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UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

COMMENTS OF THE SECTION ON COURTS, LAWYERS AND THE ADMINISTRATION OF JUSTICE OF THE DISTRICT OF COLUMBIA BAR REGARDING AMENDMENT TO RULE 15(a) OF THE GENERAL RULES OF THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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COMMENTS OF THE SECTION ON COURTS, LAWYERS AND THE ADMINISTRATION OF JUSTICE OF THE DISTRICT OF COLUMBIA BAR REGARDING AMENDMENT TO GENERAL RULE 15(a) OF THE U.S. COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

The Section on Courts, Lawyers and Administration of Justice, through its Committee on Court Rules, respectfully urges the Court to reconsider the recently promulgated amendment to General Rule 15(a). This rule, which was adopted without an opportunity for public comment, states that amicus curiae briefs supporting or opposing suggestions for rehearing en banc will be received only by invitation of the Court.

Under Rule 35(a), Fed. R. App. P., one ground for ordering a case reheard en banc is if a proceeding "involves a question of exceptional importance." There are times when a non-party believes that a panel decision presents such a question and has a perspective which is not shared by the litigants, but which may help the Court to decide if a case merits en banc review. In our view, there should be some means by which these parties can present their position directly to the Court, namely, by filing a brief as amicus curiae. Indeed, the fact that amici seek to file a brief may alert the Court to the importance of an issue.

In making this recommendation, we recognize that the Court's 1987 rules changes sought to reduce both the number of amicus briefs as well as the number of pages in briefs filed by parties and amici. Assuming that the same concerns underlie this recent rule change, we suggest that there may be less drastic measures which could be imposed short of abolishing amicus briefs in these situations. These include requiring that any amici join in one brief to the extent practicable (cf. Gen. Rule 11(e)(5)), limiting the number of pages in any amicus brief, or requiring would-be amici to move for leave to file such a brief.

Such measures, either individually or in combination, would limit the papers filed in connection with en banc motions, while still providing a useful safety valve for those cases where an amicus brief would be of assistance to the Court.