



LOCAL RULE 3: Form of Motions for En Banc Reconsideration.

En banc consideration of an appeal is not favored and has heightened requirements. Any motion for en banc reconsideration should address the Rule 41.2(c) standard, as reiterated in Rule 49.5.

(a) *Statement of conflict or extraordinary circumstances.* The first page of the motion must include a statement that addresses the Rule 41.2(c) standard. The statement is limited to one page in length and should not include argument. Failure to address this standard shall be grounds for denying the motion summarily.

(b) *Identify the conflicting cases.* If the motion asserts a conflict, it should cite the cases from the First Court of Appeals—not cases from a higher court—that the movant regards as conflicting with the panel decision. A conflict with the decision of a higher court does not qualify as a conflict for purposes of the Rule 41.2(c) standard, but it may provide a ground for panel rehearing or a petition for discretionary review in a higher court (and in rare cases it may play a part in creating extraordinary circumstances for purposes of Rule 41.2(c)).

(c) *Identify the extraordinary circumstances.* If the motion asserts extraordinary circumstances, it should state them concisely and save elaboration for the argument section of the motion.

(d) *Error correction fails the standard.* En banc reconsideration is not designed as a means of pursuing mere error correction. The Rule 41.2(c) standard normally is not met by a claim that settled law was misapplied, *e.g.*, such as a claim that the panel erred with respect to the sufficiency of the evidence. Such claims may be more appropriate in a motion for panel rehearing or a petition for discretionary review in a higher court.