

**At a Stated Term of the United States Court of Appeals for the
Second Circuit, held at the Thurgood Marshall United States Courthouse,
40 Foley Square, in the City of New York, on the 30th day of October,
Two Thousand Twenty-four,**

PRESENT: Debra Ann Livingston,
Chief Judge
Raymond J. Lohier
Richard J. Sullivan
Joseph F. Bianco
Michael H. Park
William J. Nardini
Steven J. Menashi
Eunice C. Lee
Beth Robinson
Myrna Pérez
Alison J. Nathan
Sarah A. L. Merriam
Maria Araújo Kahn,
Circuit Judges

IT IS HEREBY ORDERED, that the Local Rules of the United States Court of Appeals for the Second Circuit, are amended, effective immediately, and proposed for public comment pursuant to 28 U.S.C. § 2071(b) and Fed. R. App. P. 47(a)(1). The Clerk of Court shall receive comments submitted by November 28, 2024. Anyone wishing to comment should do so, in writing, addressed to:

Catherine O'Hagan Wolfe
Clerk of Court
United States Court of Appeals
40 Foley Square
New York, New York 10007

or

Email: rulescomments@ca2.uscourts.gov

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Local Rule 35.1 En Banc Procedure (Transferred to Local Rule 40.1)

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IOP ~~35.1~~ 40.1 En Banc Poll and Decision

(a) Judges Eligible to Request an En Banc Poll. Only an active judge of the court or a senior judge who sat on the three-judge panel is eligible to request a poll of the active judges to determine whether a case should be heard or reheard en banc.

(b) Judges Eligible to Vote in an En Banc Poll. Only an active judge may vote to determine whether a case should be heard or reheard en banc and whether an en banc panel, once constituted, should be dissolved. A judge's status as an active or senior judge for the purpose of an en banc poll is determined on the date of entry of the en banc order.

(c) Judges Eligible to Participate in an En Banc Hearing or Rehearing. Only an active judge or a senior judge who sat on the three-judge panel is eligible to participate in the en banc hearing or rehearing. A judge's status as an active or senior judge is determined on the date of the hearing or rehearing en banc, i.e., on the date oral argument is heard or the case is submitted.

(d) Judges Eligible to Participate in an En Banc Decision. Only an active judge or a senior judge who either sat on the three-judge panel or took senior status after a case was heard or reheard en banc may participate in the en banc decision. A judge who joins the court after a case was heard or reheard en banc is not eligible to participate in the en banc decision.

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Local Rule 40.1 Panel and En Banc Rehearing Procedure

(a) Form of Petition. If a party is simultaneously filing a petition for panel rehearing and a petition for rehearing en banc, both requests must be made in a single document.

(b) Time to File in a Direct Criminal Appeal. A petition for panel rehearing may be filed within 45 days after entry of judgment.

(c) Copy of Opinion or Summary Order Required. A petition for panel rehearing must include a copy of the opinion or summary order to which the petition relates and must not include any other documents.

(d-e) Number of Paper Copies. If a petition for only panel rehearing exceeds 50 pages, the petitioner must submit 3 paper copies of the petition to the clerk's office. If a ~~the~~ petition for only

~~en banc rehearing or a single petition for panel and en banc rehearing is simultaneously filed with a petition for rehearing en banc, the petitioner must submit 15 paper copies. the number of copies required by LR 35.1(e).~~

(e d) Procedure After Amendment of Court Ruling. If the court substantively amends its opinion or summary order, a petition (or an amended petition) for panel rehearing may be filed within the times specified by FRAP 40(d a)(1) or, if in a direct criminal appeal by L.R. 40.1(b) above, counted from the date of filing of the amended opinion or order. A petition for ~~panel~~ rehearing filed before amendment of the court's ruling may, but need not, be amended.

(f e) Sanctions. The court may, after affording notice and an opportunity to be heard, impose sanctions against a party that files a frivolous petition for panel rehearing.

Local Rule 40.2 Panel Reconsideration Procedure

When the court determines an appeal by issuing an order for which a FRAP 36 judgment is not entered, a party adversely affected may file a motion for panel reconsideration and a motion for reconsideration en banc that complies with FRAP ~~35 and 40~~ and LR ~~35.1 and 40.1~~. No response may be filed unless the court orders.

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FOR THE COURT

Catherine O'Hagan Wolfe

Catherine O'Hagan Wolfe
Clerk of Court

New York, NY

Underline – material added
Strikethrough – material deleted