



Fifth Circuit
Court of Appeal
State of Louisiana
Pro Se Manual

A guide for the filing
of pleadings
before the appeals court

Prepared by the Fifth Circuit Court of Appeal
on April 11, 2016

SUMMARY

Please remember that the information contained in this guide is a summary of the methods by which an individual unrepresented by counsel may apply to the Fifth Circuit Court of Appeal for relief that may be allowed by law. This guide is not a substitute for legal counsel; again we reiterate that navigating the appellate process may be difficult without legal counsel. Please remember to consult with the Louisiana Civil Code, the Louisiana Code of Civil Procedure, the Louisiana Criminal Code, the Louisiana Code of Criminal Procedure, the Louisiana Children's Code, the Uniform Rules of the Courts of Appeal and the Local Rules of the Courts of Appeal in the jurisdiction in which you will be filing for the statutory requirements for which you will be deemed to have knowledge, if you choose to undertake your own representation in an appellate matter.

MOTIONS

Motions filed in the Court of Appeal must be typewritten or legibly handwritten and must clearly state the basis for the motion and the relief sought. A legible copy of the motion must be sent to other parties and counsel of record and the motion must contain a certificate showing the method and date of service. All motions filed in the Court of Appeal must contain a proposed order. There is also a filing fee for most motions.

FEES

Although the costs of an appeal are collected by the lower court, fees for the filing of writ applications and motions will be collected by the Clerk's Office for the Court of Appeal. A listing of fees can be found on the Fifth Circuit's website, www.fifthcircuit.org, and may be paid by cash, check, or money order.

FILINGS

All filings other than filings transmitted electronically shall be the original and three copies. *Rule 2 – Local Rules of the Fifth Circuit.*

Fifth Circuit Court of Appeal

This guide is intended primarily to assist non-attorneys with the basic procedural steps that should be followed when filing any pleadings with the Louisiana Fifth Circuit Court of Appeal. The information contained herein is not intended to replace the Uniform Rules of the Courts of Appeal, or the Local Rules of the Fifth Circuit. This guide is specifically intended for use when filing with the Fifth Circuit; other circuit courts of appeal throughout the state may have different rules, and you are urged to contact that jurisdiction for their specific filing information.

This guide reflects the filing requirements for pleadings before the Fifth Circuit as of January 1, 2015. The uniform rules and the local rules are always subject to change. Any unrepresented party is hereby placed on notice that consultation with the most current uniform and local rules should take place before pleadings are filed. You may obtain current information on the uniform or local rules for the Fifth Circuit by accessing our website at fifthcircuit.org, and clicking the **About Us** section of the pull down menu at the top.

If you choose to call our Clerk of Court Office, please be advised that they may or may not be able to assist you depending on the nature of your question. **Employees of the Court are not permitted to give legal advice or make specific recommendations to you on how you should proceed regarding filings that pertain to an appeal or a writ application.** While the Court is cognizant that it can be difficult for an unrepresented individual to navigate the process on their own, we cannot deviate from this restriction, and would suggest that if you find the process too complex, that

Glossary of Terms

Appeal. A review by this Court of a final decision from the court below to determine whether any legal or factual mistakes occurred, and, if so, whether the party who has filed the appeal is entitled to have the decision of the court below reversed or modified.

Appellant. The party who appeals from the lower court's final decision.

Appellee. The party against whom an appeal is taken, and who may respond to the appeal.

Brief. A written statement that explains the facts of the case, assignments of errors by the lower court, and legal arguments of a party to an appeal.

Interlocutory order. An order issued by the lower court that addresses preliminary or intermediate matters that may be rendered before the lower court's final decision.

Jurisdiction. Authority of a Court to hear a matter or case.

- ◇ **Appellate jurisdiction** refers to this Court's authority to review and revise the lower court's final decision.
- ◇ **Supervisory jurisdiction** refers to this Court's authority to hear and decide an interlocutory matter prior to the lower court's final decision.
- ◇ **Original jurisdiction** refers to this Court's authority to make an initial determination of a matter.

Motion. A written pleading requesting the court to issue specific relief on a procedural matter.

- j. A copy of each pleading in which the judgment, order or ruling is based, including the petition(s) in civil cases and the indictment or the bill of information in criminal cases. A copy of the pertinent court minutes (if available).
- k. A copy of the judgment or ruling complained of.
- l. A copy of the judge's reasons for ruling (if written).
- m. A copy of Notice of Intent to seek writs filed in the trial court, and the order setting a return date, and any requests for extensions of the return date.
- n. In a criminal case, the application should also include a complete record of all evidence upon which the judgment is based (such as the transcript of the hearing or trial at issue in the writ application) or an affidavit setting forth that the defendant intelligently waives the right to cause all or any portion of the record to accompany the application.
- o. Please consult the local rules of the Court of Appeal for a current schedule of fees that may be charged for the filing of writs and motions in civil cases.

Is there a right to a rehearing once the Court acts on my writ application?

If the writ application is granted, the losing party can seek a rehearing from the Court of Appeal. However, **there is no right to a rehearing from a writ denial.** If the writ application or the rehearing is denied, you have the right to file a writ of certiorari to the Louisiana Supreme Court within thirty (30) days. Their address is as follows:

Supreme Court
State of Louisiana
400 Royal Street, Suite 4200
New Orleans, LA 70130-2104

What should my application include?

A complete listing of necessary contents is contained in *Uniform Rules - Courts of Appeal, Rule 4-5*, which can be found on our website at fifthcircuit.org, and clicking the **About Us** section of the pull down menu at the top.

- a. The original writ application shall contain the parish name of the trial court, all trial court docket numbers that are applicable, and be signed by the party filing the writ application.
- b. The filing party shall certify the correctness of the allegations of the writ application.
- c. The filing party shall certify by affidavit that a copy of the writ application has been delivered or mailed to the trial judge and to all opposing counsel. The affidavit shall list all parties, and all counsel indicating the parties that each represents.
- d. The original and three copies of the writ application shall have the pages of the writ application and attached documents and exhibits consecutively numbered. Writ applications and/or attached documents and exhibits shall not include tabs or acco fasteners.
- e. An index of all items contained in the writ application.
- f. A concise statement of the grounds upon which the jurisdiction of the Court is invoked.
- g. A statement of the facts concerning the case.
- h. The issues and questions of law presented for determination by the Court. The Court's decision will be based solely on the issues and questions of law contained in the writ application.
- i. Assignments or specifications of error and a memorandum in support of the application.

GLOSSARY continued...

Notice of Intent. The party intending to apply to this Court for a writ shall give notice to the judge whose ruling is at issue and request that the judge set a return date for the filing of the writ in this Court. The notice must also be sent to opposing parties or counsel.

Pro se. A person who does not retain a lawyer and appears on their own behalf before the Court. ***Pro se* litigants are held to the same standards when undertaking to represent themselves as are attorneys, and must be familiar with the rules and procedure of the Court in order to have their matters properly considered.**

Writ. Although there are several different types of writs, they fall into two general categories. *Original writs* that are presented to this Court for initial decision may be issued to prohibit a trial court from exceeding its jurisdiction or to compel a trial court to perform a mandatory duty. The *supervisory writ*, which is usually filed to request review of an intermediate decision of the lower court, if timely filed, may be reviewed by this Court to correct or modify a lower court's ruling on an interlocutory decision. This type of writ can be decided in the sole discretion of the Court.

What is the Louisiana Fifth Circuit Court of Appeal?

The Louisiana Fifth Circuit Court of Appeal consists of eight Judges, and the Court sits in panels of three Judges to decide most appeals and writ applications. The jurisdiction of the Court includes the parishes of Jefferson, St. Charles, St. John the Baptist, and St. James.

An appeal is not a new trial. The parties before the Court of Appeal will not be permitted to conduct discovery, call witnesses, or offer any evidence that was not presented first to the court below. The Court decides appeals strictly on the basis of the record from the trial court and the written briefs that are filed by the parties. On appeal the parties may request oral argument in accordance with the local rules.

The Fifth Circuit has appellate jurisdiction and supervisory jurisdiction over the lower courts within its circuit. A party has the right to an appeal from a final appealable judgment or an interlocutory judgment when expressly provided by law. A party has the right in a timely manner to seek supervisory relief from an interlocutory ruling of the lower court. A writ application is not a substitute for a timely filed appeal.

SUPERVISORY WRITS

Where do I file my supervisory writ application?

A supervisory writ application must be filed with the Clerk of the Court of Appeal. The original and three copies should be delivered or mailed to the Louisiana Fifth Circuit Court of Appeal, P.O. Box 489, Gretna, LA 70054.

When do I file my writ application?

A party wishing to file a writ application shall have the trial court fix a reasonable time within which to file the application with this Court. In criminal cases, the time for filing shall not exceed thirty (30) days from the date the ruling of the trial court was rendered. In civil cases, the return date shall not exceed 30 days from the mailing of Notice of Judgment. However, the trial court or this Court may extend the time for filing an application. You must file a motion for an extension of the return date prior to the date that the initial date expires.

How do I file an appellee's brief with the Court?

The appellee's brief is the opponent's opportunity to tell the Court why the decision of the court below was the correct decision, and should be affirmed. It should include all the same sections discussed above for the appellant's brief; however, instead of raising issues for review the appellee is replying to issues raised by the appellant.

When will the Court of Appeal decide my case?

After the briefs have been filed, you will receive notification that your case has been set on the Court's docket. No evidence or testimony will be taken at this time; however, you will be permitted to present a brief oral argument to the Court if it was requested in time. Generally a decision by the Court will be reached within one to three months following the submission to the panel of your case after the date for oral argument. However, some cases may take longer.

What can I do if I lose my appeal?

If the Court affirms the judgment of the lower court, you may file a motion for rehearing within 14 days of the date the decision was rendered. If you do not choose to file a rehearing, or if a rehearing is denied, then you have thirty (30) days in which to seek writs of certiorari to the Louisiana Supreme Court. The Louisiana Supreme Court's address is:

Supreme Court
State of Louisiana
400 Royal Street, Suite 4200
New Orleans, LA 70130-2104

Where is the Louisiana Fifth Circuit Court of Appeal located?

The Louisiana Fifth Circuit Court of Appeal is located at:

**101 Derbigny
Gretna, LA 70053**

The Court's regular business hours for accepting filings are Monday through Friday, 8:30 a.m. to 4:30 p.m.

If you have a question about a filing, you should direct your letter or telephone calls to the Clerk's Office in Gretna, Louisiana:

**Clerk of Court
Louisiana Fifth Circuit Court of Appeal
P.O. Box 489
Gretna, LA 70054
(504) 376-1400**

**NO PARTY IS ALLOWED TO CONTACT A
JUDGE DIRECTLY REGARDING ANY
CASE.**

What matters may be appealed to the Louisiana Fifth Circuit?

In civil cases the Court has appellate jurisdiction from final appealable rulings issued by any trial judge or a worker's compensation judge. A ruling is final if it resolves all the issues including the issue of attorney's fees. A partial final judgment may also be appealed if the trial court has designated it as final and appealable. A party may sometimes appeal from an interlocutory ruling. Appeals from interlocutory rulings are limited to specific instances, and generally a party would seek supervisory relief from an interlocutory ruling by way of a writ application.

In a criminal case, a defendant may appeal to this Court from a conviction and imposition of sentence in a case triable by jury, except where the death penalty has been imposed. The state has the right to appeal in limited circumstances. The review of a misdemeanor conviction is generally by supervisory writ.

What rulings may be reviewed by supervisory writ applications?

Interlocutory rulings may be reviewed by this Court on a supervisory writ application. A decision may be interlocutory if it decides a preliminary matter before the final ruling on all of the issues or claims before the Court.

The appellant's brief.

An appellant's brief is the written document that explains why you are appealing, and what you think is wrong with the decision of the court below. The Court may be somewhat flexible about the contents of your brief if you are *pro se*, however, it is still necessary to present your brief in an organized fashion. The Court will be better able to understand the issues you raise on appeal if you divide your brief into the following sections:

- ◇ A table of citations, which alphabetically lists all legal authorities cited in your brief.
- ◇ A concise statement of the case, which describes the nature of the lower court proceedings to be reviewed. This section should include facts that were presented to the court below that are supported by testimony or exhibits in the record.
- ◇ The issues or assignments of error presented for determination by the appeal court. This is a summary of your arguments that states in numbered sentences the issues you wish to raise in the appeal.
- ◇ A section in which you argue why the issues that form the basis of your appeal should be reviewed by this Court. This part of the brief should divide each of your issues into a separate subsection, and will provide the reasons, facts from the trial court record, and law supporting why you think the trial court erred in its decision.
- ◇ A conclusion, which briefly tells the Court what remedy you are seeking.
- ◇ A copy of the decision of the trial court that is being appealed must be attached to your brief. The judgment and reasons for judgment are not included in the page count.

These are some basic guidelines relating to your brief:

- ◇ If typed, all briefs must be typed in 14 point font or larger. Briefs on 8 ½” by 14” paper shall not exceed 31 pages and briefs on 8 ½” by 11” paper shall not exceed 41 pages. Briefs may be handwritten, but **illegible briefs will not be accepted**. A handwritten brief must comply with the same page limitations as a typed brief. You must file a motion to exceed page limitation with this Court, if you wish to file a brief in excess of the page limit. A motion to exceed the page limit will be granted by this Court only if you have a good reason.
- ◇ You **must** file your brief on or before the deadline that is set forth in the Notice of Lodging that you receive from this Court’s Clerk’s Office. If you fail to timely file a brief, you will automatically waive your right to oral argument, and lose your right to file a reply brief. Unexcused delay may also result in the appeal being deemed abandoned or dismissed.
- ◇ Whether your brief is typed or handwritten, it must be clearly legible, each page consecutively numbered, and exhibits (if any) clearly marked. Any exhibits attached to the brief must be included in the total page count, with the exception of the judgment, which must be attached to the appellant’s brief.
- ◇ Your brief must contain a certificate of mailing listing all parties and their counsel. The list must indicate when and by what means service of the brief was accomplished. Legible copies of briefs must be delivered or mailed by the party filing the brief to all other parties’ counsel of record, or to the party individually, if unrepresented. Only in a criminal appeal must a copy of the brief be delivered or mailed to the judge who presided over the trial.

Do you need a lawyer?

Individuals may appear before any court without a lawyer. Although an individual is not required to have a lawyer, most people find navigating the appellate process difficult without the assistance of counsel. If you pursue your appeal without the assistance of a lawyer, you are still required to comply with the rules of the Court. You may find it helpful to refer to several legal resources in drafting pleadings. These resources include, but are not limited to, the Uniform Rules - Courts of Appeal, the Local Rules of this Appellate Court, the Louisiana Civil Code, Louisiana Codes of Civil and Criminal Procedure, Louisiana Revised Statutes, and West’s Louisiana Cases.

Many legal resources and materials may be accessed by the public at The Law Library of Louisiana located in the Louisiana Supreme Court building at 400 Royal Street, Second Floor, New Orleans, LA 70130. You may contact a state law librarian at 504-310-2400 or library@lasc.org. As another resource for legal materials, you may contact Loyola Law School at 504-861-5792 or Tulane Law School at 504-865-5952.

Free legal aid is provided on a limited basis by Southeast Louisiana Legal Services. You may contact them at www.slls.org or at 504-529-1000.

APPEALS

Where do I file my request for an appeal?

The person wishing to appeal a final judgment (the appellant) from the trial court must file his timely motion and order for appeal with the lower court that rendered the ruling. It is important for the appellant to be aware of the time delay in the lower court for filing his request for an appeal. Once the trial court grants your order of appeal, the Clerk's Office in the lower court will prepare the record and send it to the Court of Appeal. When an appellate record is lodged with the Court, our office will send you a Notice of Lodging of the appeal record. The Notice of Lodging will state the time to file your brief, and the time period to request oral argument. Please insure that the Clerk has accurate contact information as you will receive other notices from this Court as your appeal progresses.

What is the appellate record?

The record is a compilation of all the original papers and exhibits in your case filed with the court below. The record is transmitted automatically by the court below to this Court after the motion and order for appeal is signed, and all required costs are paid to the trial court by the person who is requesting the appeal. **Do not ignore this request for payment or your appeal may be subject to dismissal.**

The record will include the transcript of the trial or other hearings held in the lower court, assuming all applicable costs have been paid to the clerk of the trial court. It will also include the petition and other pleadings, pretrial orders, motions, any written orders, opinions or judgments of the court below, among other things. It includes all documents and exhibits admitted into evidence by the court below during a hearing or trial. Material that may be obtained after the ruling of the trial court, or that was

not presented to the trial court and admitted into evidence during a hearing or trial, will not be considered part of the record. It is your responsibility to make sure that the lodged record contains all of the relevant material that is necessary to decide your appeal. You should review the record after it is lodged with this Court to insure that there are no other properly filed or admitted documents, pleadings, or exhibits missing.

A party not represented by counsel is not permitted to withdraw a record from the Clerk's Office, but may review the record and any exhibits at reasonable times in the Clerk's Office. The party may also obtain copies of items in the record by paying a nominal copy fee.

How do I file an appellate brief with the Louisiana Fifth Circuit?

Uniform Rules - Courts of Appeal, Rules 2-12.2 to 2-12.4, and 2-12.7 explain the form, contents, and time for filing briefs on appeal. The Court will strictly enforce these rules regardless of whether a brief is filed by a lawyer on behalf of a party or a pro se litigant. *Rule 2-12.1- Uniform Rules Courts of Appeal.* Additionally, you will be required to pay a fee for a late filed brief, if you have failed to properly move for an extension. *Rule 4 – Local Rules of the Fifth Circuit.*