



REHEARING & EN BANC IN THE FIFTH CIRCUIT

1



EVEN THE GODS ARE SOMETIMES FOOLED

Até – the Greek goddess of mischief of ruin.

“[S]he walks the air above men’s heads and leads them astray.” – Homer, *Illiad*

“*Even the gods are sometimes visited by Até.*” Apollonius Rhodius, *Argonautica*

2



WHY SHOULD I COMPLAIN?

The gods may throw a dice
Their minds as cold as ice
And someone way down here
Loses some[thing] dear
The winner takes it all
The loser has to fall
It's simple and it's plain
Why should I complain?
- Abba, *The Winner Takes It All*

3

TOPICS

- Background
- Statistics
- Isolated error –
Panel Rehearing
- Far-reaching error –
En Banc

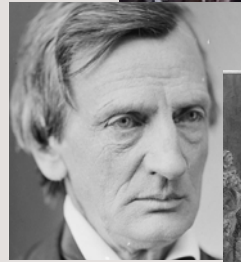


4

And you may ask yourself,
“Well, how did I get here?”

BACKGROUND

*From the English Chancery
to the Fifth Circuit IOPs*



"By no means," continued Alton, in his slow, steady, solemn voice. "It is not the law, printing and publishing of a paper that will make it a fact; the words themselves must be taken, and in their construction and contents, and the sense in which they are used." (Page 108)

5

EARLY ORIGINS



“Rehearing” comes the Court of Chancery in England – until the Chancellor affixed his seal to a decision, case could be reheard by his counselors ad infinitum.



Early U.S. common law courts could reconsider any decision until the court’s term expired.

6

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: Rehearing and En Banc Practice in the Fifth Circuit

Also available as part of the eCourse

[Rehearing and En Banc Practice in the Fifth Circuit](#)

First appeared as part of the conference materials for the
33rd Annual Conference on State and Federal Appeals session
"Rehearing and En Banc Practice in the Fifth Circuit"