

6 Cir. R. 35 En Banc Determination

- (a) **Petition for Hearing or Rehearing En Banc.** A petition for a hearing or rehearing en banc may be made as provided in FRAP 35 or by any member of the en banc court. The grant of a rehearing en banc vacates the previous opinion and judgment of this court, stays the mandate and restores the case on the docket as a pending appeal. A petition for rehearing containing a petition for rehearing en banc must so state plainly on the cover and in the title of the document. A petition for rehearing en banc will also be treated as a petition for rehearing before the original panel. 6 Cir. R. 27(b) governs filing and service. A copy of the opinion or final order sought to be reviewed must accompany the petition for en banc review. The court ordinarily will not consider a petition that does not conform to this rule.
- (b) **Counsel Not Obligated to File.** En banc consideration of a case is an extraordinary measure. In every case the duty of counsel is fully discharged without filing a petition for rehearing en banc unless the case meets the rigid standards of FRAP 35(a). Filing a petition for rehearing, with or without a petition for rehearing en banc, is not a prerequisite to the filing of a petition for writ of certiorari.
- (c) **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.

COMMITTEE NOTE: Former 6th Cir. R. 14; former I.O.P. 20.8.

Comments

The title is changed to conform to FRAP 35.

The term “suggestion” is changed to “petition” to conform to the 1998 style amendments of FRAP 35. There are also other stylistic changes.

Rule 35(a) incorporates the provisions of 6 Cir. R. 27(b) regarding the number of copies filed and served.