



The Art of Appellate Advocacy

A View from the Ninth Circuit
Bench

Program Overview

Operational Updates

Caseload Statistics

Appeals Process and Motions

Appellate Briefing

Oral Argument

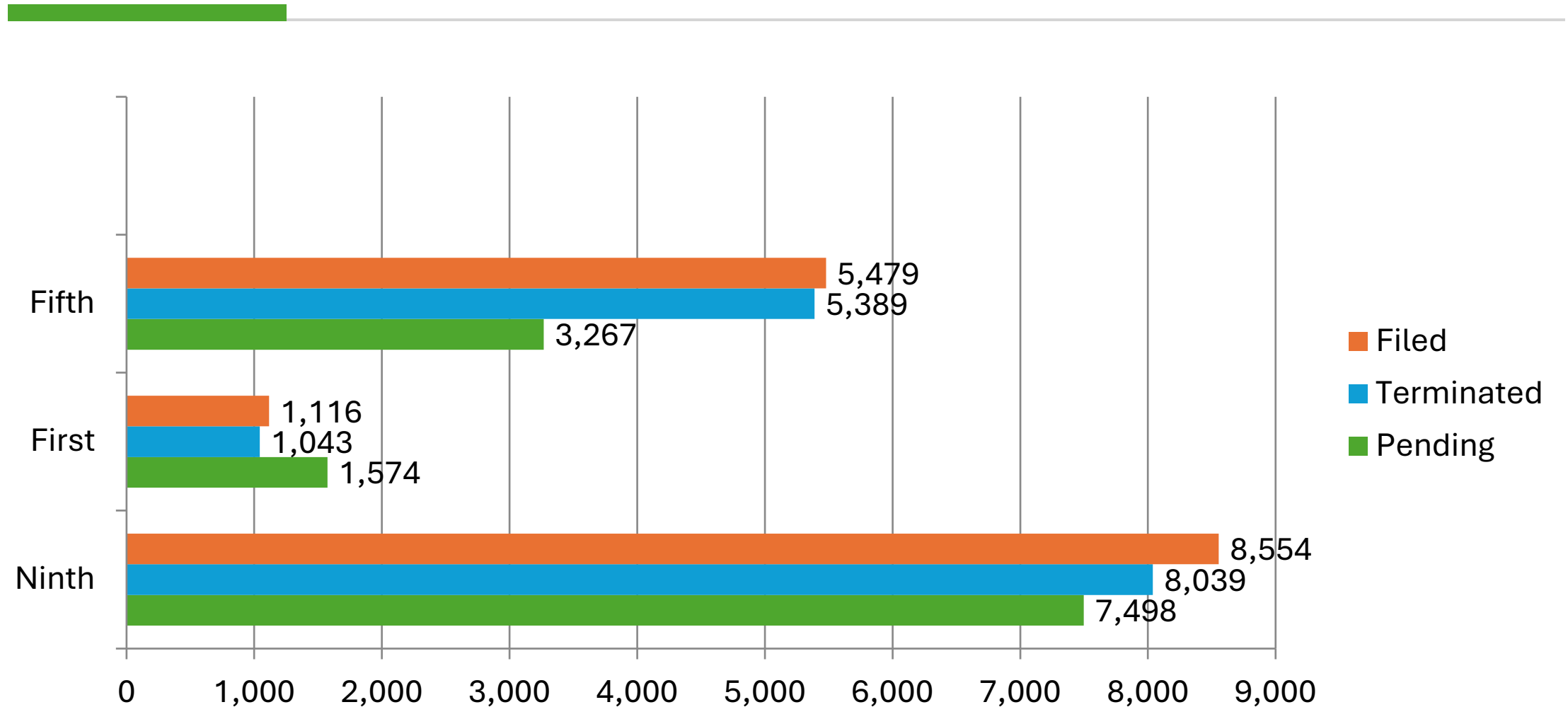
Rules and Resources

COURT OPERATIONS UPDATES

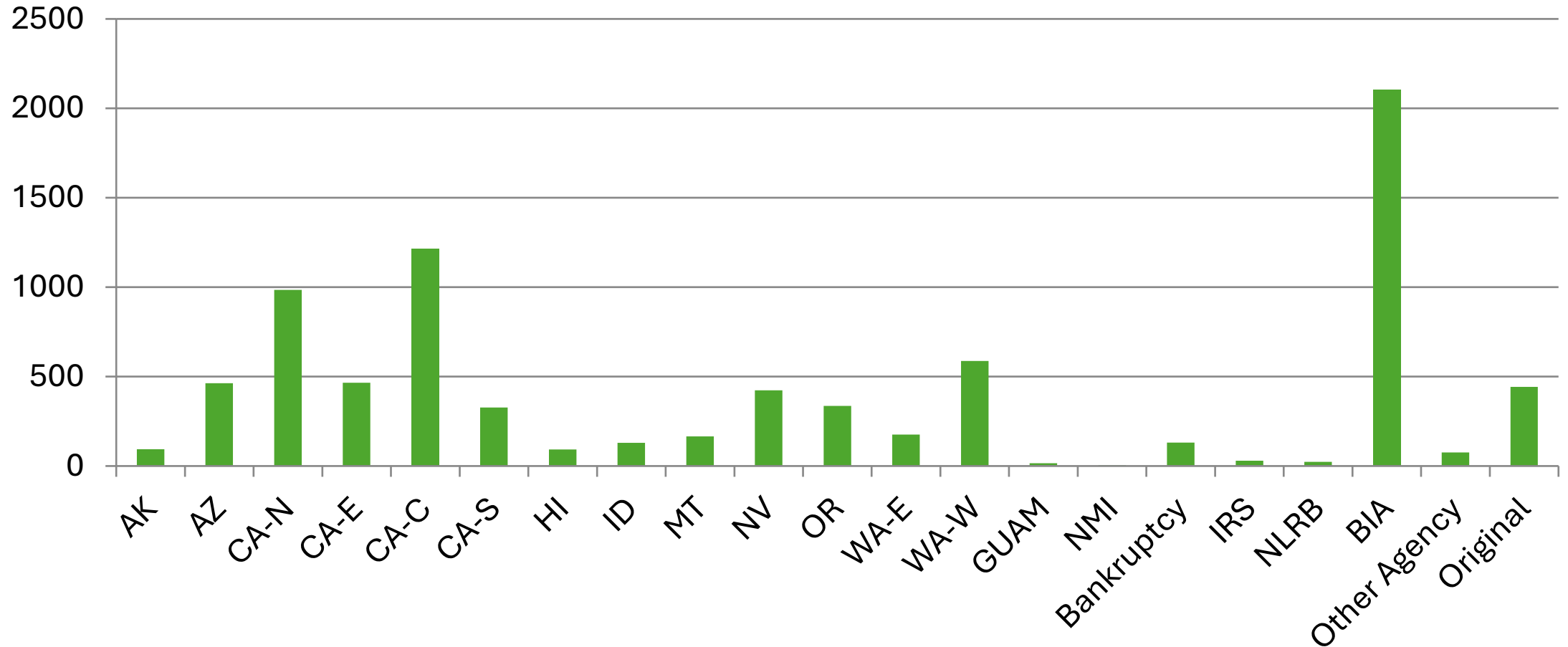
- Case filings nationally have decreased significantly over the last few years, exacerbated by the pandemic, but are on the rise again.
- Our case processing has been unaffected, resulting in a significantly reduced backlog (down 20% from 2020 to 2023). This has resulted in more expeditious resolution of appeals and the tightening of extensions and delays.
- We have been opening all new cases in our new case management system (ACMS) since October 2023. Cases previously opened in CM/ECF remain in that legacy system.
- We have resumed providing CLE programs and holding special sittings in locations throughout the circuit.
- Since January 2024, all attorneys and unrepresented litigants are expected to appear in person for oral argument. If that would pose a hardship, they must file a motion.

Caseload

12 Months Ending March 31, 2025



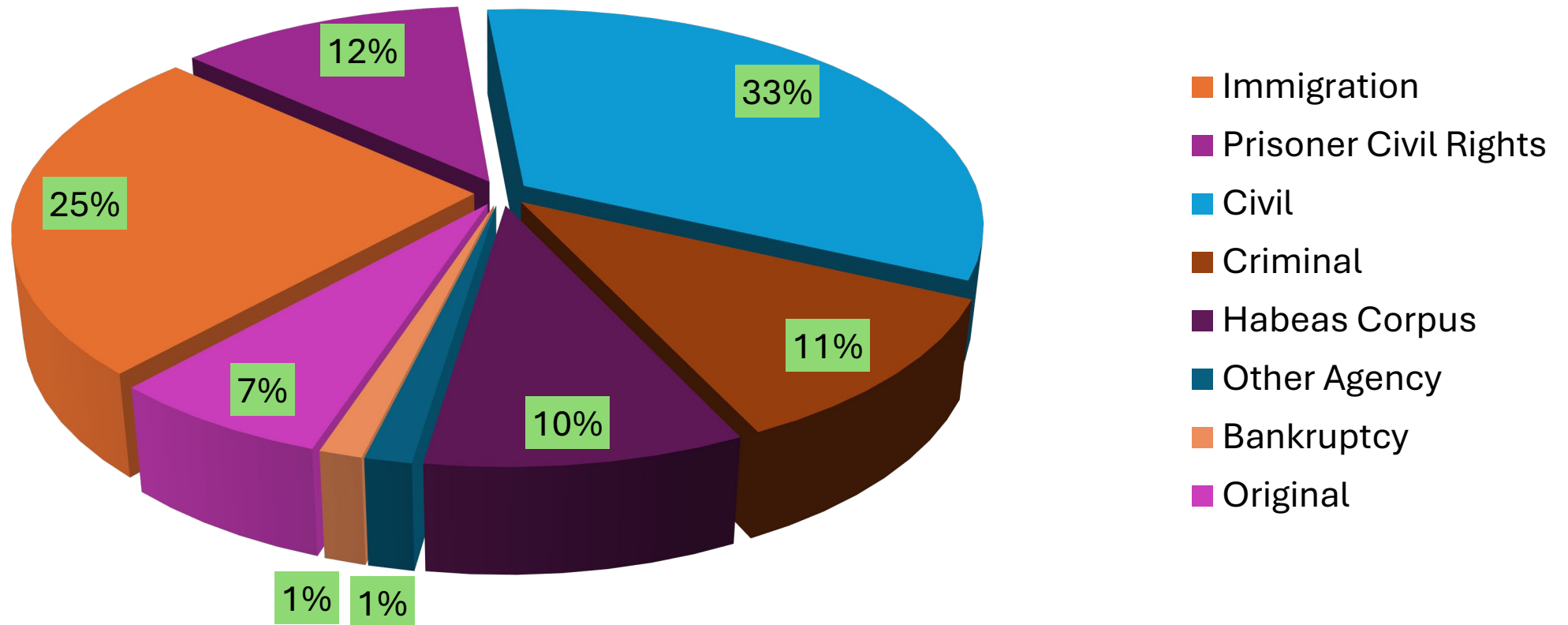
Where Do our Appeals Come From?



12 Months Ending March 31, 2025

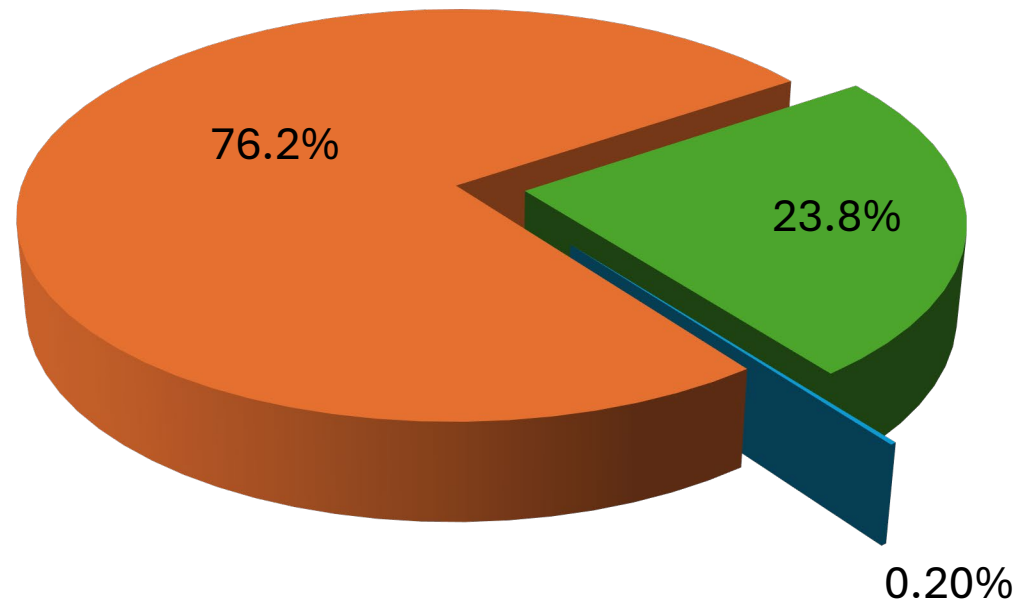
Case Types

12 Months Ending March 2025



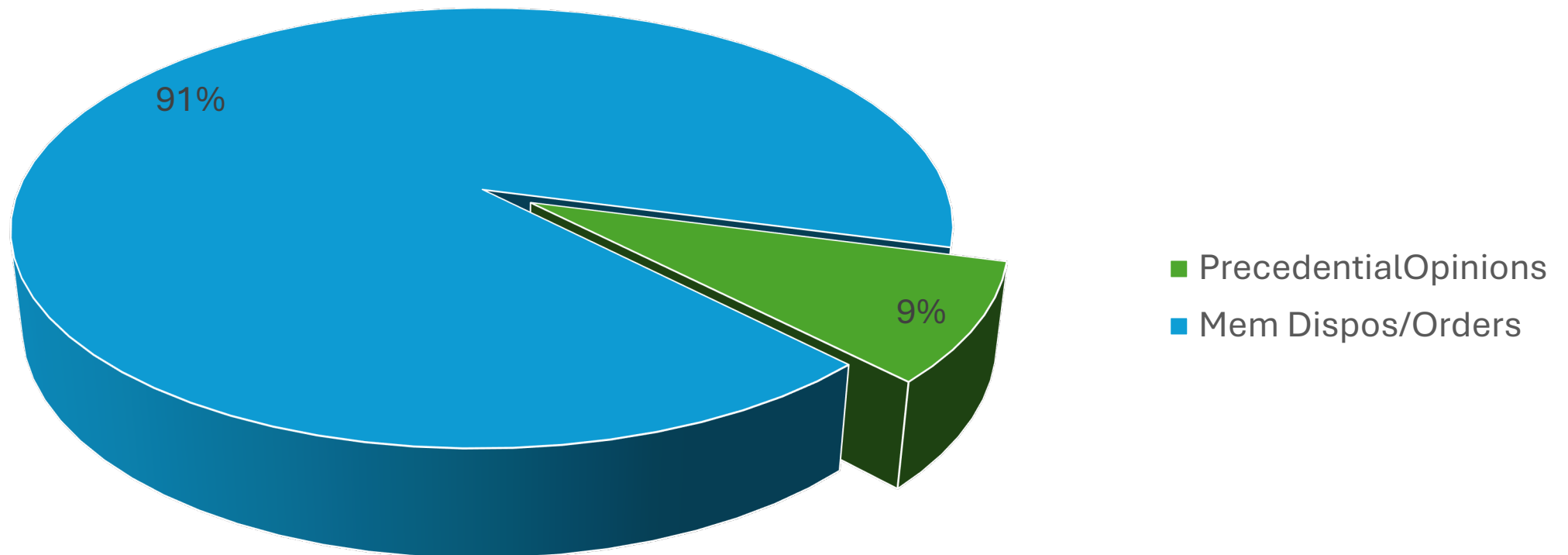
Merit Terminations

■ Argument ■ En Banc ■ Submission



12 Month Period Ending March 31, 2025

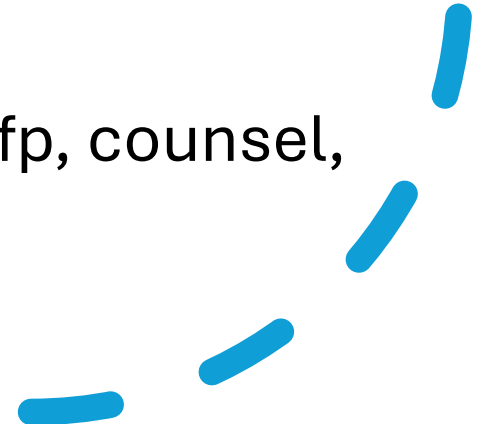
Types of Merits Decisions



12 Month Period Ending March 31, 2025

Processing Appeals: Initial Review and Motions

- All new appeals and petitions are referred to staff attorneys' office
- Civil Counseled Appeals also go to Mediation
- Jurisdictional review
- Case management issues – filing fees, counsel status
- Certificates of Appealability
- Original proceedings (mandamus, SOS)
- Permissive Appeals
- Orders to show cause
- Initial motions (stay of removal, ifp, counsel, bail)



Appellate Briefing

- Required contents: FRAP 28
- Working with excerpts of record
- Tips:
 - Brevity
 - The law-of-the-circuit rule
 - Dealing with forfeiture/waiver
 - Alternate grounds for affirmance

Briefing in the Ninth Circuit

- Heed FRAP 28 requirements for contents of briefs
- Pay careful attention to jurisdictional statement and standard of review
- To intro or not to intro?



Briefing in the Ninth Circuit

- Support every factual statement with excerpts of record cite
- Master Ninth Circuit Rule 30-1 on excerpts of record and follow it in assembling your ER
- Understand the Ninth Circuit's law of the circuit rule and its exceptions




Briefing in the Ninth Circuit

- If you represent appellant, understand waiver/forfeiture rules and their exceptions
- If you represent appellee, consider alternative grounds for affirmance
- Strive for brevity. Edit and re-edit to eliminate duplication.





Oral Argument and Submission

- Case management and inventory process
 - Screening vs Argument Track
 - Oral and written screening process
 - Calendaring process and timing
- 



Oral Argument in the Ninth Circuit

- Purpose of oral argument
- Oral argument as a conversation
- Never interrupt or talk over a judge
- Do not read your argument. Prepare module answers to likely questions. Be nimble in moving between them.



Oral Argument in the Ninth Circuit

- Master the record and briefs beforehand
- Prepare with a moot
- Watch for new authority and alert the panel with a FRAP 28(j) letter
- During argument: listen to questions and identify the judges' concerns



Questions?



Rules and Resources

Recent/Pending Rule Changes

- Archived rule changes (and pending when any) in redline version and administrative orders are available at http://www.ca9.uscourts.gov/content/view.php?pk_id=0000000682
- ACMS now in use for all new cases opened as of October 1, 2023. Find information and training videos [here](#)
- Recent Rule Changes– Visual Images in Briefs (2022), Counsel in Criminal/Habeas Appeals (2023), Bail pending appeal (June 2024), Petitions for Rehearing, Deadlines, Electronic Filing, Corporate Disclosure (Dec 2024)
- New and Revised Forms, Instructions, Case information packets

Rules and Resources

Ninth Circuit Website

- Appellate Practice Guide, Shell Brief, Sample Excerpts
<http://cdn.ca9.uscourts.gov/datastore/uploads/guides/AppellatePracticeGuide.pdf>
- Other guides and legal outlines
- Court sponsored CLE program materials and video
https://www.ca9.uscourts.gov/content/view.php?pk_id=0000000887
- Mentor Program
http://cdn.ca9.uscourts.gov/datastore/general/2013/03/22/ninth_circuit_applt_lawyer_rep_mentoring_project.pdf
- CM/ECF and ACMS issues/problems – efilerhelp@ca9.uscourts.gov
- Feel free to call or email me if you are not sure who to ask



Filing Tips and Common Errors

- Filing original proceedings and petitions for review electronically
- Filing briefs and motions – use correct events in each system
- Filing types that don't need forms or other attachments
- Document descriptions of briefs and excerpts and related documents
- Filing sealed documents – service and timing and basis
- Updating Pacer account and email
- Physical and documentary trial exhibits – submit by separate motion if not PDF
- CM/ECF Help Guide is very useful and informative, how-to videos
- ACMS Help, videos, and Instructions now available