

**District of Columbia  
Court of Appeals**



BEFORE: Blackburne-Rigsby, Chief Judge, Beckwith, Easterly, McLeese, Deahl,  
Howard, and Shanker, Associate Judges

**ORDER**  
(FILED — May 20, 2024)

The court has decided to amend its Internal Operating Procedures, primarily to clarify its procedures in cases involving hearing or rehearing en banc. Redlined and clean versions of the affected portions of the Internal Operating Procedures are attached to this order. The changes to the court's Internal Operating Procedures will go into effect immediately.

So ordered.

**PER CURIAM**

D.C. Court of Appeals Internal Operating Procedures [redline version of May 2024 amendments]

VIII. Post-Argument Conference and Opinion Writing.

...

F(7) [new] If the division decides to publish an opinion that was previously unpublished or to make substantive amendments to a previously published opinion, the division will circulate the opinion intended for publication to the full court before the opinion is published pursuant to Part VIII.F(6).

...

IX. Publication of Opinions.

A. Published opinions will be posted on the court's website and made available to legal publishers.

...

XI. Petitions for **Hearing or Rehearing** En Banc.

A. To avoid conflicts in division decisions and to preserve stability of the court's decisions, no subsequent division may overrule a published opinion of a previous division. En banc consideration is required to overrule a previous decision of the court. En banc consideration is also required before the court declines to follow a binding decision of the United States Court of Appeals for the District of Columbia Circuit (i.e., a decision rendered before February 1, 1971).

B. The filing of a petition for rehearing en banc does not take the case out of the plenary control of the division deciding the case. The division may, on its own, grant rehearing and may do so without action by the full court. If the division issues a revised opinion in response to the petition for rehearing en banc, the order accompanying the opinion will vacate the previous opinion and further state that the opinion and order are without prejudice to the filing of a new petition for rehearing en banc addressed to the revised opinion.

C. Pursuant to D.C. Code § 11-705(d), hearing or rehearing of a case en banc may be ordered by a majority of the judges on the court of appeals in regular active service who are not disqualified (hereafter referred to as “active” judge or judges). Only the active judges may vote on whether to grant hearing or rehearing en banc. A judge’s status as an active or senior judge for the purpose of voting on a petition for en banc review is determined on the date of entry of the order ruling on the petition for en banc review. A judge who joins the court after a petition for hearing or rehearing en banc has been filed with the court, and before an order granting or denying the petition has been entered, will participate in the decision whether to hear or rehear a case en banc. The court for an en banc hearing or rehearing consists of the active judges, except that a senior judge who was a member of the division that decided the case may sit as a judge of the court en banc. A judge’s status as an active or senior judge for the purpose of deciding an en banc case is determined on the date of entry of the decision by the en banc court. A judge who joins the court after en banc review has been granted but before the case has been decided by the en banc court will participate in the decision of the case.

D. The Clerk will transmit an en banc petition to the active judges, to a senior judge who was a member of the division that decided the case, and to a judge of the Superior Court who sat on the case by designation pursuant to D.C. Code § 11-707. An answer to the petition will be ordered if requested by two such judges. A request for an answer will be made within 10 days after transmittal of the petition to the judges. If two judges request an answer, the Clerk will enter an order directing an answer to be filed within 14 days from the date of the order. The Clerk will send a copy of the answer received to each member of the division that heard and decided the case and to all other active judges of the court.

E. Any active judge, a senior judge who was a member of the division that decided the case, or a judge of the Superior Court who sat on the case by designation may request a poll of the active judges as to whether the petition should be granted. A request for a poll will be made within 15 days of transmittal to the judges of the petition or a requested answer. If no request for a poll is made, the petition will be denied and an order will be entered reflecting that no judge has called for a vote on the petition.

F. Whether or not a petition for hearing en banc has been filed, any active judge may request, sua sponte, a poll of the active judges as to whether hearing en banc should be granted in a case. Whether or not a petition for rehearing en banc

has been filed, any active judge, a senior judge who was a member of the division that decided the case, or a judge of the Superior Court who sat on the case by designation may request, sua sponte, a poll of the active judges as to whether rehearing en banc should be granted in a case.

G. As previously noted, a judge of the Superior Court who sat on the case by designation may call for an answer to a petition for rehearing en banc and may request a poll of the active judges. A Superior Court judge who sat by designation may not vote on whether to grant or deny rehearing en banc and may not participate if the court rehears the case en banc.

H. Upon receipt of a request to poll the court, active judges shall transmit their votes to the Clerk. .

I. When a majority of votes has been cast in favor of either granting or denying hearing or rehearing en banc, the Clerk will notify the judges of the result. Within 5 days, the active judges who have not voted on the petition will do so or notify the Clerk that a separate statement of views will be filed. A judge will have 30 days in which to file a separate statement, but the en banc order will issue after the expiration of that time whether or not such a statement has been received.

J. The court may grant hearing or rehearing en banc as to an entire case or may grant hearing or rehearing en banc limited to one or more specific issues. If the court votes to grant limited hearing or rehearing en banc, the court's order will indicate the issue or issues as to which the court has granted hearing or rehearing en banc. When granting hearing or rehearing en banc, the court will indicate whether it is vacating the opinion and/or judgment issued by the division, in whole or in part.

K. When the court grants hearing or rehearing en banc, it will indicate whether it wishes further briefing. If further briefing is directed, the en banc court will either direct the filing of new briefs to replace the briefs filed before the division or identify the specific issues or issues to be briefed for the en banc court. The en banc court will also indicate whether it intends to hold oral argument en banc and, if so, will establish the time allotted for such argument.

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F. Whether or not a petition for hearing en banc has been filed, any active judge may request, sua sponte, a poll of the active judges as to whether hearing en banc should be granted in a case. Whether or not a petition for rehearing en banc has been filed, any active judge, a senior judge who was a member of the division that decided the case, or a judge of the Superior Court who sat on the case by designation may request, sua sponte, a poll of the active judges as to whether rehearing en banc should be granted in a case.

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