

# IN THE COURT OF CRIMINAL APPEALS OF TEXAS

Misc. Docket No. 21-001

## ORDER AMENDING TEXAS RULES OF APPELLATE PROCEDURE

**ORDERED** that:

1. The Court approves the following amendments to the Texas Rules of Appellate Procedure.
2. The amendments take effect October 1, 2021.
3. The amendments may be changed before October 1, 2021, in response to public comments. Written comments should be sent to [txccarulescomments@txcourts.gov](mailto:txccarulescomments@txcourts.gov). The Court requests that comments be sent by August 31, 2021.
4. The Clerk is directed to:
  - a. file a copy of this Order with the Secretary of State;
  - b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
  - c. send a copy of this Order to each elected member of the Legislature; and
  - d. submit a copy of the Order for publication in the *Texas Register*.

Dated: May 25, 2021

*Sharon Keller*

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Sharon Keller, Presiding Judge

*Barbara Hervey*

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Barbara Hervey, Judge

*Bert Richardson*

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Bert Richardson, Judge

*Kevin Patrick Yeary*

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Kevin P. Yeary, Judge

*David Newell*

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David Newell, Judge

*Mary Lou Keel*

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Mary Lou Keel, Judge

*Scott Walker*

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Scott Walker, Judge

*Michelle M. Slaughter*

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Michelle M. Slaughter, Judge

*Jesse McClure II*

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Jesse McClure, Judge

# IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 21-9059

## ORDER AMENDING TEXAS RULES OF APPELLATE PROCEDURE

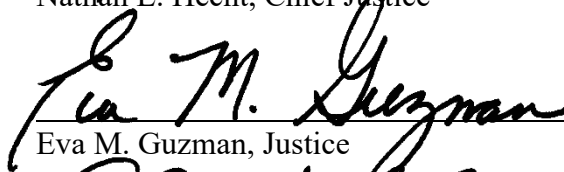
**ORDERED** that:

1. The Court approves the following amendments to the Texas Rules of Appellate Procedure.
2. The amendments take effect October 1, 2021.
3. The amendments may be changed before October 1, 2021, in response to public comments. Written comments should be sent to [rulescomments@txcourts.gov](mailto:rulescomments@txcourts.gov). The Court requests that comments be sent by August 31, 2021.
4. The Clerk is directed to:
  - a. file a copy of this Order with the Secretary of State;
  - b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
  - c. send a copy of this Order to each elected member of the Legislature; and
  - d. submit a copy of the Order for publication in the *Texas Register*.

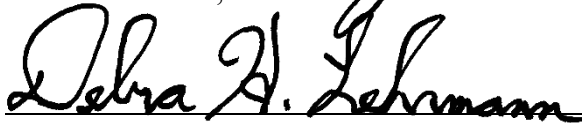
Dated: May 25, 2021



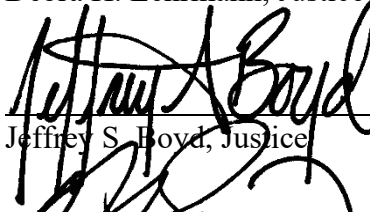
Nathan L. Hecht, Chief Justice



Eva M. Guzman, Justice



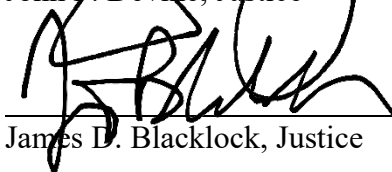
Debra H. Lehrmann, Justice



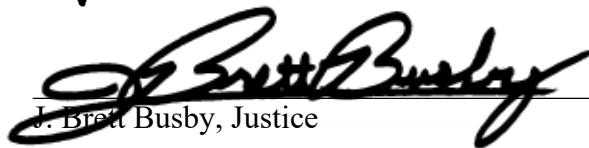
Jeffrey S. Boyd, Justice



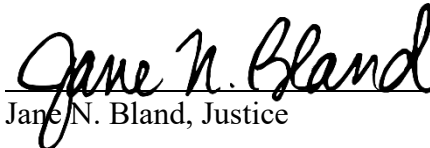
John F. Devine, Justice



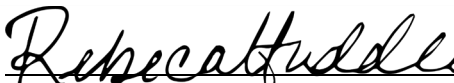
James D. Blacklock, Justice



J. Brett Busby, Justice



Jane N. Bland, Justice



Rebeca A. Huddle, Justice

## Rule 10. Motions in Appellate Courts

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### 10.4 Power of Panel or Single Justice or Judge to Entertain Motions.

(a) *Single Justice.* In addition to the authority expressly conferred by these rules or by law, a single justice or judge of an appellate court may grant or deny a request for relief that these rules allow to be sought by motion. But in a civil case, a single justice should not do the following:

- (1) act on a petition for an extraordinary writ; or
- (2) dismiss or otherwise determine an appeal or a motion for rehearing or en banc reconsideration.

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## **Rule 19. Plenary Power of the Courts of Appeals and Expiration of Term**

### **19.1. Plenary Power of Courts of Appeals**

A court of appeals' plenary power over its judgment expires:

- (a) 60 days after judgment if no timely filed motion for rehearing or en banc reconsideration, or timely filed motion to extend time to file such a motion, is then pending; or
- (b) 30 days after the court overrules all timely filed motions for rehearing or en banc reconsideration, and all timely filed motions to extend time to file such a motion.

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### **Notes and Comments**

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Comment to 2008 change: Subdivision 19.1 is changed, consistent with other changes in the rules, to specifically address a motion for en banc reconsideration and treat it as having the effect of a motion for rehearing.

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## Rule 41. Panel and En Banc Decision

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### 41.2. Decision by En Banc Court

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- (c) *En Banc Consideration Disfavored.* En banc consideration of a case is not favored and should not be ordered unless necessary to secure or maintain uniformity of the court's decisions or unless extraordinary circumstances require en banc consideration. A vote to determine whether a case will be ~~heard~~considered or ~~reheard~~reconsidered en banc need not be taken unless a justice of the court requests a vote. If a vote is requested and a majority of the court's members vote to ~~hear~~consider or ~~rehear~~reconsider the case en banc, the en banc court will ~~hear~~consider or ~~rehear~~reconsider the case. Otherwise, a panel of the court will consider the case.

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## Rule 47. Opinions, Publication, and Citation

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### 47.5. Concurring and Dissenting Opinions

Only a justice who participated in the decision of a case may file or join in an opinion concurring in or dissenting from the judgment of the court of appeals. Any justice on the court may file an opinion in connection with a denial of ~~a hearing~~consideration or ~~rehearing~~reconsideration en banc.

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

### **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 to Motion for Rehearing**

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

### **49.3. Decision on Motion for Rehearing**

A motion for rehearing may be granted by a majority of the justices who participated in the decision of the case. Unless two justices who participated in the decision of the case agree on the disposition of the motion for rehearing, the chief justice of the court of appeals must assign a justice to replace any justice who participated in the panel decision but cannot participate in deciding the motion for rehearing. 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.~~

### **49.54. Further Motion for Rehearing**

After a court decides 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 anytime before the 15-day period allowed for filing the motion expires, and with leave of the court, anytime before the court of appeals decides the motion.~~

#### **49.75. 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, 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. The motion should address the standard for en banc consideration in Rule 41.2(c). No response to a motion for en banc reconsideration need be filed unless the court so requests. While the court has plenary power, a majority of the en banc court may, ~~with or without a motion~~ on its own initiative, 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. The court may dispose of the case with or without rebriefing and oral argument.

#### **49.6. Further Motion for En Banc Reconsideration**

After a court decides a motion for en banc reconsideration, a further motion for en banc reconsideration 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.

#### **49.7. Accelerated Appeals**

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

#### **49.8. Amendments**

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

#### **49.89. Extension of Time**

A court of appeals may extend the time for filing a motion for rehearing or en banc reconsideration if a party files a motion complying with Rule 10.5(b) no later than 15 days after the last date for filing the motion.

#### **49.910. Not Required for Review**

A motion for rehearing or for en banc reconsideration is not a prerequisite to filing a petition for review in the Supreme Court or a petition for discretionary review in the Court of Criminal Appeals nor is it required to preserve error.

#### **~~49.10. Deleted~~**

#### **49.11. Relationship to Petition for Review**

A party may not file a motion for rehearing or en banc reconsideration in the court of appeals after that party has filed a petition for review in the Supreme Court unless the court of appeals modifies its opinion or judgment after the petition for review is filed. The filing of a petition for review does not preclude another party from filing a motion for rehearing or en banc reconsideration or preclude the court of appeals from ruling on the motion. If a motion for rehearing or en banc reconsideration is timely filed after a petition for review is filed, the petitioner must immediately notify the Supreme Court clerk of the filing of the motion, and must notify the clerk when the last timely filed motion is overruled by the court of appeals.

#### **49.12. Certificate of Conference Not Required**

A certificate of conference is not required for a motion for rehearing or en banc reconsideration ~~of a panel's decision~~.

### **Notes and Comments**

Comment to 1997 change: This is former Rule 100. Subdivision 49.4 is moved here from former Rule 43(h). Subdivisions 49.9 and 49.10 are added.

Comment to 2008 change: Rule 49 is revised to treat a motion for en banc reconsideration as having the effect of a motion for rehearing and to include procedures governing the filing of a motion for en banc reconsideration. Subdivision 49.5(c) is amended to clarify that a further motion for rehearing may be filed if the court issues a different opinion, irrespective of whether the opinion is issued in connection with the overruling of a prior motion

for rehearing. Issuance of a new opinion that is not substantially different should not occasion a further motion for rehearing, but a motion's lack of merit does not affect appellate deadlines. The provisions of former Rule 53.7(b) that address motions for rehearing are moved to new subdivision 49.11 without change, leaving the provisions of Rule 53.7(b) that address petitions for review undisturbed. Subdivision 49.12 mirrors Rule 10.1(a)(5) in excepting motions for rehearing and motions for en banc reconsideration from the certificate-of-conference requirement.

Comment to 2021 change: Rule 49 is revised to clarify when a motion for en banc reconsideration may be filed. Some subdivisions have been rearranged. Amended subdivision 49.5 adds a cross-reference to the standard for en banc consideration in Rule 41.2(c).

## Rule 53. Petition for Review

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### 53.7. Time and Place of Filing

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- (c) *Petitions Filed by Other Parties.* If a party files a petition for review within the time specified in 53.7(a) — or within the time specified by the Supreme Court in an order granting an extension of time to file a petition — any other party required to file a petition may do so within 45 days after the last timely motion for rehearing or en banc reconsideration is overruled or within 30 days after any preceding petition is filed, whichever date is later.

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[CLEAN VERSION AS AMENDED]

**Rule 10. Motions in Appellate Courts**

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**10.4 Power of Panel or Single Justice or Judge to Entertain Motions.**

- (b) *Single Justice.* In addition to the authority expressly conferred by these rules or by law, a single justice or judge of an appellate court may grant or deny a request for relief that these rules allow to be sought by motion. But in a civil case, a single justice should not do the following:
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- (c) *En Banc Consideration Disfavored.* En banc consideration of a case is not favored and should not be ordered unless necessary to secure or maintain uniformity of the court's decisions or unless extraordinary circumstances require en banc consideration. A vote to determine whether a case will be considered or reconsidered en banc need not be taken unless a justice of the court requests a vote. If a vote is requested and a majority of the court's members vote to consider or reconsider the case en banc, the en banc court will consider or reconsider the case. Otherwise, a panel of the court will consider the case.

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### **47.5. Concurring and Dissenting Opinions**

Only a justice who participated in the decision of a case may file or join in an opinion concurring in or dissenting from the judgment of the court of appeals. Any justice on the court may file an opinion in connection with a denial of consideration or reconsideration en banc.

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### **49.2. Response to Motion for Rehearing**

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

### **49.3. Decision on Motion for Rehearing**

A motion for rehearing may be granted by a majority of the justices who participated in the decision of the case. Unless two justices who participated in the decision of the case agree on the disposition of the motion for rehearing, the chief justice of the court of appeals must assign a justice to replace any justice who participated in the panel decision but cannot participate in deciding the motion for rehearing. If rehearing is granted, the court may dispose of the case with or without rebriefing and oral argument.

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

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the court for en banc review and disposition. The court may dispose of the case with or without rebriefing and oral argument.

#### **49.6. Further Motion for En Banc Reconsideration**

After a court decides a motion for en banc reconsideration, a further motion for en banc reconsideration may be filed within 15 days of the court's action if the court:

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

#### **49.9. Extension of Time**

A court of appeals may extend the time for filing a motion for rehearing or en banc reconsideration if a party files a motion complying with Rule 10.5(b) no later than 15 days after the last date for filing the motion.

#### **49.10. Not Required for Review**

A motion for rehearing or for en banc reconsideration is not a prerequisite to filing a petition for review in the Supreme Court or a petition for discretionary review in the Court of Criminal Appeals nor is it required to preserve error.

#### **49.11. Relationship to Petition for Review**

A party may not file a motion for rehearing or en banc reconsideration in the court of appeals after that party has filed a petition for review in the Supreme Court unless the court of

appeals modifies its opinion or judgment after the petition for review is filed. The filing of a petition for review does not preclude another party from filing a motion for rehearing or en banc reconsideration or preclude the court of appeals from ruling on the motion. If a motion for rehearing or en banc reconsideration is timely filed after a petition for review is filed, the petitioner must immediately notify the Supreme Court clerk of the filing of the motion, and must notify the clerk when the last timely filed motion is overruled by the court of appeals.

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## Rule 53. Petition for Review

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### 53.7. Time and Place of Filing

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- (c) *Petitions Filed by Other Parties.* If a party files a petition for review within the time specified in 53.7(a) — or within the time specified by the Supreme Court in an order granting an extension of time to file a petition — any other party required to file a petition may do so within 45 days after the last timely motion for rehearing or en banc reconsideration is overruled or within 30 days after any preceding petition is filed, whichever date is later.

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