

Rule 35. 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 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) Number of Copies. An original and 10 copies of a petition for hearing or rehearing en banc must be filed.

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

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

(g) 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.