

# **FIFTH CIRCUIT CLERK'S OFFICE UPDATE**

**Bar Association of the Fifth Federal Circuit**

**New Orleans, Louisiana  
October 3, 2022**

# Discussion Topics

- **Quick overview of current and future operations.** The court modified operations and relaxed requirements due to the pandemic. Will the court consider making any of these permanent? What other changes have occurred or might be coming?
- **Public's perception of fairness in court procedures.** Given publication of draft opinion from the Supreme Court, articles on judge conflicts of interests, and questions regarding case assignment practices, how do Fifth Circuit procedures protect confidential communications and ensure fairness in case processing decisions?
- **Practice tips and resources.** Things you should consider as you litigate your appeal.

# Current and future operations

- Courthouse and Clerk's Office reopened to the public on March 7, 2022, with no requirement for vaccination or wearing of masks.
- Arguments are conducted in-person -- absent counsel request with justification.
- Masks are voluntary, but if worn, should be removed while addressing the court.
- COVID precluded remote OA sittings, but this year, the court will sit at law schools in Oxford, Mississippi, and Lubbock, Texas.
- We began live streaming OA audio on during COVID. We will continue this for all OA in the future – including remote hearings.
- January 2021 and later OA recordings available on Court YouTube Channel.
  - Channel supports closed captions and permits adjustments of replay speed.
  - More robust search features help find counsel and judge participation.
  - Channel includes the video of the court's memorial for Judge Reavley. We will consider uploading other content in the future.

# Current and future operations

- A General Order waived requirement for filing paper briefs and record excerpts during COVID until the case was placed on the OA calendar. Counsel only provided paper copies when notified to do so by the Clerk. Good news: the court has determined to continue this practice going forward.
- The court values record excerpts and will continue to require production of record excerpts.
- The court approved new procedures for assigning expedited cases to merits panels to ensure timely review. Now, immediately upon receipt of an order expediting a case, the clerk assigns the appeal to a randomly selected panel from the next court sitting.
  - This ensures that a merits panel controls the case and determines appropriate briefing and argument schedules, speeding the resolution of expedited appeals.
  - Parties' preferences regarding scheduling will be considered but will not dictate the schedule.

# **The public's perception of courts:**

## **Confidential Information**

- Leak of draft SCOTUS opinion demonstrated the harm caused by failing to maintain the confidentiality of draft documents and deliberation discussions.
- When judges can communicate openly and honestly with each other and with their staffs, it furthers their ability to reach the correct outcome.
- Confidentiality builds public respect for the judiciary and encourages litigants to trust the judicial process.
- While our court has not experienced leaks, we (like other courts) re-examined and strengthened procedures to prevent the intentional or inadvertent release of confidential court information.
- Clerk's Office employees sign a confidentiality agreement. Chambers and other court units independently decide whether to require this – but all court staff understand the rules of confidentiality apply and appropriate discipline or other measures will be imposed for violations, even if a written agreement was not required.

# The public's perception of courts:

## Recusal Issues

- *“Federal Judges Had Financial Conflicts.”* (Wall Street Journal April 27, 2022). First of many articles reviewing judge participation in cases impacting the judge's or a family member's financial interests.
- *“Judge removes clerk from Sonos case after Google conflict questions.”* (Reuters, June 2, 2022). Clerk previously worked for Google, owned Google stock, which he had placed in a blind trust. Allegedly had worked for Google law firm.
- The “Courthouse Ethics and Transparency Act,” Pub. L. No. 117-125, 136 Stat. 1205 (2022) now requires judges to file periodic transaction reports with respect to certain classes of securities and requires the Administrative Office (AO) to establish an online database for these transaction reports and judges' financial disclosure reports. The law applies to all judicial officers, including magistrate judges and bankruptcy judges.

# The public's perception of courts:

## Recusal Issues

- Most reported conflicts involved district court judges. CM/ECF used in district and bankruptcy courts does not have a recusal checking function, so judges and their staffs (not clerk's office staff) must identify and resolve any recusal issues.
- Appellate CM/ECF court software includes recusal tracking.
- What are Fifth Circuit Court of Appeals procedures which identify and avoid possible conflicts?
  - Upon appointment, all judges list entities and relationships that require recusal. Circuit Judicial Council requires all judges review and update recusal lists at least semiannually – but our court requires judges review lists quarterly.
  - Appellate CM/ECF and two local clerk's office programs track this reported information to prevent assignment of a matter to a judge where a judge has indicated recusal. We also automatically block a judge from receiving an email regarding a case where the judge is recused.
  - We check all new filings each day to verify possible new conflicts based upon participation of new litigants or interested parties. We thoroughly check parent and subsidiary relationships for corporate entities.
  - When a judge receives an assignment, the judge and staff examine the certificates of interested parties in briefs for recusals.
- Parties are obligated to inform the court of **all** interested parties or entities. Five days before an argument last spring, attorneys informed me another firm provided advice and held moot courts for their appeal. The second firm's involvement created a recusal issue for a judge assigned to hear the case – because this information did not appear in any pleading, our procedures were not able to properly prevent the assignment of a recused judge.

# The public's perception of courts:

## Assignment of cases

- Intervenor's Reply in Support of Its Motion, Sierra Club v. West Virginia Department of Environmental Protection, No. 22-1008 (4th Cir. May 17, 2022).

“Over the last four years, this Court has consistently assigned the same three judges to numerous, diverse cases involving Mountain Valley Pipeline, LLC (“Mountain Valley”), Mountain Valley Southgate, and the Atlantic Coast Pipeline. In doing so it has created a special “pipeline panel” within the broader Court, contravening its own objective of **avoiding “both the appearance and the fact of presentation of particular types of cases to particular judges.”**

- No allegation of intentional action, but unusual case assignment pattern created perception.
- Motion to Assign to different panel denied June 22, 2022.



# Fifth Circuit procedures for assigning related cases

- We do not have subject matter expert panels. We assign similar matters to the same panel only for judicial efficiency, under the following circumstances:
  - If counsel alerts the court that cases are related and the cases are briefed and ready for screening, we submit them to the same panel.
  - Parties can jointly move the court for assignment to the same panel.
  - The court's Staff Attorney, after review of cases with similar issues, may recommend that the court consolidate the appeals and send them to one panel.
  - A judge reviewing an appeal to determine whether argument is necessary may learn of other cases presenting similar issues and may direct that we consolidate the cases or assign the cases to the same oral argument panel. But the judge does not select the panel, which is randomly assigned.
  - When the court learns that cases with similar issues have been assigned to two different panels, the panels confer to decide which panel will take both.

# Fifth Circuit Procedures: Calendar and panel creation

In January of each year, the Clerk of Court prepares a proposed court schedule for the upcoming court year, which runs from July 1 to June 30 of the following year. This schedule determines the weeks the court will sit for panel and en banc cases. Once that schedule is approved, the Clerk of Court uses a computer program to randomly assign judges to **Administrative**, **Screening**, and **Oral Argument** panels.

While the program applies different rules for the different panel types, in general, the intent is to ensure diversity of panels by applying rules which:

- Avoid repeating the identical three judges serving together in the current or a previous court year;
- Avoid having a judge serve with another judge on multiple panels during the same court year;
- Avoid having two judges serve together when that duplicates the previous year's pairing, if possible;
- Avoid having a judge sit for three consecutive months in the current court year (for OA panels);
- Avoid a senior judge sitting less than the requested number of sittings (for OA panels);
- Avoid an active judge sitting more than other active judges (for OA panels); and
- Avoid two senior judges sitting on the same panel.

# Fifth Circuit Procedures: Administrative Panels

- **Administrative panels** handle routine and emergency motions/matters filed before briefing is completed, which is normally when we assign the case to a merits panel.
- Before the beginning of the court year, we establish a random order to be used when assigning matters to judges. We strictly follow the order the next court year when assigning all matters. Thus, on July 1, we submit the first administrative or emergency matter filed to the first judge on that random pattern list, unless the judge is recused or on respite. If so, we assign the matter to the second judge on the list, but then the judge skipped receives the next matter we receive.
- We assign all subsequent matters following this initial random order, thereby ensuring random assignment to judges and panels throughout the year.
- The timing of a filing determines which judge or panel receives the matter, since we simply select the judge in rotation.
- Over the course of a court year, this both ensures random assignments and equitable distribution of work.

# Fifth Circuit Procedures

- **Screening panels** review briefed cases to determine if oral argument is necessary.
- Like administrative panels, we assign cases to these panels following a pattern created at the beginning of a court year, so each assignment is random.
- Screening panels handle the bulk of the court's work. If all three judges agree there is no need for oral argument, that panel issues an opinion without conducting oral argument, on the summary calendar.
- If any judge thinks OA is necessary, the screening panel returns the case to the clerk with instructions to place it on an upcoming OA calendar.

# **Fifth Circuit procedures:**

## **Oral argument case assignment**

- The Clerk (with no judge Involvement) randomly assigns cases to oral argument panels using the guidance in the IOP Following Local Rule 34.13.
- Cases are calendared "first-in, first-out" except for criminal appeals, habeas corpus petitions and motions attacking a federal sentence, grand jury witness issues, or motions for temporary or preliminary injunctive relief.
- If we have 5 panels sitting, the calendar clerk pulls 100 cases and balances the calendars by case type (civil vs criminal) so that each panel has an approximate equal number of case types. This clerk does not know the identity of the panels, so a second clerk who does, reviews tentative assignments and determines whether the assignment would cause a conflict for a judge. If so, the case is assigned randomly to another panel, and substituted with a randomly selected similar type case from the receiving panel's assigned cases.
- The tentative assignments are sent to each panel, so judges can confirm no conflicts exist, and then published.
- We announce the judges serving on each panel one week before argument.

## **Practice tip:**

### **Law and precedent limit reversals**

- For the court year ending June 30, 2022, the court reversed or vacated only 7.4% of appeals.
- Reversal Statistics for Common Case Types:
  - 3.8% of criminal appeals
  - 14.3% of non-prisoner “U.S. Civil Cases”
  - 16.9% of other civil cases
- Detailed statistical information can be found in the Clerk’s Annual Statistical Report on the Court’s internet site, under the "About the Court" tab, in the “Court Statistics” section.

# Law and precedent matter more than panel composition: Opinions overwhelmingly unanimous regardless of composition

5 <sup>th</sup> CIRCUIT OPINION CONCURRENCE AND DISSENT RATES THREE JUDGE PANELS					
Statistical Year ending June 30	2018	2019	2020	2021	2022
<b>Total Number of Opinions</b>	<b>2833</b>	<b>2871</b>	<b>2802</b>	<b>2554</b>	<b>3116</b>
Number of Opinions with Dissents or Concurrences and Dissents	58	39	52	57	65
<b>Overall Agreement Percentage</b>	<b>98%</b>	<b>99%</b>	<b>98%</b>	<b>98%</b>	<b>98%</b>

## **Practice tip: How long will an appeal take?**

- Notice of Appeal to Filing of Last Brief: **4.7 Months**
- Hearing to Final Disposition: **1.2 Months**
- Notice of Appeal to CA 5 Final Disposition: **9.4 Months**

The median time from filing of the Notice of Appeal to CA 5 final disposition in oral argument cases is **13.2 Months**.



July 1, 2021, to June 30, 2022

	Cases Commenced	Procedural Terminations	Total Merits Terminations	Merits Terminations After Oral Hearing	Merits Terminations on Briefs	% Placed on the Oral Argument Calendar	% Reversed
Criminal	2,139	399	1,884	171	1,468	9.1%	3.8%
U.S. Prisoner Petitions	380	199	339	28	278	8.3%	3.9%
Other U.S. Civil	250	70	127	65	40	51.2%	14.3%
Private Prisoner Petitions	1,100	594	730	59	529	8.1%	3.4%
Other Private Civil	1,165	479	733	431	174	58.9%	16.9%
Bankruptcy	66	19	58	23	25	39.7%	12.5%
Administrative Agency	480	241	480	86	375	17.9%	3.7%
Original Proceedings*	418	158	267	1	262	0.4%	0.0%
Miscellaneous	62	3	59	0	53	0.0%	0.0%
TOTAL	6,060	2,162	4,677	864	3,204	18.5%	6.2%
<b>Louisiana</b>	<b>892</b>	<b>305</b>	<b>553</b>	<b>167</b>	<b>171</b>	<b>38.0%</b>	<b>6.9%</b>
<b>Mississippi</b>	<b>374</b>	<b>111</b>	<b>241</b>	<b>53</b>	<b>121</b>	<b>26.5%</b>	<b>3.7%</b>
<b>Texas</b>	<b>4,217</b>	<b>1,347</b>	<b>3,136</b>	<b>549</b>	<b>1584</b>	<b>20.9%</b>	<b>4.6%</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 of Petitions for Rehearing En Banc Granted	
Fifth Circuit	474	2,642	172	12	182	4	
<b>Louisiana</b>	<b>99</b>	<b>250</b>	<b>30</b>	<b>6</b>	<b>43</b>	<b>1</b>	
<b>Mississippi</b>	<b>27</b>	<b>176</b>	<b>9</b>	<b>0</b>	<b>9</b>	<b>0</b>	
<b>Texas</b>	<b>303</b>	<b>1870</b>	<b>133</b>	<b>6</b>	<b>129</b>	<b>3</b>	

\*Including successive habeas corpus and pro se mandamus petitions

## **Practice tip:**

# **What must I do to practice in the Fifth Circuit?**

- Requirements:
  - Create a PACER account and link the account to the Fifth Circuit CM/ECF.
  - Be an active member of the Fifth Circuit Bar. You can join the bar online through PACER by uploading documents and paying the \$238.00 fee. But be careful -- each year several attorneys join the Bar Association of the Fifth Federal Circuit (BAFFC) and think they have been admitted in our court!
  - There is no fee to register for a PACER account, but you must enter a payment method at PACER registration to obtain access to our CM/ECF site, download the EROA, view sealed documents, or use our quality control program to check your brief.
  - We register you as an electronic filer under 5th Cir. R. 25.2.3 when we process your request. File an entry of appearance form in each case.

# Practice Tip:

## Don't forget to tell us when you move or change address

FW: FINAL NOTICE: 5TH CIRCUIT BAR MEMBERSHIP RENEWAL DUE



CA05db\_BarRenewals

Wed 9/22/2021 11:09 AM

You are receiving this notice because your membership is expiring. The fee to renew is \$50.00. Please be advised that failure to renew by the end of this month will invalidate your membership and require you to reapply for admission to the bar. The fee for readmission is \$238.00. If you are an attorney with a US Government agency, you are still required to renew your membership, however, you are exempt from the \$50.00 renewal fee.

Please visit us at <http://www.ca5.uscourts.gov/attorneys/membership/renewal-2> for additional information on renewing your membership with the 5th Circuit Bar.

Please note, this notice does not pertain to membership in the Bar Association of the Fifth Federal Circuit.

**Attorneys often miss the email notice and must reapply (\$238.00 vs. \$50.00).**

**Attorneys often discover membership expired only while trying to file a document near a deadline!**

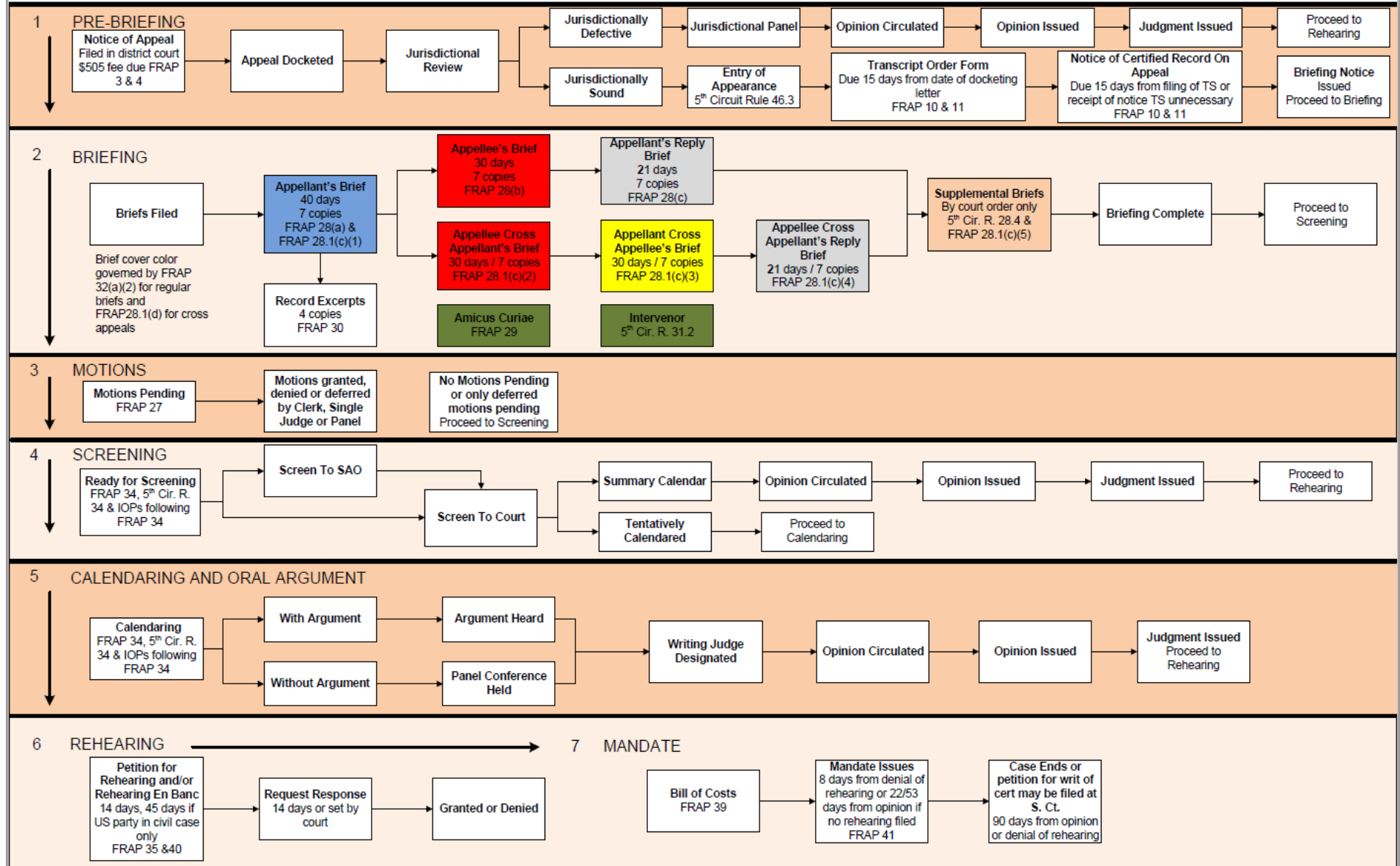
## **Practice tip:**

### **Other resources you should review**

- Website: [www.ca5.uscourts.gov](http://www.ca5.uscourts.gov)
- 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.uscourts.gov](mailto:Webmaster@ca5.uscourts.gov)

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

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



<https://www.ca5.uscourts.gov/docs/default-source/forms-and-documents---clerks-office/documents/5CCAppellateFlowChart>

# WHO CAN I CALL IN YOUR OFFICE FOR ASSISTANCE?

## LOOK AT YOUR CASE NUMBER!

CASE MANAGEMENT TEAMS					
Case Administration Manager: Peter Connors 310-7685			All Clerk's Office Numbers are 504 Area Code		
<b>NORTHERN AND WESTERN TEXAS</b> <b>10001-19999                      50001-59999</b> <b>Group Main No. 310-7806</b>		<b>SOUTHERN AND EASTERN TEXAS</b> <b>20001-29999                      40001-49999</b> <b>Group Main No. 310-7807</b>		<b>LOUISIANA, MISSISSIPPI, &amp; AGENCY</b> <b>30001-39999                      60001-69999</b> <b>Group Main No. 310-7808</b>	
<u>CASE MANAGER</u>		<u>CASE MANAGER</u>		<u>CASE MANAGER</u>	
Amanda Sutton-Foy (ASF) 310-7670		Angel Tardie (ABT) 310-7715		Connie Brown (CB) 310-7671	
<b>Nos. Ending in 1:</b> Roeshawn Johnson (RAJ) 310-7998  <b>Nos. Ending in 2:</b> Mary Frances Yeager (MFY) 310-7686  <b>Nos. Ending in 3:</b> Melissa Mattingly (MRM) 310-7719  <b>Nos. Ending 5:</b> Casey Sullivan (CAS) 310-7642  <b>No. ending in 7:</b> Melissa Courseault (MBC) 310-7701  <b>Nos. Ending in 9:</b> Lisa Ferrara (LEF) 310-7675	<b>Case Management Nos. Ending in 4, 6, 8 and 0:</b> are routed as identified above based on the second to last number.  <b>Generalist Work Only: Nos Ending in 4, 6, 8, &amp; 0:</b> Renee McDonough (RSM) 310-7673  <b>Prisoner Pro Se Clerk:</b> Monica Washington (MRW) 310-7705	<b>Nos. Ending in 1, &amp; 2:</b> Christy Rachal (CCR) 310-7651  <b>Nos. Ending in 3, &amp; 4:</b> Shawn Henderson (SDH) 310-7668  <b>Nos. Ending in 5 &amp; 6:</b> Rebecca Leto (RLL) 310-7703  <b>Nos. Ending in 9 &amp; 0:</b> Christina Gardner (CAG) 310-7684  <b>Case Numbers Ending is 7 &amp; 8 are routed to the Clerks above by the second to last number.</b>	<b>Prisoner Pro Se Clerk:</b> Donna Mendez (DLM) 310-7677  <b>Opinions Specialist:</b> Nancy Dolly (NFD): 310-7683	<b>Nos. Ending in 1 (All work):</b> Whitney Jett (WMJ) 310-7772  <b>Nos. Ending in 2 (All work):</b> Mary C. Stewart (MCS) 310-7694  <b>Nos Ending in 3 (All work):</b> Allison Lopez (AGL) 310-7702  <b>Nos. Ending in 4 (All work):</b> Shea Pertuit (SEP) 310-7666	<b>Nos. Ending in 6 (All work):</b> Majella Sutton (MAS) 310-7680  <b>Nos. Ending in 7 (All work):</b> Dantrell Johnson (DLJ) 310-7689  *Case Nos. ending in 5, 8, 9, and 0 are routed as identified above based on the second to last number.  <b>Prisoner Pro Se Clerk:</b> Monica Washington (MRW) 310-7705
<b>DEATH PENALTY 70000</b> Monica Washington (MRW) 310-7705 1 <sup>st</sup> Backup: Mary Frances Yeager (MFY) 310-7686 2 <sup>nd</sup> Backup: Donna Mendez (DLM) 310-7677					
ALL TEAMS/ALL CASE NUMBERS					
<b>OPINION SPECIALIST TEAM LINE: 310-7800</b>  Peter Connors (PAC): 310-7685 Nancy Dolly (NFD): 310-7683		<b>OPINION ASSIGNMENTS, CASES ENDING IN:</b>  1: Whitney Jett, 310-7772 2: Christy Rachel, 310-7651 3, 4, 5, 6, 7, 8, 9 and 0: Nancy Dolly, 310-7683		<b>RECORDS DATA QUALITY ANALYSTS Team Line: 310-7721</b>  Dawn LeBlanc (DDL): 310-7717 Cindy Broadhead (CMB): 310-7707	

## Assistance we provide filers

- Notice of all pending deadlines to help you manage work.
- The Electronic Record on Appeal (EROA).
- Brief Templates.
- Notice of severe errors in pleadings.
- Automatic 3-day extension so you can correct errors (not available in expedited cases).

# Pending deadlines/filings



Filing Reports ▼ Utilities ▼ Help Getting Started Log Out

United States Court of Appeals for the Fifth Circuit



## U.S. Court of Appeals CM/ECF Official Attorney Electronic Document Filing System

*This is a restricted government website for official court business only. All activities of CM/ECF subscribers or users of this system for any purpose, and all access attempts, may be recorded and monitored by persons authorized by the federal judiciary for improper use, protection of system security, performance of maintenance and for appropriate management by the judiciary of its systems. By subscribing to CM/ECF, users expressly consent to system monitoring and to official access to data reviewed and created by them on the system. If evidence of unlawful activity is discovered, including unauthorized access attempts, it may be reported to law enforcement officials.*

### Welcome

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

Last Login Fri Sep 24 08:11:42 CDT 2021

### [Court Information](#)

If you are an attorney or pro se granted electronic filing privileges in our Court, the landing screen will automatically display deadlines for your cases. You can sort this information by case number, item due, or date due. You may docket an item by selecting the hyperlink under the "File Event" tab. **If you prefer to not see the deadlines, simply remove the check from the "Show Pending Deadlines" box.**

☒ Show Pending Deadlines

### Pending Deadlines/Filings

Case ▼	Title	Item Due ⇅	Party Type/Name	Date Due ⇅	File Event
21-50886	USA v. Matthew Artega	A/Pet's Brief Due	Appellant Matthew Taylor Artega	10/22/2021	<a href="#">Appellant/Petitioner Brief Filed</a> <a href="#">Anders Brief Filed</a> <a href="#">Rule 28i letter filed adopting brief</a>



# Resources and assistance under the Utilities tab

CM<sup>ECF</sup>

United States Court of Appeals for the Fifth Circuit

Filing Reports **Utilities** Help Getting Started Log Out

Bar Renewal

Bar History Report

File Case Originating Documents with Fee

File Case Originating Documents w/o Fee

Request Documents

Electronic Record on Appeal

Brief Template

Check PDF Document

Notice for Cases of Interest

Update My Account

This is a restricted government website for official use only. All information posted on this website may be recorded and monitored by persons responsible for appropriate management by the judiciary of the United States Court of Appeals for the Fifth Circuit and created by them on the system. If evidence of unauthorized access is detected, it may be reported to law enforcement officials.

Use of the CM/ECF Document Filing System by subscribers or users of this system for any purpose, and all access attempts, use, protection of system security, performance of maintenance and for any other purpose, requires the user to expressly consent to system monitoring and to official access to data reviewed for unauthorized access attempts, it may be reported to law enforcement officials.

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☐ Show Pending Deadlines

# Obtaining a district court EROA

## (Obtain agency records through PACER)

CM/ECF United States Court of Appeals for the Fifth Circuit

Filing Reports **Utilities** Help Getting Started Log Out

- Bar Renewal
- Bar History Report
- File Case Originating Documents with Fee
- File Case Originating Documents w/o Fee
- Request Documents
- Electronic Record on Appeal**
- Brief Template
- Check PDF Document
- Notice for Cases of Interest
- Update My Account

*This facility is for Official Court Business only. Rule 25. Evidence of unauthorized or criminal conduct.*

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**Pending Deadlines/Filings**

Case	Title	Item Due	Party Type/Name	Date Due	File Event
60-69998	USA v. Charles Test	A/Pet's Brief Due	Appellant Bruce Test	09/22/2022	<a href="#">Appellant/Petitioner Brief Filed</a> <a href="#">Anders Brief Filed</a> <a href="#">Rule 28i letter filed</a> <a href="#">adopting brief</a>

**Electronic Records Available for Download**

Case Number	Short Title	Date Accepted
<a href="#">22-20001</a>	Mull v. Houston Indep Sch Dist	September 09, 2022
<a href="#">22-40541</a>	USA v. Garcia-Bahena	August 26, 2022
<a href="#">22-40502</a>	USA v. Valle	September 23, 2022
<a href="#">22-40489</a>	USA v. Janise	August 31, 2022
<a href="#">22-40488</a>	USA v. Velazquez-Sosa	September 09, 2022

## **Practice tip: Brief templates**

- We offer you a template tailored for **your** brief.
- Template includes all required sections and certifications, referencing applicable FRAP and local rules.
- Template includes in appropriate fields case information accurate as of the time the template was created.
- Even if you don't use our template to draft your brief, we recommend you download it and compare with your document to alert you to deficiencies or missing sections.

# Brief templates

## DOWNLOADING A BRIEF TEMPLATE

CM<sup>ECF</sup>

Filing Reports **Utilities** Help Getting Started Log Out

United States Court of Appeals for the Fifth Circuit

Bar Renewal

Bar History Report

File Case Originating Documents with Fee

File Case Originating Documents w/o Fee

Request Documents

Electronic Record on Appeal

**Brief Template**

Check PDF Document

Notice for Cases of Interest

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☒ Show Pending Deadlines

**Pending Deadlines/Filings**

No pending deadlines/filings.

peals CM/ECF  
Document Filing System

**Brief Templates Available for Download**

Case Number	Short Title	Type	Date Created
<a href="#">22-20001</a>	Mull v. Houston Indep Sch Dist	Appellant Brief	September 21, 2022
<a href="#">21-50885</a>	USA v. Morris	Appellee Brief	September 21, 2022
<a href="#">21-50882</a>	USA v. Fierro	Appellee Brief	September 22, 2022
<a href="#">21-50881</a>	USA v. Carillo	Appellee Brief	September 22, 2022
<a href="#">21-50879</a>	USA v. Pham	Appellee Brief	September 22, 2022
<a href="#">21-50877</a>	USA v. Rodriguez-Morales	Appellee Brief	September 22, 2022
<a href="#">21-50876</a>	USA v. Villegas	Appellee Brief	September 22, 2022
<a href="#">21-50875</a>	USA v. Huerta-Rodriguez	Appellee Brief	September 22, 2022
<a href="#">21-50874</a>	USA v. Lopez-Nicolas	Appellee Brief	September 22, 2022
<a href="#">21-50873</a>	USA v. Hernandez-Ortega	Appellee Brief	September 23, 2022
<a href="#">21-50872</a>	USA v. Pascual-Miguel	Appellee Brief	September 23, 2022

# Brief templates

No. 22-20001

IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

Markethia Mull,

Plaintiff - Appellant

v.

Houston Independent School District,

Defendant - Appellee

On Appeal from  
United States District Court for the Southern District of Texas  
4:20-CR-632-1

BRIEF OF APPELLANT MARKETHIA MULL

SUBMITTED BY:  
Bryce Corse  
201 St. Charles Avenue  
New Orleans, LA 70126

OF INTERESTED PERSONS

rd certifies that the following listed persons and  
sentence of 5<sup>th</sup> Cir. Rule 28.2.1 have an interest in  
presentations are made in order that the judges of  
isqualification or recusal.

Counsel for Appellees:
Joseph Gay of U.S. Attorney's Office San Antonio, TX

Counsel for Appellants:
Matthew Kozik El Paso, TX

Counsel for Interested Parties:
Type Here

S/Matthew James Kozik  
Attorney of record for Type Here

A Certificate of Interested Persons is required by 5<sup>th</sup> Cir. R. 28.2.1.

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JURISDICTIONAL STATEMENT

Type here a Jurisdictional Statement as required by FED. R. APP. P. 28(a)(4)(A)  
through (D)

STATEMENT OF THE ISSUES

here a Statement of Issues presented for review as required by FED. R. APP. P.  
5).

STATEMENT OF THE CASE

here a Statement of the Case as required by FED. R. APP. P. 28(a)(6).

SUMMARY OF THE ARGUMENT

here a Summary of the Argument as required by FED. R. APP. P. 28(a)(7).

ARGUMENT

2

CERTIFICATE OF SERVICE

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

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f applicable include:

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/Matthew James Kozik

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

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## Practice tip:

### We notify you of deficiencies in Pleadings

- QC Application scans your brief for all requirements of FRAP and Local Rules, and we inform attorneys of any **severe** errors that likely will cause rejection of pleading.
- Finds minor technical errors, but if these do not impact case processing, we will not reject the pleading.
- An attorney alerted to severe errors can file without making corrections, but when a brief has critical errors, it will likely later be rejected.
- New focus on severe errors reduced rejections by 20%

# QC check of brief before E-filing

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☒ Show Pending Deadlines

Pending Deadlines/Filings

Case	Title	Item Due	Party Type/Name	Date Due	File Event
21-50885	USA v. Carol Morris	A/Pet's Brief Due	Appellant Carol Johnene Morris	10/22/2021	<a href="#">Appellant/Petitioner Brief Filed</a> <a href="#">Anders Brief Filed</a> <a href="#">Rule 28i letter filed adopting brief</a>
21-50886	USA v. Matthew Artega	A/Pet's Brief Due	Appellant Matthew Taylor Artega	10/22/2021	<a href="#">Appellant/Petitioner Brief Filed</a> <a href="#">Anders Brief Filed</a> <a href="#">Rule 28i letter filed adopting brief</a>

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# Sample QC message will show critical deficiencies.

## Document Check Result

A computer program examined this brief to determine whether it meets FRAP and local rule requirements. The program determined your brief potentially contained both critical and minor deficiencies. Critical deficiencies significantly impact the court's internal review or processes, and almost always require rejection of the brief and the filing of a corrected pleading. Minor deficiencies are less serious and do not require rejection, but nonetheless warrant your attention.

### 1. Critical deficiencies found that normally result in rejected brief:

- The deadline for filing the appellant's/appellee's/appellant's reply brief has expired and you must file a motion to file the brief out of time if you have not already done so. See FED. R. APP. P. 31(a)(1). See FED. R. APP. P. 27 and 5th CIR. R. 27.4 for motion requirements.
- We have no record that you filed an appearance in this case as required by FED. R. APP. P. 12(b), and 5th CIR. R. 12. The appearance form is available on our website at: "<http://www.ca5.uscourts.gov/docs/default-source/forms/formforappearanceofcounsel.pdf>". If this is the only error, you may continue and file the brief, but we will mark the brief as not sufficient until we receive the appearance form.

### 2. Minor deficiencies we call to your attention:

- The name of the originating court, agency, or board does not appear or is incorrect on the title page of the brief. The expected court name was: United States District Court for the Northern District of Texas. See FED. R. APP. P. 32(a)(2)(D).
- The program is unable to determine if the title of the brief required by FED. R. APP. P. 32(a)(2)(E), identifying the party or parties for whom the brief is filed, is included on the brief cover, (e.g., Appellant's Brief, Appellee's Brief, Appellant's Reply Brief). If the section header exists, please verify for correct spelling, or if it includes additional text or characters that may confuse the search engine.

You may either continue and docket the brief as is, or stop this filing, make corrections, and upload a corrected brief. Successfully correcting critical deficiencies now would avoid later rejection of the brief. Regardless of the option you choose, a deputy clerk (not the program) will decide whether errors require rejection.

Three-day extension. If you are filing on the deadline and need additional time to make corrections, we will give you an automatic extension of three working days, unless your case has a special briefing requirement. To determine if this extension is available in your case, click on the 'File Extension' button displayed at the bottom of the screen and docket the extension. If the automatic extension is not available, you will be returned to docketing.

Note: We are aware that in some instances, the program mistakenly reports a deficiency when none exists, such as when it does not find a close or identical match for required contents or sections, or when graphics, text or characters confuse the search engine. Please help us improve this program by letting us know if the program incorrectly identifies a deficiency in your brief by emailing us at [Margaret.Dufour@ca5.uscourts.gov](mailto:Margaret.Dufour@ca5.uscourts.gov).

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Done



# Practice tip:

## Recent questions and issues

- Some recent questions:
  - “The argument in my case was months ago. What is holding up the opinion?”
    - I don’t know and/or I can’t tell you. But I promise you the court did not lose your case.
  - “My opinion came out 60 days ago. Why have you not released the mandate?”
    - Three judge opinions are subject to en banc review, and a judge may direct that we not issue the mandate until those discussions are completed. This does not mean the opinion will be vacated or even modified. It is just part of the deliberative process.
- Recurring but avoidable issues:
  - Trying to file but not a current member of Fifth Circuit Bar.
  - Trying to file without first filing an appearance.
  - Waiting the due date to ask for extension.
  - Not giving justifications for brief extension requests.
  - Not confirming conference with opposing counsel for motion.
  - Not informing us early who will argue and the division of time.
  - Refiling an incorrectly filed document. (Please call us first!)

## Closing thoughts

- Believe it or not, our goal is to help you, not make your job harder.
- Our goal is to create processes that make it easier for attorneys to practice.
- Focusing on critical (vs. minor) errors should reduce the number of rejected pleadings, saving attorneys and clients time and money.
- Our goal is to be the best clerk's office you could hope for.
- Help us achieve that goal by giving us feedback, good or bad.