

HOW TO BETTER NAVIGATE THE APPELLATE DIVISION,
FIRST DEPARTMENT: A GUIDE BY HON. DAVID B. SAXE (RETIRED)

Hon. David B. Saxe (ret.), a former Associate Justice of the Appellate Division, First Department for nineteen (19) years, has developed a unique boutique law practice platform that can assist trial counsel in navigating the many facets of practice before the Appellate Division, First Department.

Justice Saxe's many years as both an esteemed jurist and a successful attorney provides clients with a unique perspective on successfully navigating the litigation and appeals process. Justice Saxe provides consultation to clients and legal teams on strategy, trial preparation and brief review.

He is able to focus appellate oral arguments for maximum effect and he offers a perspective based on sitting for 19 years on the most prestigious intermediate state appellate court in the United States. In his tenure on the appellate court, Justice Saxe has handled a wide range of appellate matters including the following: contract issues, corporate finance, insurance and re-insurance matters, business torts, products liability, intellectual property, real property, land-use and zoning, labor and employment, environmental law, constitutional law and civil rights, matrimonial and family law matters and probate issues.

Judge Saxe has written extensively about appellate practice and procedure and in particular about the intricacies of practice and procedure at the Appellate Division, First Department. He is the author of the seminal article, "How We Operate" New York Law

Journal (May 13, 2009; October 26, 2012), that offers a birds-eye, inside-baseball perspective on the operation of the Court.

Throughout his career, Judge Saxe has authored close to one thousand signed opinions. The New York Times once referred to him as “the most published judge in the State.” He was and still is called upon to lecture to other jurists on Legal Writing Skills and other important topics. He currently serves by appointment of the Presiding Justice of the Appellate Division, First Department to the Governor's Judicial Screening Committee for the Appellate Division, First Department. In a letter written on his retirement from the Appellate Division, former Chief Judge Judith Kaye wrote, in part, “As for your judicial opinions, I am certain we all agree: always on the Court of Appeals it was a treat (if we agreed) and a challenge (if we disagreed) to review a David Saxe Appellate Division Opinion. Hopefully, we agreed, because invariably Justice Saxe turned out an impressive writing, in result, reasoning and articulation. Having myself been a commercial litigator before ascending the bench, I found your civil, contract, commercial and real estate Opinions – an area of law and justice so important to the vitality and economy of New York State – particularly outstanding. Characteristics of a Saxe writing would be thoughtfulness and clarity, a contribution both to the stability of the law and to its progress.”

In addition to these boutique appellate services, and strategic case analysis, Justice Saxe provides Alternative Dispute Resolution services. He is involved in all manner of negotiations, disputes, debates and legal proceedings. Whether serving as a mediator,

arbitrator or consultant to legal teams, the depth and breadth of his experience as a distinguished jurist and before that as a seasoned attorney allow him to provide deep, impartial and meaningful solutions. He has a particular focus on complex commercial, insurance and real estate controversies, as well as significant experience in resolving high-end matrimonial related disputes either as a mediator, arbitrator or consultant.

SOCPE OF JUSTICE SAXE'S APPELLATE CONSULTATION ASSISTANCE

* Determine suitability for appellate review; analyze the record on appeal and decision, order and judgement to be appealed from; determine strategic points to be addressed, framed and analyzed and standard of review;

* Briefing: Judge Saxe will assist in the preparation of the parties' Briefs with an eye to both substance, style and readability. He has long held the view that the effective Brief must tell a story that should capture the attention and imagination of the reader - no matter what kind of case is involved. Judge Saxe can assist with this task. He has what can be termed a "judicial nose." In examining drafts, he can ..." distinguish between the scents that are merely unpleasant and those that signify the presence of some endemic disease or weakness." (Coffin, On Appeal, etc., p 45).

* Appellate Argument: - Judge Saxe knows the sort of presentation that is effective and the kind that is not. He will assist in the:

- development of a set of targeted talking points;

- use of archived streaming of past panel sittings; and
- prepare for and run a Moot Court Session with critique.

* Motion Practice: Judge Saxe is knowledgeable about the mechanics of stay applications, motions for re-argument and for leave to appeal.