

#### **Rule 40. Division Rehearing; En Banc Determination.**

(a) A Party's Options. A party may seek rehearing of a decision through a petition for division rehearing, a petition for rehearing en banc, or both. A party seeking both forms of rehearing must file the petitions as a single document. Division rehearing is the ordinary means of reconsidering a division decision; rehearing en banc is not favored. In cases consolidated on appeal, a petition filed by one party will not be deemed filed by any other party.

(b) Content of a Petition.

(1) Petition for Division Rehearing. A petition for division 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 division 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 division decision conflicts with a decision of the United States Supreme Court (with citation to the conflicting case or cases); or

(C) 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 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 in active service or a retired judge who was a member of division that rendered the decision 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)-(C) is met.

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

(1) Time. Any petition for division rehearing or rehearing en banc must be filed within 14 days after judgment is entered—or, if the division later amends its decision (on rehearing or otherwise), within 14 days after the amended decision is entered.

(2) Form of Petition. The petition must comply in form with Rule 32. Copies must be filed and served as Rule 31 prescribes.

(3) Length. The petition (or a single document containing a petition for division rehearing and a petition for rehearing en banc) must not exceed 15 pages.

(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 division 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) Division's Authority After a Petition for Rehearing En Banc. The filing of a petition for rehearing en banc does not limit the division'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, the 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 hearing en banc. But initial hearing en banc is not favored and ordinarily will not be ordered. Unless a judge in active service calls for a vote, a vote need not be taken to determine whether the case will be so heard.

(h) Reconsideration. A party may not file a motion to reconsider the denial of a petition for rehearing, initial hearing en banc, or rehearing en banc.