# **DEPOSITIONS**

# PRACTICE AND PROCEDURE IN FEDERAL AND NEW YORK STATE COURTS

# **SECOND EDITION**

Honorable Harold Baer, Jr. Robert C. Meade, Jr., Esq.

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#### **DEDICATION**

This book is dedicated in memory of

HONORABLE HAROLD BAER

and

HONORABLE ROBERT C. MEADE,

JUSTICES OF THE SUPREME COURT OF THE STATE OF NEW YORK

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#### PREFACE TO THE SECOND EDITION

The second edition of this book represents a major revision of its predecessor. We have, of course, updated the case citations, statutory material and rules, but we have gone far beyond that:

- We have added new substantive material to the legal section of the text (Part One).
- We have introduced a new Part Two on ethics, which greatly expands the discussion of that important subject and does so in light of the N.Y. Rules of Professional Conduct, which went into effect in April 2009.
- We have also edited the practical advice section, which had been Part Two in the first edition and becomes Part Three here.

Throughout the book we speak of the *deposition*. We do so because that is the term for this discovery device that is employed by the Federal Rules of Civil Procedure and the Civil Practice Law and Rules. It is appropriate, however, to take note of the fact that in the everyday world of law practice in New York State courts, it is very common, indeed routine, for lawyers and judges to use the phrase *examination before trial*, or EBT for short.

Our ambitions for this undertaking remain unaltered. We hope practitioners will find this book a useful reference tool, a handbook to which they can turn for information on important legal aspects of deposition practice in state and federal courts. We also hope the reader will benefit from the discussion of ethical issues that may arise in various ways in deposition practice. The answers to ethical questions are not always as clear as one would wish—sometimes these questions are truly dilemmas—but practitioners must be attuned to potential ethical pitfalls so that they can be prepared for them, investigate them and, ideally, avoid them. In addition, we have tried to offer some useful practical suggestions about how to navigate around the shoals of deposition practice.

It also continues to be our aspiration that this work will help attorneys new to litigation practice in the state and federal courts of New York. As we observed in the preface to the first edition, the path facing the new attorney is not always smooth in these times of close attention to the bottom line and office productivity on the part of law firms and public sector employers. This work, we hope, will help to fill any training gap there may be in regard to deposition practice.

Finally, we dedicate this book to the memory of two men who for us were, among many important things, professional guides and models of commitment to the ideals of the law and dedication to public service.

Dated: January 2011

Hon. Harold Baer, Jr. Robert C. Meade, Jr.

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