislation by the 1986 session of the General Assembly amending the Virginia Administrative Process Act, pursuant to recommendations from the Regulatory Reform Board chaired by Delegate Ralph (Bill) Axselle (Henrico).

The Handbook is divided into nine chapters, including an informative overview of Administrative practice written by Richmond attorney Robert T. Adams. The chapters are compiled by attorneys who regularly practice before the following agencies: State Corporation Commission, Industrial Commission, Alcoholic Beverage Control Board,

State Air Pollution Control Board, State Water Control Board, State Board for Contractors, State Department of Health (regulation of hazardous and solid waste), and Department of Health Regulatory Boards. The final chapter includes information related to practice before the boards of Dentistry, Funeral Directors and Embalmers, Nursing, Optometry, Pharmacy, Veterinary Medicine, Behavioral Science Professions (Professional Counselors, Psychology and Social Work) and Medicine.

For each chapter, authors provide the bases for regulation, the duties and powers of the agencies, and the regulatory scheme of the agencies. The latter observations are invaluable for the attorney who must attack the promulgation of a regulation or the manner in which an agency applies a regulation. Rules for practice before the State Corporation Commission, Industrial Commission, Alcoholic Beverage Control Board and State Board for Contractors are published as appendices. Of particular value to the young attorney is the step by step approach to conducting a Worker's Compensation claim in the Industrial Commission provided by Lawrence J. Pascal of Alexandria. Forms and case and Code citations are provided to allow the practitioner easy access to more detailed analysis of the law. Larry E. Gilman of Richmond provides practical advice to attorneys who, for example, must tailor restrictions for an Alcoholic Beverage Control licensee to locate near schools or churches. Among other things, Richard D. Gary, Donald G. Owens and William F. Schutt, of Richmond, and H. Allen Glover of Roanoke provide invaluable insights into the most important aspect of practicing before the State Corporation Commission, where to locate assistance and information. In their chapter discussing the State Air Pollution Control Board, authors James M. Rinaca of Richmond and Amy R. Templeton provide valuable forms for obtaining publications, press releases, proposed and final regulations, and notices of hearings or meetings.

The authors of the Handbook direct the practicing attorney to be alert to changes that are inevitable in this evolving and dynamic area of the law. This admonishment became important immediately, for as soon as the Handbook was published, the Virginia Alcoholic Beverage Control Board promulgated Order No. A-246, effective December 12, 1985, drastically altering the Board's Rules of Practice. In view of the continuous evolution of the body of Administrative Law, it is hoped that the publishers of *Virginia Administrative Law and Practice*, 2nd Edition (1986) provide yearly updates to the Handbook. Even without these supplements, the Handbook is