



Public Information Office
United States Courts for the Ninth Circuit

Office of the Circuit Executive · 95 7th Street, San Francisco, CA 94103 · (415) 355-8800 · (415) 355-8901 Fax

MEDIA ADVISORY

February 10, 2017

Contact: David Madden, (415) 355-8800

Ninth Circuit En Banc Procedure Summary

This explanation may provide some background on the Ninth Circuit en banc procedure.

Following the issuance of a three judge panel order or opinion, parties may seek rehearing before an en banc court. The parties may also elect to bypass that process and seek review by the United States Supreme Court. Under Federal Rules of Appellate Procedure and the Ninth Circuit General Orders, a circuit judge can also request that a vote be held on whether a decision should be reheard by an en banc panel, even if the parties have not requested it. This procedure is termed a "sua sponte en banc call." Under Court procedure, the judge who made the request is not identified.

When a sua sponte en banc call is made, the parties are ordinarily requested to provide their views on whether a case should be reheard en banc before the Court conducts a vote. That briefing request is made through an order of the Chief Judge or En Banc Coordinator. In this case, at the request of a judge on the court, the Chief Judge issued an order directing the parties to file briefs to provide their views. The briefs are due February 16. After the briefs are filed, a vote is scheduled on the en banc call, unless it has been withdrawn. If a majority of the active, non-recused judges vote in favor of rehearing en banc, then the case is reheard by the en banc court. If the vote succeeds, the en banc court assumes control over the case. Ordinarily, oral argument will be scheduled before the en banc court at a time set by the Chief Judge. A decision is issued some time after the judges confer on the case. The en banc court consists of the Chief Judge, and ten non-recused judges who are randomly drawn. Senior judges are not eligible to serve on the en banc court, unless they served on the three judge panel.

If the vote fails, the three judge panel retains control of the case. In either event, an order is issued announcing the results, but the votes are not disclosed.

En banc calls, including sua sponte en banc calls, are a common occurrence. In an average year in the Ninth Circuit, there are approximately 1,500 requests by parties for rehearing en banc. Typically, there are approximately fifty requests each year by a judge for a vote on whether to rehear the case en banc. On the average, the Ninth Circuit hears between 15-25 en banc cases a year.

Specific information about the en banc procedure may be found in Federal Rule of Procedure 35, Ninth Circuit Rules 27 and 35, and the Ninth Circuit General Orders, all of which may be found on the Ninth Circuit website.

###