

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT  
501 POTTER STEWART U.S. COURTHOUSE  
100 EAST FIFTH STREET  
CINCINNATI, OHIO 45202-  
3988

Kelly L. Stephens  
Clerk

513-564-7000

December 1, 2024

**NOTICE OF PROPOSED AMENDMENTS TO**  
**SIXTH CIRCUIT LOCAL RULES AND INTERNAL**  
**OPERATING PROCEDURES**

Pursuant to 28 U.S.C. § 2071, and 6 Cir. R. 47(d), the United States Court of Appeals for the Sixth Circuit provides notice that it adopts amendments to Sixth Circuit Local Rules 35, 40, 203, and Appendix, and Sixth Circuit Internal Operating Rules 35 and 40. An immediate need exists and these amendments are effective December 1, 2024.

The court hereby invites public comment on the amendments. Comments should be submitted by March 1, 2025, and addressed to:

Kelly L. Stephens, Clerk  
Sixth Circuit Court of Appeals  
501 Potter Stewart U.S. Courthouse  
100 East Fifth Street  
Cincinnati, Ohio 45202-3988

OR

[RulesComments@ca6.uscourts.gov](mailto:RulesComments@ca6.uscourts.gov)

*New text is highlighted/bold; deleted text indicated by strikethrough.*

**FRAP 35      ~~En Banc Determination~~ **(Transferred to Rule 40)****

- ~~(a) — **When Hearing or Rehearing En Banc May Be Ordered.** A majority of the circuit judges who are in regular active service and who are not disqualified may order that an appeal or other proceeding be heard or reheard by the court of appeals en banc. An en banc hearing or rehearing is not favored and ordinarily will not be ordered unless:~~
- ~~(1) — en banc consideration is necessary to secure or maintain uniformity of the court's decisions; or~~
  - ~~(2) — the proceeding involves a question of exceptional importance.~~
- ~~(b) — **Petition for Hearing or Rehearing En Banc.** A party may petition for a hearing or rehearing en banc.~~
- ~~(1) — The petition must begin with a statement that either:~~
    - ~~(A) — the panel decision conflicts with a decision of the United States Supreme Court or of the court to which the petition is addressed (with citation to the conflicting case or cases) and consideration by the full court is therefore necessary to secure and maintain uniformity of the court's decisions; or~~
    - ~~(B) — the proceeding involves one or more questions of exceptional importance, each of which must be concisely stated; for example, a petition may assert that a proceeding presents a question of exceptional importance if it involves an issue on which the panel decision conflicts with the authoritative decisions of other United States Courts of Appeals that have addressed the issue.~~
  - ~~(2) — Except by the court's permission:~~
    - ~~(A) — a petition for an en banc hearing or rehearing produced using a computer must not exceed 3,900 words; and~~
    - ~~(B) — a handwritten or typewritten petition for an en banc hearing or rehearing must not exceed 15 pages.~~
  - ~~(3) — For purposes of the limits in Rule 35(b)(2), if a party files both a petition for panel rehearing and a petition for rehearing en banc, they are considered a single document even if they are filed separately, unless separate filing is required by local rule.~~
- ~~(c) — **Time for Petition for Hearing or Rehearing En Banc.** A petition that an appeal be heard initially en banc must be filed by the date when the appellee's brief is due. A~~

~~petition for a rehearing en banc must be filed within the time prescribed by Rule 40 for filing a petition for rehearing.~~

- ~~(d) — **Number of Copies.** The number of copies to be filed must be prescribed by local rule and may be altered by order in a particular case.~~
- ~~(e) — **Response.** No response may be filed to a petition for an en banc consideration unless the court orders a response. The length limits in Rule 35(b)(2) apply to a response.~~
- ~~(f) — **Call for a Vote.** A vote need not be taken to determine whether the case will be heard or reheard en banc unless a judge calls for a vote.~~

#### **6 Cir. R. 35 ~~Petition for Rehearing En Banc~~ (Transferred to 6 Cir. R. 40)**

- ~~(a) — **Petition Content.** A petition for rehearing containing a petition for rehearing en banc must so state plainly on the cover and in the title of the document. A copy of the opinion or final order sought to be reviewed must accompany the petition.~~
- ~~(b) — **Effect of Granting the Petition.** A decision to grant rehearing en banc vacates the previous opinion and judgment of the court, stays the mandate, and restores the case on the docket as a pending appeal.~~
- ~~(c) — **Counsel Not Obligated to File.** Counsel fully discharges his or her duty in a case without filing a petition for rehearing en banc unless the case meets the rigid standards of Fed. R. App. P. 35(a).~~

#### **6 Cir. I.O.P. 35 — ~~En Banc Determination~~ (Transferred to 6 Cir. I.O.P. 40)**

- ~~(a) — **Extraordinary Nature of Petition for Rehearing En Banc.** A petition for rehearing en banc is an extraordinary procedure intended to bring to the attention of the entire court a precedent setting error of exceptional public importance or an opinion that directly conflicts with Supreme Court or Sixth Circuit precedent. Alleged errors in the determination of state law or in the facts of the case (including sufficient evidence), or errors in the application of correct precedent to the facts of the case, are matters for panel rehearing but not for rehearing en banc.~~
- ~~(b) — **Voting to Sit En Banc.** Only Sixth Circuit judges in regular active service who have not recused themselves from the case may vote in a poll on an en banc petition. See 28 U.S.C. § 46(c).~~
- ~~(c) — **Composition of En Banc Court.** The en banc court is composed of all judges in regular active service at the time of a hearing or rehearing, any senior judge of the court who sat on the original panel, and, if no oral argument en banc is held, any judge in regular active service at the time that the en banc court agreed to decide the case without oral argument~~

~~(d) — General Procedure — Petition for Rehearing En Banc.~~

- ~~(1) — The court will treat a petition for rehearing en banc as a petition for rehearing before the original panel.~~
- ~~(2) — The clerk will circulate the petition to the original panel. The panel has 14 days to comment on the petition to the en banc coordinator in the clerk's office.~~
  - ~~(A) — If the panel changes the substance of its decision, it will provide its modified decision to the en banc coordinator. The modified decision will be filed and counsel notified. Counsel will then have 14 days to withdraw, modify, or maintain the pending petition for rehearing en banc or to file a new petition.~~
  - ~~(B) — If the panel does not substantially modify its decision, the coordinator will then circulate the petition and the panel's comments to the en banc court.~~
- ~~(3) — Any active judge or any member of the panel whose decision is the subject of the rehearing may request a poll within 14 days from the date of circulation of the petition and the panel's comments. If a poll is requested, 14 days are allowed for voting.~~
- ~~(e) — When a Poll Can Be Requested. Any active judge or any member of the original hearing panel whose decision is under review may request a poll. Usually a poll is requested after a party files a petition for rehearing en banc. However, any member of the en banc court may sua sponte request a poll for hearing or rehearing en banc before a party files an en banc petition. If the request for a poll is not based on a party's petition, the clerk will immediately circulate voting forms to the en banc court.~~
- ~~(f) — Response to Petition. When a poll is requested, or if a judge requests a response, the clerk will ask for a response to the petition if none has been previously requested.~~

**FRAP 40      Petition for Panel Rehearing/En Banc Determination**

**(a)      A Party's Options.** A party may seek rehearing of a decision through a petition for panel rehearing, a petition for rehearing en banc, or both. Unless a local rule provides otherwise, a party seeking both forms of rehearing must file the petitions as a single document. Panel rehearing is the ordinary means of reconsidering a panel decision; rehearing en banc is not favored.

**(b)      Content of a Petition.**

**(1) Petition for Panel Rehearing.** A petition for panel rehearing must:

(A) state with particularity each point of law or fact that the petitioner believes the court has overlooked or misapprehended; and

(B) argue in support of the petition.

(2) **Petition for Rehearing En Banc.** A petition for rehearing en banc must begin with a statement that:

(A) the panel decision conflicts with a decision of the court to which the petition is addressed (with citation to the conflicting case or cases) and the full court's consideration is therefore necessary to secure or maintain uniformity of the court's decisions;

(B) the panel decision conflicts with a decision of the United States Supreme Court (with citation to the conflicting case or cases);

(C) the panel decision conflicts with an authoritative decision of another United States court of appeals (with citation to the conflicting case or cases); or

(D) the proceeding involves one or more questions of exceptional importance, each concisely stated.

(c) **When Rehearing En Banc May Be Ordered.** On their own or in response to a party's petition, a majority of the circuit judges who are in regular active service and who are not disqualified may order that an appeal or other proceeding be reheard en banc. Unless a judge calls for a vote, a vote need not be taken to determine whether the case will be so reheard. Rehearing en banc is not favored and ordinarily will be allowed only if one of the criteria in Rule 40(b)(2)(A)-(D) is met.

(d) **Time to File; Form; Length; Response; Oral Argument.**

(1) **Time.** Unless the time is shortened or extended by order or local rule, any petition for panel rehearing or rehearing en banc must be filed within 14 days after judgment is entered—or, if the panel later amends its decision (on rehearing or otherwise), within 14 days after the amended decision is entered. But in a civil case, unless an order shortens or extends the time, the petition may be filed by any party within 45 days after entry of judgment or of an amended decision if one of the parties is:

(A) the United States;

(B) a United States agency;

(C) a United States officer or employee sued in an official capacity; or

(D) a current or former United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf—including all instances in which the United States represents that person when the court of appeals' judgment is entered or files that person's petition.

(2) **Form of Petition.** The petition must comply in form with Rule 32. Copies must be filed and served as Rule 31 prescribes, except that the number of filed copies may be prescribed by local rule or altered by order in a particular case.

(3) **Length.** Unless the court or a local rule allows otherwise, the petition (or a single document containing a petition for panel rehearing and a petition for rehearing en banc) must not exceed:

(A) 3,900 words if produced using a computer; or

(B) 15 pages if handwritten or typewritten.

(4) **Response.** Unless the court so requests, no response to the petition is permitted. Ordinarily, the petition will not be granted without such a request. If a response is requested, the requirements of Rule 40(d)(2)-(3) apply to the response.

(5) **Oral Argument.** Oral argument on whether to grant the petition is not permitted.

(e) **If a Petition Is Granted.** If a petition for panel rehearing or rehearing en banc is granted, the court may:

(1) dispose of the case without further briefing or argument;

(2) order additional briefing or argument; or

(3) issue any other appropriate order.

(f) **Panel's Authority After a Petition for Rehearing En Banc.** The filing of a petition for rehearing en banc does not limit the panel's authority to take action described in Rule 40(e).

(g) **Initial Hearing En Banc.** On its own or in response to a party's petition, a court may hear an appeal or other proceeding initially en banc. A party's petition must be filed no later than the date when its principal brief is due. The provisions of Rule 40(b)(2), (c), and (d)(2)-(5) apply to an initial en banc. But initial hearing en banc is not favored and ordinarily will not be ordered.

(a) ~~**Time to File; Contents; Response; Action by the Court if Granted.**~~

(1) ~~**Time.** Unless the time is shortened or extended by order or local rule, a petition for panel rehearing may be filed within 14 days after entry of judgment. But in a civil case, unless an order shortens or extends the time, the petition may be filed by any party within 45 days after entry of judgment if one of the parties is:~~

(A) ~~the United States;~~

(B) ~~a United States agency;~~

(C) ~~a United States officer or employee sued in an official capacity; or~~

(D) ~~a current or former United States officer or employee sued in an individual capacity for an act or omission occurring in connection with~~

duties performed on the United States' behalf—including all instances in which the United States represents that person when the court of appeals' judgment is entered or files the petition for that person.

- (2) ~~**Contents.** The petition must state with particularity each point of law or fact that the petitioner believes the court has overlooked or misapprehended and must argue in support of the petition. Oral argument is not permitted.~~
- (3) ~~**Response.** Unless the court requests, no response to a petition for panel rehearing is permitted. Ordinarily, rehearing will not be granted in the absence of such a request. If a response is requested, the requirements of Rule 40(b) apply to the response.~~
- (4) ~~**Action by the Court.** If a petition for panel rehearing is granted, the court may do any of the following:~~
  - (A) ~~make a final disposition of the case without reargument;~~
  - (B) ~~restore the case to the calendar for reargument or resubmission; or~~
  - (C) ~~issue any other appropriate order.~~
- (b) ~~**Form of Petition; Length.** The petition must comply in form with Rule 32. Copies must be served and filed as Rule 31 prescribes. Except by the court's permission:~~
  - (1) ~~a petition for panel rehearing produced using a computer must not exceed 3,900 words; and~~
  - (2) ~~a handwritten or typewritten petition for panel rehearing must not exceed 15 pages.~~

#### 6 Cir. R. 40 Petition for Rehearing ~~Extension of Time~~

- (a) **Extension of Time – Grounds.** The court will grant a motion to extend the time to file a petition for panel rehearing or for rehearing en banc only for the most compelling reasons.
- (b) **Failure to File a Motion.** If an untimely petition for panel rehearing or for rehearing en banc is not accompanied by a motion to extend the filing time, the court will return the petition, unfiled, to the sending party.
- (c) **Petition Content.** A petition for panel rehearing containing a petition for rehearing en banc must so state plainly on the cover and in the title of the document. A copy of the opinion or final order sought to be reviewed must accompany the petition.
- (d) **Effect of Granting a Petition for Rehearing En Banc.** A decision to grant rehearing en banc vacates the previous opinion and judgment of the court, stays the mandate, and restores the case on the docket as a pending appeal.
- (e) **Counsel Not Obligated to File.** Counsel fully discharges his or her duty in a case without filing a petition for rehearing en banc unless the case meets the rigid standards of Fed. R. App. P. 35(a) 40(b)(2).

#### 6 Cir. I.O.P. 40 Petitions for Rehearing

- (a) **Panel Rehearing – When Necessary.**
- (1) **Purpose.** The purpose of a petition for panel rehearing is to bring a claimed error of fact or law in the opinion to the panel’s attention. It is not to be used for re-argument of issues previously presented.
- (2) **Not a Prerequisite to Supreme Court Filing.** A party is not required to petition for rehearing—with or without a petition for rehearing en banc—as a prerequisite to a petition for writ of certiorari in the Supreme Court of the United States.
- (b) **Panel Rehearing – Review.** Only the original panel members will review petitions for panel rehearing that are unaccompanied by a petition for rehearing en banc.
- (c) **Panel Rehearing – Briefing, Reargument, and Disposition.** If a petition for panel rehearing is granted, the court will usually make a final disposition without additional briefing or reargument. It may instead:
- allow additional briefing;
  - restore the case to the calendar for reargument or resubmission; or



- enter other appropriate orders.
- (d) **Extension of Time or Leave to File Out-of-Time.** The court will refer a motion for additional time to file a petition for panel rehearing or for permission to file out of time, to the original panel members. Counsel should not presume that the motion will be granted.
- (e) **Extraordinary Nature of Petition for Rehearing En Banc.** A petition for rehearing en banc is an extraordinary procedure intended to bring to the attention of the entire court a precedent-setting error of exceptional public importance or an opinion that directly conflicts with Supreme Court or Sixth Circuit precedent. Alleged errors in the determination of state law or in the facts of the case (including sufficient evidence), or errors in the application of correct precedent to the facts of the case, are matters for panel rehearing but not for rehearing en banc.
- (f) **Voting to Sit En Banc.** Only Sixth Circuit judges in regular active service who have not recused themselves from the case may vote in a poll on an en banc petition. See 28 U.S.C. § 46(c).
- (g) **Composition of En Banc Court.** The en banc court is composed of all judges in regular active service at the time of a hearing or rehearing, any senior judge of the court who sat on the original panel, and, if no oral argument en banc is held, any judge in regular active service at the time that the en banc court agreed to decide the case without oral argument
- (h) **General Procedure – Petition for Rehearing En Banc.**
- (1) The court will treat a petition for rehearing en banc as a petition for rehearing before the original panel.
  - (2) The clerk will circulate the petition to the original panel. The panel has 14 days to comment on the petition to the en banc coordinator in the clerk's office.
    - (A) If the panel changes the substance of its decision, it will provide its modified decision to the en banc coordinator. The modified decision will be filed and counsel notified. Counsel will then have 14 days to withdraw, modify, or maintain the pending petition for rehearing en banc or to file a new petition.
    - (B) If the panel does not substantially modify its decision, the coordinator will then circulate the petition and the panel's comments to the en banc court.
  - (3) Any active judge or any member of the panel whose decision is the subject of the rehearing may request a poll within 14 days from the date of circulation of the petition and the panel's comments. If a poll is requested, 14 days are allowed for voting.

- (i) **When a Poll Can Be Requested.** Any active judge or any member of the original hearing panel whose decision is under review may request a poll. Usually a poll is requested after a party files a petition for rehearing en banc. However, any member of the en banc court may sua sponte request a poll for hearing or rehearing en banc before a party files an en banc petition. If the request for a poll is not based on a party's petition, the clerk will immediately circulate voting forms to the en banc court.
- (j) **Response to Petition.** When a poll is requested, or if a judge requests a response, the clerk will ask for a response to the petition if none has been previously requested.

## **6 Cir. R. 203 Assignment of Judges; Quorum**

- (a) **Assignment of Judges; Quorum.** As provided in 28 U.S.C. § 46, the judges of this court shall be assigned to sit upon the court and its panels in such order, at such sessions, and for the hearing of such cases, as the court directs. Cases and controversies shall be heard and determined by a panel of three judges, unless a hearing or rehearing before the court en banc is ordered as provided by FRAP ~~35~~ 40. A majority of the number of judges authorized to constitute the court or a panel thereof shall constitute a quorum.

**Appendix:  
Length Limits Stated in the  
Federal Rules of Appellate Procedure**

This chart summarizes the length limits stated in the Federal Rules of Appellate Procedure. Please refer to the rules for precise requirements, and bear in mind the following:

- In computing these limits, you can exclude the items listed in Rule 32(f).
- If you use a word limit or a line limit (other than the word limit in Rule 28(j)), you must file the certificate required by Rule 32(g).
- For the limits in Rules 5, 21, 27, **35**, and 40:
  - You must use the word limit if you produce your document on a computer; and
  - You must use the page limit if you handwrite your document or type it on a typewriter.
- For the limits in Rules 28.1, 29(a)(5), and 32:
  - You may use the word limit or page limit, regardless of how you produce the document; or
  - You may use the line limit if you type or print your document with a monospaced typeface. A typeface is monospaced when each character occupies the same amount of horizontal space.

		<b>Rule</b>	<b>Document type</b>	<b>Word limit</b>	<b>Page limit</b>	<b>Line limit</b>
<b>Permission to appeal</b>		5(c)	<ul style="list-style-type: none"> <li>Petition for permission to appeal</li> <li>Answer in opposition</li> <li>Cross-petition</li> </ul>	5,200	20	Not applicable
<b>Extraordinary writs</b>		21(d)	<ul style="list-style-type: none"> <li>Petition for writ of mandamus or prohibition or other extraordinary writ</li> <li>Answer</li> </ul>	7,800	30	Not applicable
<b>Motions</b>		27(d)(2)	<ul style="list-style-type: none"> <li>Motion</li> <li>Response to a motion</li> </ul>	5,200	20	Not applicable
		27(d)(2)	<ul style="list-style-type: none"> <li>Reply to a response to a motion</li> </ul>	2,600	10	Not applicable
<b>Parties' briefs (where no</b>		32(a)(7)	<ul style="list-style-type: none"> <li>Principal brief</li> </ul>	13,000	30	1,300

<b>cross-appeal)</b>	32(a)(7)	• Reply brief	6,500	15	650
<b>Parties' briefs (where cross-appeal)</b>	28.1(e)	• Appellant's principal brief • Appellant's response and reply brief	13,000	30	1,300
	28.1(e)	• Appellee's principal and response brief	15,300	35	1,500
	28.1(e)	• Appellee's reply brief	6,500	15	650
<b>Party's supplemental letter</b>	28(j)	• Letter citing supplemental authorities	350	Not applicable	Not applicable
<b>Amicus briefs</b>	29(a)(5)	• Amicus brief during initial consideration of case on merits	One-half the length set by the Appellate Rules for a party's principal brief	One-half the length set by the Appellate Rules for a party's principal brief	One-half the length set by the Appellate Rules for a party's principal brief
	29(b)(4)	• Amicus brief during consideration of whether to grant rehearing	2,600	Not applicable	Not applicable
<b>Rehearing and en banc filings</b>	<del>35(b)(2)</del> & <del>40(b)</del> (d)(3)	• Petition for <b>initial</b> hearing en banc • Petition for panel rehearing; petition for rehearing en banc • <b>Response if requested by the court</b>	3,900	15	Not applicable