

## **Proposed Amendment to Tex. R. App. P. 49 (Second Alternative)**

### **Rule 49. Motion for Rehearing and En Banc Reconsideration**

[Note: This version fixes the ambiguous “when permitted” language and requires simultaneous filing of panel and en banc motions.]

#### **49.1. Motion for Rehearing**

A motion for rehearing may be filed within 15 days after the court of appeals’ judgment or order is rendered. The motion must clearly state the points relied on for the rehearing.

#### **49.2. Response**

No response to a motion for rehearing need be filed unless the court so requests. A motion will not be granted unless a response has been filed or requested by the court.

#### **49.3. Decision on Motion**

A motion for rehearing may be granted by a majority of the justices who participated in the decision of the case. Otherwise, it must be denied. If rehearing is granted, the court or panel may dispose of the case with or without rebriefing and oral argument.

#### **49.4. Accelerated Appeals**

In an accelerated appeal, the appellate court may deny the right to file a motion for rehearing or shorten the time to file such a motion.

#### **49.5. Further Motion for Rehearing**

After a motion for rehearing is decided, a further motion for rehearing may be filed within 15 days of the court’s action if the court:

- (a) modifies its judgment;
- (b) vacates its judgment and renders a new judgment; or
- (c) issues a different opinion.

#### **49.6. Amendments**

A motion for rehearing or en banc reconsideration may be amended as a matter of right any time before the 15-day period allowed for filing the motion expires, and with leave of the court, any time before the court of appeals decides the motion.

#### **49.7. En Banc Reconsideration**

A party may file a motion for en banc reconsideration as a separate motion, with or without filing a motion for rehearing. The motion must be filed within 15 days after the court of appeals' judgment or order is rendered. While the court has plenary power, a majority of the en banc court may, with or without a motion, order en banc reconsideration of a panel's decision. If a majority orders reconsideration, the panel's judgment or order does not become final, and the case will be resubmitted to the court for en banc review and disposition.

**Comment [TS1]:** Deleted: or when permitted within 15 days after the court of appeals' denial of the party's last timely filed motion for rehearing or en banc reconsideration

#### **49.8. Further Motion En Banc Reconsideration**

After a motion for en banc reconsideration is decided, a further motion for en banc reconsideration may be filed within 15 days if the court:

- (a) modifies the judgment
- (b) vacates its judgment and renders a new judgment
- (c) issues a different opinion.

[renumber remaining subsections accordingly]

**Note:** Depending on how the rule is revised, the 2008 comments may need to be revised as well. The first sentence of those comments reads: “Rule 49 is revised to treat a motion for en banc reconsideration as a motion for rehearing and to include procedures governing the filing of a motion for en banc reconsideration.”