

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

**Berger v. City of Seattle**

Berger · No. 05-35752 · Decided September 2, 2009

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SUMMARY

The Ninth Circuit awarded Michael Berger attorneys' fees on appeal and held that his fee request was timely. The court referred determination of the appropriate fee amount to the Appellate Commissioner, subject to panel reconsideration.

OPINION

PER CURIAM.

FOR PUBLICATION UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT  
MICHAEL JAMES BERGER, a single man also known as Magic Mike, Plaintiff-Appellee, v.  
No. 05-35752 CITY OF SEATTLE; VIRGINIA D.C. No. ANDERSON, Director of Seattle CV-  
03-03238-JLR Center; MICHAEL B. ANDERSON, Western District of Emergency Service  
Manager for Washington, Seattle Center; TEN UNKNOWN Seattle EMPLOYEES/OFFICERS, of  
the Seattle ORDER Center and the City of Seattle, all in both their individual and official  
capacities, Defendants-Appellants. Filed September 2, 2009 Before: Alex Kozinski, Chief  
Judge, Harry Pregerson, Stephen Reinhardt, Michael Daly Hawkins, Kim McLane Wardlaw,  
Ronald M. Gould, Richard A. Paez, Marsha S. Berzon, Richard C. Tallman, Milan D. Smith, Jr.  
and N. Randy Smith, Circuit Judges.

ORDER Appellee Michael Berger is awarded attorneys' fees on appeal. Contrary to the  
respondents' suggestion, the fee request was timely. A request for attorneys' fees must be filed no  
later than fourteen days after the expiration of the period within 12201 12202 BERGER v. CITY  
OF SEATTLE which a petition for rehearing might have been filed. See 9th Cir. R. 39-1.6.

Although the applicable procedural rules, national and local, do not expressly provide for the  
filing of a petition for full court rehearing en banc, they apply gener- ally to the procedures  
governing rehearing en banc, with no exception for full court en banc. See 9th Cir. R. 35-3; Fed.  
R. App. P. 35, 40. Indeed, in every circuit but ours, every peti- tion for rehearing en banc is a  
petition for full court en banc, so the Federal Rules of Appellate Procedure necessarily apply to  
such petitions.

Our General Orders so recognize, as they expressly contemplate the filing of a petition for  
rehearing en banc before the full court within fourteen days after the filing of an en banc  
disposition. See 9th Cir. Gen. Order 5.8.

The court received Appellee's petition within fourteen days after the expiration of the period within which a petition for a full court rehearing might have been filed. Appellee's petition is therefore timely. The determination of an appropriate amount of fees on appeal is referred to the Appellate Commissioner, who shall conduct whatever proceedings he deems appropriate.

The Appellate Commissioner's order is subject to reconsideration by the panel. See 9th Cir. R. 39-1.9. PRINTED FOR ADMINISTRATIVE OFFICE—U.S. COURTS The summary, which does not constitute a part of the opinion of the court, is copyrighted