

IOP 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.

