

# ADOPTED April 1, 2019

## UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

### AMENDMENT OF LOCAL RULE 35(c)

### AND WITHDRAWAL OF MARCH 31, 1993, STANDING ORDER

PLEASE TAKE NOTICE that the Court intends to amend Local Rule 35(c) to clarify that a senior judge of the Court may (1) participate in en banc rehearing of a decision of a panel of which the judge was a member or (2) continue to participate in the decision of a case or controversy that was heard or reheard by the en banc court at a time when the judge was in regular active service.

PLEASE TAKE NOTICE that the Court intends to withdraw its March 31, 1993, Standing Order, *In re Senior United States Circuit Judges for the Fourth Circuit Court of Appeals*. Withdrawal resolves any tension between the Standing Order, which states that senior judges consent to participate in en banc consideration of matters to which they are assigned, and 28 U.S.C. § 46(c), which states that such participation is at the judge's election.

Amendment of Local Rule 35(c) and withdrawal of the March 31, 1993, Standing Order will take effect on April 1, 2019. Interested parties may submit comments on or before March 25, 2019, to:

Patricia S. Connor, Clerk  
U.S. Court of Appeals for the Fourth Circuit  
1100 E. Main Street, Suite 501  
Richmond, Virginia 23219

The Fourth Circuit Rulebook is available [here](#)

February 19, 2019

Date

s/ Patricia S. Connor

Clerk

**Local Rule 35(c). Decision of Cases Heard or Reheard En Banc.**

~~An en banc hearing will be before all eligible, active and participating judges of the Court. An en banc rehearing will be before all eligible and participating active judges, and any senior judge of the Court who sat on the panel that decided the case originally. An active judge who takes senior status after a case is heard or reheard by an en banc Court will be eligible to participate in the en banc decision.~~ A court en banc shall consist of all eligible, active and participating judges of the Court, except that any senior judge of the Court may (1) participate in en banc rehearing of a decision of a panel of which the judge was a member or (2) continue to participate in the decision of a case or controversy that was heard or reheard by the en banc court at a time when the judge was in regular active service. A judge who joins the Court after argument of a case to an en banc Court will not be eligible to participate in the decision of the case. A judge who joins the Court after submission of a case to an en banc Court without oral argument will participate in the decision of the case. Granting of rehearing en banc vacates the previous panel judgment and opinion; the rehearing is a review of the judgment or decision from which review is sought and not a review of the judgment of the panel.

WITHDRAWN April 1, 2019

**UNITED STATES COURT OF APPEALS**

**FOR THE FOURTH CIRCUIT**

In re: Senior United States Circuit Judges for the  
Fourth Circuit Court of Appeals

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S T A N D I N G

O R D E R

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Pursuant to the authority set forth in 28 U.S.C. § 46(c) and 28 U.S.C. § 294(c), all senior circuit judges in this circuit are hereby assigned to perform all judicial duties in any case, or in the decision of any matter, such as a motion or any other procedural or administrative matter, which has been properly assigned to them, whether in the ordinary course of business or otherwise. Any senior circuit judge who undertakes the performance of any official duties pursuant to this designation consents to participate (except upon absence from duty station or the like) in the consideration of the same until terminated, including, but not exclusively, participation in in banc consideration of the matter.

ENTERED this 31st day of March, 1993.

/s/ Sam J. Ervin, III  
Chief Circuit Judge