



**INTERNAL OPERATING PROCEDURES
FIRST DISTRICT COURT OF APPEALS, FLORIDA
SECTION VI: EN BANC PROCEEDINGS**

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INTERNAL OPERATING PROCEDURES | 1DCA (FL)

SECTION: VI

TITLE: EN BANC PROCEEDINGS

RULES: 6.1 through 6.14



IOP 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 and provide a link to the motion in iDCA.

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 to be made within the time for rehearing or within twenty days after a motion for rehearing en banc is filed.

IOP 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.



IOP 6.3 | PANEL REQUEST

When the majority of a panel decides to recede from a prior opinion of this court, whether that prior opinion is in the same case or in a different case, the primary judge or the senior judge of the panel shall request an en banc vote of the court.



IOP 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.



IOP 6.5 | 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 basis of the conflict or potential conflict or describe why the case is of exceptional importance.



IOP 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.

If the clerk is notified of a request for en banc consideration prior to release of a panel opinion, the opinion shall not be released until conclusion of proceedings on the en banc request by the court.



IOP 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.



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.

IOP 6.9 | EN BANC ORDER; PARTY NOTICE

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.



IOP 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.



IOP 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.

IOP 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.



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. The judges shall thereafter promptly notify the director of central staff by email whether they join, concur, dissent, or note the opinions. Once this process is complete, the director of central staff shall prepare a tag line. 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 en banc opinion will then be transmitted to the clerk of court for pre-release.

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, i.e., two dissents, they will generally appear in order of seniority, the senior judge's opinion appearing first. A judge with priority, however, may request the chief judge to approve a different sequence of opinions within a category.

An opinion or opinions concurring with or dissenting from the court's denial of a request for hearing en banc shall not be permitted. Opinions concurring with or dissenting from the court's order denying 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 pre-released 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 rehearing en banc filed by a party shall be permitted and shall be issued when the panel rules on a motion for rehearing, if filed, or the time for rehearing has passed. Such opinions and orders shall be transmitted to 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 pre-released, en banc opinions and orders denying rehearing en banc with a dissent shall be pre-released by the clerk for three full business days.



IOP 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.



APPENDIX



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