

**PROPOSED AMENDMENTS TO THE
FEDERAL RULES OF APPELLATE PROCEDURE¹**

1 **Rule 35. En Banc Determination**

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3 **(b) Petition for Hearing or Rehearing En Banc.** A party
4 may petition for a hearing or rehearing en banc.

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6 (2) Except by the court's permission:

7 (A) a petition for an en banc hearing or rehearing
8 produced using a computer must not exceed
9 3,900 words; and

10 (B) a handwritten or typewritten petition for an
11 en banc hearing or rehearing must not
12 exceed 15 pages.

13 * * * * *

14 **(e) Response.** No response may be filed to a petition for
15 an en banc consideration unless the court orders a

¹ New material is underlined; matter to be omitted is lined through.

16 response. The length limits in Rule 35(b)(2) apply to
17 a response.

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Committee Note

The amendment to Rule 35(e) clarifies that the length limits applicable to a petition for hearing or rehearing en banc also apply to a response to such a petition, if the court orders one.

1 **Rule 40. Petition for Panel Rehearing**

2 **(a) Time to File; Contents; ~~Answer-Response~~; Action**
3 **by the Court if Granted.**

4 * * * * *

5 (3) ~~Answer-Response~~. Unless the court requests, no
6 ~~answer-response~~ to a petition for panel rehearing
7 is permitted. ~~But~~ Ordinarily, rehearing will not
8 be granted in the absence of such a request. If a
9 response is requested, the requirements of
10 Rule 40(b) apply to the response.

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12 **(b) Form of Petition; Length.** The petition must comply
13 in form with Rule 32. Copies must be served and filed
14 as Rule 31 prescribes. Except by the court's
15 permission:

16 (1) a petition for panel rehearing produced using a
17 computer must not exceed 3,900 words; and

4 FEDERAL RULES OF APPELLATE PROCEDURE

18 (2) a handwritten or typewritten petition for panel
19 rehearing must not exceed 15 pages.

Committee Note

The amendment to Rule 40(a)(3) clarifies that the provisions of Rule 40(b) regarding a petition for panel rehearing also apply to a response to such a petition, if the court orders a response. The amendment also changes the language to refer to a “response,” rather than an “answer,” to make the terminology consistent with Rule 35; this change is intended to be stylistic only.