otherwise agree or the Court otherwise directs. If separate appellants support the same argument, care shall be taken to avoid duplication of argument.

(e) *Non-appearance of parties.* If the appellee fails to appear to present argument, the Court will hear argument on behalf of the appellant, if present. If the appellant fails to appear, the Court may hear argument on behalf of the appellee, if his counsel is present. If neither party appears, the case will be decided on the briefs unless the Court shall otherwise order.

(f) *Submission on briefs.* By agreement of the parties, a case may be submitted for decision on the briefs, but the Court may direct that the case be argued.

(g) *Use of physical exhibits at argument; removal.* If physical exhibits other than documents are to be used at the argument, counsel shall arrange to have them placed in the courtroom before the Court convenes on the date of the argument. After the argument counsel shall cause the exhibits to be removed from the courtroom unless the Court otherwise directs. If exhibits are not reclaimed by counsel within a reasonable time after notice is given by the Clerk, they shall be destroyed or otherwise disposed of as the Clerk shall think best. (Amended, Apr. 30, 1979.)

Notes of Advisory Committee on Appellate Rules. — A majority of circuits now limit oral argument to 30 minutes for each side, with the provision that additional time may be made available upon request. The Committee is of the view that 30 minutes to each side is sufficient in most cases, but that where additional time is necessary it should be freely granted on a proper showing of cause therefor. It further feels that the matter of time should be left ultimately to each Court of Appeals, subject to the spirit of the Rule that a reasonable time should be allowed for argument. The term "side" is used to indicate that the time allowed by the Rule is afforded to opposing interests rather than to individual parties. Thus if multiple appellants or appellees have a common interest, they constitute only a single side. If counsel for multiple parties who constitute a single side feel that additional time is necessary, they may request it.

In other particulars this Rule follows the usual practice among the circuits. See Third Cir. Rule 31; Sixth Cir. Rule 20; Tenth Cir. Rule 23.

Editor's notes. — All of the Circuit Rules cited in the second sentence in the second paragraph of the Advisory Committee Notes have been revised since the Notes were written and the numbering referred to is no longer accurate.

Rule 35. Determination of causes by the Court in banc.

(a) *When hearing or rehearing in banc will be ordered.* A majority of the circuit judges who are in regular active service may order that an appeal or other proceeding be heard or reheard by the Court of Appeals in banc. Such a hearing or rehearing is not favored and ordinarily will not be ordered except (1) when consideration by the full Court is necessary to secure or maintain uniformity of its decisions, or (2) when the proceeding involves a question of exceptional importance.

(b) *Suggestion of a party for hearing or rehearing in banc.* A party may suggest the appropriateness of a hearing or rehearing in banc. No response shall be filed unless the Court shall so order. The Clerk shall transmit any such suggestion to the members of the panel and the judges of the Court who are in regular active service but a vote need not be taken to determine whether the cause shall be heard or reheard in banc unless a judge in regular active service or a judge who was a member of the panel that rendered a decision sought to be reheard requests a vote on such a suggestion made by a party.

(c) *Time for suggestion of a party for hearing or rehearing in banc; suggestion does not stay mandate.* If a party desires to suggest that an appeal be heard initially in banc, the suggestion must be made by the date on which the appellee's brief is filed. A suggestion for a rehearing in banc must be made within the time prescribed by Rule 40 for filing a petition for rehearing, whether the suggestion is made in such petition or otherwise. The pendency of such a suggestion whether or not included in a petition for rehearing shall not affect the finality of the judgment of the Court of Appeals or stay the issuance of the mandate. (Amended, Apr. 30, 1979.)

Notes of Advisory Committee on Appellate Rules. — Statutory authority for in banc hearings is found in 28 U.S.C. § 46 (c). The proposed Rule is responsive to the Supreme Court's view in Western Pacific Ry. Corp. v. Western Pacific Ry. Co., 345 U.S. 247, 73 S. Ct. 656, 97 L. Ed. 986 (1953), that litigants should be free to suggest that a particular case is appropriate for consideration by all the judges of a Court of Appeals. The Rule is addressed to the procedure whereby a party may suggest the appropriateness of convening the Court in banc. It does not affect the power of a Court of Appeals to initiate in banc hearings sua sponte.

The provision that a vote will not be taken as a result of the suggestion of the party unless requested by a judge of the court in regular active service or by a judge who was a member of the panel that rendered a decision sought to be reheard is intended to make it clear that a suggestion of a party as such does not require any action by the Court. See Western Pacific Ry. Corp. v. Western Pacific Ry. Co., supra, 345 U.S. at 262, 73 S. Ct. 656. The Rule merely authorizes a suggestion, imposes a time limit on suggestions for rehearings in banc, and provides that suggestions will be directed to the judges of the Court in regular active service.

In practice, the suggestion of a party that a case be reheard in banc is frequently contained in a petition for rehearing, commonly styled "petition for rehearing in banc". Such a petition is in fact merely a petition for a rehearing, with a suggestion that the case be reheard in banc. Since no response to the suggestion, as distinguished from the petition for rehearing, is required, the panel which heard the case may quite properly dispose of the petition without reference to the suggestion. In such a case the fact that no response has been made to the suggestion does not affect the finality of the judgment or the issuance of the mandate, and the final sentence of the Rule expressly so provides.

In banc review not necessarily barred in absence of factors specified in subdivision (a). — This Rule does not establish a blanket policy barring in banc review in the absence of the 2 factors delineated in subdivision (a) of this Rule; in banc consideration may be appropriate in an extremely unusual case in order to cure a gross injustice. United States v. Lynch, 690 F.2d 213 (D.C. Cir. 1982).

Cited in Jolly v. Listerman, 675 F.2d 1308 (D.C. Cir.), cert. denied, — U.S. —, 103 S. Ct. 450, 74 L. Ed. 2d 604 (1982).

Rule 36. Entry of judgment.

The notation of a judgment in the docket constitutes entry of the judgment. The Clerk shall prepare, sign and enter the judgment following receipt of the opinion of the Court unless the opinion directs settlement of the form of the judgment, in which event the Clerk shall prepare, sign and enter the judgment following final settlement by the Court. If a judgment is rendered without an opinion, the Clerk shall prepare, sign and enter the judgment following instruction from the Court. The Clerk shall, on the date judgment is entered, mail to all parties a copy of the opinion, if any, or of the judgment if no opinion was written, and notice of the date of entry of the judgment.

Notes of Advisory Committee on Appellate Rules. — This is the typical rule. See First Cir. Rule 29; Third Cir. Rule 32; Sixth Cir. Rule 21. At present, uncertainty exists as to the date of entry of judgment when the opinion directs subsequent settlement of the precise