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## Narratives Drawn from Rich Experience: Mayer Brown's Federal Appellate Practice

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# THE JOURNAL OF APPELLATE PRACTICE AND PROCESS

## BOOK REVIEW

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NARRATIVES DRAWN FROM RICH EXPERIENCE:  
MAYER BROWN'S *FEDERAL APPELLATE PRACTICE*\*

Patrick E. Higginbotham\*\*

Robert Stern's *Supreme Court Practice* is widely regarded as the essential reference for practice before the Supreme Court of the United States. Mr. Stern retired from the Mayer Brown law firm leaving its upkeep—it is now in its ninth edition—to the hands of three distinguished members of the firm's Supreme Court and Appellate Practice group.<sup>1</sup>

This practice group of lawyers has turned virtually all hands to produce *Federal Appellate Practice*, boldly offered as a companion to the Stern treatise. With seventeen chapters and 953 pages, it is said to be a collegial effort and is presented as “a comprehensive array of the issues that a federal appellate practitioner must confront.”<sup>2</sup> I found that to be so.

This is a treatise but it offers much more in a seamless blend of rules and practice—a legal reference with narratives drawn from rich experience that speaks to the ear of the lawyer who has a case and the study of one who hopes to be retained. It

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\* Mayer Brown LLP, *Federal Appellate Practice* (Philip Allen Lacovara ed., BNA 2008).

\*\* Senior Judge, United States Court of Appeals for the Fifth Circuit.

1. See Eugene Gressman et al., *Supreme Court Practice* (9th ed. BNA 2007).

2. *Federal Appellate Practice*, *supra* n. \*, at iii.

offers the rules and the case law with a style that can be captured only by writers who are able participants not just observers. This is no small feat: to maintain a disciplined treatment of the rules of the game while counseling lawyers of their play all with a reassuring quality of work. The chapters flow from preserving issues for appeal to appellate jurisdiction, to motions, continuing in a march responsive to the likely order of issues a federal appeal will present. The writing is crisp and to the point.

There are many, but I will point to just one small example of its consistent lifting up of the little but important issues in the practice: In treating appellate jurisdiction the reader is directed to Rule 54(b), one path of appeal before final judgment. The authors' treatment of the issue of whether the requirement that the claim being appealed be separate from the claim that remains in the district court is an independent requirement or merely part of the no-reason-for-delay inquiry is concrete and to the point, lifting up in one brief paragraph an issue often confused by district courts and counsel. The writers move easily from clear analysis of statutory and case material to softer counsel born of experience such as how best to field questions from the bench and the wisdom that the clerk's office can be your best friend.

Wisely, the authors resist any overly zealous effort to strip the duplication inherent in a meaningful discussion of each of the successive tasks of the appellate lawyer. This packaging gives each step a completeness essential to the practical use of the book and avoids undue cross references. After all, the uncertainties in handling an appeal fall in clusters upon the practitioner; they do not present in the neat sequence of an index. And its orderliness is one of the distinctive achievements in this book, taking it from dry treatise to a highly useful companion book, one that will find its way to a place within reach of the appellate specialist and only a step or two away from the infrequent traveler. Remarkably, both will find this a rich resource.

In brief, one cannot but be impressed by this work's distinguished list of contributing editors. Yet that factum does not make it the significant contribution that it is. Rather, it is the impressive melding and marshaling of this talent that does, to these eyes, make it a companion to the revered work of Mr. Stern. Well done.