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Fifth Circuit Statistics

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The Fifth Circuit's annual statistical report provides a variety of helpful statistics. It shows the number of cases filed, the results of the Fifth Circuit's internal screening process, and general statistics regarding case dispositions. But although these statistics are helpful, they do not provide some of the information that would be most valuable to practitioners advising clients once oral argument has been set: What are the odds that my case will be reversed? How frequently do the judges on my panel disagree with one another? Does the passage of time since argument indicate anything about the likely result? Perhaps most importantly, why does the Fifth Circuit reverse district courts?

This Paper is an attempt to answer these questions. By combining the Fifth Circuit's oral argument calendars with analysis of the published cases, conclusions can be drawn about voting patterns, decision release dates, and grounds for reversal.

This Paper is based on a review of cases orally argued in the Fifth Circuit between July 2015 and June 2016. Cases were classified according to the overall type, the result, which judges sat on the panel, the author of the opinion, whether the decision was published, and time between argument at the decision. For civil cases, the posture of the case—whether the appeal was from on motion to dismiss, interlocutory appeal, summary judgment, or post-trial—and the grounds for any reversal were noted.

I. The Road to Oral Argument

Before discussing statistics on argued cases, it is worth reviewing the process that occurs before oral argument in a case.

The Clerk of the Fifth Circuit provides an annual report on Judicial Workload Statistics. Archives of these reports for 2014 through 2016 are currently available at <http://www.ca5.uscourts.gov/about-the-court/court-statistics>. This Paper relies primarily on the Clerk's Annual Report July 2015 - June 2016, <http://www.ca5.uscourts.gov/docs/default-source/default-document-library/annual-report-july-2015-to-june-2016.pdf?sfvrsn=4> ("Clerk's Report").¹ These statistics are best understood in light of the Fifth Circuit's Internal Operating Procedures, <http://www.ca5.uscourts.gov/docs/default-source/forms-and-documents---clerks-office/rules/5thcir-iop> ("IOP"), and the Practitioner's Guide to the U.S. Court of Appeals for the Fifth Circuit, <http://www.ca5.uscourts.gov/docs/default-source/forms-and-documents---clerks-office/documents/practitionersguide.pdf> ("Practitioner's Guide").

The statistics indicate that approximately 7,600 new appeals are filed in the Fifth Circuit each year. Clerk's Report at vi. The year beginning in June 2015 appears to have been an outlier, with 8,675 new appeals being filed. *Id.* The number

¹ This time period was chosen to ensure that all cases would have been decided.

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