

Motions for En Banc Hearing and Rehearing Under Rule 31.1 of the North Carolina Rules of Appellate Procedure

IDS Policy:

(A) The decision to file a motion for initial en banc hearing or for en banc rehearing in the North Carolina Court of Appeals is a matter committed to appellate counsel's reasonable professional judgment, and neither approval from the Appellate Defender nor permission from the client is required to file such motions.

Per Rule 31.1 of the North Carolina Rules of Appellate Procedure, the following grounds allow for the Court of Appeals to grant a motion for initial en banc hearing and for en banc rehearing:

- (1) en banc consideration is necessary to secure or maintain uniformity of the court's decisions; or
- (2) the case involves a question of exceptional importance.

If appellate counsel concludes that the case meets one of the above criteria, it would be reasonable professional judgment to seek initial en banc hearing or en banc rehearing. It would not be reasonable professional judgment to seek en banc rehearing only because the Court of Appeals denied relief.

(B) If counsel files a motion for initial en banc hearing on behalf of a client, counsel will be compensated for all reasonably necessary time. If counsel files a motion for en banc rehearing on behalf of a client, counsel will be compensated for a maximum of ten hours. If counsel responds to a motion for initial en banc hearing or en banc rehearing filed by opposing counsel, counsel will be compensated for all reasonably necessary time.

(C) Rule 31.1(d) of the North Carolina Rules of Appellate Procedure requires a motion for en banc rehearing to be filed within fifteen days of the filing of the Court of Appeals' opinion in the case. In light of such a short timeframe during which counsel must act, counsel need not seek or obtain permission from a client to file a motion for en banc rehearing. However, if the client has previously instructed counsel not to file a motion for en banc rehearing under any circumstances, counsel should not file such a motion.

(D) If, in the exercise of reasonable professional judgment, counsel decides not to file a motion for en banc rehearing, and in the exercise of reasonable professional judgment also decides not to file a petition for discretionary review (PDR) in the North Carolina Supreme Court, then counsel should inform the client of those decisions and provide the client with information about filing a motion for en banc rehearing and PDR *pro se*. The information to be provided to the client includes a copy of N.C.G.S. § 7A-31(c), a copy of Rules 15 and 31.1 of the Rules of Appellate Procedure, the dates the motion for en banc rehearing and PDR are due, and the relevant mailing addresses for filing and service. *See* IDS Policy: Petitions for Discretionary Review.

Policy effective April 1, 2017

Authority: G.S. 7A-16, 7A-31(c), 7A-498.3(c); Rule 31.1, N.C. R. App. P.; IDS Rule 3.3(a); Rule 1.2 of the Revised Rules of Professional Conduct.