



# **FIFTH CIRCUIT COURT OF APPEALS**

## **CLERK'S OFFICE UPDATE 2016 APPELLATE ADVOCACY SEMINAR**

**TOM PLUNKETT  
Federal Bar Association  
25 September 2016**



# AGENDA



- Circuit Statistical Review
- Pending FRAP Changes
- Practice Tips
- Future Practice
- Questions



# CASE LOAD

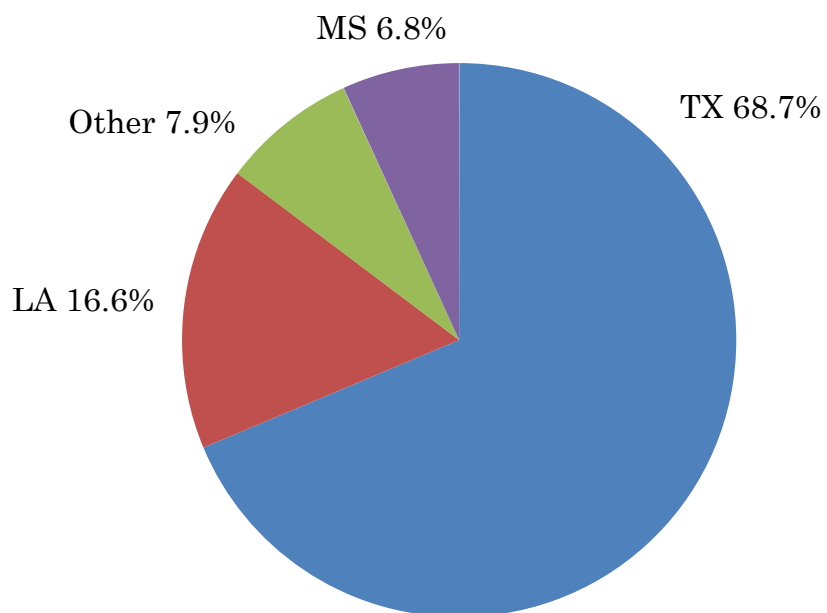


Circuit	2015	2016
DC	1,117	1,246
1 <sup>ST</sup>	1,470	1,708
2 <sup>ND</sup>	4,753	4,579
3 <sup>RD</sup>	3,425	3,623
4 <sup>TH</sup>	4,646	6,294
<b>5<sup>TH</sup></b>	<b>7,423</b>	<b>8,675</b>
6 <sup>TH</sup>	4,518	5,159
7 <sup>TH</sup>	2,841	3,452
8 <sup>TH</sup>	2,833	3,657
9 <sup>TH</sup>	11,973	11,531
10 <sup>TH</sup>	1,893	2,332
11 <sup>TH</sup>	6,140	7,843
TOTAL	53,032	60,099



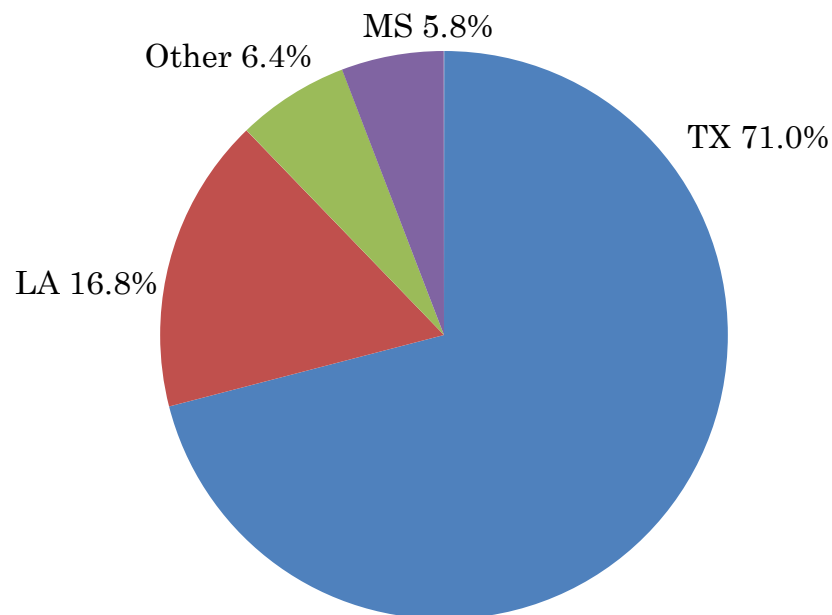
# NEW APPEALS BY STATE

## 2015



■ TX = 5096   ■ LA = 1233   ■ Other = 586   ■ MS = 508

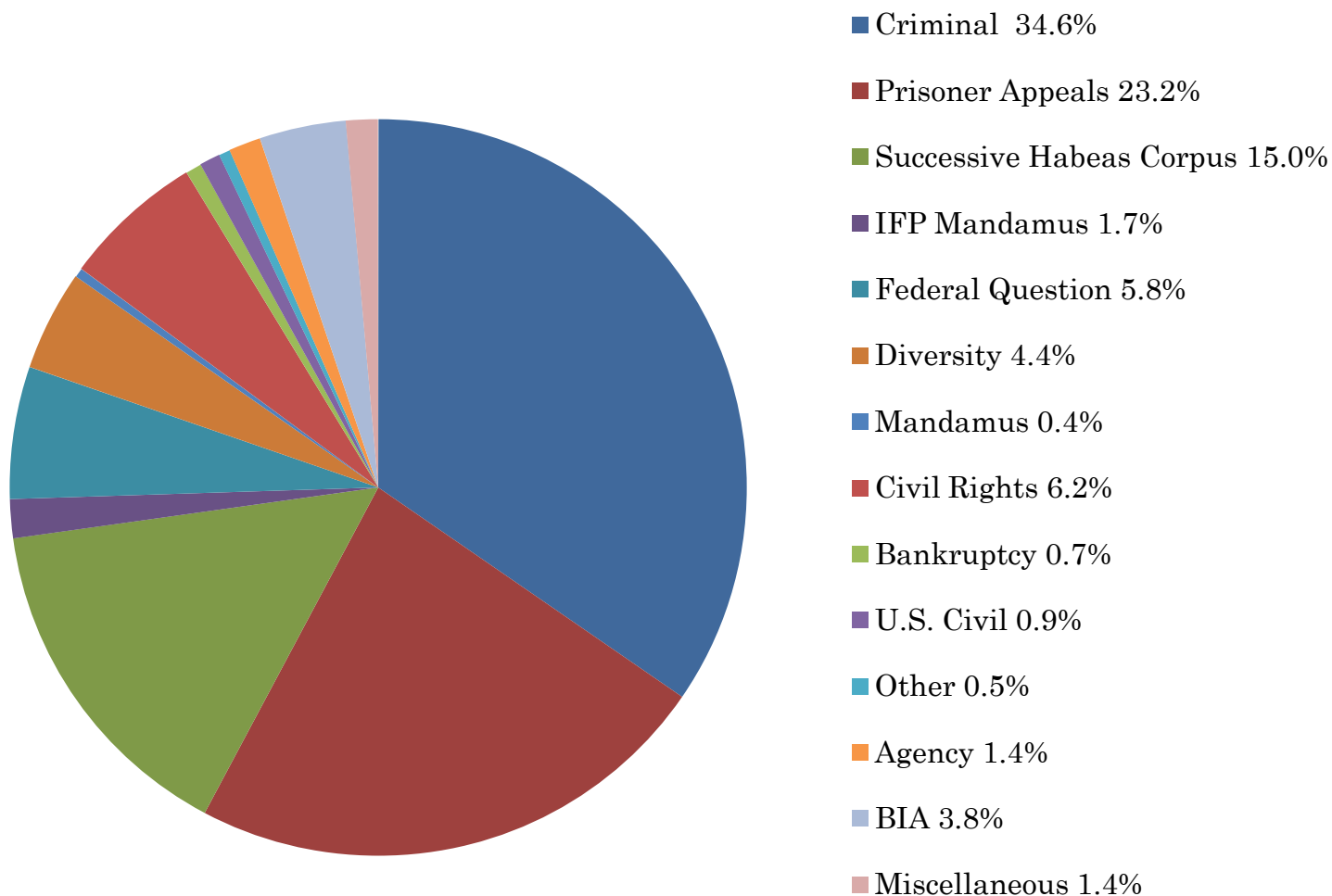
## 2016



■ TX = 6156   ■ LA = 1459   ■ Other = 554   ■ MS = 506



# New Appeals by Case Type



**STATISTICAL SNAPSHOT**  
For the 12 month period which ended June 30, 2016

	Cases Commenced	Procedural Terminations	Total Merits Terminations	Merits Terminations After Oral Hearing	Merits Terminations on Briefs	% Placed on the Oral Argument Calendar	% Reversed
Criminal	3,004	733	1,860	216	1,644	11.6%	3.4%
U.S. Prisoner Petitions	547	290	243	9	234	3.7%	4.9%
Other U.S. Civil	178	78	93	45	48	48.4%	14.0%
Private Prisoner Petitions	1,465	660	609	39	570	6.4%	3.4%
Other Private Civil	1,356	494	658	398	260	60.5%	16.6%
Bankruptcy	58	23	38	27	11	71.1%	2.6%
Administrative Agency	463	221	189	40	149	21.2%	3.2%
Original Proceedings*	1,482	217	654	0	654	0.0%	0.0%
Miscellaneous	122	4	38	0	38	0.0%	0.0%
<b>TOTAL</b>	<b>8,675</b>	<b>2,720</b>	<b>4,382</b>	<b>774</b>	<b>3,608</b>	<b>17.7%</b>	<b>6.1%</b>
<b>Louisiana</b>	<b>1,459</b>	<b>425</b>	<b>710</b>	<b>183</b>	<b>527</b>	<b>25.8%</b>	<b>7.6%</b>
<b>Eastern District of Louisiana</b>	<b>623</b>	<b>207</b>	<b>381</b>	<b>91</b>	<b>248</b>	<b>24.0%</b>	<b>9.9%</b>
	Total Number of Published Opinions	Total Number of Unpublished Opinions	Number of Petitions for Panel Rehearing	Number of Panel Rehearings Granted	Number of Petitions for Rehearing En Banc	Number Granted	
Fifth Circuit	422	2,714	240	3	194	7	
<b>Louisiana</b>	<b>102</b>	<b>314</b>	<b>59</b>	<b>1</b>	<b>43</b>	<b>1</b>	
<b>Eastern District of Louisiana</b>	<b>57</b>	<b>129</b>	<b>28</b>	<b>1</b>	<b>20</b>	<b>1</b>	

\*Including successive habeas corpus and pro se mandamus petitions



# CASE PROCESSING TIMES

## 2015-2016



- Notice of Appeal to Filing of Last Brief: **5.0 Months**
- Last Brief to Hearing or Submission: **3.7 Months**
- Hearing to Final Disposition: **1.4 Months**
- Submission to Final Disposition **0.3 Months**
- Notice of Appeal to CA 5 Final Disposition: **9.2 Months**

26.7% of all appeals are placed on the oral argument calendar, although some of these cases will later be decided without argument.

The median time from filing of the Notice of Appeal to CA 5 final disposition in oral argument cases is **12.4 Months**.



# PENDING FRAP CHANGES



- **FRAP changes effective on December 1, 2016.**
  - Changes to FRAP 4, 5, 21, 25,26, 27, 28, 28.1, 29, 32, 35 and 40.
  - Changes to Forms 1, 5, and 6, as well as adding a new form 7.
  - New Appendix.
- Changes to Rules 4 and 25, changes to Forms 1 and 5, and addition of new Form 7 clarify the **inmate filing rule** and do not require local action.
- Additional change to Rule 4 addresses circuit split concerning **timeliness of motions** filed under Civil Rules 50, 52 and 59, and does not require local action.
- Changes to Rules 5, 21, 27, 28.1, 32, 35 and 40 impose **word count limits for documents prepared by computer** and require a minor change to 5<sup>th</sup> Cir. R. 32.2.
- Changes to Rule 29 establish default rules regarding **amicus filings** in connection with petitions for rehearing that require changes to 5<sup>th</sup> Cir. R. 29.1 and 29.3.
- Change to Rule 26 eliminates **three-day rule** if service is made electronically that requires a minor change to 5<sup>th</sup> Cir. R. 26.1.
- Change to Rule 28 reflects the **relocation of the certificate of compliance** requirement from Rule 32(a)(7) to 32(g)(1) and requires a minor change to 5<sup>th</sup> Cir. R. 28.3(m).
- **Additional FRAP Changes for 2017:**
  - Notice and Comment Period ends in February 2017
  - Effective December 1, 2017





# REQUIRED USAGE



- For the limits in FRAP 5 (Permission to Appeal), 21 (Extraordinary Writs), 27 (Motions), 35 (Petition for Hearing or Rehearing en banc), and 40 (Petition for Panel Rehearing):
  - You **MUST** use the **WORD** limit if you produce the document on a **COMPUTER**.
  - You **MUST** use the **PAGE** limit if you **HANDWRITE** or **TYPE** the document
- For the limits in FRAP 28.1 (Parties Briefs with Cross-Appeal), 29(a)(5) (Amicus Briefs), and 32 (Parties Briefs without Cross-Appeal):
  - You **MAY** use the **WORD** or **PAGE** limit regardless of how you produce the document; or
  - You **MAY** use the **LINE** limit if you **TYPE** or **PRINT** your document with a **MONOSPACED TYPEFACE** (each character occupies the same amount of horizontal space).
- If you use a **WORD** or **LINE** limit (other than under FRAP 28(j)), you **MUST** file the **CERTIFICATE OF COMPLIANCE** required by FRAP 32(g).

# COMPARISON OF FRAP CHANGES

FRAP	2015	December 1, 2016
<b>Permission to Appeal (5c)</b> Answer in Opposition Cross-Petition	20 Pages	<b>5,200 Words (Computer)</b> 20 Pages (Hand/Typed)
<b>Extraordinary Writs (21d):</b> Petition for Writ of Mandamus/Prohibition/etc	30 Pages	<b>7,800 Words (Computer)</b> 30 Pages (Hand/Typed)
<b>Motions (27d):</b> Motion & Response	20 Pages	<b>5,200 Words (Computer)</b> 20 Pages (Hand/Typed)
Reply to a Response to a Motion	10 Pages	<b>2,600 Words (Computer)</b> 10 Pages (Hand/Typed)
<b>Rehearing and En Banc Filings (35b2, 40b)</b>	15 Pages	<b>3,900 Words (Computer)</b> 15 Pages (Hand/Typed)

# COMPARISON OF FRAP BRIEF CHANGES

FRAP	2015	December 1, 2016
<b>Principal Brief (32a7Bi)</b>	14,000 Words 30 Pages 1,300 Lines	13,000 Words 30 Pages 1,300 Lines
<b>Reply Brief (32a7Bii)</b>	7,000 Words 15 Pages 650 Lines	6,500 Words 15 Pages 650 Lines
<b>If Cross-Appeal (28.1e):</b>		
Appellant Principal, Response & Reply Brief	14,000 Words 30 Pages 1,300 Lines	13,000 Words 30 Pages 1,300 Lines
Appellee Principal/Response Brief	16,500 Words 35 Pages 1,500 Lines	15,300 Words 35 Pages 1,500 Lines
Reply Brief	7,000 Words 15 Pages 650 Lines	6,500 Words 15 Pages 650 Lines
<b>Amicus Brief (29)</b>	½ of the Principal Brief	½ of the Principal Brief
Rehearing		2,600 Words
<b>Supplemental Letter (28j)</b>	350 Words	350 Words

# 2016 FRAP LENGTH LIMITATIONS

Action	Document Type	Word Limit	Page Limit	Line Limit	Rule
Permission to Appeal	Petition for Permission to Appeal Answer in Opposition Cross-Petition	5,200	20	NA	FRAP 5(c)
Extraordinary Writs	Petition for Writ of Mandamus or Prohibition or other Extraordinary Writ	7,800	30	NA	FRAP 21(d)
Motions	Motion Response to a Motion	5,200	20	NA	FRAP 27(d)(2)
	Reply to a Response to a Motion	2,600	10	NA	FRAP 27(d)(2)
Parties' Briefs (where no cross- appeal)	Principal Brief	13,000	30	1,300	32(a)(7)
	Reply Brief	6,500	15	650	32(a)(7)
Parties' Briefs (where cross-appeal)	Appellant's Principal Brief Appellants Response and Reply Brief	13,000	30	1,300	28.1 (e)
	Appellee's Principal and Response Brief	15,300	35	1,500	
	Appellee's Reply Brief	6,500	15	650	
Party's Supplemental Letter	Letter citing supplemental authorities	350	NA	NA	28(j)
Amicus Briefs	Amicus Brief during initial consideration of the case on the merits	One-half the length set by the Appellate Rules for a party's principal brief			29(d)
	Amicus Brief during consideration of whether to grant rehearing	2,600	NA	NA	29(b)(4)
Rehearing and En Banc Filings	Petition for Hearing En Banc Petition for Panel Rehearing; Petition for Rehearing En Banc	3,900	15	NA	35(b)(2) & 40(b)



# PRACTICE TIPS



# UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Honorable Carl E. Stewart, Chief Judge

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## News & Announcements

### Latest Opinions

#### EROA Access

The Fifth Circuit now permits ECF Attorneys who have entered an appearance in a case to download a digital copy of the unsealed Electronic Record on Appeal (EROA). District Court Clerks will notify counsel when this feature is available for specific appeals. After receipt of this notice, counsel should review [EROA Downloads](#) for instructions on the download process.

Contact our Records Department at 504-310-7692 or 504-310-7632 with any questions or comments.

Thank you.

#### Request for Proposals - Sitefinity Content Management

**Fifth Circuit Rule 30.1.7 requires that paper record excerpts filed with the court contain physical tabs that extend beyond the edge of the document.**



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### Court Location

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**Courthouse:**

U.S. Court of Appeals  
For The Fifth Circuit  
600 Camp Street  
New Orleans, LA 70130

**Clerk's Office:**

U.S. Court of Appeals  
For The Fifth Circuit  
600 S. Maestri Place  
New Orleans, LA 70130

**Clerk of Court:** Lyle W. Cayce (504) 310-7700

Please send questions or comments to [Webmaster\\_ca5@ca5.uscourts.gov](mailto:Webmaster_ca5@ca5.uscourts.gov).

**CASE MANAGEMENT TEAMS**

**Case Administration Manager:** Peggy Keller 310-7708

**All Clerk's Office Numbers are 504 Area Code**

<p align="center"><b>NORTHERN AND WESTERN TEXAS 10001-19999</b>  <b>50001-59999</b>                  Group Main No. 310-7806</p>		<p align="center"><b>SOUTHERN AND EASTERN TEXAS 20001-29999</b>  <b>40001-49999</b>                  Group Main No. 310-7807</p>		<p align="center"><b>LOUISIANA, MISSISSIPPI, &amp; AGENCY 30001-39999</b>  <b>60001-69999</b>                  Group Main No. 310-7808</p>	
<p align="center"><u><b>CASE MANAGER</b></u></p> <p><b>Nos. Ending in 0:</b> Peter Connors (PAC) 310-7685</p>		<p align="center"><u><b>CASE MANAGER</b></u></p> <p><b>Nos. Ending in 4:</b> Amanda Sutton-Foy (ASF) 310-7670</p>		<p align="center"><u><b>CASE MANAGER</b></u></p> <p><b>Nos. Ending in 1:</b> Connie Brown (CB) 310-7671</p>	
<p><u><b>CASE MANAGEMENT CLERKS:</b></u></p> <p><b>Nos. Ending in 1, 2, 3:</b> Mary C. Stewart (MCS) 310-7694</p> <p><b>Nos. Ending in 7, 8, 9:</b> Melissa Courseault (MBC) 310-7701</p> <p><u><b>GENERALISTS:</b></u></p> <p><b>Nos. Ending in 1, 3, 4:</b> Nancy Dolly (NFD) 310-7683</p> <p><b>Nos Ending in 6, 0:</b> Renee McDonough (RSM) 310-7673</p> <p>Roeshawn Johnson 310-7998</p>	<p><u><b>CASE MANAGEMENT CLERKS:</b></u></p> <p><b>Nos. Ending in 4, 5, 6:</b> Mary Frances Yeager (MFY) 310-7686</p> <p><u><b>GENERALISTS:</b></u></p> <p><b>Nos. Ending in 5, 7, 8:</b> Melissa Mattingly (MRM) 310-7719</p> <p><b>Nos. Ending in 2, 9:</b> Shawn Henderson (SDH) 310-7668</p> <p><b>Prisoner Pro Se Clerk:</b> Claudia Farrington (CNF) 310-7706</p>	<p><u><b>CASE MANAGEMENT CLERKS:</b></u></p> <p><b>Nos. Ending in 8, 9, 0:</b> Dawn Shulin (DMS) 310-7658</p> <p><b>Nos. Ending in 1, 2, 3:</b> Angel Batiste (ADB) 310-7715</p> <p><u><b>GENERALISTS:</b></u></p> <p>Rebecca Leto (RLL) 310-7703</p> <p>Casey Sullivan 310-7642</p> <p>LaToya Allen 310-7623</p>	<p><u><b>CASE MANAGEMENT CLERKS:</b></u></p> <p><b>Nos. Ending in 5,6,7:</b> Jann Wynne (JMW) 310-7688</p> <p><b>Prisoner Pro Se Clerk:</b> Donna Mendez (DLM) 310-7677</p> <p><u><b>GENERALISTS:</b></u></p> <p><b>Nos. Ending in 5, 6, 7, 8, 9:</b> Jim DeMontluzin (RJD) 310-7679</p> <p><b>Nos. Ending in 1, 2, 3, 4, 0:</b> Christina Gardner (CAG) 310-7684</p>	<p><u><b>CASE MANAGEMENT CLERKS:</b></u></p> <p><b>Nos Ending in 3, 5 &amp; 9:</b> Allison Lopez (AGL) 310-7702</p> <p><b>Nos. Ending in 4, 6 &amp; 7:</b> Shea Pertuit (SEP) 310-7666</p> <p><u><b>GENERALISTS:</b></u></p> <p>Majella Sutton (MAS) 310-7680</p> <p>Lisa Ferrara 310-7649</p> <p><b>Nos. Ending in 0 will rotate by the next to last number between Generalists</b></p>	<p><u><b>CASE MANAGEMENT CLERKS:</b></u></p> <p><b>Nos. Ending in 0, 2 &amp; 8:</b> Cindy Broadhead (CMB) 310-7707</p> <p><u><b>GENERALISTS:</b></u></p> <p><b>Nos. Ending in 1, 3, 4, 5, and 7:</b> Sabrina Short (SBS) 310-7817</p> <p><b>Nos. Ending in 2, 6, 8, 9, and 0:</b> Dantrell Johnson (DLJ) 310-7689</p> <p><b>Prisoner Pro Se Clerk:</b> Monica Washington (MRW) 310-7705</p>

<p><b>DEATH PENALTY 70000</b></p> <p>Monica Washington (MRW) 310-7705</p>	<p><b>RECORDS DATA QUALITY ANALYSTS (All Teams)</b>                  Records Team Line: 310-7721 Mike Brown (MRB): 310-7692 Dawn LeBlanc (DDL ): 310-7717</p>
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# PRACTICE TIPS



- **Register Early and Keep Information Updated:**
  - Member 5<sup>th</sup> Circuit Bar, PACER Enrollment for the 5<sup>th</sup> Circuit, and filed, updated Appearance Form.
  - Verify information by logging into your “Appellate Filer Account” with PACER.
- **Notice of Docketing Activity (NDA):**
  - Check for any Attachments.
  - If think incorrectly filed, please call Clerk’s Office before trying to refile.
- **Extensions:**
  - ALL requests for extension must include an explanation for the required delay.
  - Level 1 Extension= Only 30 Days Total.
  - Counsel must file a motion for extensions of time exceeding 30 days.
- **Citation of Supplemental Authorities (28(J) Submissions):**
  - Intervening decisions or new developments.
  - Letter not brief, no more than 350 Words.
  - Citations and succinct comments.
- **Electronic devices in the Courtroom - No one may use any ELECTRONIC DEVICE while in the courtroom gallery.**





# FUTURE PRACTICE



- **2017 FRAP Changes:**
  - Notice and Comment Period – February 2017
  - Effective Date – December 1, 2017
  
- **Next Generation (NextGen) Case Processing/Electronic Case Filing (AM/ECF) System:**
  - Tentatively scheduled for implementation in Fall 2017
  - Impacts on the Attorney Interface & Practice:
    - Central Sign – On: Allows all users to maintain one account across all courts (Appellate, District and Bankruptcy) and to sign in one time to access to all courts in which they have permission to e-file.
    - Eliminates the Java Plug-in: Attorney filing in Appellate NextGen replaces the code that requires attorneys to download a Java Plug-In with code written using the NextGen tool set and new architecture. This will provide a more streamlined, updated and consistent interface for filing.
  - Forming an internal Agile Project Management Team to develop Tasks, Milestones and Training Products.
  
- **Continued Development of Local Applications**



**QUESTIONS?**

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