FIFTH CIRCUIT COURT OF APPEALS

CLERK'S OFFICE UPDATE
2017 APPELLATE ADVOCACY SEMINAR
BAR ASSOCIATION OF THE FIFTH FEDERAL CIRCUIT

TOM PLUNKETT

2 October 2017

AGENDA

- Automated Document Quality Control (QC) Project
- NextGen Update
- 2017 FRAP Rule Changes
- Statistical Review
- Questions

AUTOMATED DOCUMENT QUALITY CONTROL (QC)

PROJECT GOALS

- Reduce Clerk's Office staff workload checking for document filing defects while retaining same high quality submissions to the court.

- Assist the Bar in achieving an efficient and quality electronic submission.

METHODOLOGY

- Reduce Clerk's Office staff workload by automating quality control tests and resulting docketing correspondence.

- Provide immediate feedback to attorney filers on any document defects so they can correct them BEFORE filing.

- Assist attorney filers by providing pre-created brief "templates" that already have the correct boilerplate in place.

COMPONENTS

- Automated Document Quality Control (QC)
- Pre-Populate Docketing Letter (BR-5) with Deficiencies for Correction
- Electronic Filer Instant QC Results
- Downloaded Pre-Populated Brief Templates

AUTOMATED DOCUMENT QUALITY CONTROL (QC)

- 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 briefs.

- Automatically report defects to the appropriate Clerk's Office 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), eliminating the need for staff to manually add and manipulate the letter, greatly reducing the time necessary to generate the letter.

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 (e.g. Certificate of Interested Persons, Table of Contents/Authorities, Statement of Jurisdiction, etc.).

SAMPLE QC TEST RESULTS

Disagree	Test	Start Page	End Page	Test Result	Word Count	Problem	Comments
☐	Case Number Test			Passed	0		
☐	Court Name Test			Passed	0		
☐	Case Caption Test			Failed -- Severe	0	The caption is invalid. Below is the valid caption: KELLIE STOKES, Mom and Friend of B.S., Plaintiff - Appellant v. SOUTHWEST AIRLINES, Defendant - Appellee The following is the matched section: kellie stokes, mom and friend of b.s., plaintiff - appellant v. southwest airlines, defendant[[s]] - appellee	
☐	OriginatingCourt Name Test			Passed	0		
☐	Appellants Brief Type Test			Passed	-1		
☐	Certificate of Interested Persons Test	3	4	Passed	216		
☐	Statement Regarding Oral Argument Test	4	4	Passed	5		
☐	Table of Contents Test	4	5	Passed	57		
☐	Table of Authorities Test	5	7	Passed	292		
☐	Statement of Jurisdiction Test			Failed -- Severe	0	The statement of jurisdication is not found.	Section header misspelled in brief.
☐	Statement of the Issues Test	7	7	Passed	26		
☐	Statement of the Case Test	7	9	Passed	307		
☐	Summary of Argument Test			Failed -- Severe	0	The summary of argument is not found.	Section header misspelled in brief.

SAMPLE QC TEST RESULTS

Disagree	Test	Start Page	End Page	Test Result	Word Count	Problem	Comments
☐	Case Number Test			Passed	0		
☐	Court Name Test			Failed -- Severe	0	The proper court name was not found in the document. The valid court name is: United States Court of Appeals for the Fifth Circuit	The attorney wrote: UNITED STATES COURT OF APPEALS FOR THE FIFTH COURT
☐	Case Caption Test			Failed -- Severe	0	The caption is invalid. Below is the valid caption: WESCO INSURANCE COMPANY, A DELAWARE CORPORATION, Plaintiff - Appellee v. GWENDOLYN GENE LAYTON; TROYLYN ANN LAYTON, Defendants - Appellants The following is the matched section: wesco insurance company, a delaware corporation plaintiff-appellee v. gwendolyn gene layton; troylyn[[n]] ann layton, defendants - appellants	mispelled name of "Troylynn
☐	OriginatingCourt Name Test			Passed	0		
☐	Appellees Brief Type Test			Passed	-1		
☐	Certificate of Interested Persons Test	2	3	Passed	0		
☐	Statement Regarding Oral Argument Test	3	4	Passed	0		
☐	Table of Contents Test	4	6	Passed	0		
☐	Table of Authorities Test	6	9	Passed	0		
☐	Statement of Jurisdiction Test	9	9	Passed	0		
☐	Statement of the Issues Test	9	10	Failed -- Severe	0	Double spaced lines required for this section.	not double spaced
☐	Statement of the Case Test	10	29	Passed	0		

SAMPLE QC TEST ROA RESULTS

Social Security Number Test			Passed	0
Brief Word Count Test			Passed	5084
Image Scan Test			Passed	-1
Roa Test			Failed -- Severe	0

Details

Problem	Page Number	Error
roa.1174-121	14	ROA citation to page 1174 out of range for this record

Signature Test			Passed	-1
Brief Filed in Time			Passed	0
Attorney of Record Exists			Passed	0

PRE-POPULATE DOCKETING LETTER

- Automatically link QC Scan results to pre-formatted deficiency notices and pre-populate the briefing notice docketing letter (BR-5).

- Allows Docketing Clerk to quickly focus and confirm Submission Deficiencies and submit Docketing Letter through an NDA to the parties.

- Speeds review and submission for correction.

ELECTRONIC FILER INSTANT QC RESULTS

- Goal is to provide the electronic filer a way to test and receive immediate (Turbo-Tax Like) QC results prior to docketing.
- Essentially, this feature provides the electronic filer with the same QC report and linkage to deficiencies before filing.
- This allows the electronic filer to immediately review and correct deficiencies before uploading and filing the document.
- It's not hard to see the significant time savings and improve document quality fostered by this application. Conservatively, we estimated over 5,000 staff hours annually saved through this application.

BRIEF TEMPLATES

- Revised our prior sample briefs and developed an application that automatically creates pre-formatted briefs with all available information from CM/ECF.

- Many of the defects are due to inaccurate boilerplate such as caption errors, invalid signatures, and other simple mistakes. The pre-created brief templates will enter all of the boilerplate automatically.

- For each attorney of record pre-created brief templates are automatically generated (the appellant's and reply briefs for the appellant's representative, and the appellee's brief for the appellee's representative).

- A new menu option will be provided to access the templates just like the electronic record. There will also be a link in the briefing notice.

RETRIEVAL PAGE

Brief Templates Available for Download

Prid: Refresh

Case Number	Short Title	Type	Last Updated
17-20453	USA v. Martin Ramirez	Appellant Brief	September 22, 2017
17-20453	USA v. Martin Ramirez	Reply Brief	September 22, 2017
17-40580	USA v. Fidencio Lara-Mares	Reply Brief	September 19, 2017
17-40580	USA v. Fidencio Lara-Mares	Appellant Brief	September 19, 2017
17-40810	USA v. Juan Compian	Appellant Brief	September 22, 2017
17-40810	USA v. Juan Compian	Reply Brief	September 22, 2017

SAMPLE BRIEF

17-20453

United States Court of Appeals for the Fifth Circuit

UNITED STATES OF AMERICA

Plaintiff Appellee

v

MARTIN MENDEZ RAMIREZ

Defendant Appellant

SAMPLE BRIEF

On Appeal from
United States District Court for the Southern District of Texas

BRIEF OF APPELLANT
Martin Ramirez

SUBMITTED BY:
Kayla R. Gassmann
Federal Public Defender's Office
440 Louisiana Street
Houston, TX 77002

SAMPLE BRIEF

CERTIFICATE OF INTERESTED PERSONS

USA v. Martin Ramirez

17-20453

Type Here. Certificate of interested persons required by 5TH CIR. R. 28.2.1

Plaintiffs-Appellees:	**Counsel for Plaintiffs-Appellees:**
United States of America	Carmen Mitchell of U.S. Attorney's Office Houston, TX

Defendants-Appellants:	**Counsel for Defendants-Appellants:**
Martin Ramirez	Marjorie Meyers of Federal Public Defender's Office Houston, TX
Martin Ramirez	Kayla Gassmann of Federal Public Defender's Office Houston, TX

Other Interested Parties:	**Counsel for Interested Parties:**
Type Here	Type Here

S/Kayla R. Gassmann

SAMPLE BRIEF

STATEMENT REGARDING ORAL ARGUMENT

Type Here. Statement regarding oral argument required by 5TH CIR. R. 28.2.3

(see also FED. R. APP. P. 34(a)(1)

SAMPLE BRIEF

TABLE OF CONTENTS

Contents

SAMPLE BRIEF

SAMPLE BRIEF

TABLE OF AUTHORITIES

Cases

Type Here. A table of authorities (see FED. R. APP. P. 28(a)(3))

SAMPLE BRIEF

JURISDICTIONAL STATEMENT

Type Here. A jurisdictional statement as required by FED. R. APP. P. 28(a)(4)(A) through (D)

STATEMENT OF THE ISSUES

Type Here. A statement of issues presented for review (see FED. R. APP. P. 28(a)(5))

SAMPLE BRIEF

STATEMENT OF THE CASE

Type Here. A statement of the case (see FED. R. APP. P. 28(a)(6)

SUMMARY OF THE ARGUMENT

Type Here. A summary of the argument (see FED. R. APP. P. 28(a)(7))

ARGUMENT

SAMPLE BRIEF

Type Here. The argument, including the applicable standards of review (see FED. R. APP. P. 28(a)(8))

STANDARD OF REVIEW

Type Here.

SAMPLE BRIEF

CONCLUSION

Type Here. A short conclusion stating the precise relief sought (see FED. R. APP. P. 28(a)(9)

SUBMITTED BY:

S/Kayla R. Gassmann
Kayla R. Gassmann
Federal Public Defender's Office
440 Louisiana Street
Houston, TX 77002

A signature of counsel or a party as required by FED. R. APP. P. 32(d)

SAMPLE BRIEF

CERTIFICATE OF SERVICE

I certify that on INSERT DATE, the foregoing document was served, via the Court's CM/ECF Document Filing System, upon the following registered CM/ECF users:

INSERT NAMES OF COUNSEL

SAMPLE BRIEF

If applicable include:

I further certify that a paper copy of the foregoing document was forwarded via U.S. Mail on today's date to the following parties/counsel:

INSERT NAMES AND ADDRESSES

S/Kayla R. Gassmann

A certificate of service in the form required by FED. R. APP. P. 25

SAMPLE BRIEF

CERTIFICATE OF COMPLIANCE

1. This document complies with [the type-volume limit of FED. R. APP. P. *32(a)(7)(B)* because, excluding the parts of the document exempted by FED. R. APP. P. 32(f) :

this document contains [*state the number of*] words.

SAMPLE BRIEF

2. This document complies with the typeface requirements of FED. R. APP. P. 32(a)(5) and the type-style requirements of FED. R. APP. P. 32(a)(6) because:

this document has been prepared in a proportionally spaced typeface using [*state name and version of word-processing program*] in [*state font size and name of type style*].

S/Kayla R. Gassmann

A certificate of compliance if required by FED. R. APP. P. 32(g) and 5TH CIR. R.

FIELDING TIMELINE

- Automated Document Quality Control (QC) = Implemented for Briefs (Appellant, Appellee & Reply), Expansion to Remaining Submissions Over the Next Year.

- Pre-Populate Docketing Letter (BR-5) with Deficiencies for Correction = Final Testing for Briefs (Appellant, Appellee & Reply), Implement Internally within a Month.

- Electronic Filer Instant QC Results = In Initial Development, then Internal/External Testing with Mid to Late 2018 Fielding.

- Downloaded Pre-Populated Brief Templates = Brief Templates Developed and In Internal Testing. Plan is to Conduct Selected Attorney Testing within the Next Couple of Months and go Live by the First of the Year.

Next Generation (NextGen) Case Processing/Electronic Case Filing (CM/ECF) System

NEXTGEN UPDATE

- NextGen CM/ECF Release 1.2 just released to all courts on Sep 28, 2017.

- We loaded this new release to a private server for testing and configuration of the software. It takes a significant effort to customize the software to meet our local needs and ongoing applications.

- Tentatively, we anticipate offering this updated version of CM/ECF to counsel by March 2018.

- Advance notice will be provide. For registered electronic filers, instructions will be provided to guide them through the process of upgrading their Pacer account and linking their local Circuit e-filing credentials. Tutorials and training materials will be made available on our website in addition to the guidance already available on the Pacer site.

2017 FRAP RULE CHANGES

- The following rules were adopted by the Supreme Court, transmitted to Congress and, absent Congress enacting legislation to reject, modify or defer, will take effect December 1, 2017.
- **Appellate Rule 4**:
  - This technical amendment restores the former subdivision (a)(4)(B)(iii) that was inadvertently deleted in 2009.
  - (iii) No additional Fee is required to file an amended notice. The advisory committee did not believe publication was necessary given the technical, non-substantive nature of this correction.
- No changes to local rules, IOPs or court policies will be necessary.

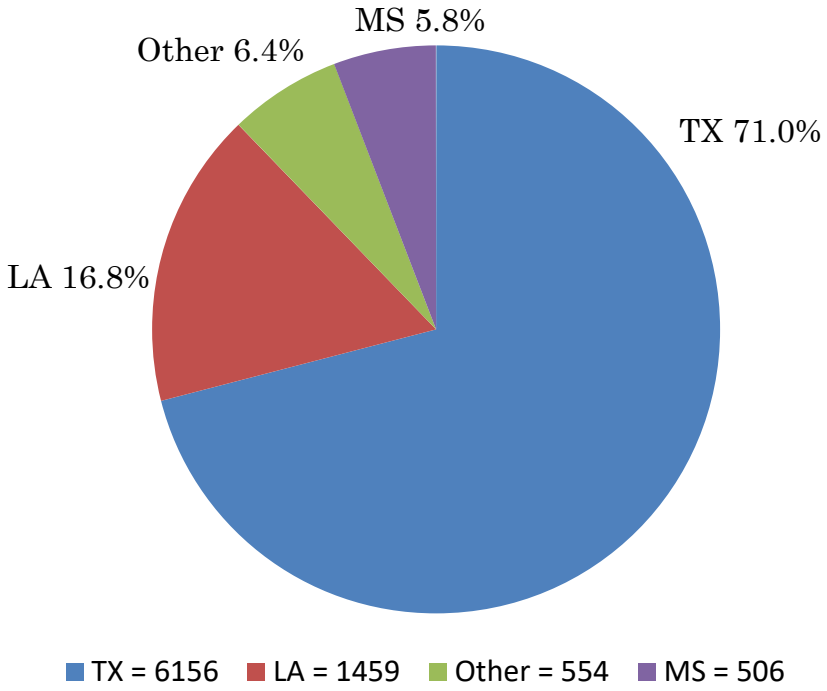
STATISTICAL REVIEW
July 1, 2016 – June 30, 2017

CASE LOAD

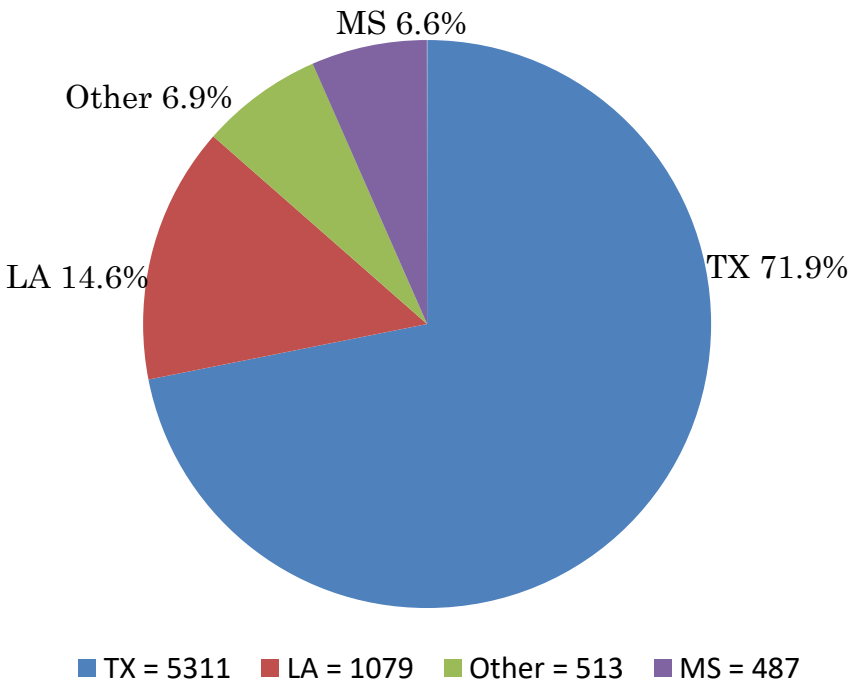
Circuit	2016	2017
DC	1,246	1,046
1ST	1,708	1,341
2ND	4,579	4,314
3RD	3,623	2,936
4TH	6,294	4,741
5TH	**8,675**	**7,390**
6TH	5,159	4,649
7TH	3,452	2,867
8TH	3,657	3,105
9TH	11,531	11,294
10TH	2,332	1,982
11TH	7,843	6,363
TOTAL	60,099	52,028

NEW APPEALS BY STATE

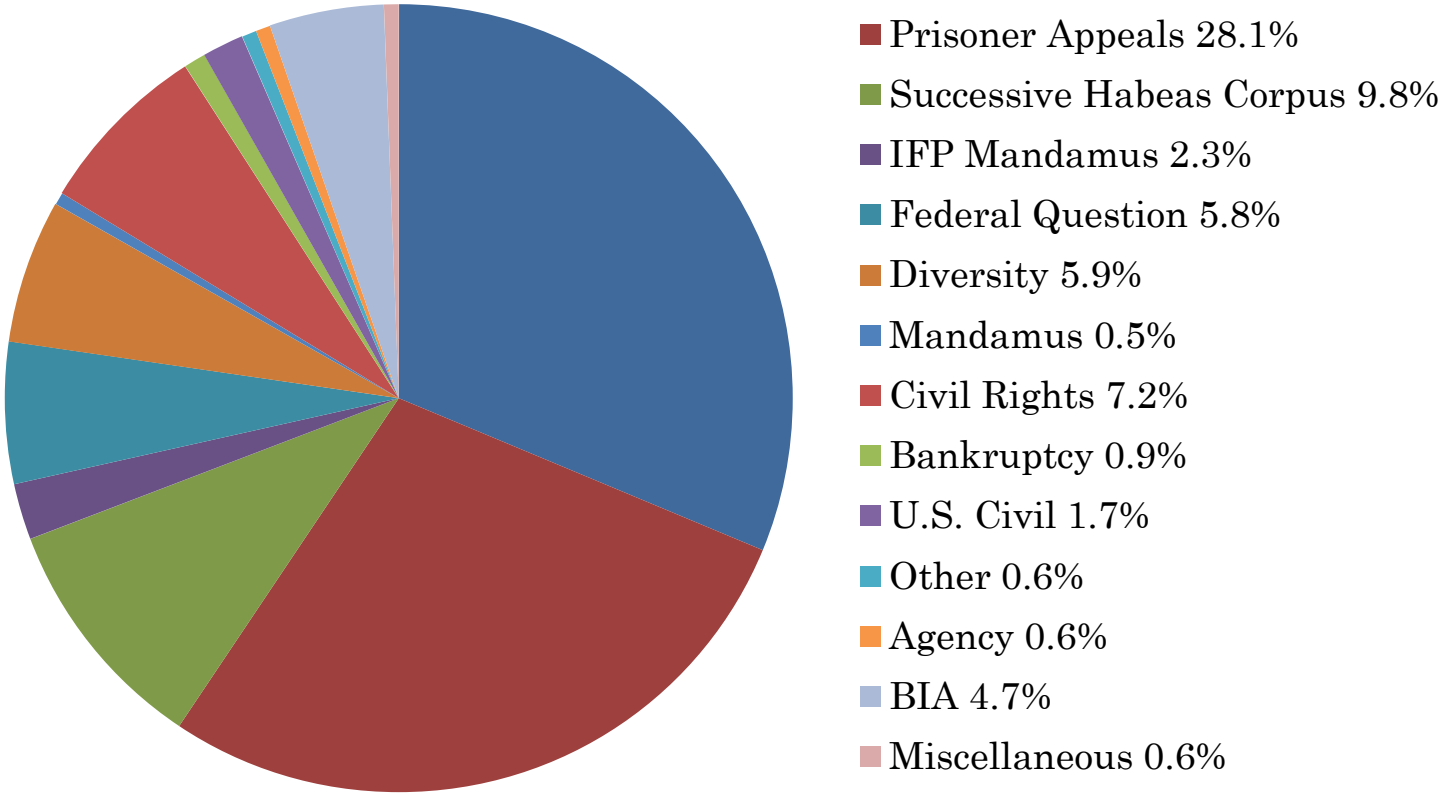
2016



2017



NEW APPEALS BY CASE TYPE



STATISTICAL SNAPSHOT

For the 12 month period which ended June 30, 2017

	Cases Commenced	Procedural Terminations	Total Merits Terminations	Merits Terminations After Oral Hearing	Merits Terminations on Briefs	% Placed on the Oral Argument Calendar	% Reversed
Criminal	2,310	610	1,814	240	1,574	13.2%	3.1%
U.S. Prisoner Petitions	643	269	239	9	230	3.8%	2.1%
Other U.S. Civil	206	85	87	51	36	58.6%	11.5%
Private Prisoner Petitions	1,431	694	586	26	560	4.4%	3.1%
Other Private Civil	1,347	600	595	374	221	62.9%	13.8%
Bankruptcy	63	20	35	20	15	57.1%	5.7%
Administrative Agency	412	184	173	46	127	26.6%	8.7%
Original Proceedings*	937	334	1,102	1	1,101	0.1%	0.0%
Miscellaneous	41	4	29	0	29	0.0%	0.0%
TOTAL	7,390	2,800	4,660	767	3,893	16.5%	5.4%
Louisiana	**1,079**	**405**	**622**	**157**	**465**	**25.2%**	**5.8%**
Eastern District of Louisiana	**575**	**215**	**305**	**79**	**226**	**25.9%**	**5.6%**

	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	457	2,538	243	7	198	2	
Louisiana	**84**	**290**	**36**	**1**	**27**	**0**	
Eastern District of Louisiana	**41**	**132**	**16**	**0**	**8**	**0**	

*Including successive habeas corpus and pro se mandamus petitions

CASE PROCESSING TIMES 2016-2017

- Notice of Appeal to Filing of Last Brief: **5.1 Months**
- Last Brief to Hearing or Submission: **4.0 Months**
- Hearing to Final Disposition: **1.2 Months**
- Submission to Final Disposition **0.3 Months**
- Notice of Appeal to CA 5 Final Disposition: **9.4 Months**

28.1% 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**.

QUESTIONS?

Thomas_Plunkett@ca5.uscourts.gov