



# FLIGHT-WATCH



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## **AIRMAN FILES APPEAL WITH THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CHALLENGING THE NTSB'S INTERPRETATION OF THE STALE COMPLAINT RULE**

An earlier issue of Flightwatch dealt with a recent decision by the National Transportation Safety Board (NTSB) which indicates a relaxed application of the stale complaint rule found in 49 C.F.R. § 821.33. That case was Administrator v. Ramaprakash, NTSB Order No. EA-4947 (February 7, 2002). [See Volume 118 of Flightwatch, March 2002, which



can be found at [www.alanarmstronglaw.com](http://www.alanarmstronglaw.com).] Mr. Ramaprakash argued before the Administrative Law Judge and also on appeal before the NTSB that since the FAA's notice to him of an alleged violation of FAR § 61.15(e), (f) [dealing with notifying the FAA of a driving under the influence infraction] came nearly fourteen months after his driving under the influence conviction, the FAA's complaint should have been dismissed as stale. After the NTSB affirmed the decision of Judge Pope [which refused to dismiss the FAA's charges based on the stale complaint rule] the airman petitioned the NTSB to reconsider its decision. The NTSB denied the airman's petition for reconsideration.

It is important to note that both in the NTSB's Order affirming Judge Pope's Initial Decision and also in the Order denying the Petition for Rehearing two of the five members of the NTSB dissented. Members Goglia and Hammerschmidt have declared that the six month notice requirement of the stale complaint rule is clear, simple and straightforward. Since no "good cause" for a delay of fourteen months before the airman was notified of certificate action was shown, the charges should have been dismissed.

On September 11, 2002, the airman docketed his appeal with the United States Court of Appeals for the District of Columbia in Case No. 02-1283. The docketing statement filed by Mr. Ramaprakash also makes reference to a similar case presently pending before the NTSB in the form of Administrator v. Shrader, NTSB Docket No. SE-15472. The filing of the docketing statement with the United States Court of Appeals for the District of Columbia is merely an early step in the appeal process. Later, counsel for Mr. Ramaprakash will have to file a brief with legal authorities explaining why the airman believes the decision of the NTSB was erroneous. However, we do have the Petitioner's Statement of Issues to be Raised filed with the Court, and these are as follows:



(1) Whether the NTSB erred as a matter of law in affirming the FAA's suspension of the petitioner's airman's certificate?

(2) Whether the NTSB's expansion of its interpretation of 49 C.F.R. § 821.33 (the "stale complaint rule") was plainly erroneous, inconsistent with regulation, and thus, not in accordance with law?



(3) Whether the NTSB's affirmation of the suspension of Petitioner's airman's certificate was accomplished without observance of procedure required by law?

(4) Whether the NTSB's failure to dismiss the FAA's charges against Petitioner pursuant to the stale complaint rule was arbitrary, capricious, an abuse of discretion and not in accordance with law?

On November 11, 2002, the Aircraft Owners and Pilots Association ("AOPA") dispatched a notice to the United States Court of Appeals for the District of Columbia declaring its intention to participate as an *amicus curiae* (friend of the court). The airman's brief of legal authorities is due on January 7, 2003, with the FAA's brief being due on February 6, 2003.

Mr. Ramaprakash is represented by Mark T. McDermott, Esq. and Peter J. Wiernicki of Washington D.C. He was represented by the author of Flightwatch when the case was before the NTSB. The author of Flightwatch also represents Mr. Shrader before the NTSB.

Tilak S. Ramaprakash v. National Transportation Safety Board and Federal Aviation Administration, United States Court of Appeals for the District of Columbia Circuit, Case No. 02-1283.

Alan Armstrong is engaged in the general practice of law with an emphasis in the following areas:

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The aircraft pictured in this issue of Flightwatch is a SBD-5 Douglas Dauntless Dive-bomber operated by the Dixie Wing of the Commemorative Air Force. The photographs were taken at an airshow in Augusta, Georgia.