

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
501 POTTER STEWART U.S.
COURTHOUSE
100 EAST FIFTH STREET
CINCINNATI, OHIO
45202-3988**

**Kelly L. Stephens
Clerk**

513-564-7000

December 1, 2025

**NOTICE OF AMENDMENTS TO FEDERAL
RULES OF APPELLANT PROCEDURE, SIXTH
CIRCUIT LOCAL RULES, AND SIXTH CIRCUIT
INTERNAL OPERATING PROCEDURES**

Pursuant to 28 U.S.C. § 2074, the Federal Rules of Appellate Procedure are amended to include [amendments](#) to Rules 6 and 39.

Pursuant to 28 U.S.C. § 2071 and 6 Cir. R. 47(c), the United States Court of Appeals for the Sixth Circuit provides notice that it has adopted amendments to Sixth Circuit Local Rules 12(c)(5) and 40, and Sixth Circuit Internal Operating Procedure 40 as modified following public comment.

Following public comment, the proposed amendments published June 30, 2025, to Sixth Circuit Rule 12(c)(5) were modified as follows:

Proposed Amendment:

- (c) (5) **Petition for Rehearing or for Writ of Certiorari.**
 - (A) Appointed counsel must file a petition for rehearing in this court or for a writ of certiorari in the Supreme Court if the client requests it, and in counsel's considered judgment, there are grounds for seeking ~~Supreme Court review~~ further review. If counsel determines there are no grounds supporting the client's request, counsel shall promptly file a motion to withdraw pursuant to (4)(D) of this section.
 - (B) The court shall accept a timely petition for rehearing filed pro se by a person represented by appointed counsel. If appointed counsel has not filed a motion to withdraw, the clerk shall serve counsel with notice of the pro se petition with a request that counsel take further action.

Final Amendment:

- (5) **Petition for Rehearing or for Writ of Certiorari.**
 - (A) Appointed counsel must file a petition for rehearing in this court or for a writ of certiorari in the Supreme Court if the client requests it, and in counsel's considered judgment, there are grounds for seeking further review.
 - (B) The court shall accept a timely petition for rehearing filed pro se by a person represented by appointed counsel. If appointed counsel has not filed a motion to withdraw, the clerk shall serve counsel with notice of the pro se petition with a request that counsel take further action.

Following public comment, the proposed amendments published June 30, 2025, to Sixth Circuit Rule 40 were modified as follows:

Proposed Amendment:

6 Cir. R. 40 ~~Petition for Panel Rehearing; En Banc Determination~~

- ~~(a) **Extension of Time.** The court will grant a motion to extend the time to file a petition for panel rehearing or for rehearing en banc only for the most compelling reasons.~~
- (a) **Extraordinary Nature of Petition for Rehearing En Banc.**** A petition for rehearing en banc is an extraordinary request intended to bring to the attention of the entire court a precedent-setting error of exceptional public importance or an opinion that directly conflicts with Supreme Court or Sixth Circuit precedent. Counsel fully discharges his or her duty in a case without filing a petition for rehearing en banc unless the case meets the rigid standards of Fed. R. App. P. 40(b)(2). Alleged errors in the determination of state law or in the facts of the case (including sufficient evidence), or errors in the application of correct precedent to the facts of the case, are matters for panel rehearing but not for rehearing en banc.
- ~~(b) **Failure to File a Motion.** In an untimely petition for panel rehearing or rehearing en banc is not accompanied by a motion to extend the filing time, the court will return the petition, unfiled, to the sending party.~~
- (b) **(e) Petition Content.**** A petition for panel rehearing containing a petition for rehearing en banc must so state plainly on the cover and in the title of the document. A petition that does not plainly request en banc rehearing will be presumed to seek only panel rehearing and will not be circulated to the en banc court for review. A copy of the opinion or final order sought to be reviewed must accompany the petition.
- (c) **Expedited Relief.**** A petition for panel rehearing or for rehearing en banc should state whether the court has previously expedited the matter for review. If either party seeks expedited review or relief for the first time upon rehearing, the party should file a separate motion that shows good cause to expedite.
- (d) **Extension of Time.**** The court will grant a motion to extend the time to file a petition for panel rehearing or for rehearing en banc only for the most compelling reasons. If an untimely petition for panel rehearing or for rehearing en banc is not accompanied by a motion to extend the filing time, the court will return the petition, unfiled, to the sending party.
- (e) **(d) Effect of Granting a Petition for Rehearing En Banc.**** A decision to grant rehearing en banc vacates the previous opinion and judgment or order of the court, stays the mandate, and restores the case on the docket as a pending appeal.
- ~~(e) **Counsel Not Obligated to File.** Counsel fully discharges his or her duty in a case without filing a petition for rehearing en banc unless the case meets the rigid standards of Fed. R. App. P. 40(b)(2).~~

Final Amendment:

6 Cir. R. 40 Panel Rehearing; En Banc Determination

- (a) **Petition Content.** A petition for panel rehearing containing a petition for rehearing en banc must so state plainly on the cover and in the title of the document. A petition that does not plainly request en banc rehearing will be presumed to seek only panel rehearing and will not be circulated to the en banc court for review. A copy of the opinion or final order sought to be reviewed must accompany the petition.
- (b) **Expedited Relief.** A petition for panel rehearing or for rehearing en banc should state whether the court has previously expedited the matter for review. If either party seeks expedited review or relief for the first time upon rehearing, the party should file a separate motion that shows good cause to expedite.
- (c) **Extension of Time.** The court will grant a motion to extend the time to file a petition for panel rehearing or for rehearing en banc only for the most compelling reasons. If an untimely petition for panel rehearing or for rehearing en banc is not accompanied by a motion to extend the filing time, the court will return the petition, unfiled, to the sending party.
- (d) **Effect of Granting a Petition for Rehearing En Banc.** A decision to grant rehearing en banc vacates the previous opinion and judgment or order of the court, stays the mandate, and restores the case on the docket as a pending appeal.

Following public comment, the proposed amendments published June 30, 2025, to Sixth Circuit Internal Operating Procedure 40 were modified as follows.

Proposed Amendment:

6 Cir. I.O.P. 40 Petitions for Rehearing

(a) ~~Panel Rehearing—When Necessary.~~

(1) **When Necessary.**

(A) ~~(1)~~ **Purpose.** The purpose of a petition for panel rehearing is to bring a claimed error of fact or law in the opinion to the panel’s attention. It is not to be used for re-argument of issues previously presented.

(B) ~~(2)~~ **Not a prerequisite to Supreme Court Filing.** A party is not required to petition for rehearing – with or without a petition for rehearing en banc—as a prerequisite to a petition for a writ of certiorari in the Supreme Court of the United States.

(2) ~~(b)~~ **Panel Rehearing—Review.** Only the original panel members will review petitions for panel rehearing that are unaccompanied by a petition for rehearing en banc.

~~(3)~~ ~~(c)~~ **Panel Rehearing—Briefing, Reargument, and Disposition.** In a petition for panel rehearing is granted, the court will usually make a final disposition without additional briefing or reargument. ~~It may instead:~~

- ~~allow additional briefing;~~
- ~~restore the case to the calendar for reargument or resubmission; or~~
- ~~enter other appropriate orders.~~

(4) ~~(d)~~ **Extension of Time or Leave to File Out-of-Time.** The court will refer a motion for additional time to file a petition for panel rehearing or for permission to file out of time to the original panel members. Counsel should not presume that the motion will be granted.

~~(e) **Extraordinary Nature of Petition for Rehearing En Banc.** A petition for rehearing en banc is an extraordinary procedure intended to bring to the attention of the entire court a precedent-setting error of exceptional public importance or an opinion that directly conflicts with Supreme Court or Sixth Circuit precedent. Alleged errors in the determination of state law or in the facts of the case (including sufficient evidence), or errors in the application of correct precedent to the facts of the case, are matters for panel rehearing but not for rehearing en banc.~~

(b) **Rehearing En Banc.**

(1) ~~(f)~~ **Voting to Sit En Banc.** Only Sixth Circuit judges in regular active service who have not recused themselves from the case may vote in a poll on an en banc petition. See U.S.C. §46(c).

(2) ~~(g)~~ **Composition of En Banc Court.** The en banc court is composed of all judges in regular active service at the time of a hearing or rehearing, any senior judge of the court who sat on the original panel, and, if no oral argument en banc is held, any judge in regular active service at the time that the en banc court agreed to decide the case without oral argument.

(3) ~~(h)~~ **General Procedure —Petition for Rehearing En Banc.**

(A) ~~(1)~~ **The court will treat a A** petition for rehearing en banc **will first be treated** as a petition for rehearing before the original panel.

~~(2)~~ **The clerk will circulate the petition to the The** original panel. ~~The panel~~ has 14 days to comment submit comments on the petition to the ~~en banc coordinator in the clerk's office~~ **clerk.**

(1) ~~(A)~~ If the panel changes the substance of its decision, it will provide its modified decision to the ~~en banc coordinator~~ **clerk.** The modified decision will be filed and counsel notified. Counsel will then have 14 days with withdraw, modify, or maintain the pending petition for rehearing en banc or to file a new petition.

(2) ~~(B)~~ If the panel does not substantially modify its decision, the ~~coordinator~~ **clerk** will then circulate the petition and the panel's comments to the en banc court.

(B) Any active judge or any member of the panel whose decision is the subject of the rehearing ~~petition~~ may request a poll. ~~within~~ **If a poll is requested, 14 days from the date of circulation of the petition and panel's comments** are allowed for voting. **Voting on a poll will not commence until a response to the petition has been requested and filed.**

(4) **When a Poll Can Be Requested.**

(A) Any active judge or any member of the original hearing panel whose decision is under review may request a poll **within 14 days from the date of circulation of the petition and the panel's comments.** ~~Usually a poll is requested after a party files a petition for rehearing en banc. However, any member of the en banc court may sua sponte requeste a poll for hearing or rehearing en banc before a party files an en banc petition. If the request for a poll is not based on a party's petition, the clerk will immediately circulate voting forms to the en banc court.~~

(B) **Sua Sponte Poll.** Notwithstanding subsection (A), any member of the en banc court may sua sponte request a poll for hearing or rehearing en banc before a party files an en banc petition. Following a request for a sua sponte poll, the clerk will immediately circulate voting forms to the en banc court.

(5) **Response to Petition.** When a poll is requested, or if a judge requests a response, the clerk will ask for a response to the petition if none has been previously requested.

Final Amendment:

6 Cir. I.O.P. 40 Petitions for Rehearing

(a) **Panel Rehearing**

(1) **When Necessary.**

(A)**Purpose.** The purpose of a petition for panel rehearing is to bring a claimed error of fact or law in the opinion to the panel’s attention. It is not to be used for re-argument of issues previously presented.

(B)**Not a Prerequisite to Supreme Court Filing.** A party is not required to petition for rehearing—with or without a petition for rehearing en banc—as a prerequisite to a petition for a writ of certiorari in the Supreme Court of the United States.

(2) **Review.** Only the original panel members will review petitions for panel rehearing that are unaccompanied by a petition for rehearing en banc.

(3) **Briefing, Reargument, and Disposition.** If a petition for panel rehearing is granted, the court will usually make a final disposition without additional briefing or reargument.

(4) **Extension of Time or Leave to File Out-of-Time.** The court will refer a motion for additional time to file a petition for panel rehearing or for permission to file out of time to the original panel members. Counsel should not presume that the motion will be granted.

(b) **Rehearing En Banc**

(1) **Extraordinary Nature of Petition for Rehearing En Banc.** A petition for rehearing en banc is an extraordinary request intended to bring to the attention of the entire court a precedent-setting error of exceptional public importance or an opinion that directly conflicts with Supreme Court or Sixth Circuit precedent. Counsel fully discharges his or her duty in a case without filing a petition for rehearing en banc unless the case meets the rigid standards of Fed. R. App. P. 40(b)(2). Alleged errors in the determination of state law or in the facts of the case (including sufficient evidence), or errors in the application of correct precedent to the facts of the case, are matters for panel rehearing but not for rehearing en banc.

(2) **Voting to Sit En Banc.** Only Sixth Circuit judges in regular active service who have not recused themselves from the case may vote in a poll on an en banc petition. See 28 U.S.C. § 46(c).

- (3) **Composition of En Banc Court.** The en banc court is composed of all judges in regular active service at the time of a hearing or rehearing, any senior judge of the court who sat on the original panel, and, if no oral argument en banc is held, any judge in regular active service at the time that the en banc court agreed to decide the case without oral argument.
- (4) **General Procedure.**
- (A) A petition for rehearing en banc will first be treated as a petition for rehearing before the original panel. The original panel has 14 days to submit comments on the petition to the clerk.
- (1) If the panel changes the substance of its decision, it will provide its modified decision to the clerk. The modified decision will be filed and counsel notified. Counsel will then have 14 days to withdraw, modify, or maintain the pending petition for rehearing en banc or to file a new petition.
- (2) If the panel does not substantially modify its decision, the clerk will then circulate the petition and the panel's comments to the en banc court.
- (B) Any active judge or any member of the panel whose decision is the subject of the rehearing petition may request a poll. If a poll is requested, 14 days are allowed for voting. Voting on a poll will not commence until a response to the petition has been requested and filed.
- (5) **When a Poll Can Be Requested.**
- (A) Poll After Petition is Filed. Any active judge or any member of the original hearing panel whose decision is under review may request a poll within 14 days from the date of circulation of the petition and the panel's comments.
- (B) Sua Sponte Poll. Notwithstanding subsection (A), any member of the en banc court may sua sponte request a poll for hearing or rehearing en banc before a party files an en banc petition. Following a request for a sua sponte poll, the clerk will immediately circulate voting forms to the en banc court.
- (6) **Response to Petition.** When a poll is requested, or if a judge requests a response, the clerk will ask for a response to the petition if none has been previously requested.