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**UNITED STATES COURT OF APPEALS**  
FOR THE FIRST CIRCUIT

ANASTASIA DUBROVSKY  
CLERK

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**NOTICE OF PROPOSED 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 provides notice that it proposes the attached amendments to Local Rules 35.0 and 40.0 and Internal Operating Procedure X.

The amendments are made to maintain consistency with the amendments to the Federal Rules of Appellate Procedure, which go into effect December 1, 2024, merging the provisions of Rules 35 and 40 of the Federal Rules of Appellate Procedure. The amendment to Internal Operating Procedure X corrects a citation to the Federal Rules of Appellate Procedure.

Additions are noted in *italic* print; deletions are noted in ~~strikeout~~ print.

The court hereby invites public comment on the amendments. Comments should be submitted by November 27, 2024 and addressed to:

Office of the Clerk  
U.S. Court of Appeals for the First Circuit  
United States Courthouse  
1 Courthouse Way, Suite 2500  
Boston, MA 02210

October 28, 2024

Anastasia Dubrovsky, Clerk

**Local Rule 35.0. *En Banc Determination* (Transferred to Local Rule 40.0)**

**(a) *Who May Vote; Composition of En Banc Court.***

~~(1) **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.~~

~~(b) **Petitions for Panel Hearing or Rehearing En Banc.** If a petitioner files a petition for panel rehearing and a petition for rehearing en banc addressed to the same decision or order of the court, the two petitions must be combined into a single document and the document is subject to the length limitation contained in Fed. R. App. P. 35 (b)(2), (3).~~

~~(c) **Number of Copies.** When a petition for hearing or rehearing en banc or combined Fed. R. App. P. 35(b)(3) document 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 hearing or rehearing en banc or combined Fed. R. App. P. 35(b)(3) document is filed in paper form, ten copies must be filed with the clerk, including one copy on a computer generated disk. The disk must be filed regardless of page length but otherwise in accordance with Local Rule 32.0.~~

~~(d) **Motions for Leave to File Oversized Petitions.** A motion for leave to file a petition in excess of the page length limitations of Fed. R. App. P. 35(b)(2) and Local Rule 35.0(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.~~

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

### **(a) *Who May Vote; Composition of En Banc Court***

(1) ***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.*

**(a)(b) Number of Copies.** When a petition for ~~panel~~ rehearing 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 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)(c) Motions for Leave to File Oversized Petitions.** A motion for leave to file a petition for ~~panel~~ rehearing in excess of the page length limitations of Fed. R. App. P. 40(bd) 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.

**Internal Operating Procedure X(A) (Petitions for Panel Rehearing and Petitions for Panel Hearing or Rehearing En Banc): General.** Fed. R. App. P. 40 and ~~35~~ 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.