

PROPOSED AMENDMENTS TO LOCAL APPELLATE RULE 26

Comments Requested: The Court of Appeals of Ohio, Eighth Appellate District will accept public comments until Friday, January 19, 2024, on the proposed amendments to Loc.App.R. 26.

Comments on the proposed amendments should be submitted in writing to: Erin M. O’Toole, Court Administrator, Eighth District Court of Appeals, 1 Lakeside Ave., Rm. #202, Cleveland, Ohio 44113 or emo@8thappeals.com not later than January 19, 2024. Please include your full name and mailing address in any comments submitted by e-mail.

Summary of Proposed Amendments:

Loc.App.R. 26:

- Loc.App.R. 26(B)(3): Same language previously contained in Section (C), which recognizes the administrative judge’s authority to summarily dismiss any application that does not comply with the requirements of App.R. 26(A)(2) and this local rule.
- Loc.App.R. 26(C)(1): New provision that recognizes that the court will only accept a case for en banc consideration upon application of the parties or sua sponte following the journalization and release of a conflicting decision.
- Loc.App.R. 26(C)(2): New provision that specifically provides that if a case is accepted for en banc review, the parties will be notified that it was accepted.
- Loc.App.R. 26(C)(3): New provision allowing for briefing (not to exceed five pages) within 10 days of an order designating a case for sua sponte en banc resolution.
- Loc.App.R. 26(C)(4): New provision indicating that parties may request oral argument via videoconferencing, however, oral argument will only be granted at the court’s discretion.

Key to Proposed Amendments:

- 1. Existing language appears in regular type. Example: text.**
- 2. Existing language to be deleted appears in strikethrough. Example: ~~text~~.**

3. New language to be added appears in underline. Example: text.

RULE 26. EN BANC CONSIDERATION

(A) **Scope of Review.** This court shall consider an appeal en banc in accordance with App.R. 26(A)(2) and the procedures set forth in this rule. En banc consideration is not favored.

(B) **Application For En Banc Consideration.** App.R. 26(A)(2) governs parties' applications for en banc consideration. The parties must strictly comply with the time limits of the appellate rule for filing an application, an opposing brief, or a reply brief. The application and opposing brief shall not exceed ten pages. The reply brief shall not exceed five pages. The parties shall electronically file an application, opposing brief, or reply brief in accordance with Loc.App.R. 13.1.

(1) Contents of the Application for En Banc Consideration.

(a) An application for en banc consideration shall include a concise one-paragraph statement of the dispositive point of law upon which the applicant asserts that the panel's decision conflicts with a prior panel's decision of this court.

(b) The application must specifically identify the paragraph(s) of the panel opinion at issue and the paragraph(s) of the prior panel's opinion that conflict on a point of law and explain why en banc is necessary to secure and maintain uniformity of this court's decisions.

(2) Parties seeking both reconsideration and en banc application must file a combined application in a single document that does not exceed ten pages.

(3) The administrative judge may summarily dismiss any application for en banc consideration that does not comply with the requirements of App.R. 26(A)(2) and this local rule.

(C) Procedure.

(1) The court will only accept a case for en banc resolution upon an application of the parties or sua sponte following the journalization and release of a conflicting decision.

(2) When a majority of the en banc court votes to accept a case for en banc resolution, the administrative judge will issue an order indicating the same.

- (3) Within 10 days of an order designating a case for sua sponte en banc resolution, any party may file a brief not to exceed five pages addressing the resolution of the conflict.
- (4) After a case has been accepted for en banc review, any party may request a remote oral argument via videoconferencing to address the resolution of the conflict, however, oral argument will only be granted at the court's discretion.

~~The administrative judge may summarily dismiss any application for en banc consideration that does not comply with the requirements of App.R. 26(A)(2) and this local rule. When a majority of the en banc court votes to consider a case sua sponte after the panel's decision has been journalized, the administrative judge will issue an order indicating the case is being considered for en banc review and additional briefing may be ordered by the court.~~