

**District of Columbia
Court of Appeals**



No. M285-24

BEFORE: Blackburne-Rigsby, Chief Judge, and Beckwith, Easterly, McLeese, Deahl, Howard, and Shanker, Associate Judges.

NOTICE
(FILED – October 22, 2024)

Pursuant to D.C. Code § 11-743, this court must conduct its business according to the Federal Rules of Appellate Procedure (“FRAP”), unless the court adopts or prescribes modifications of those rules. Amendments to the FRAP have been approved and are scheduled to go into effect in December 2024. Once they go into effect, the amendments would become rules of this court, unless this court decides otherwise. The amendments and related materials are attached to this notice.

The court hereby stays the effective date of the 2024 FRAP amendments as rules of this court pending further order of the court. The court has determined to send a modified version of the 2024 FRAP amendments out for public comment. The modifications primarily involve deleting language that is inapplicable to this court and making other conforming changes.

The court also has determined to send out for public comment one other proposed rule change: adding language making clear that a party may not file a motion to reconsider the denial of a petition for rehearing, initial hearing en banc, or rehearing en banc.

Track-changes and clean copies of the proposed amendments are attached.

This notice is published to afford interested parties an opportunity to submit written comments concerning the amendments under consideration. Comments must be submitted by Monday, December 23, 2024. Comments may be submitted electronically to rules@dcappeals.gov, or in writing, addressed to the Clerk, D.C. Court of Appeals, 430 E Street, N.W., Washington, D.C. 20001. All comments submitted pursuant to this notice will be available to the public.

PER CURIAM

PAGE LEFT BLANK INTENTIONALLY

Rule 35. [\(Transferred to Rule 40\)](#)

~~Petition for Hearing or Rehearing En Banc; En Banc Determination.~~

~~(a) When Hearing or Rehearing En Banc May Be Ordered. 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 heard or reheard 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. A party may petition for a hearing or rehearing en banc.~~

~~—(1) The petition must begin with a statement that either:~~

~~—(A) the decision of the division conflicts with controlling authority (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.~~

~~—(2) Except by the court's permission, a petition for an en banc hearing or rehearing must not exceed 15 pages.~~

~~—(3) For the purposes of the page limit in Rule 35(b)(2), if a party files both a petition for division rehearing and a petition for rehearing en banc, they are considered a single document even if filed separately.~~

~~—(4) In cases consolidated on appeal, a petition filed by one party will not be deemed filed by any other party.~~

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

~~(d) Response. Unless the court requests, no response to a petition for en banc consideration, and no reply to a response, may be filed.~~

~~(e) The petition and any response or reply must comply in form with Rule 32.~~

~~(f) Call for a Vote. A vote will not be taken to determine whether the case will be heard or reheard en banc unless a judge in regular active service or a retired judge who was a member of the division that rendered the decision calls for a vote.~~

Rule 40. ~~Petition for Rehearing by the~~ 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~~ ~~Contents; Answer; Action by the Division if Granted.~~

(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. ~~Unless the time is shortened or extended by order, a petition for rehearing by the division may be filed within 14 days after entry of judgment.~~

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

~~served as Rule 31 prescribes. Contents. The petition must state with particularity each point of law or fact that the petitioner believes the division has overlooked or misapprehended and must argue in support of the petition. Oral argument in support of the petition is not permitted.~~

~~(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. Response. Unless the division requests, no response to a petition for rehearing by the division, and no reply to a response, may be filed.~~

~~(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. Consolidation. In cases consolidated on appeal, a petition filed by one party will not be deemed filed by any other party.~~

~~(5) Oral Argument. Oral argument on whether to grant the petition is not permitted. Action by the Division. If a petition for rehearing by the division is granted, the division 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; Length. The petition and the response must comply in form with Rule 32. Petitions and responses must be served and filed as Rule 31 prescribes for briefs. Unless the division permits otherwise, a petition for rehearing by the division, or a response if requested by the court, must not exceed 15 pages.~~

~~(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.

Rule 35. (Transferred to Rule 40)

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.

**PROPOSED AMENDMENTS TO THE
FEDERAL RULES OF APPELLATE PROCEDURE**

Rule 32. Form of Briefs, Appendices, and Other Papers

* * * * *

(g) Certificate of Compliance.

(1) Briefs and Papers That Require a

Certificate. A brief submitted under Rules 28.1(e)(2), 29(b)(4), or 32(a)(7)(B)—and a paper submitted under Rules 5(c)(1), 21(d)(1), 27(d)(2)(A), 27(d)(2)(C), or 40(d)(3)(A)—must include a certificate by the attorney, or an unrepresented party, that the document complies with the type-volume limitation. The person preparing the certificate may rely on the word or line count of the word-processing system used to prepare the document. The certificate must

state the number of words—or the number of lines of monospaced type—in the document.

- (2) **Acceptable Form.** Form 6 in the Appendix of Forms meets the requirements for a certificate of compliance.

Rule 35. (Transferred to Rule 40)

Rule 40. 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 the 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 hearing en banc. But initial hearing en banc is not favored and ordinarily will not be ordered.

**PROPOSED AMENDMENTS TO THE
FEDERAL RULES OF APPELLATE PROCEDURE**

Rule 35. (Transferred to Rule 40)

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);
 - (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 the 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.