

STATE OF OHIO)

COUNTY OF SUMMIT)

IN RE: EN BANC CONSIDERATION

COURT OF APPEALS
DANIEL M. HERRIGAN

2018 MAR 16 PM 3:30

SUMMIT COUNTY
CLERK OF COURTS

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

C.A. No. MISC.

JOURNAL ENTRY

The following procedures shall apply to en banc consideration in the Ninth District Court of Appeals, until superseded by a Local Rule.

En banc consideration after decision.

(1) When a decision of this Court implicitly or explicitly overrules an earlier decision of this Court, by a two-to-one vote of the panel, a party may move for en banc consideration or the Court may sua sponte order en banc consideration, as outlined below.

(2) By a party. A party's application for en banc consideration must be filed within ten days of the filing of the decision. En banc consideration is not favored and will not be ordered unless necessary to secure or maintain the uniformity of decisions within the District on an issue that is dispositive in the case. See App.R. 26(B). The application and brief in support shall not exceed ten pages. Within ten days of service of the application for en banc consideration, a party opposing the motion may file an opposing brief that shall not exceed ten pages. The party making the application for en banc consideration may file a reply brief, not to exceed five pages, within seven days of service of the answer brief in opposition. An original

and three copies of any application for en banc consideration, opposing brief, or reply brief are required.

(3) By the Court. Any Judge on the Court may make a request to the Court's Presiding Judge that a case be considered en banc. The request must be made within ten days of the release of the decision. If a request is made, the Presiding Judge shall issue an order inviting the parties to file briefs, not to exceed ten pages, addressing whether they believe the issue should be considered en banc.

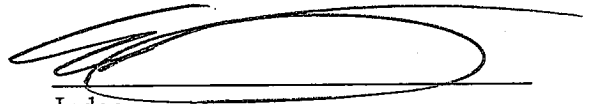
(4) Procedure.

(a) The author judge of the decision shall inform the members of the en banc court of a party's request for en banc consideration. If a majority of the en banc court votes in favor of en banc consideration, the Presiding Judge shall call an en banc conference to take place at the earliest convenient date, which may be at the regularly scheduled judges' meeting. The parties will be requested to file supplemental briefs on the conflicting issues. Briefs shall be limited to not more than ten pages. An original and six copies of the briefs shall be filed pursuant to a briefing schedule set by the Presiding Judge. Oral rehearing en banc will not be allowed except by majority vote of the en banc court.

(b) Notice of the en banc conference will be accompanied by the panel's released decision as well as the court's previous decisions in question, relevant decisions of other appellate districts, supplemental and original briefs of the parties, and such other materials essential to display the conflicting considerations. A discussion of the issues will take place at the en banc conference.

(c) If the en banc majority decides to adhere to the released decision, the Presiding Judge shall designate a judge from the en banc majority to draft an appropriate order, which

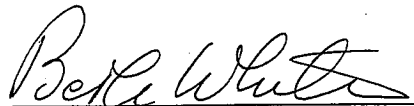
will be circulated for comment or dissent in accordance with customary practice. If the en banc majority decides to overrule the panel's decision, the Presiding Judge shall designate a judge from the en banc majority to draft the En Banc Decision. The En Banc Decision shall be circulated among all of the judges of the Court for comment or dissent in accordance with customary practice. The En Banc Decision will contain an appropriate reference to the en banc procedure.



Judge



Judge



Judge



Judge



Judge