

# The Survey of New York Practice Table of Contents

Editorial Board

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# THE SURVEY OF NEW YORK PRACTICE

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### INTRODUCTION\*

In this final issue of Volume 65, *The Survey* reviews several

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\* *The Survey* uses the following abbreviations:

New York Civil Practice Law and Rules (McKinney) .....	CPLR
New York Civil Practice Act .....	CPA
New York Criminal Procedure Law (McKinney) .....	CPL
New York Code of Criminal Procedure .....	CCP
Real Property Actions and Proceedings Law (McKinney) .....	RPAPL
Domestic Relations Law (McKinney) .....	DRL
Estates, Powers and Trusts Law (McKinney) .....	EPTL
General Business Law (McKinney) .....	GBL
General Municipal Law (McKinney) .....	GML
General Obligations Law (McKinney) .....	GOL
D. Siegel, <i>New York Practice</i> (1991) .....	SIEGEL
Weinstein, Korn & Miller, <i>New York Civil Practice</i> (1989) .....	WK&M
<i>The Survey of New York Practice</i> .....	<i>The Survey</i>

significant developments in New York law. In *People v. Harris*, the New York Court of Appeals held that the precinct-house confession of a murder suspect obtained approximately one hour after a warrantless entry into his apartment, though admissible under the fourth amendment of the United States Constitution, must be suppressed under article I, section 12 of the New York State Constitution. The *Harris* court reasoned that although the federal and state search-and-seizure provisions are identical, federal law inadequately protects the rights of New York citizens because it compromises New York's unique, expansive right-to-counsel protections, which attach earlier in criminal proceedings than does their federal counterpart.

Article I, section 12 of the New York State Constitution was interpreted as also granting New York citizens broader protections from canine sniffs in *People v. Dunn*. In that case, the New York Court of Appeals held that a canine sniff conducted by police in the common hallway outside a private apartment, though not constituting a "search" under the fourth amendment of the United States Constitution, is a "search" under the state constitution. Because of its utility and discriminate and nonintrusive nature, however, the *Dunn* court concluded that a canine sniff may be used by police without a warrant when they have a "reasonable suspicion," as opposed to the more exacting standard of "probable cause," that a private dwelling contains illegal drugs.

In *Niesig v. Team I*, the New York Court of Appeals formulated the "alter ego" test to determine when an attorney may conduct *ex parte* interviews with an opposing corporate party's employees without violating Disciplinary Rule 7-104(A)(1) of the Code of Professional Responsibility. In balancing the competing goals of preventing inadvertent disclosures to overreaching opposing counsel and of providing unburdened access to relevant information, the court concluded that all employees, except those who are following the advice of counsel or whose acts or omissions can bind, or be imputed to, the corporation, may be interviewed without the presence of counsel.

Finally, in *In re Raquel Marie X.*, the New York Court of Appeals declared unconstitutional the requirement in DRL section 111(1)(e) that the father openly live with his child or the child's mother for a continuous period of six months prior to the commencement of adoption proceedings in order to have a right to veto his child's adoption. The court held that this "living together"

requirement violated the father's constitutional right to develop a relationship with his child because, rather than focusing on the father-child relationship, it was primarily directed to the father-mother relationship. Recognizing the prominence of the "living together" requirement in the statutory scheme, the *Raquel Marie* court struck down section 111(1)(e) in its entirety, but in its place promulgated an interim standard that includes those requirements in section 111(1)(e) that had not been declared unconstitutional.

The members of Volume 65 hope that *The Survey's* examination of these recent decisions of the New York Court of Appeals will be of interest and value to the bench and bar.