En Banc Petition Process

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NINTH CIRCUIT 3-JUDGE PANEL DECISION

Losing party **must** file petition for rehearing or rehearing en banc within **14 days** after the panel decision.

PARTY FILES PETITION FOR REHEARING AND/OR REHEARING EN BANC

- Judges have **21 days** to either: do nothing, "stop the clock" for a 14-day extension of time, ask the original 3-judge panel as to whether they want to rehear the case ("a 5.4(b) notice request"), or call for an en banc vote (a call is **very rarely made** before a 5.4(b) request though).
- The original 3-judge panel may request that the non-petitioning party file a response to the petition at this time.
- Amicus curiae must serve briefs within 10 days after the petition or response of the party amicus wishes to support. Amicus not wishing to support either party must serve its briefs within 10 days after the petition.

JUDGES DO NOTHING Petition rejected. Original 3-judge panel issues order denying petition.

ANY JUDGE "STOPS THE CLOCK"

A one time only 14-day extension.

ANY NON-PANEL JUDGE MAKES A 5.4(b) NOTICE REQUEST

If any non-panel judge makes a 5.4(b) notice request to the original 3-judge panel, the panel has a **maximum of 90 days** from the date of 5.4(b) notice request *or* the petition, *whichever is later*, to inform the non-panel judges whether the panel wants to rehear the case themselves or not.

3-JUDGE PANEL CHOOSES NOT TO REHEAR CASE

- If panel does not want to rehear case, any non-panel judge can call for an en banc vote within 14 days after receipt of the 5.4(b) notice, 21 days after the petition for rehearing and/or rehearing en banc, or within 14 days after circulation of the party response (if one has already been called for), whichever is later.
- A judge may "stop the clock" for a 14-day extension of time, only if the clock has not been stopped before.
- If judges do not call for an en banc vote within this time frame, petition is rejected.

ANY JUDGE "STOPS THE CLOCK"

14-day extension only available if clock has not been stopped before.

3-JUDGE PANEL CHOOSES TO REHEAR CASE

ANYJUDGE (ACTIVE OR SENIOR) CALLS FOR AN EN BANC VOTE

- A judge calling for an en banc vote must forward a memorandum to the other
 judges setting forth the reasons for rehearing en banc within 14 days of the en
 banc call or 14 days after circulation of the party response (if applicable),
 whichever is later.
- If no response to the petition has been previously filed, the author of the panel opinion or the Clerk of Court upon request of the En Banc Coordinator, shall ordinarily order counsel to file a response to the petition within 21 days of the date of the order. After the response is submitted, any judge may circulate memoranda in response to the en banc call within 21 days
- If a response has been previously filed, any judge may circulate memoranda within 21 days after the date the En Banc Coordinator determines that no response will be filed because a response has been previously filed.

VOTE FAILS TO OBTAIN MAJORITY: PETITION DENIED

Original 3-judge panel issues order denying petition.

MAJORITY VOTE (14 OF 27JUDGES IN FAVOR); PETITION GRANTED

- Chief Judge must enter an order taking the case en banc. The en banc panel will consist of the Chief Judge and 10 randomly selected active judges. This panel will decide whether there will be oral argument and/or additional briefing. If no additional briefing is requested, the Clerk will order the parties to file more copies of the original briefs and of the excerpts.
- Amicus curiae supporting petitioning party or not supporting either party must serve briefs within 21 days after petition for rehearing en banc is granted.
- Amicus curiae supporting responding party **must** serve briefs within *35 days* after petition for rehearing en banc is granted.

ACTIVE JUDGES VOTE

After the time for judges to circulate memoranda concludes, the En Banc Coordinator notifies the **active** judges to vote. Unless otherwise ordered, each judge must cast a vote within *14 days* of the notice. Majority vote is required to grant petition for rehearing en banc. Failure to vote is deemed a silent no.

*But at anytime, for good cause, the En Banc Coordinator (the active or senior judge appointed to supervise the en banc process) can extend, suspend, or compress the time schedule. The current En Banc Coordinator is **Judge Sidney Runyan Thomas**.

How a Judge Initiates the En Banc Process

En Banc Sua Sponte Process



NINTH CIRCUIT 3-JUDGE PANEL DECISION

A judge may on his or her own accord (sua sponte) call for a vote on rehearing en banc within 7 days of the expiration of the time for filing a petition for panel rehearing or rehearing en banc. This usually means within 21 days of the panel decision. But if the original 3-judge panel grants a party an extension of time to file a petition, the time to make a sua sponte call extends for **7 days** after the petition is due.

A JUDGE MAKES AN EN BANC CALL

- Author of the 3-judge panel opinion or Clerk Court upon the request of the En Banc Coordinator shall ordinarily enter an order directing the parties to file simultaneous briefs within 21 days setting forth their respective positions on whether the matter should be reheard en banc. If the En Banc Coordinator does not order simultaneous briefing, the parties will be notified of the en banc call.
- The judge who made the sua sponte en banc call must forward a memorandum setting forth reasons for the en banc rehearing within 7 days after the circulation of the simultaneous briefing filed by the parties if they were filed. If not, within 14 days of the date the sua sponte call was distributed.

JUDGES EXCHANGE MEMORANDA

Any judge may circulate memoranda in response to an en banc call within 21 days after the simultaneous briefs are circulated by the Clerk's Office or 21 days after the date the En Banc Coordinator determined that no briefs were to be filed.

VOTE FAILS TO OBTAIN MAJORITY: NO REHEARING EN BANC

Original 3-judge panel issues order.

MAJORITY VOTE (14 OF 27JUDGES IN FAVOR): REHEARING EN BANC **GRANTED**

Chief Judge shall enter an order taking the case en banc pursuant to Circuit Rule 35-3.

EN BANC VOTING

After the time for judges to circulate memoranda concludes, the En Banc Coordinator will notify the active judges to vote. Unless otherwise ordered, each judge must cast a vote within 14 days of the notice. Majority vote is required for rehearing.

*But at anytime, for good cause, the En Banc Coordinator (the active or senior judge appointed to supervise the en banc process) can extend, suspend, or compress the time schedule. The current En Banc Coordinator is Judge Sidney Runyan Thomas.