

FLORIDA
FIRST DISTRICT
COURT OF APPEAL



INTERNAL OPERATING
PROCEDURES

December 2023

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Section 1 Introduction

The Florida Rules of Appellate Procedure, the Florida Rule of General Practice and Judicial Administration Rule 2.210 and Chapter 35 of the Florida Statutes govern the operation of the First District Court of Appeal. The internal operating procedures set out herein are intended to supplement those rules and do not supplant the rules promulgated by the Supreme Court of Florida. This manual is designed to disclose the established practices in the court, to aid practitioners and others who come before the court, and to orient new personnel of the court. These internal procedures do not and are not intended to create any substantive or procedural rights. A copy of these rules will be posted on the court's website. The master copy of these rules, with all current updates, will be kept by the clerk of the court.

Section 2 General Information

2.1 Jurisdiction

The court hears appeals from final orders and certain nonfinal orders entered by all court divisions of the First, Second, Third, Eighth, and Fourteenth Judicial Circuits and from administrative orders entered by many state governmental agencies. County court decisions in certain circumstances are also subject to appellate review by this court. Additionally, this court has exclusive statewide jurisdiction to hear all appeals in workers' compensation cases, orders in insurance liquidation proceedings and other matters as provided by general law. The First District Court of Appeal also considers original proceedings governed by Florida Rule of Appellate Procedure 9.100, including petitions for certiorari, mandamus, prohibition, and habeas corpus.

The territorial jurisdiction of the court includes the following twenty-nine counties: Alachua, Baker, Bay, Bradford, Calhoun, Columbia, Dixie, Escambia, Franklin, Gadsden, Gilchrist, Gulf, Hamilton, Holmes, Jackson, Jefferson, Lafayette, Leon, Levy, Liberty, Madison, Okaloosa, Santa Rosa, Suwannee, Taylor, Union, Wakulla, Walton and Washington.

2.2 Hours of Operation

The court—located at 2000 Drayton Drive, Tallahassee, Florida 32311—is open from 8:00 a.m. until 5:00 p.m. on weekdays except for holidays. The court

closes in observance of the holidays established by the Florida Supreme Court and additional discretionary holidays so designated by the chief judge. An administrative order is issued each year setting forth the dates when the court will be closed. The administrative order is available on the court's website. Oral arguments are open to the public, subject to the sitting panel's right to close when authorized by law. A member of the public who wishes to tour the courtrooms may request an escorted tour by contacting the marshal at 850-487-1000.

2.3 After-Hours Access

Non-court-related use of the public areas of the courthouse must have a governmental or law-related educational purpose and be approved pursuant to a building use policy adopted by the court and published on the court's website.

2.4 Sittings Away from Court

The court seeks to conduct at least one oral argument session annually in each of its circuits, as caseload permits. The court welcomes requests to sit in any community within its district and attempts to coordinate with schools and civic organizations to make these special sessions useful to the community. Requests to sit in any community may be made to either the clerk or the chief judge.

2.5 Accommodations for Persons with Disabilities

The court is in compliance with the Americans with Disabilities Act (ADA) regarding facilities, services, and programs. The marshal's office can provide special accommodations to all people, including people with disabilities. Special accommodations may require up to 7 days advance notice.

2.6 Website

The court maintains a website at www.1dca.flcourts.gov. The court posts all written opinions of the court issued since August 2003. Oral argument calendars, administrative orders, information on high profile cases, employment opportunities, and a link to a live video feed of oral arguments while in progress appear on the website. The court's video web page has archived oral argument proceedings since January of 2004. The site contains profiles of the judges, clerk, and marshal. Directions to the courthouse are also on the website.

2.7 Court Property

The marshal is the custodian of court property, except court files, and inventories it annually by number. No court property shall be removed from the court premises without the consent of the chief judge or marshal, or as approved by court policy or order.

2.8 Administrative Orders

All administrative orders, as approved by the chief judge, are accessible through the clerk's page on the court's website. All original administrative orders shall be retained in the custody of the clerk.

Section 3 Court Personnel

3.1 Judges and Judicial Staff

Thirteen judges serve on the Court. Each judge has up to three personal staff. Additionally the court has a central staff of attorneys who work pursuant to policies adopted by the court under the direction of the chief judge. The staff is composed of three units. One unit screens cases for jurisdiction and makes recommendations on original petitions and motions filed with the court. The second unit of the central staff primarily prepares substantive summaries on certain criminal and collateral criminal merits cases as directed by the chief judge pursuant to policies adopted by the court. The third unit is a legislatively authorized unit that specializes in preparing summaries and recommendations in workers' compensation cases.

3.2 The Chief Judge

3.2.1 Duties and Responsibilities

The chief judge serves as the administrative officer of the court and has authority to manage the caseload and the business of the court in accordance with the provisions of rule 2.210(a)(2) of the Florida Rules of General Practice and Judicial Administration.

All matters of court policy are to be decided by the active judges on the court. The chief judge shall ensure that the various policies adopted by the judges

of the court are given full force and effect. The court may decide court policy on any issue of interest to the court including policies on the selection, retention, employment, promotion, and compensation of employees; court budget; court facilities; or any other matter not governed by the Rules of General Practice and Judicial Administration or these Internal Operating Procedures.

3.2.2 Term of Office

The term of the chief judge shall be for two years beginning on July 1 of each odd-numbered year. In the event of a vacancy, a successor shall be chosen promptly to serve the balance of the unexpired term.

3.2.3 Selection

The chief judge shall be selected by the judges of the court on the basis of managerial, administrative, and leadership abilities. Beginning in 2021, nominations for a chief judge designate shall be open on May 1 of each even numbered year and shall close ten days prior to the election which will be held in June of that year. The election shall be by majority vote and the votes shall be cast by secret ballot. Voting by absentee ballot is permitted by notifying the chief judge of the intention to vote absentee and by providing the clerk, prior to the counting of the ballots, a sealed ballot on the uniform ballot form provided by the clerk for that election. The votes will be immediately counted by the clerk, with the assistance of the marshal, and the winner will be immediately announced to the court. The winner will be the judge receiving at least 51% of the votes cast and shall be the chief judge designate until assuming office as the chief judge on July 1st of the following odd numbered year. The number of votes cast for each candidate will not be disclosed.

If no one receives a majority of votes, a run-off election will be conducted between the two judges receiving the most votes on the previous ballot. The absentee ballot will be counted in any runoff election as being cast for the same judge as in the original election if that judge is still a candidate in the runoff election. In the event that no candidate receives a majority vote of all the sitting judges in the run-off election and there are any absentee ballots being cast, then the run-off election will be postponed until such time as the judge(s) casting the absentee ballot(s) have an opportunity to participate.

3.2.4 Assigning Cases to the Chief Judge

In consideration of the administrative responsibilities connected with the office, the chief judge may assign responsibility for the chief judge's desk to any active judge on the court, whether on a rotating or ad hoc basis. In addition, the chief judge may elect up to two of the following reductions to his or her caseload by directing the clerk by written memorandum to:

1. Excuse the chief judge from a writs and motions panel for the period designated;
2. Reduce the chief judge's merits panel assignments as primary judge by up to two cases per case assignment month for months identified. The chief judge's law clerks shall be responsible for aiding the primary judge in the resolution of the reassigned cases, unless the primary judge assigned to the matter affirmatively indicates that assistance from the chief judge's staff is not necessary;
3. Reduce or eliminate the chief judge's merits panel assignments for cases prepared by central staff, including post-conviction cases or the three cases prepared by the writs and motions staff attorneys; or,
4. Assign up to ten of the chief judge's merits panel cases to a senior or an associate judge for one or two merits panel sessions during the calendar year.

3.3 The Clerk

3.3.1 Appointment

The court shall appoint a clerk who shall hold office at the pleasure of the court and perform such duties as the court directs. Florida Rule of General Practice and Judicial Administration 2.210(b) and section 35.22, Florida Statutes, provide details concerning the appointment and general duties of the clerk. The clerk's office shall be at the headquarters of the court. The clerk shall devote full time to the duties of the office and shall not engage in the practice of law or any other business while occupying the office of clerk.

3.3.2 Court Files and Records

The clerk of the court shall keep an official docket for each case invoking the court's jurisdiction and shall retain the docket and filings as required by rule 2.430. In accordance with the requirements of rule 2.210(b)(2), the official files shall remain in the custody of the clerk. Physical exhibits that are part of a case file may not be removed from the courthouse. But to facilitate the review of cases by remote access, the clerk or a judge may authorize court personnel to upload video clips and other suitable exhibits to a secure file.

The clerk also shall retain correspondence related to cases. Letters and other documents submitted to the court or any of the judges or their staff from an organization or person outside the court that relate to a case shall be retained in the correspondence file in accordance with rule 2.430 and shall be available for inspection by the public except those exempted by statute, rule or court order.

3.3.3 Internal Operating Procedures

The clerk maintains a copy of the Internal Operating Procedures Manual as a court record. This record is available in the clerk's office for inspection by any interested person during business hours, or on the court's website at any time. The clerk reviews these procedures annually to ensure their accuracy and informs the court when there is a need to change these procedures to conform to any policy or practice.

3.3.4 Orders

The clerk shall issue unpublished orders of the Court under his or her signature unless otherwise directed by the judge or judges who approved the order.

3.4 The Marshal

The marshal holds office at the pleasure of the court and shall perform the duties and responsibilities identified in rule 2.210(c) of the Florida Rules of General Practice and Judicial Administration and section 35.26, Florida Statutes, and other duties of the office as the court may direct.

Section 4 General Policies and Procedures

4.1 Recusal and Disqualification of Judges

In order to facilitate the assignment of cases, the clerk maintains a list for each active judge of persons or entities who are likely to appear before the court and whose involvement in a proceeding will require the judge's recusal. Each judge is responsible for keeping the clerk informed as additions to or deletions from this recusal list come to the judge's attention.

The court recognizes that the clerk's recusal list will not identify all cases involving conflicts. Parties may submit for information, on the docketing statement, a list of judges of this court who they believe should not be assigned to the case for conflict reasons. However, this listing on the docketing statement does not supplant the need to file an appropriate separate motion if a party seeks to disqualify a judge.

If a judge identifies a conflict necessitating recusal from a case on which the judge has been assigned, the judge shall notify the clerk, who will designate a substitute judge based upon a rotation system. If the judge identifying the conflict is the primary judge on the case, the judge's staff will usually remain involved to assist the substitute judge to the extent possible or necessary.

4.2 Disclosure of Assigned Judge

No court personnel shall divulge to any person other than the judges of the court and other personnel of the court the identity of the judge or panel to which a case is assigned; nor the identity of the judge or panel in which a file is at any time reposed; nor the identity of the judge or panel in which any pending motion, petition, case or other matter which has not been scheduled to be orally argued is reposed or being considered; nor shall court personnel divulge the identity of the author of any signed opinions prior to the public release of the opinion; nor ever release the identity of the writer of an unsigned opinion.

The identity of the panel scheduled to hear oral argument in a case may be posted or otherwise revealed once the schedule for argument is posted or published on the court's website.

4.3 Administrative Court Conferences

Court conferences to consider administrative matters and the adoption of policies are scheduled by the chief judge as needed. Additional conferences for special matters are called by the chief judge or upon request of four or more judges. The presence of a majority of judges of the court constitutes a quorum.

Whenever possible, the court attempts to act upon a consensus vote of the judges, but a majority vote of those present constitutes official action of the court, except as provided in section 4.4. The clerk serves as the secretary to the conference and is responsible for preparing the minutes. The marshal and the director of central staff also attend the conference. Other court personnel attend as necessary and upon the invitation of the chief judge.

Fourteen (14) calendar days prior to court conference, the chief judge shall email a reminder to each judge of the court, the clerk, the marshal, and the director of central staff regarding the date and time of the court conference. The email shall also request submissions for the court conference agenda. The court conference agenda, with any appropriate attachments, shall be distributed to the court by the chief judge seven (7) calendar days prior to court conference. Only matters appearing on the agenda shall be taken up at court conference unless a majority of those judges in attendance, upon a showing of good cause relating to the failure to timely include the matter on the court conference agenda, vote to consider other matter(s).

4.4 Revocation or Amendment of Internal Operation Procedures

An affirmative vote of a majority of the judges of the court is necessary to revoke these internal court policies or to enact amendments to them. Proposed amendments must be circulated to the judges of the court not less than seven days prior to any meeting at which a judge intends to call for a vote to add, amend, or revoke any of these internal court policies. These notice requirements may only be waived by unanimous affirmative vote of all active judges of the court.

Section 5 Proceedings Before a Panel

5.1 Scheduling and Assigning Cases

The clerk prepares the court calendar and assignment of judges to panels under the supervision of the chief judge. In preparing the schedule, the clerk assigns the judges to merits panels and writs and motions panels. The merits panel assignments are made using a blind draw system in a manner that neither judges, lawyers, nor litigants have any influence in selection of any judge or panel to consider any particular case.

5.1.1 Writs and Motions Panels

Writs and motions panels decide all motions not decided by the chief judge or acting chief judge that are filed prior to the time of the assignment of the case to a merits panel. In addition, writs and motions panels dispose of extraordinary writ petitions, including those assigned for consideration of whether to order a response to the petition. Suggestions filed under Rule of Appellate Procedure 9.125 shall be assigned, out-of-cycle, to the writs and motions panel serving at the time the suggestion was filed. In supervising the preparation of the court calendar, the chief judge shall designate in advance the day and time each weekly panel's service will begin and end. The Chief Judge may direct the extent to which attorneys on the court's central staff shall be responsible for aiding the weekly panels.

5.1.2 Emergency Matters

Emergency matters consist of petitions, cases, and other filings requiring immediate attention. Such matters shall be assigned to the writs and motions panel serving at the time the matter requiring immediate attention was filed. Upon assignment to a writs and motions panel, the clerk shall assign the case to that panel for ultimate disposition. Attorneys on the court's central staff shall be responsible for aiding the panel in the resolution of emergency matters, unless the primary judge assigned to the matter affirmatively indicates to the director of central staff that assistance from central staff is not necessary. If an emergency matter is filed in a case that has already been assigned to a regular merits panel, then the clerk shall assign the matter to that merits panel. Suggestions filed under Rule of Appellate Procedure 9.125 shall not receive emergency treatment, regardless of how the suggestion is characterized.

5.1.3 Merits Panels

Appeals that have matured, meaning that all briefs have been filed, or the time for filing has passed, and the record has been filed, are assigned to one of the regular merits panels. Each judge on a merits panel will be the primary judge on one-third of those cases, with the assignment of the primary judge being made in the clerk's office by random selection. When a judge is primary on a case, he or she makes the initial determination of whether oral argument will be granted, presents the case at conference or by circulation, and has responsibility for preparation and distributing a summary of the case to each member of the panel. The merits panel also rules upon any motions filed in the appeal after it is assigned to the panel. The summary is provided to the panel along with the briefs, any

appendices, and other conference materials, which typically include excerpts from the record, copies of opinions, and copies of relevant statutes or rules.

5.1.4 Expedited Processing of Certain Cases Involving Children

Consistent with the Florida Court System's emphasis on cases affecting children, this court has accelerated procedures for processing appeals involving the Termination of Parental Rights and Finding a Child Dependent. This court also expedites certain other categories of cases, including Juvenile Delinquency, Family Law cases affecting child custody or support, Baker Act Appeals, and other cases individually expedited by court order.

Cases that appear to address termination of parental rights or child dependency are reviewed by the court staff immediately after they are filed to identify any jurisdictional defects and to determine if the case is properly classified as a termination or dependency case. The court then issues an order which: (1) expedites the case; (2) provides that extensions of time will not be granted to court reporters, lower tribunal clerks charged with preparing the record, or to the parties, except when emergency circumstances are shown; and (3) requires the appellant to notify the court of the name and address of the court reporter who is to prepare any transcripts. To help ensure prompt identification of expedited cases by all court personnel, all termination of parental rights and dependency cases are marked as such in the court's case management system.

Prior to being assigned to a panel of judges for merits consideration, each dependency and termination case is reviewed weekly in the clerk's office to ensure that it is proceeding in accordance with the rules. If action is required to assure that the case is treated by the parties as an expedited case, the court will issue any necessary orders. These expedited cases are assigned to regular merits' panels for a decision in certain predesignated expedited case slots that are held for sensitive cases. If even quicker action is required the case will be assigned to the weekly emergency panel. Further, law clerks, judges and panels are expected to review dependency and termination of parental rights cases and other expedited cases ahead of their other cases.

5.2 Oral Argument

The members of the panel assigned the case are responsible for granting or denying oral argument. The judge who is primary on the case shall screen the oral argument requests within five days of receipt of the file from the clerk's office. If

that judge concludes that the oral argument should be granted, he or she will grant it and assign the length of argument per side. If the primary judge believes the request should be denied, that judge will forward the case and recommendation to the other panel members who shall promptly notify the primary judge whether they agree or disagree with the recommendation. If any panel member disagrees with the recommendation to deny oral argument, the oral argument shall be granted. The primary judge shall be responsible for notifying the clerk's office of the panel's decision.

5.3 Panel Conference

After the judges have had an opportunity to review the summaries, briefs and attachments or petitions and responses, and undertake any other research (and after oral argument, if there is oral argument), the case is conferenced by the panel. At conference, the panel decides the cases. At conference, the primary judge speaks or writes first and presents the case. Following the presentation, the other judges may ask questions of the primary judge. The next judge to speak or write is the junior in terms of length of service on the court of the two other judges, followed by the senior of the two non-primary judges. Once each of the judge's views are fully expressed, determinations are made regarding the drafting of opinion(s).

5.4 Opinions

5.4.1 Definition of Opinion

As used throughout IOP 5.4, the term “opinion” means any explanation, including citation to a prior decision or opinion, that accompanies a disposition, by a panel or the court sitting en banc, of an appeal or petition (including determination of a petition filed pursuant to Florida Rule of Appellate Procedure 9.100(d), or 9.141(c) or (d)); or that accompanies any other decision by a panel or the whole court that effectively affirms, approves, validates, reverses, quashes, vacates, sets aside, or otherwise upholds or vitiates any part of an order or judgment of a lower tribunal. An explanation that accompanies a determination of a motion for review filed pursuant to Florida Rule of Appellate Procedure 9.140(h)(4); 9.146(c)(3); 9.190(d)(3), (e)(2), or (e)(3); 9.310(f); 9.400(c); or 9.600(c)(3) is an opinion. An explanation that accompanies an order of a panel or the whole court granting or denying a motion for stay is not an opinion. A statement, without further elaboration, that simply describes the nature of the disposition (*e.g.*, “denied on the merits,” “dismissed for lack of jurisdiction,”

“dismissed as untimely”) is not an “explanation,” as that term is used herein, and standing alone, would not be an opinion under IOP 5.4.

5.4.2 Preparation

Usually, the primary judge is also responsible for writing the opinion, if an opinion is written. If the primary judge is in the majority, he or she will write the majority opinion. If the primary judge is in the minority, the senior judge in the majority will assign responsibility for writing the majority opinion to either himself or herself or the other judge in the majority.

5.4.3 Circulation and Release

Once the panel completes the opinion, it shall be provided to all members of the court for review (“pre-release”) for no fewer than seven days prior to public release. The clerk’s office shall release opinions designated for standard release on Wednesday of each week. If required by the circumstances of a particular week, the chief judge may schedule a regular opinion release for a day other than Wednesday. An opinion designated for expedited release shall be circulated for a period of time of at least forty-eight hours. An opinion designated for emergency release shall normally be released on the same day the request is approved or, if that is not possible, on the next day.

Expedited release and emergency release shall be reserved only for those cases which, of necessity, should not be delayed for the normal pre-release period. Requests for expedited release or emergency release must be joined by at least two panel members, and must be approved by the chief judge. In the case of the absence of the chief judge, and when the majority of the panel believes approval should not be delayed, approval of the acting chief judge is required. If there is no acting chief judge appointed or available, approval of the most senior judge of the court who is available and who is not a member of the panel on the opinion being considered must be obtained.

Along with the request for expedited or emergency release, the panel or the primary judge must include a written explanation of the necessity for expedited or emergency treatment. The request should show, at the least, 1) expedited or emergency treatment will prevent harm to the parties or to the public; 2) the justice of the cause requires expedited or emergency treatment; and, 3) the necessity for emergency or expedited treatment outweighs the benefit normally gained by standard circulation. For emergency release opinions only, the moving judge shall

also, by simultaneous email, provide all judges (and the clerk) a copy of the emergency release request and opinion. The decision of the chief judge concerning timing of an emergency release opinion is a matter within his or her sole discretion.

During this pre-release period, any judge on the court can contact the primary judge or other judges on the panel with comments and suggestions or make a request for en banc consideration.

No opinion may issue or be released before it has been circulated for review pursuant to this rule.

5.4.4 Changes and Withdrawal

A panel member may withdraw a panel opinion at any time before release for consideration of corrections or changes, or for the purpose of requesting en banc consideration.

If a non-panel member desires to withdraw an opinion for the purpose of recommending a change, clarification, or correction, he or she may request any panel member to do so or in the absence of all members of the panel, may request the chief judge or acting chief judge to withdraw the opinion.

Any opinion in pre-release that requires a substantive change (i.e., one that alters the meaning of the opinion or any portion thereof) must be withdrawn and recirculated on pre-release. Non-substantive changes may be made to an opinion in pre-release provided the primary judge provides adequate notice of the changes to all judges and the clerk no later than 5:00 p.m. on the Monday immediately preceding the Wednesday release date for the opinion. To provide adequate notice, the primary judge shall 1) email a redline version of the revised opinion to all judges and the clerk, 2) upload the redline version and the final version of the revised opinion to the case management system, and 3) send the final version of the revised opinion to the clerk's office. In the event of a non-Wednesday regular release or an expedited or emergency release, the chief judge shall set a time certain before which non-substantive changes may be made, provided that notice is given to all judges and the clerk.

The chief judge shall have the authority to delay the release date on any opinion when it appears there are matters which the panel should address and neither the primary judge nor another panel member is available prior to the scheduled release date.

In the event a judge becomes concerned that an opinion on pre-release is inappropriate because it may be unprofessional, may damage collegiality on the court, or may otherwise have a negative impact on the public trust and confidence in the court, the judge shall promptly advise the chief judge, who will withdraw the opinion before release. Within 5 days of receiving information concerning such a matter, the chief judge shall appoint a committee to investigate and seek to resolve the matter. The three members of the committee shall be the chief judge, the most senior judge on the court, and the most junior judge on the court. If the matter should involve any of those judges, the involved judge shall be replaced on the committee with the chief judge-designate replacing the chief judge, the second most senior judge replacing the most senior, and the second most junior judge replacing the most junior. The committee shall have the authority and discretion to delay the release of that opinion for a period not to exceed 30 days from the date it was withdrawn by the chief judge, unless a shorter period of time is voted by the majority of the court.

5.5 Rehearing Motions

Rehearing motions are held by the court to allow time for the opposing party to file a response in accordance with Florida Rule of Appellate Procedure 9.300(a). If there is consent by opposing counsel indicated in the motion, a response is filed sooner than the full time permitted, or the panel shortens the time due to exigent circumstances, the rehearing motion may be circulated prior to the expiration of the hold time. Motions for rehearing are considered by the panel originally assigned the case. Motions for rehearing en banc are made available to all members of the court and any member of the court can move for en banc consideration.

5.6 Handling of Post-Disposition Motions by Associate Judges and Senior Judges

An associate or senior judge assigned to a case shall also consider any motion for rehearing, clarification, certification, or issuance of a written opinion or any other post-decision motions, including attorneys' fees motions, filed in the case. However, associate judges and senior judges may not request en banc consideration of a panel decision, nor vote on any motion for rehearing en banc whether filed by a party or requested by a judge in regular active service on the court.

5.7 Mandates

Unless otherwise directed by the Court, a mandate will issue as soon as practicable after the expiration of fifteen days from the date of issuance of a dispositive opinion in an appeal or an opinion granting relief in an original proceeding. If a timely motion authorized by Florida Rule of Appellate Procedure 9.330 or 9.331 is filed in response to such an opinion, the mandate will issue as soon as practicable after the expiration of fifteen days from the date of a decision on the motion or a final disposition in the case, whichever is later. No mandate will issue in a case decided by order or in an original proceeding when the case is dismissed or relief is denied.

Section 6 En Banc Proceedings

6.1 Party Request

A party may file a motion for rehearing en banc in accordance with the Florida Rules of Appellate Procedure. The clerk shall promptly notify all judges electronically that such motion has been filed.

Twenty days shall be allowed for consideration of the motion by members of the court. The clerk shall neither issue a panel order denying rehearing nor release the mandate prior to the expiration of twenty days after the motion for rehearing en banc is filed.

No vote will be taken on the motion for rehearing en banc unless requested by a judge in regular active service on the court, which request, barring extraordinary circumstances, is made within twenty days after a motion for rehearing en banc is filed.

6.2 Judge Request

Any judge in regular active service may request en banc consideration of a panel decision prior to issuance of mandate in the case.

6.3 Panel Request

If a majority of a panel votes to join in an opinion (as defined in IOP 5.4.1) containing analysis necessary to the disposition on a point of law that directly

conflicts with analysis on the same point of law contained in a final opinion of a prior panel of this court or of this court sitting en banc, the primary judge or the senior judge of the panel shall request an en banc vote of the court pursuant to IOP 6.5.

6.4 Grounds

En banc hearings and rehearings shall not be ordered unless the case is of exceptional importance or unless necessary to maintain uniformity in the court's decisions. A decision to grant or deny en banc review on either of these grounds is within the discretion of the court.

6.5 Request Procedure

Prior to requesting en banc consideration, either sua sponte or after a party request, a judge may confer with the panel(s) on the opinion(s) in question in an attempt to better understand and resolve the differences and to verify the jurisdictional basis for en banc consideration. Requests for en banc vote shall be made by memorandum with a copy to each judge, the clerk, and the director of central staff. The memorandum shall set forth the grounds for the request.

6.6 Clerk Notification

When a judge requests en banc consideration either on a party motion or on a judge or panel sua sponte request for en banc consideration, the judge shall promptly notify the clerk. The clerk shall immediately identify the case as one containing a judge's request for en banc consideration, and no order denying rehearing shall issue until notice from the chief judge to the clerk. The clerk will withdraw any opinion in the case that is on pre-release.

6.7 En Banc Panel

The en banc panel of the court shall consist of each judge in regular active service on the court who is not recused. If a judge in regular active service (including a judge who has been recused) leaves the court during the pendency of an en banc proceeding, and that judge's successor assumes office prior to conclusion of the en banc proceeding, the successor judge may participate in the en banc proceeding in the procedural posture it is in when the successor judge assumes office.

6.8 Vote on Request for En Banc Consideration

Within a ten-business-day period, which begins three business days after a judge's request for en banc hearing or rehearing, all judges in active service shall indicate their vote or recusal for cause by written notice to the court, the clerk and the director of central staff.

Upon request of any judge, the foregoing time periods may be shortened at the discretion of the chief judge. The time for voting may be extended by the chief judge for any judge who is absent from the court for all or substantially all of the voting period. Any regular active judge who does not timely vote shall be deemed to have abstained.

At the end of the en banc voting period the director of central staff shall tabulate the votes and notify all judges and the clerk of the results. Upon an evenly divided vote on a request for en banc consideration, any judge may call for conference discussion of the issues and may poll the members of the court for a vote on reconsideration. If the court remains evenly divided, the request for en banc consideration fails.

When there is a vote by the majority of the judges participating in favor of en banc consideration, the clerk shall: (1) refrain from sending the panel opinion to West Publishing Company or, if already sent, notify West to withhold the publication of same; (2) issue an order notifying the parties that the proceeding will be determined en banc; and (3) take no further action on the case except at the direction of the chief judge or of the court en banc.

If the vote is against en banc consideration or if the en banc proceeding is dissolved and the case returned to the panel, the chief judge shall notify the clerk and the case shall proceed as a panel case. If the panel's opinion was withdrawn from pre-release due to an en banc vote, upon the primary judge's direction, the clerk will place the panel opinion on expedited pre-release for three business days, releasing on the fourth business day.

6.9 En Banc Oral Argument and Supplemental Briefing

Upon request joined in by one-third or more of the participating judges, the court shall schedule en banc oral argument. Upon a request joined by at least a majority of the participating judges, the court shall order supplemental briefing by the parties or amicus curiae on specific issues as determined by the majority. Any

such request must be accompanied by a proposed order prior to a vote being taken. No order shall issue until final supplemental briefing language is approved by the majority.

6.10 Dissolution of En Banc

A participating judge may move to dissolve en banc consideration at any time before final disposition by the en banc court. En banc consideration of a case may be terminated upon a majority vote of the judges participating.

6.11 En Banc Conference

If there is a vote approving en banc consideration, the chief judge shall schedule the case for en banc conference. All matters properly presented for final disposition at an en banc conference, including a vote on jurisdiction and on the merits, shall be resolved by majority vote of judges participating in the en banc. Any judge recused on the issue of en banc consideration is also recused on the merits. Conference shall proceed with the following: (1) an opportunity for presentation by the judge requesting en banc consideration or another judge deemed appropriate; (2) an opportunity for presentation in opposition by an appropriate judge designated by the chief judge; (3) opportunity for discussion, in order of seniority, by all participating judges; and (4) vote on the merits in order of seniority. Absence from the en banc conference shall not thereafter preclude participation in disposition of the case. A judge who will be absent from the en banc conference may notify the chief judge, the clerk, and the director of central staff that another named judge is authorized to cast a vote or votes on behalf of the absent judge at the en banc conference.

6.12 En Banc Disposition

The court may limit the issues to be considered en banc. If no prior panel decision has been released, the entire case shall be decided en banc.

6.13 En Banc Opinion

The chief judge shall assign the case to an appropriate judge for drafting an en banc opinion, which shall be so captioned.

Following the en banc conference, the judge assigned to write the majority opinion shall provide copies of that opinion via email to the other judge or judges

who also intend to write. Once all opinions have been finalized, they will be provided to the director of central staff who shall assemble them into a single document and electronically transmit copies of the document to the judges of the court. Each judge thereafter shall promptly notify the director of central staff by email whether he or she votes to concur in or dissent from the proposed majority disposition and whether he or she joins or notes the respective opinions. Once this process is complete, the director of central staff shall prepare a tag line that reflects the cumulative result of these notifications. The tag line shall include the names of the judges participating in the en banc proceeding and reflect any judges who are recused or did not participate. The single document with tag line will then be transmitted to the clerk of court for pre-release. The director of central staff shall be responsible for processing proposed non-substantive changes to all opinions in the single document and coordinating and consulting with the author of any affected opinion.

The en banc opinion shall include the majority opinion, concurring opinion(s), concurring and dissenting opinion(s), and dissenting opinion(s), in that order. If there is more than one opinion in one of these categories, (*e.g.*, two dissents) they will generally appear in order of seniority, the senior judge's opinion appearing first. A judge with priority, however, may request that the chief judge approve a different sequence of opinions.

An opinion concurring with or dissenting from the court's denial of a judge's request for hearing en banc shall not be permitted. Opinions concurring with or dissenting from the court's denial of a motion for rehearing en banc filed by a party shall be permitted. For unsuccessful requests for hearing en banc before release of the panel opinion, the panel opinion shall be placed on pre-release for three business days after en banc voting closes and then released. An order denying a motion for rehearing en banc, filed by a party, shall be issued when the panel rules on a motion for rehearing, if filed, or the time for rehearing has passed. An opinion concurring with or dissenting from the court's order denying a party's motion for rehearing en banc shall be permitted and shall be issued with the panel's order or opinion disposing of the motion. Such opinions and orders shall be transmitted to Thomson Reuters/West Publishing by the clerk to appear as a single entry in the Southern Reporter.

The director of central staff shall be responsible for verifying that all judges have voted and that all opinions have "release" signatures. Unless a shorter period is approved by a majority of the participating judges prior to the date the opinion is placed on pre-release, en banc opinions and orders denying rehearing en banc with

a concurring or dissenting opinion shall be circulated by the clerk of court for review for a minimum of three full business days before release.

6.14 Absence of a Majority Decision

A majority vote of the participating judges shall be necessary for the issuance of any en banc decision. In the absence of such a majority the case shall revert to the originally assigned panel of three judges; the order granting en banc consideration shall be vacated and the case finally disposed of by the original three-judge panel. If a panel opinion was withdrawn from pre-release due to an en banc vote, upon the primary judge's direction, the clerk will place the panel opinion on expedited pre-release for three business days, releasing on the fourth business day.