



United States Court of Appeals  
Washington D.C. 20543

June 11, 2019

Re: Writs of Review and Procedure Regarding Them

MEMORANDUM TO THE COURT

Through recent case proceedings it has been made clear that the Judges on this Third Court of Appeals have become confused on the matter regarding a Writ of Review. Calling such a matter a “confusion”, though, would be to put it in light terms. This memorandum was written after the proceedings of *Icy Antlers v. JohnnieLCuchran*, 9 F.4d \_\_\_\_ (2019) were completed, and it is highly suggested that readers review the opinions of this case.

It should be noted that the majority opinion was written before the vote on the writ for review was completed. It should also be noted that in the majority opinion, the merits of the case itself are discussed even though review was denied. This is not proper appellate procedure and is the reason for the writing of this memorandum.

Most Judges on the Court of Appeals were previously Judges on the Federal District Court. Therefore, it is excusable, to an extent, that not all Judges are familiar with appellate procedure as it is reasonably different than the procedure of the District Courts. However, one of the most fundamental parts of our procedure is in regard to the Writs for Review. Misinterpreting such a concept is highly detrimental to the integrity of our Courts.

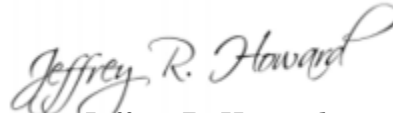
It is important for Circuit Judges to understand that when deciding whether or not to review a case, the topic of the case itself is what should be considered – not the contents thereof. The contents are what should be considered once a vote for Review has passed – hence the name “Review”. Contents should not be reviewed until the vote passes.

Deciding on whether to review a case or not boils down to a few criteria. When deciding on how to vote, the following questions should come to mind: Is the case important? Does the case involve a matter on a conflict of the law? Does the case have potential for establishing precedent for future cases? Does the case involve questions regarding previous decisions of the Courts?

The questions aforementioned are what should be asked and discussed when deciding whether to grant review or not. Before review is granted, the Court should not consider any specifics of the case such as statements of the people involved or evidence. Doing so would violate Rule 34 of the Federal Rules of Appellate Procedure which explicitly states, "Counsel intending to use physical exhibits other than documents at the argument must arrange to place them in the courtroom on the day of the argument before the court convenes".

This rule is so that evidence can be considered after review is granted and a hearing is scheduled. In the case aforementioned, *Icy Antlers v. Johnnie L. Cuchran*, evidence was considered before review had even been granted. On an opinion that should have been strictly regarding the reasons for denial, evidence was used as justification.

This Court should not have considered, discussed, or opinionated upon any evidence that was presented until review was granted and a hearing was in session.



Jeffery R. Howard

The Court  
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