

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.

CITY OF SEATTLE; VIRGINIA
ANDERSON, Director of Seattle
Center; MICHAEL B. ANDERSON,
Emergency Service Manager for
Seattle Center; TEN UNKNOWN
EMPLOYEES/OFFICERS, of the Seattle
Center and the City of Seattle, all
in both their individual and
official capacities,

Defendants-Appellants.

No. 05-35752

D.C. No.
CV-03-03238-JLR
Western District of
Washington,
Seattle
ORDER

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

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 generally 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 petition 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.

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