



# **FIFTH CIRCUIT COURT OF APPEALS**



## **CLERK'S OFFICE UPDATE**

### **2018 APPELLATE ADVOCACY SEMINAR**

### **BAR ASSOCIATION OF THE FIFTH FEDERAL CIRCUIT**

**TOM PLUNKETT, CHIEF DEPUTY**  
**TIM PHARES, ATTORNEY-ADVISOR**  
**1 October 2018**



# AGENDA

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- What's New
- Practice Notes and References
- Statistical Review
- Questions



# WHAT'S NEW

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- Court
- NextGen
- Quality Control (QC) Initiatives



# WHAT'S NEW - COURT

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- 5 New Judges:
  - Judge Engelhardt (New Orleans)
  - Judge Duncan (Baton Rouge)
  - Judge Ho (Dallas)
  - Judge Willett (Austin)
  - Judge Oldham (Austin)
- Judge Prado departed to become Ambassador to Argentina
- 16 Active Judges, 9 Senior Judges and 1 Vacancy (Mississippi)



# WHAT'S NEW - NEXTGEN

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- **Update Benefits**
  - Eliminates the need for the Java plug-in which has long been a source of problems when logging in to CM/ECF;
  - User-friendly interface (instead of an interface that progresses from one screen to the next, NextGen has a single screen displaying expandable/collapsible sections that allow the filer to easily move between sections as well as review the filing before committing the transaction to the docket).
  - The Central Sign-on feature offers a single point of access to all NextGen courts for which the attorney is registered as an e-filer, as well as all the usual PACER access for viewing case related information.
- **Updating Electronic Filer Accounts:** Must “link” accounts. Attorneys are urged to link their accounts as soon as possible to avoid issues when it comes time to file or renew their membership. Once the account is linked, filers will use their PACER login credentials at the CM/ECF Document Filing for our court to file documents, view the EROA on Appeal, and pay renewal fees. To link: Attorneys need their login and password for their Individual PACER account and their login and password for their Appellate Legacy Account.
- **Initial Issues (Clerk Help Desk - 877.232-1038 or [ca05\\_cmecf@ca5.uscourts.gov](mailto:ca05_cmecf@ca5.uscourts.gov)):**
  - Attorneys incorrectly link their “firm” account – you cannot link a group account.
  - Attorneys registering for a new individual PACER account incorrectly requesting an e-filing account with our court even though they already have one. If you have an Appellate Legacy Account, DO NOT request an e-filing account when registering for a PACER account, instead register for a PACER viewing account, and then follow our instructions to Link that new account to your Appellate Legacy Account.
  - Attorneys not knowing their Appellate Legacy login credentials. The Clerk’s Office does not have access to user names and passwords. Only PACER can provide filers with that information. Due to the elimination of the Appellate Legacy system, the only way to retrieve these credentials is to call PACER at 800-676-6856.



# WHAT'S NEW – QC

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- QC Compliance Scan linked to Briefing Deficiency Letter
- Electronic Filer “Turbo-Tax Like” Interface
- Pending Tasks Pop-Up
- Downloadable, Individualized Brief Templates



# QC COMPLIANCE SCAN



## Automated QC Scan Process

- Submit electronically filed documents to an automated quality control service that looks for potential defects upon filing. Currently only the Appellant's Brief, Appellee's Brief, and Reply Brief. Ultimately we will do this for all.
- Automatically report defects to the appropriate staff member, greatly reducing the time required to "quality control" (QC) the document for defects.
- If the defects are sufficiently serious to warrant rejection of the filing, the defects are automatically included in the deficiency form (BR-5 docketing letter).

## QC Test Types

- Case Number/Caption
- Court Name/Originating Court Name
- Brief Type (Appellant, Appellee, Reply)
- Volume Limitations (Word Count, etc.)
- Scanned Document
- ROA Citations
- Social Security Numbers
- Signature
- The required sections of the brief.



# QC INTERFACE



The screenshot displays a web browser window titled "Filing Appellant/Petitioner Brief Filed". The main content area shows a case titled "Case 17-50123 USA v. Pat Patterson" with a "NOTE" section. The note contains a reminder: "Reminder: Brief's scanned into PDF are not acceptable. (See 5th Cir. R. 31.1) Please do not load a scanned brief." It lists two instructions: "Click the 'Browse' button to locate the PDF file." and "To be sure you are selecting the intended document, view the file before attaching it to this entry." A "Document Check Result" dialog box is open in the foreground, listing seven issues for review. The dialog box has a "View in Browser" button and a "Done" button. The background interface includes a vertical "CMI/ECF Appellate" sidebar, a "Filing Reports Utilities Logout Help" menu, and a "Brief Filed" button. Other visible text includes "NOT", "anted leave to file", "deemed SUFFICIENT by the cl", and "a copy of this pleading."

**NOTE**

Reminder: Brief's scanned into PDF are not acceptable. (See 5th Cir. R. 31.1) Please do not load a scanned brief.

- Click the 'Browse' button to locate the PDF file.
- To be sure you are selecting the intended document, [view the file before attaching it to this entry.](#)

**Document Check Result**

We have performed an initial review of your filing to determine compliance with requirements. This review identified the following potential errors that warrant your consideration. You should consider correcting these issues before completing the filing of this document. If you need additional time to make the corrections, you may request an extension.

- Issue 1: The appeal number on the title page does not match the case number.
- Issue 2: Caption on the brief does not agree with the caption of the case in compliance with FED R. APP. P. 32(a) (2) (C). Caption must exactly match the Court's Official Caption.
- Issue 3: The name of the court, agency, or board does not appear on the title page. See FED R. APP. P. 32(a) (2) (D).
- Issue 4: Signature is required at the conclusion.
- Issue 5: You must electronically file a "Form for Appearance of Counsel" within 14 days from this date. You must name each party you represent, see 12(b) and 5th CIR. R. 12 and 46.3. The form is available from the Fifth Circuit's website, [www.ca5.uscourts.gov](http://www.ca5.uscourts.gov). If you fail to electronically file the form, the brief will be stricken and returned unfiled.
- Issue 6: Certificate of Service is required, see FED R. APP. P. 25(d) and 5th CIR. R. 28.3(1).
- Issue 7: The Argument must be double-spaced (See FED R. APP. P. 32 (a) (4)).

View in Browser Done





# PENDING TASKS POP-UP



## U.S. Court of Appeals CMECF Official Attorney Electronic Document Filing System

This facility is for Official Court Business only. Activity to and from this site is logged. Document filings on this system are subject to Federal Rule of Appellate Procedure, Rule 25. Evidence of unauthorized or criminal activity will be forwarded to the appropriate law enforcement officials under 18USC152 and 3571.

### Welcome

Welcome to the U.S. Court of Appeals Case Management/Electronic Case Files System. Please select an option from the menu.

Last Login Wed Sep 26 10:14 CDT 2018

[Court Information](#)

### Pending Deadlines/Filings

17-10944	USA v. Jackie Clayton	Anders Response Due on 01/03/2018 (Appellant Jackie Eugene Clayton)	<a href="#">File event "Proposed Sufficient Brief"</a> <a href="#">File event "Cross Appellee/Respondent Brief Filed"</a> <a href="#">File event "Rule 28i letter filed adopting brief"</a>
17-30805	SCF Waxler Marine, L.L.C., et al v. Aris T M/V, et al	E/Res's Brief Due on 02/09/2018 (Appellee Stonington Insurance Company)	<a href="#">File event "Appellee/Respondent Brief Filed"</a> <a href="#">File event "Cross Appellant/Petitioner Brief Filed"</a> <a href="#">File event "Proposed Sufficient Brief"</a>
17-70025	Teddrick Batiste v. Lorie Davis, Director	Motion due on 03/05/2018 (Appellant Teddrick Batiste)	<a href="#">File event "Notice No Appellee Brief Will be Filed"</a> <a href="#">File event "Brief in Support of Motion"</a>
17-70025	Teddrick Batiste v. Lorie Davis, Director	Brief in Support Due on 03/05/2018 (Appellant Teddrick Batiste)	<a href="#">File event "Motion Filed on Behalf of Party"</a> <a href="#">File event "Transcript Unnecessary"</a>
17-20781	USA v. Cheryl Waller	Sufficient Brief Due on 09/18/2018 (Appellee United States of America)	<a href="#">File event "Proposed Sufficient Brief"</a> <a href="#">File event "Motion Filed on Behalf of Party"</a>



# BRIEF TEMPLATES



## Brief Templates Available for Download

Prid:

Refresh

Case Number	Short Title	Type	Last Updated
<a href="#">17-20453</a>	USA v. Martin Ramirez	Appellant Brief	September 22, 2017
<a href="#">17-20453</a>	USA v. Martin Ramirez	Reply Brief	September 22, 2017
<a href="#">17-40580</a>	USA v. Fidencio Lara-Mares	Reply Brief	September 19, 2017
<a href="#">17-40580</a>	USA v. Fidencio Lara-Mares	Appellant Brief	September 19, 2017
<a href="#">17-40810</a>	USA v. Juan Compian	Appellant Brief	September 22, 2017
<a href="#">17-40810</a>	USA v. Juan Compian	Reply Brief	September 22, 2017



# PRACTICE TIPS AND REFERENCES



- Common Errors
- Practice Tips
- Filing Resources and Assistance
- 2018 FRAP Amendments



# COMMON ERRORS

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- Incorrect Events and Reliefs
- No current, updated appearance form
- Missing/incorrect Citations (Cite Link)
- Missing Certificate of Compliance on motions, response, replies, rehearings, etc.
- Missing Certificate of Conference
- Incomplete Transcript Order Forms
- Incorrect Caption Format



# PRACTICE TIPS

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- **Register Early and Keep Information Updated: Member Fifth Circuit Bar, PACER Enrollment for the Fifth Circuit, and filed, updated Appearance Form**
- **Notice of Docketing Activity (NDA):**
  - **Check for any Attachments**
  - **If think incorrectly filed, don't refile. Please call.**
- **Extensions:**
  - **All requests for extension must include justification.**
  - **Level 1 Extension = Only 30 days total. Must file motion for extension beyond 30 days**
- **Citation of Supplemental Authorities (28J Submissions):**
  - **Intervening Decisions or New Developments**
  - **Citations and Succinct (350 words) Comments**



# RESOURCES AND ASSISTANCE

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- Website: [www.ca5.uscourts.gov](http://www.ca5.uscourts.gov)
- Fifth Circuit Life of the Appeal Flow Chart
- Frequently Asked Questions (FAQ)
- Practitioner Guide
- Guide to Filing Emergency Motions
- Brief Guidance and Sample Briefs
- Record Reference Guide (Cite link)
- Case Management Teams Contact List
- Help Desk: 877.232-1038 or  
[Webmaster\\_ca5@ca5.uscourts.gov](mailto:Webmaster_ca5@ca5.uscourts.gov)

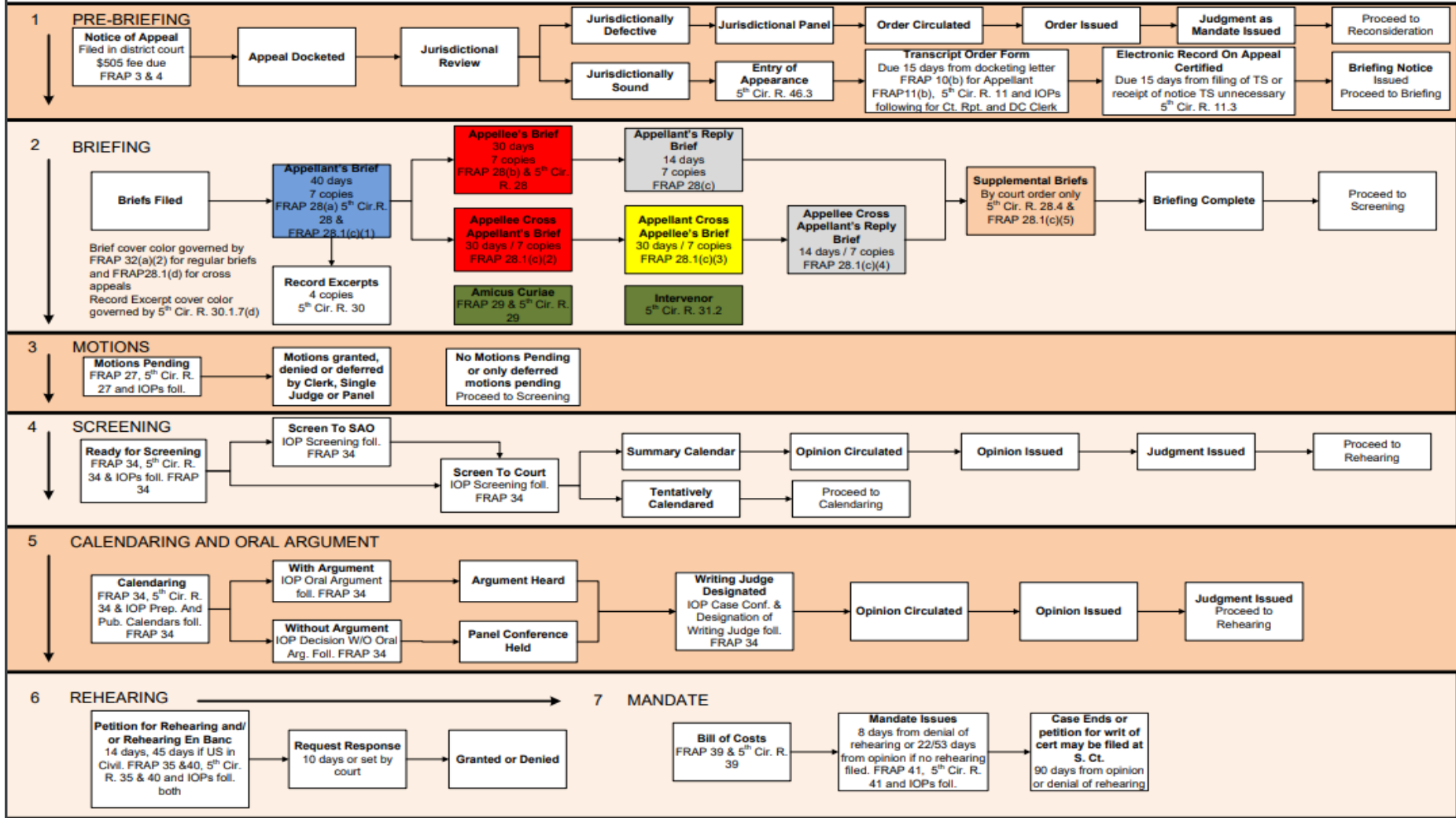


# LIFE OF THE APPEAL



## THE LIFE OF AN APPEAL IN THE FIFTH CIRCUIT COURT OF APPEALS\*

\* Does not encompass Mandamus, Original Proceedings or Petitions for Review





# CASE TEAMS CONTACT LIST



## CASE MANAGEMENT TEAMS

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

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

NORTHERN AND WESTERN TEXAS 10001-19999                      50001-59999 Group Main No. 310-7806		SOUTHERN AND EASTERN TEXAS 20001-29999                      40001-49999 Group Main No. 310-7807		LOUISIANA, MISSISSIPPI, & AGENCY 30001-39999                      60001-69999 Group Main No. 310-7808	
<b><u>CASE MANAGER</u></b> Nos. Ending in 1 & 2 (case management work only): Peter Connors (PAC)            310-7685		<b><u>CASE MANAGER</u></b> Amanda Sutton-Foy (ASF) 310-7670		<b><u>CASE MANAGER</u></b> Nos. Ending in 1 (case management work only): Connie Brown (CB) 310-7671	
<b><u>CASE MANAGEMENT WORK:</u></b> Nos. Ending in 3, 8: Melissa Mattingly (MRM) 310-7719  Nos. Ending in 4, 6: Mary Frances Yeager (MFY) 310-7686  Nos. Ending in 5, 0: Shawn Henderson (SDH) 310-7668  Nos. Ending in 7, 9: Melissa Courseault (MBC)    310-7701  <b><u>Prisoner Pro Se Clerk:</u></b> Claudia Farrington (CNF) 310-7706  Training: Roeshawn Johnson (RAJ) 310-7998	<b><u>GENERALISTS WORK:</u></b> Nos Ending in 2, 6, 0: Renee McDonough (RSM)    310-7673  Nos. Ending in 3: Shawn Henderson (SDH) 310-7668  Nos. Ending in 4: Mary Frances Yeager (MFY) 310-7686  Nos. Ending in 5: Melissa Mattingly (MRM) 310-7719  Nos. Ending in 1, 7, 8: Cindy Broadhead (CMB) 310-7707  Nos. Ending in 9: Melissa Courseault (MBC)    310-7701	<b><u>CASE MANAGEMENT WORK:</u></b> Nos. Ending in 1, 2, and 40000's ending in, 3: Angelique Tardie (ABT) 310-7715  Nos. Ending in 5, 6 and 40000's ending in 4: Jann Wynne (JMW) 310-7688  Nos. Ending in 7, 8, and 40000's ending in 9: Dawn Shulin (DMS) 310-7658  Nos. Ending in 0, and 20000's Ending in 3, 4, 9: Christina Gardner (CAG) 310-7684  <b><u>Prisoner Pro Se Clerk:</u></b> Donna Mendez (DLM) 310-7677	<b><u>GENERALISTS WORK:</u></b> Nos. Ending in 0: Christina Gardner (CAG) 310-7684  Nos. Ending 1, 5, 7: LaToya Allen (LCA) 310-7623  Nos. Ending in 2: Angel Tardie (ABT) 310-7715  Nos. Ending 3, 6, 9: Casey Sullivan (CAS) 310-7642  Nos. Ending in 4: Jann Wynne (JMW) 310-7688  Nos. Ending in 8: Dawn Shulin (DMS) 310-7658	<b><u>CASE MANAGEMENT CLERKS:</u></b> Nos. Ending in 2 (All work): Mary C. Stewart (MCS) 310-7694  Nos Ending in 3 (All work): Allison Lopez (AGL) 310-7702  Nos. Ending in 4 (All work): Shea Pertuit (SEP) 310-7666  Nos. Ending in 5, (All work): Rebecca Leto (RLL) 310-7703	Nos. Ending in 6 (All work): Majella Sutton (MAS) 310-7680  Nos. Ending in 7 (All work): Dantrell Johnson (DLJ) 310-7689  Nos. Ending in 1 (generalist work only): Lisa Ferrara (LEF) 310-7675  *Case Nos. ending in 8, 9, and 0 are routed as identified above based on the second to last number.  <b><u>Prisoner Pro Se Clerk:</u></b> Monica Washington (MRW) 310-7705
<b>DEATH PENALTY    70000</b> Monica Washington (MRW) 310-7705		<b>RECORDS DATA QUALITY ANALYSTS (All Teams) Team Line: 310-7721</b> Mike Brown (MRB): 310-7692                      Attorney Admissions/Renewals: Dawn LeBlanc (DDL ): 310-7717                      Sandra Fairchild: 310-7657 Sabrina Short (SBS): 310-7817			





# FRAP AMENDMENTS

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- 2018 Amendments Effective December 1
- Local Impact
- 2019 Proposed Amendments Available for Comment



# STATISTICS

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## **2017- 2018 Court Term Statistics** **July 1, 2017 to June 30, 2018**



# STATISTICAL SNAPSHOT



Court Term 2017 – 2018 July 1, 2017 – June 30, 2018	Cases Commenced	Procedural Terminations	Total Merits Terminations	Merits Terminations After Oral Hearing	Merits Terminations on Briefs	% Placed on the Oral Argument Calendar	% Reversed
Criminal	2,156	394	1,623	219	1,404	13.5%	4.4%
U.S. Prisoner Petitions	735	318	324	18	306	5.6%	3.7%
Other U.S. Civil	166	84	68	38	30	55.9%	11.8%
Private Prisoner Petitions	1,403	669	770	49	721	6.4%	3.6%
Other Private Civil	1,633	740	570	351	219	61.6%	11.4%
Bankruptcy	86	24	30	20	10	66.7%	13.3%
Administrative Agency	452	236	222	42	180	18.9%	3.6%
Original Proceedings*	671	213	505	1	504	0.2%	0.0%
Miscellaneous	45	5	44	0	44	0.0%	0.0%
<b>TOTAL</b>	<b>7,347</b>	<b>2,683</b>	<b>4,156</b>	<b>738</b>	<b>3,418</b>	<b>17.8%</b>	<b>5.5%</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	374	2,462	244	20	175	8	



# CASE PROCESSING TIMES



## Court Term 2017-2018

- Notice of Appeal to Filing of Last Brief: 4.8 Months
- Last Brief to Hearing or Submission: 5.4 Months
- Hearing to Final Disposition: 1.2 Months
- Submission to Final Disposition 0.4 Months
- Notice of Appeal to CA 5 Final Disposition: 9.8 Months

The median time from filing of the Notice of Appeal to CA 5 final disposition in oral argument cases is **13.3** Months.



# QUESTIONS?

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[TIMOTHY\\_PHARES@CA5.USCOURTS.GOV](mailto:TIMOTHY_PHARES@CA5.USCOURTS.GOV)