

# Writs v. Appeals – Get it Right the First Time



Judge Tiffany Chase, 4<sup>th</sup> Cir. Court of Appeal  
Judge Hans Liljeberg, 5<sup>th</sup> Cir. Court of Appeal

# Learning Objectives

- Learn about the workload and statistics of the court
- Become familiar with new rules
- Recognize some pitfalls in appellate practice

# 2022 Fifth Circuit Filings

## ➤ Appeals

- 136 Lodged (Criminal & Civil)
- 146 Full Opinions

## ➤ Statistics

- 48% reversed, vacated, or modified
- 48% affirmed
- 5% dismissed

# 2022 Fifth Circuit Filings

- Writs – 403 filed
  - 144 Civil Writs
  - 259 Criminal Writs
- Statistics
  - 73% denied
  - 1% not considered/dismissed
  - 26% modified

# 2022 Fourth Circuit Filings

## ➤ Appeals

- 168 Lodged (Criminal & Civil)
- 122 Full Opinions

## ➤ Statistics

- 48% reversed, vacated, or modified
- 48% affirmed
- 6% dismissed

# 2022 Fourth Circuit Filings

- Writs – 403 filed
  - 144 Civil Writs
  - 259 Criminal Writs
- Statistics
  - 7% denied
  - 1% not considered/dismissed
  - 26% modified

# What's new?



# Fifth Circuit

- **Rule 11: Electronic Audio and Video Evidence**
  - **Windows media audio & video (WMA) (WMV) preferred format**
  - **Alternate formats must include a description of the software and installation instructions. Inform the Clerk of Court within 5 days of record being lodged.**



# **Fifth Circuit – Rule 11 (cont'd)**

- **The following must be provided with all electronic evidence:**
  - **Title of the file**
  - **Brief description of what is contained in the file**
  - **Length of the file**
  - **File format**
  - **Guarantee of no viruses**
  - **Anti-virus software used to scan file**
  - **Date of virus definitions**

# Fifth Circuit (cont'd)

- **Rule 13: Stays Relating to Bankruptcy, etc.**
  - **Seeking party shall file a motion to stay, including:**
    - **Acknowledgement that mover will notify the court every 180 days with a status update; and**
    - **Acknowledgement that failure to file the recurring notice may subject the mover to sanctions or contempt**
  - **Within 30 days of the stay being lifted in another court or order resolving the proceeding in the other court, the mover must file a written request that the stay issued by this court be lifted.**

# Fourth Circuit

# APPEALS



# Appealing Final Judgments

- Determines merits of the case
- Signed Judgment
- Interlocutory -- court may exercise discretion & convert the appeal to a writ

# Interlocutory Judgment Appealable

- Trial court designates it as final and makes “an express determination that there is no just reason for delay” – article 1915(B)

# Rule 2-12.2 Preparation of Brief

- Applies to appeals, motions, writs, & applications for rehearing
- Original briefs
  - 31 legal pages (limit)
  - 41 letter pages
- Reply briefs:
  - 13 legal pages
  - 18 letter pages
- Roman or Times New Roman 14 or larger

# **Rule 2-12.13. Non-conforming Briefs**

- **May be stricken in whole or in part by the court**
- **May be ordered to file a new or amended brief**



# **Rule 2-12.6.1 Citation of Supplemental Authorities**

- **After briefing and/or oral argument but before a decision is rendered:**
- **May promptly notify the clerk of court by letter**
  - **Name & citation of the opinion or authority**
  - **Issue raised by the case**
    - **Citation to the page number in briefs**
    - **If in oral argument, where & how the issue arose**

# **Rule 2-12.6.1 Citation of Supplemental Authorities**

- **Letter shall not exceed 2 letter sized pages**
- **Shall not contain argument**
- **Separate motion for permission to file supplemental brief to argue or exceed page limits**

# Appealing Final Judgments

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# Preserving Issues for Appeal

- Timely objection
- Specific grounds
- Brought to the attention of the judge

# Building an Adequate Record

- Appellate courts only consider matters in the record
- Pretrial preparation is critical
  - Planning objections
  - Supervisory writs
- Off record conferences

# Common Mistakes Affecting Appeals

- **Insufficient Decretal Language**
- **Must contain:**
  - **Party in favor of whom the ruling is ordered**
  - **Party against whom it is ordered**
  - **Specify the relief or award which is granted or denied**
  - **Claim(s) or cause(s) it adjudicates**
- **Judgment must be discernible & certain on its face**

# Top 4 Filing Issues

- No attached judgment from the district court on appellate brief
- No signed copy of the Notice of Intent or judgment on writ application
- Pages not consecutively numbered
- Combining appellant & appellee briefs



# Governing Standard of Review

- Manifest error or clearly wrong
- *De novo* review

# Proffer

- Evidence held inadmissible – record or statement of the nature thereof
- Court may allow any excluded evidence to be offered subject to cross-examination
- Court must state reasons for ruling

# Proffer

- On the record or by deposition
- During recess or other time designated by the court
- Within 30 days subsequent to exclusion

# Exceptions

- Subject matter jurisdiction may be raised on appeal
- Appeal Court may raise:
  - Nonjoinder, peremption, res judicata, discharge in bankruptcy
  - Failure to obtain order of appeal

# Designating the Record on Appeal

- All or portions of the record
- 3 days, excluding holidays, after taking the appeal
- If only portions of the record – must designate a concise statement of points relying upon

# Answering the Appeal

- No need to answer unless seeking to modify or reverse judgment or damages for frivolous appeal
- Appellee's answer is equivalent to a cross-appeal
  - Not applicable to those not appellants

# Requesting Oral Argument

- Lodging of record triggers deadline to request
- Must be made within 30 days after lodging of record
- Untimely brief forfeits right to oral argument
  - Motion to Reinstate Oral Argument
- In-person or Video Conference

# Exceptions

- Prescription may be raised first on appeal
- Must be pleaded



# Screening Policy

- **Lack of decretal language**
- **Specific relief granted or denied**
- **Identification of affected parties**
- **Specificity of money judgment**
- **Timeliness of appeal**
- **Appealability of judgments**
- **Expedited appeal**

# WRIT PRACTICE



# Applying for Supervisory Writs

- La. C.C.P. art. 2201
- Before/during trial & before final judgment
- Conform with Uniform Rules Courts of Appeal 4-1
- Trial court maintains jurisdiction
- Is a stay needed?

# Applying for Supervisory Writs

- Irreparable Injury?
- Herlitz factors
  - Reversal will terminate litigation
  - No dispute of facts
  - Judicial efficiency
  - Fundamental fairness
- No response timeline

# Opinions & Dispositions

- Appeals & writs granted
  - Notification via email
  - Online
- Writs
  - Denial
  - What if my writ is denied?



**Thank you!**