

OFFICE OF THE CLERK
UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

ANASTASIA DUBROVSKY
CLERK

JOHN JOSEPH MOAKLEY
UNITED STATES COURTHOUSE
1 COURTHOUSE WAY, SUITE 2500
BOSTON, MA 02210
(617) 748-9057

**NOTICE OF ADOPTION OF AMENDMENTS TO LOCAL RULE 35.0,
LOCAL RULE 40.0, AND INTERNAL OPERATING PROCEDURE X**

The United States Court of Appeals for the First Circuit previously provided notice of proposed amendments to Local Rule 35.0, Local Rule 40.0, and Internal Operating Procedure X. The court solicited comments on the proposed amendments. In response to non-substantive comments on the proposed changes to Local Rule 40.0 from the court's Rules Advisory Committee, the court reorganized that rule's subsections, edited two headings for clarity, and changed references to "petition for rehearing" to "petition for panel rehearing or rehearing en banc" for completeness. No additional comments were received.

The court hereby provides notice of the final adoption of the amendments. A copy of Local Rule 35.0, Local Rule 40.0, and Internal Operating Procedure X, with the amendments incorporated, is attached.

December 2, 2024

Anastasia Dubrovsky, Clerk

Local Rule 35.0. (Transferred to Local Rule 40.0)

Local Rule 40.0. Petition for Panel Rehearing; En Banc Determination

(a) Number of Copies. When a petition for panel rehearing or rehearing en banc is filed electronically in compliance with the court's electronic filing system, paper copies are not required and a disk copy is not required. When a petition for panel rehearing or rehearing en banc is filed in paper form, ten copies must be filed with the clerk, including one copy on computer generated disk. The disk must be filed regardless of page length but otherwise in accordance with Local Rule 32.0.

(b) Motions for Leave to File Oversized Petitions. A motion for leave to file a petition for panel rehearing or rehearing en banc in excess of the page length limitations of Fed. R. App. P. 40(b) must be filed at least five days in advance of the petition's due date, must specify the additional length sought, and must contain a detailed statement of grounds. Such motions will be granted only for compelling reasons.

(c) En Banc Procedures

(1) Who May Vote. The decision whether a case should be heard or reheard en banc is made solely by the circuit judges of this circuit who are in regular active service. Rehearing en banc shall be ordered only upon the affirmative votes of a majority of the judges of this court in regular active service who are not disqualified, provided that the judges who are not disqualified constitute a majority of the judges who are in regular active service.

(2) Composition of En Banc Court.

(A) A court en banc consists solely of the circuit judges of this circuit in regular active service except that any senior circuit judge of this circuit shall be eligible to participate (i) at that judge's election, as a member of an en banc court reviewing a decision of a panel of which that judge was a member, or (ii) to continue to participate in the decision of a case or controversy that was heard or reheard by the court en banc at a time when such judge was in regular active service.

(B) For the purpose of determining those who may be a member of the en banc court under subsection (A)(ii), a case is heard or reheard by the court en banc when oral argument is held, or if no oral hearing is held, as of the date the case is ordered to be submitted to the en banc court.

Internal Operating Procedure X. Petitions for Panel Rehearing and Petitions for Panel Hearing or Rehearing En Banc

A. General. Fed. R. App. P. 40 should be consulted with respect to the procedures. Petitions for rehearing are intended to bring to the attention of the panel claimed errors in the opinion and they are not to be used for reargument of an issue previously presented.