



FIFTH CIRCUIT COURT OF APPEALS CLERK OF COURT UPDATE

**LYLE CAYCE
JUNE 6, 2014
AUSTIN, TEXAS**

AGENDA

- Circuit overview and judges
- Rule Changes, the EROA, and citation formats
- Advances in Court Technology and Practice Implications
- 2012 – 2013 Circuit Statistics
- Questions

FIFTH CIRCUIT'S NINE DISTRICT
COURTS



Louisiana Districts:

- Eastern District, New Orleans
 - Clerk: Bill Blevins
- Middle District, Baton Rouge
 - Clerk: Nick Lorio
- Western District, Shreveport
 - Clerk: Tony Moore

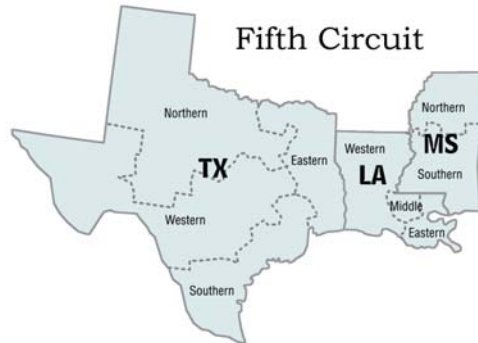
FIFTH CIRCUIT'S NINE DISTRICT
COURTS



Mississippi Districts:

- Northern District, Oxford
 - Clerk: David Crews
- Southern District, Jackson
 - Clerk: Arthur Johnston

FIFTH CIRCUIT'S NINE DISTRICT COURTS



Texas Districts:

- Eastern District, Tyler
 - Clerk: David Maland
- Northern District, Dallas
 - Clerk: Karen Mitchell
- Southern District, Houston
 - Clerk: David Bradley
- Western District, San Antonio
 - Clerk: William Putnicki

FIFTH CIRCUIT JUDGES

**Currently 14 active (17 authorized)
and 8 senior* judges**

- Houston: Judges Reavley*, King*, DeMoss*, Jones, Smith, and Elrod
- San Antonio: Judges Garza* and Prado
- Austin: Judges Benavides*, Higginbotham*, and Owen
- Dallas: Judge Haynes
- Jackson: Judges Barksdale*, Graves, Jolly, and Southwick
- Shreveport: Chief Judge Stewart
- Lafayette: Judge Davis
- New Orleans: Judges Wiener*, Dennis, Clement, and Higginson

FRAP 28 (BRIEFS) AND 28.1 (CROSS-APPEALS) CHANGES

- FRAP Rules 28 (Briefs) and 28.1 (Cross-Appeals).
 - Amendment requires a single statement of the case to include the relevant factual and procedural history as well as identify the rulings to be reviewed. No longer will an appellant’s brief contain separate statements of the case and facts.
 - We modified Fifth Circuit Rule 28.3(g) and (h) to conform to the FRAP 28 and 28.1 amendments.

5TH CIRCUIT RULE 28.2.2 (Record References) Change

- This change requires every factual assertion to be supported by a reference to the page number of the original record, whether in paper or electronic form, where the matter is found, **using the record citation form as directed by the Clerk of Court.**
- Citation guidance at Form 7 of the Appendix to Rules and Internal Operating Procedures posted at <http://www.ca5.uscourts.gov/clerk/docs/frap2007.pdf>.

WHY THIS RULE CHANGE?

- In 2012, to avoid costs associated with paper ROA, the court approved a pilot program to determine whether some panels could decide appeals with an electronic record, rather than a paper record. We began to develop an electronic record on appeal.
- We previously fielded a program that automatically inserts hyperlinks into e-filed pleadings, permitting a judge reviewing a brief on a computer or an electronic device to quickly access the cited legal authority using a preferred engine (Lexis or Westlaw.)

WHY THIS RULE CHANGE?

- As we prepared for the EROA pilot program, judges asked us to modify our hyperlinking program to also provide links to the electronic record, from record citations in briefs.
- To provide hyperlinks to the record as requested, our computer program had to recognize citations and point judges to the correct page of the record. This required that a standard electronic record on appeal (EROA) and standard citations in briefs.

WHY THIS RULE CHANGE?

- After notice and comment, the court amended local rule 28.2.2 to require parties to cite to the EROA using a citation format that our program could recognize.
- Today, when attorneys file briefs with these formats, the computer program automatically inserts hyperlinks to the EROA, and a court user viewing the electronic copy of the brief immediately is directed to the particular page of the record when the user activates the hyperlink.

TWO TYPES OF RECORDS ON APPEAL

Before the pilot EROA program, the official record on appeal was the paper record prepared by the district court clerk.

This record contained pagination that included “USCA5” and a page number. Our court has under review many appeals with records using this pagination format.

TWO TYPES OF RECORDS ON APPEAL

- The EROA in appeals under the pilot program, however, uses a new pagination format, which contains the appellate **case number** followed by a period, then the page number. For example, 13-12345.121.
- Note that an appeal could contain **both** USCA5 and EROA pagination formats, when the district court holds supplemental proceedings.

HOW TO CITE THESE DIFFERENT RECORDS (EROA VS. USCA5)

- Cite to the EROA (any record with pagination that includes the case number) using the new formats required by local rule 28.2.2.
- Do not use the new citation formats for records with USCA5 pagination. Instead, cite “USCA5” and the page number, as appropriate.
- In a mixed record appeal, use the citation format for the type of record you reference.

HOW TO CITE THE EROA

Single Record Cases – ROA.123

Multiple Record – ROA.13-12345.123

Agency Cases – ROA.123

PERMISSIBLE EROA CITATIONS

To specific lines on pages of the record:

Single Record Cases - " ROA," followed by a period, followed by the page number, followed by a colon, followed by the line number(s), as follows:
ROA.143:22-24 or ROA.143:22 - 145:10 (to mean page 143 starting with line 22 and ending at page 145, line 10).

For multiple record cases, line citation would be as follows: "ROA.13-12345.143:22-24" or "ROA.13-12345.143:22 - 145:10."

ADVANCES IN COURT TECHNOLOGY

CIMS4iPAD DEMONSTRATION

- iPad app that provides judges all case related information, including docket entries, pleadings, and the record on appeal. Information can be stored on the judge's iPad to be available when there is no Wi-Fi or cell connection.
- Application automatically loads appropriate data when the clerk assigns the appeal to a judge, and deletes data after the judge completes work.
- Application navigates from a hyperlink, to the reference material, and back to the brief.

ADVANCES IN COURT TECHNOLOGY

CIMS4iPAD DEMONSTRATION

- Application hyperlinks legal citations in briefs, permitting a judge to access the authority using the judge's preferred search engine.
- Application hyperlinks citations in briefs to the EROA, permitting a judge to immediately access the matter referenced in a brief.
- After reviewing hyperlinked matters, the application returns the judge seamlessly to the location of the hyperlink in the brief.

CIMS4iPAD DEMONSTRATION

WHY DO YOU CARE IF A JUDGE IS USING THIS TECHNOLOGY?

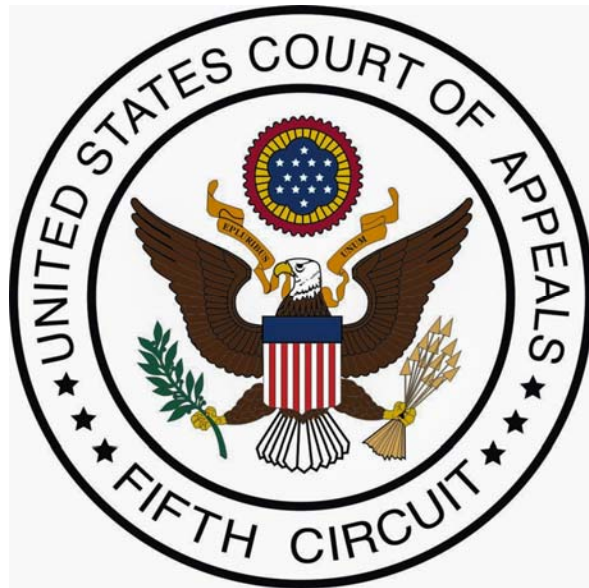
- All judges receive paper briefs, but many judges use the iPad or computer to read briefs when preparing for oral argument.
- There are obvious differences between a judge reviewing a paper brief and reviewing a brief on a desktop computer or the iPad application.
- Does it matter to you that a judge may review an electronic copy of your brief, and can by a simple mouse click or screen touch immediately see your legal or record authority?

**YOU SHOULD CARE, SO CONSIDER
THESE MATTERS**

- Use proper case citations so that our program will create good links. (We might find an improperly cited case, but....)
- Cite to the correct page of the EROA (the judge will know immediately if you have the wrong page!)

**OTHER MATTERS YOU MAY WANT TO
CONSIDER...**

- Properly characterize the record. Make sure that the material actually says what you say it means. The judge will know immediately if you even inadvertently mischaracterize the record.
- Consider where you present the citation (in the body of the brief or in a footnote?)



Backup Slides

2012 – 2013 Fifth Circuit Court Term Statistics

1 July 2012 – 30 June 2013

U.S. COURTS OF APPEAL – APPEALS COMMENCED, TERMINATED AND PENDING

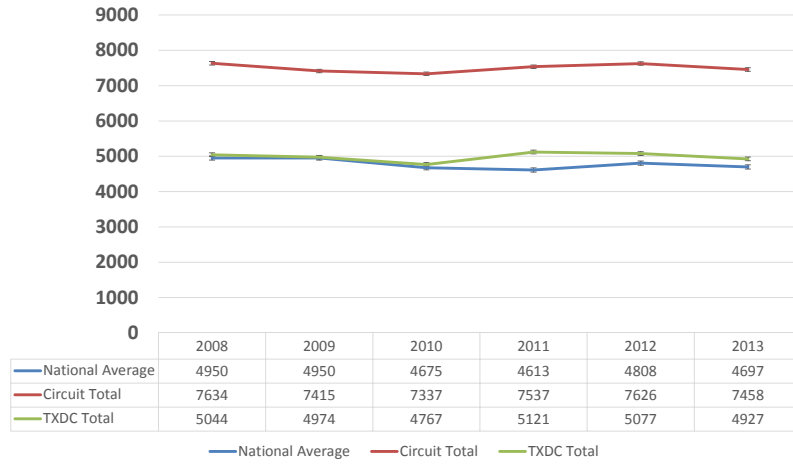
CIRCUIT	FILINGS			TERMINATIONS			PENDING		
	2012	2013	PERCENT CHANGE	2012	2013	PERCENT CHANGE	2012	2013	PERCENT CHANGE
DC	1,197	1,137	-5.00	1,179	964	-18.20	1,306	1,479	13.20
FIRST	1,618	1,562	-3.50	1,558	1,528	-1.90	1,310	1,344	2.60
SECOND	5,643	5,186	-8.10	5,436	6,069	11.60	4,698	3,815	-18.80
THIRD	3,771	3,859	2.30	3,897	3,886	-0.30	2,370	2,343	-1.10
FOURTH	4,907	5,064	3.20	5,280	5,079	-3.80	2,396	2,381	-0.60
FIFTH	7,626	7,401	-3.00	7,339	7,451	1.50	4,765	4,715	-1.00
SIXTH	4,829	5,088	5.40	5,418	5,593	3.20	4,443	3,938	-11.40
SEVENTH	3,059	2,909	-4.90	3,039	3,001	-1.30	1,988	1,896	-4.60
EIGHTH	3,046	2,943	-3.40	2,966	2,916	-1.70	1,503	1,530	1.80
NINTH	12,793	12,669	-1.00	12,656	12,879	1.80	14,289	14,079	-1.50
TENTH	2,237	2,125	-5.00	2,169	2,232	2.90	1,448	1,341	-7.40
ELEVENTH	6,973	6,417	-8.00	6,335	6,936	9.50	4,013	3,494	-12.90
TOTALS	57,699	56,360	-2.30	57,272	58,534	2.20	44,529	42,355	-4.90

NOTE: This Table does not include data for the U.S. Court of Appeals for the Federal Circuit

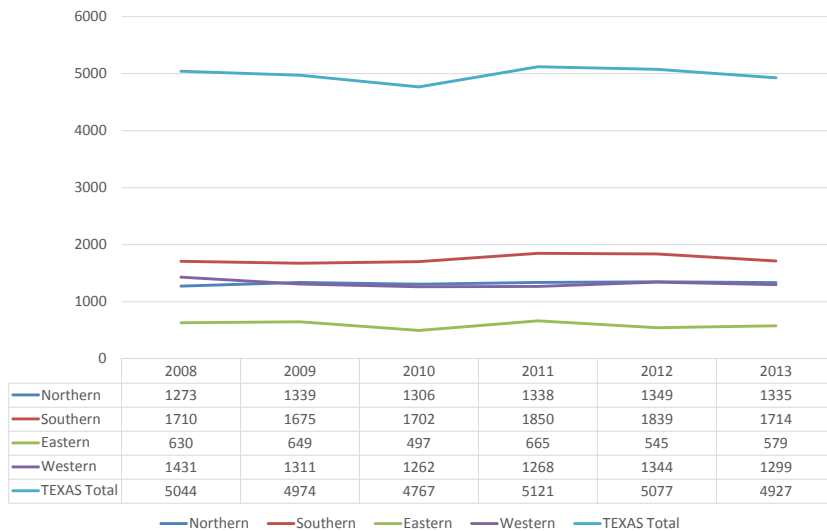
2008 – 2013 NEW APPEALS FILED

**Texas District Courts are slightly above the Nation Average for Circuits. Texas Southern had the second most appeals of any district court in 2013. Only California Central District had more appeals. Texas Southern had more appeals than two circuit courts.

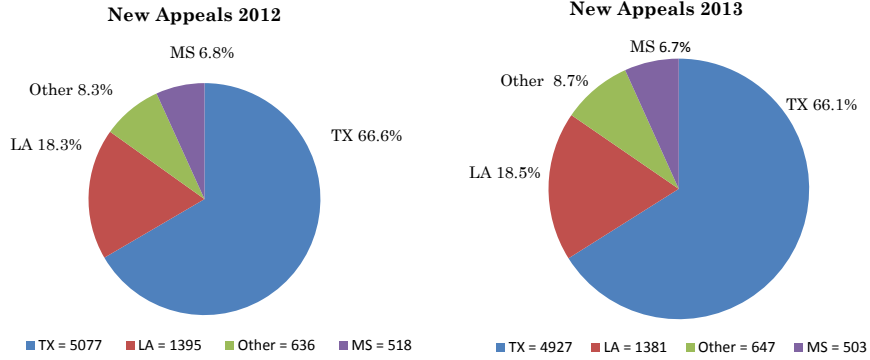
New Appeals Filed



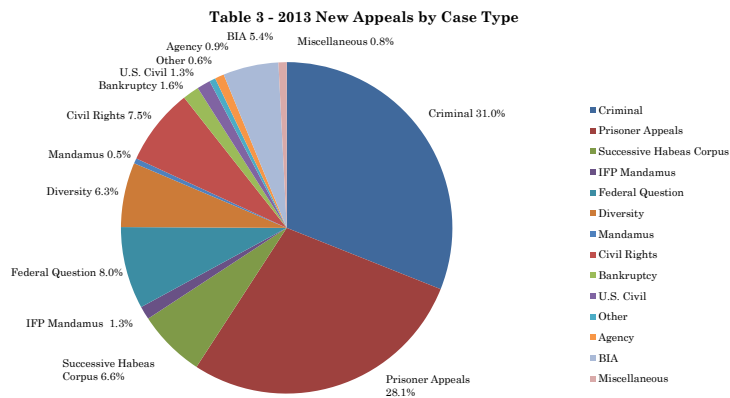
TEXAS NEW APPEALS (2008 – 2013)



NEW APPEALS PERCENTAGE BY STATE



NEW APPEALS BY CASE TYPE



STATISTICAL SNAPSHOT							
For the 12 month period which ended June 30, 2013							
	Cases Commenced	Procedural Terminations	Total Merits Terminations	Merits Terminations After Oral Hearing	Merits Terminations on Briefs	% Placed On Oral Argument Calendar	% Reversed
Criminal	2,318	579	1,886	243	1,390	12.9%	3.4%
U.S. Prisoner Petitions	685	276	433	24	366	5.5%	2.8%
Other U.S. Civil	191	88	97	39	51	40.2%	17.8%
Private Prisoner Petitions	1,410	698	747	58	610	7.8%	4.2%
Other Private Civil	1,560	660	779	354	260	45.4%	11.4%
Bankruptcy	117	51	61	35	9	57.4%	13.6%
Administrative Agency	487	247	215	29	160	13.5%	4.8%
Original Proceedings (including successive habeas corpus and pro se mandamus petitions)	633	166	468	3	453	0.6%	0.0%
Miscellaneous	57	5	45	0	45	0.0%	0.0%
TOTAL	7,458	2,765	4,686	785	3,299	16.8%	5.4%
	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
	369	2,643	290	17	229		6
	TEXAS - 237	1,908	193	7	149		1

CASE PROCESSING TIMES

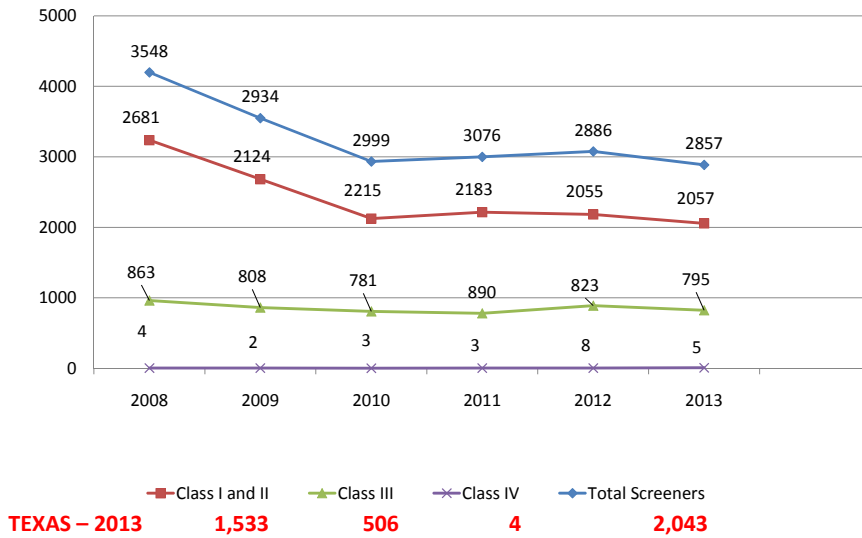
2012-2013

- Notice of Appeal to Filing of Last Brief: **5.8 Months**
- Last Brief to Hearing or Submission: **3.9 Months**
- Hearing to Final Disposition: **1.3 Months**
- Submission to Final Disposition **0.6 Months**
- Notice of Appeal to CA 5 Final Disposition: **9.7 Months**

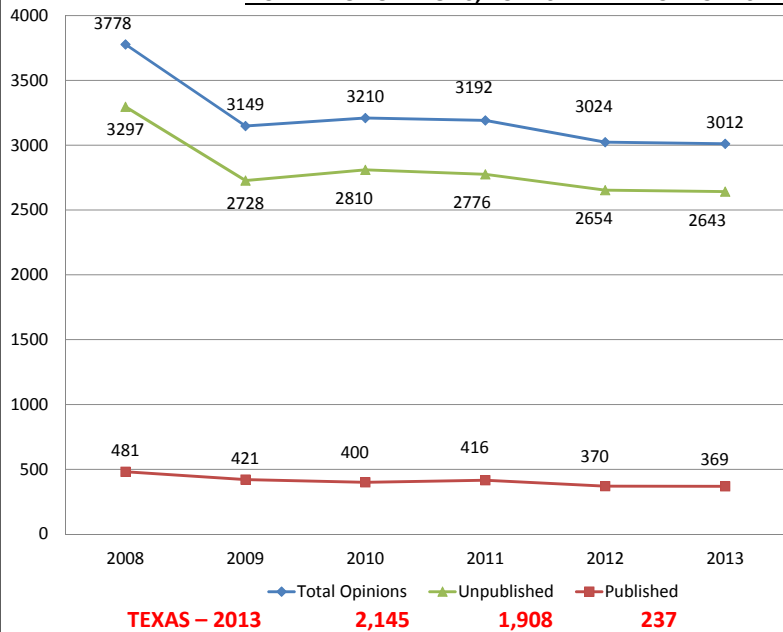
28% of all appeals are placed on the oral argument calendar, although some of these cases will later be decided without argument.

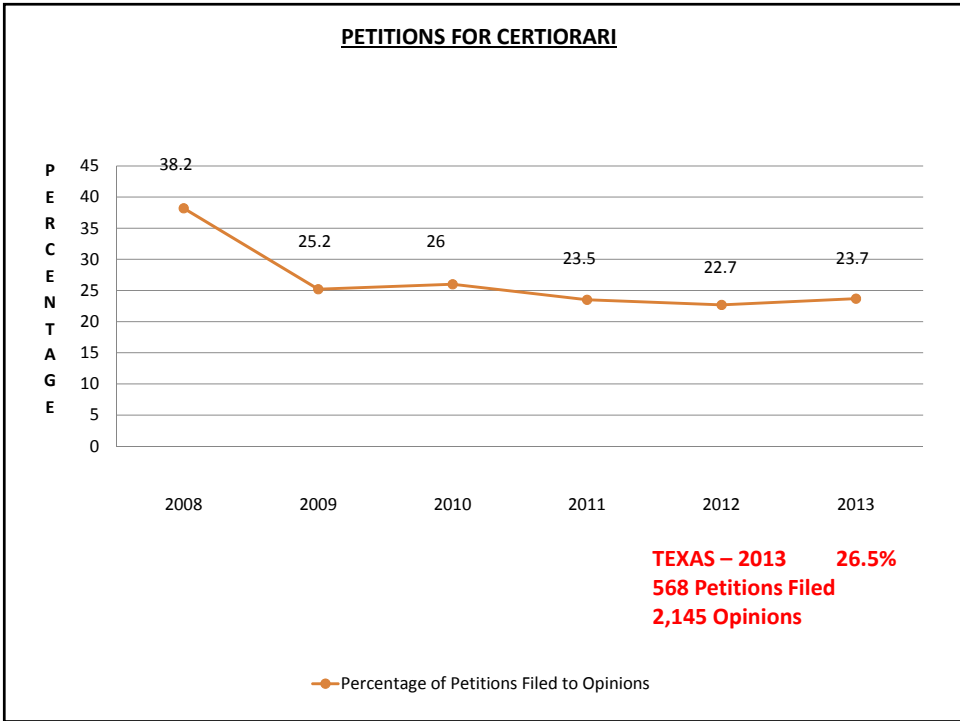
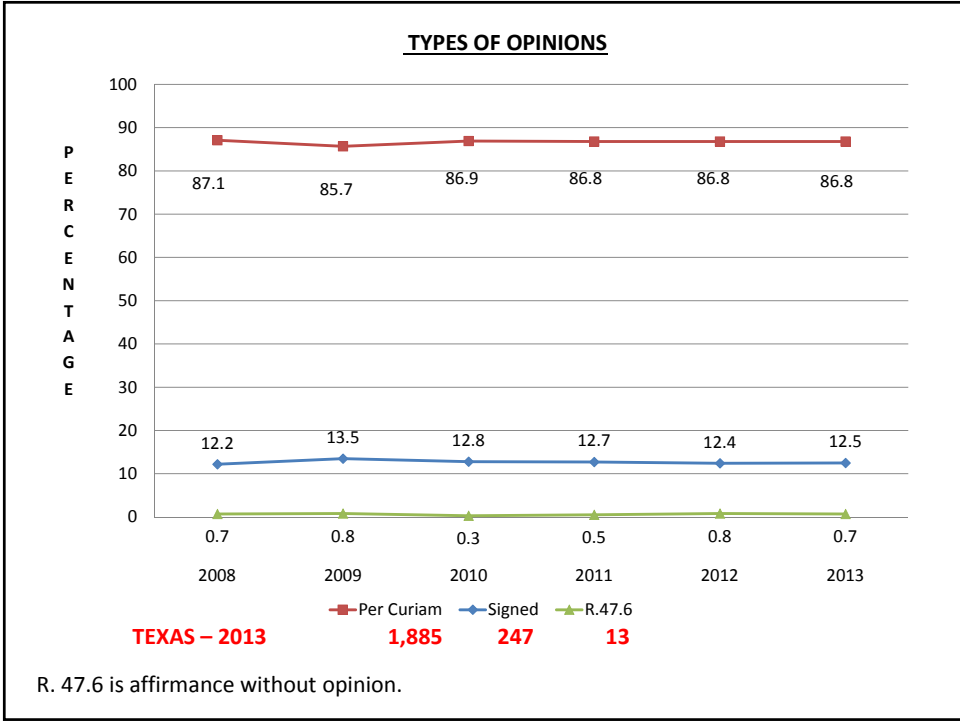
The median time from filing of the Notice of Appeal to CA 5 final disposition in oral argument cases is **13.4 Months**.

SCREENING CLASSIFICATION

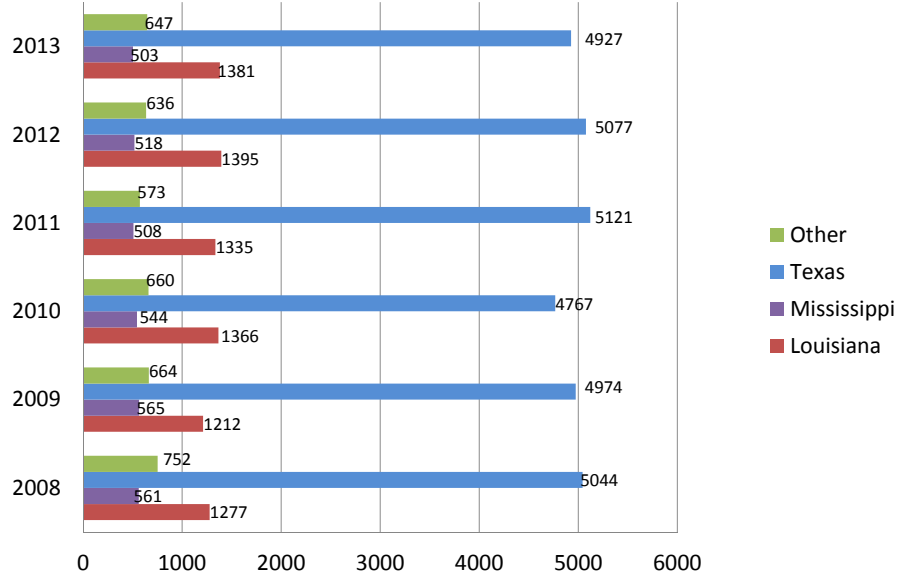


NUMBER OF OPINIONS, PUBLISHED AND UNPUBLISHED

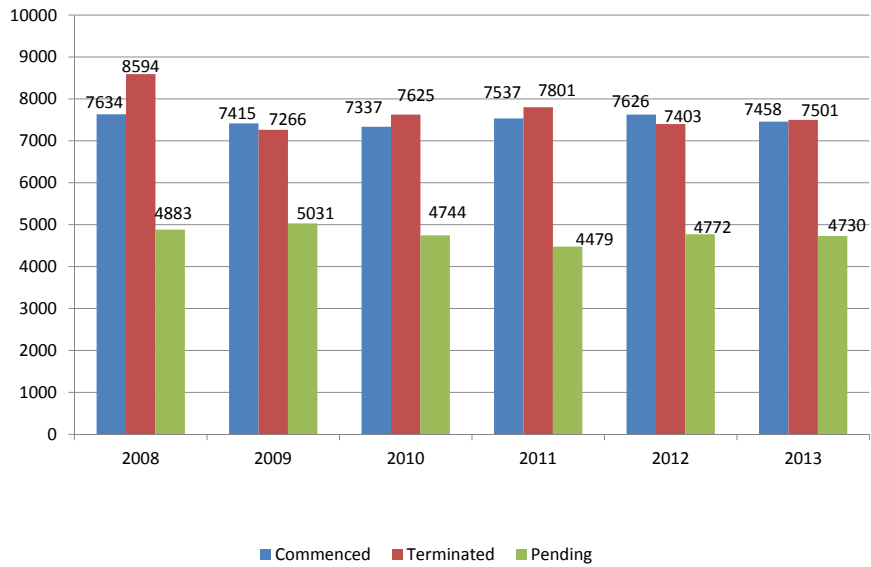




NEW APPEALS BY DISTRICT



SUMMARY OF APPEALS COMMENCED, TERMINATED AND PENDING



UNASSIGNED CARRY-OVER*

Year	Unassigned Cases	New Appeals	% Unassigned Cases to New Appeals
2008	4171	7634	54.6
2009	4324	7415	58.3
2010	3939	7337	53.7
2011	3643	7537	48.3
2012	3924	7626	51.4
2013	3727	7458	49.9

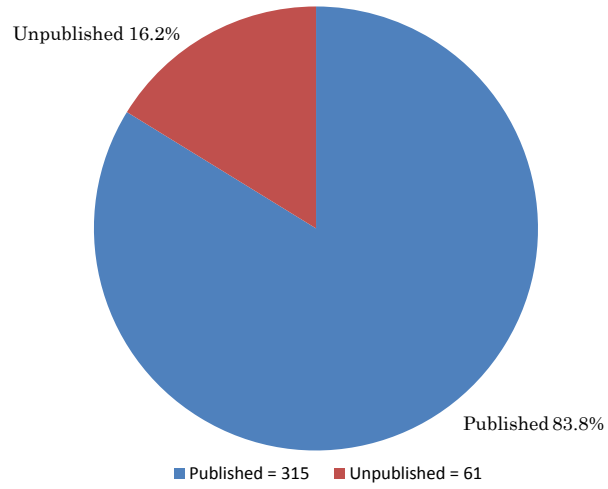
*Cases pending briefing, or briefed but not yet argued, or argued and not decided, are reported as "Unassigned Carry-Over."

SCREENING CLASSIFICATION

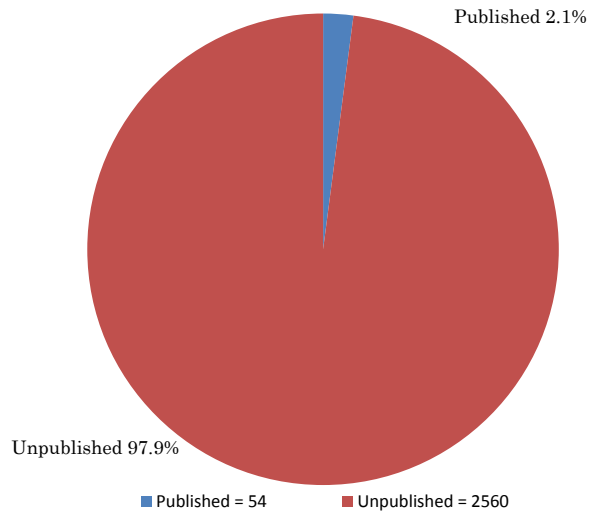
Year	I and II (No Argument)		III (Limited Argument)		IV (Full Argument)		Total	
	No.	%	No.	%	No.	%	No.	%
2008	2681	75.6	863	24.3	4	0.1	3548	100
2009	2124	72.4	808	27.5	2	0.1	2934	100
2010	2215	73.9	781	26.0	3	0.1	2999	100
2011	2183	71.0	890	28.9	3	0.1	3076	100
2012	2055	71.2	823	28.5	8	0.3	2886	100
2013	2057	72.0	795	27.8	5	0.2	2857	100
TOTAL	13,315	72.8	4960	27.1	25	0.1	18,300	100

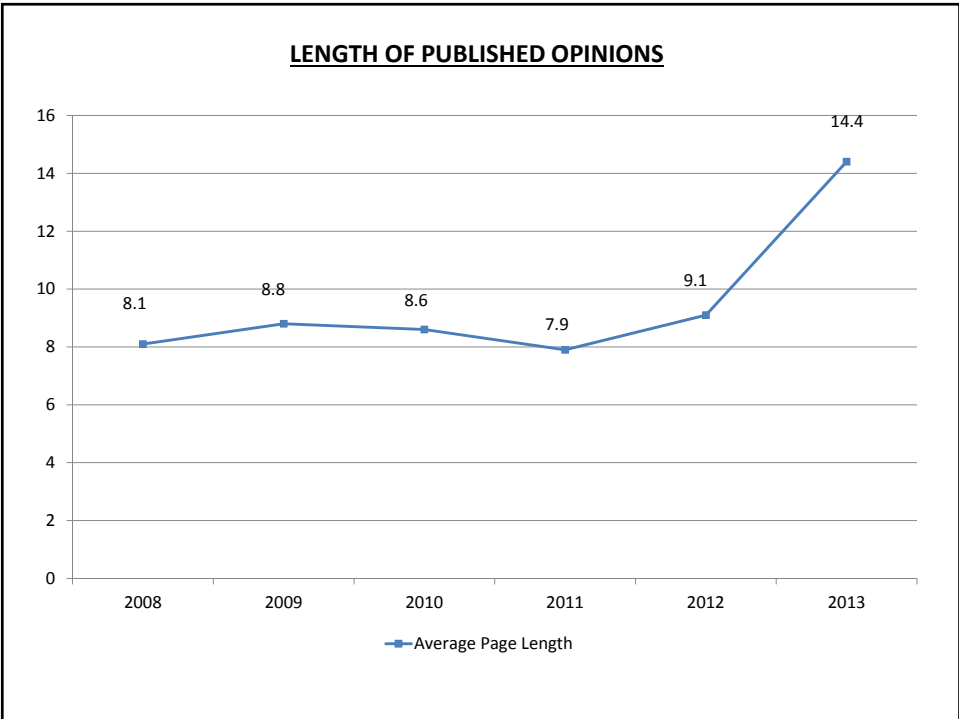
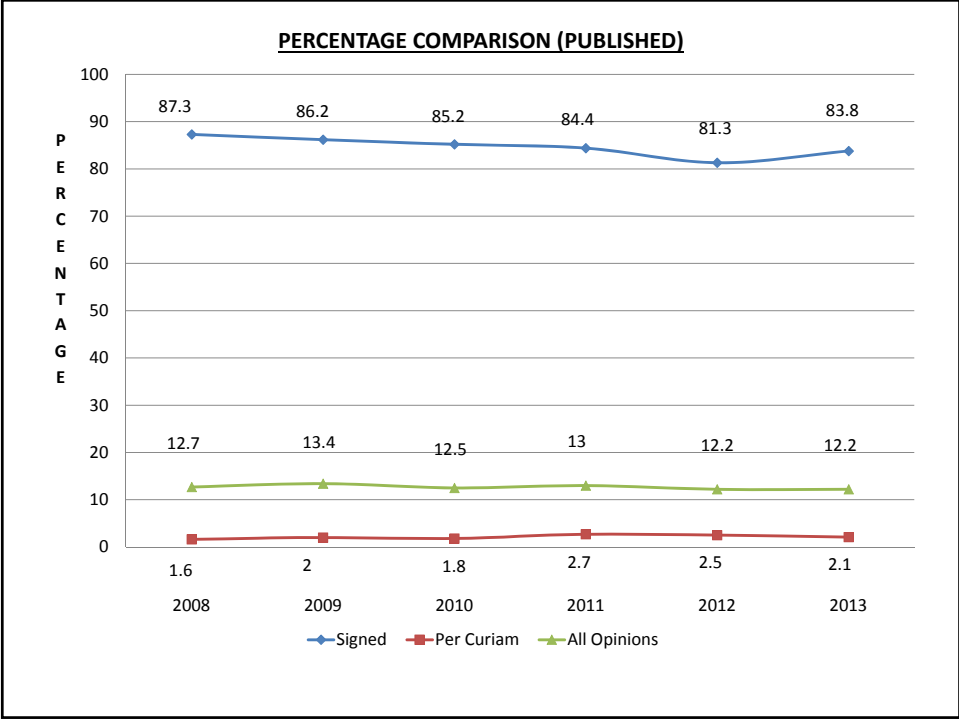
TEXAS – 2013 1,533 75.0 506 24.8 4 0.2 2,043

SIGNED OPINIONS - NUMBER AND PERCENTAGE



PER CURIAM OPINIONS – NUMBER AND PERCENTAGE





MANDATES HELD

Statistical Year	Mandates Held	Average Time Held in Days	Rehg. Den. w/ Poll
2004	32	120	3
2005	26	131	7
2006	46	103	8
2007	32	170	2
2008	30	88	4
2009	21	101	2
2010	22	112	3
2011	32	85	5
2012	43	85	6
2013	54	73	5
GRAND TOTAL	338	107	45

COURT OF APPEALS FEE SCHEDULE INCREASES

- Fee Increase (28 USC 1913):
 - The fee to file a Notice of Appeal (or Writ of Habeas) increased to **\$500** (\$505 with fee to District Court)
 - Petition for Review and Writ of Mandamus Fees also increased to **\$500**