

IOP 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 If the panel's opinion was withdrawn from pre-release due to an en banc vote, upon the primary judge's direction, the clerk will place the panel opinion on expedited pre-release for three business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.

