

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Berger v. City of Seattle

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

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 peti- tion 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