

## RULE 40. PETITION FOR REHEARING

### (a) Procedure and Limitations.

(1) **Time for Filing.** Unless the time is shortened or enlarged by order, ~~any party may file~~ a petition for rehearing ~~may be filed~~ within ~~18-14~~ days after the filing of the appellate court's decision under Rule 36. The 3-day mailing period set forth in Rule 26(c) does not apply to the time limits set by this Rule.

(2) **Contents.** The petition ~~shall~~must state ~~briefly and~~ with particularity the points of law or fact that the petitioner believes the court has overlooked or misapprehended and contain argument in support of those points. ~~shall contain such argument in support of the petition as the petitioner desires to present.~~ Oral argument in support of the petition will not be permitted. Any claim that the court has overlooked or misapprehended a material fact ~~shall~~must be supported by a reference to the page of the transcript, appendix, or record where the matter is to be found; any claim that the court has overlooked or misapprehended a material question of law or has overlooked, misapplied, or failed to consider controlling authority ~~shall~~must be supported by a reference to the page of the brief where petitioner has raised the issue.

(3) **Petitions in Criminal Appeals; Exhaustion of State Remedies.** A decision by a panel of the Supreme Court, the en banc Supreme Court, or the Court of Appeals resolving a claim of error in a criminal case, including a claim for postconviction relief, is final for purposes of exhaustion of state remedies in subsequent federal proceedings. Rehearing is available only under the limited circumstances set forth in Rule 40(c). ~~Petitions for rehearing filed on the pretext of exhausting state remedies may result in sanctions under Rule 40(g).~~

(b) **Form of Petition, ~~and Answer~~Response, and Reply; ~~Number of Copies~~; Length; Certificate of Compliance; Filing Fee.**

**Commented [pdw1]:** If we are reopening this rule, I recommend striking this language for consistency. We have stricken the sanctions paragraphs in NRAP 40(g) and NRAP 40A(g). In addition, NRAP 40B(b) contains an exhaustion section that does not mention sanctions.

**Commented [pdw2]:** At 12-15-22 Commission meeting, Julie Ollom pointed out that the "number of copies" language in the title is no longer applicable. We have reopened NRAP 40 to make this change.

**(1) Decision of Court of Appeals or Supreme Court Panel.** A petition for rehearing of a decision of the Court of Appeals or of a panel of the Supreme Court, ~~or an answer~~ a response to ~~such the~~ petition, or a reply shall must comply in form with Rule 32, and, unless e-filed, the an original and 5 copies shall must be filed with the clerk, unless the court by order in a particular case shall direct a different number. One copy shall must be served on counsel for each party separately represented.

**(2) En Banc Decision.** A petition for rehearing of a decision of the en banc Supreme Court, ~~or an answer~~ a response to the petition, or a reply shall must comply in form with Rule 32, and, unless e-filed, the an original and 9 copies shall must be filed with the clerk, unless the court by order in a particular case shall direct a different number. One copy shall must be served on counsel for each party separately represented.

**(3) Length.** Except by permission of the court, a petition for rehearing, or ~~an~~ a response answer to the petition, may not exceed 10 pages or 4,667 words or, if it uses a monospaced typeface, 433 lines of text. shall not exceed 10 pages. Alternatively, the petition or answer is acceptable if it contains no more than 4,667 words, or if it uses a monospaced typeface, and contains no more than 433 lines of text. A reply may not exceed one half of the page or type-volume limitations of the petition.

**(4) Certificate of Compliance.** A petition for rehearing, ~~or an answer~~ a response, or a reply shall must include a certificate that the submission complies with the formatting requirements of Rule 32(a)(4)-(6) and the page- or type-volume limitation of this Rule, computed in compliance with Rule 32(a)(7)(C). The petition ~~or, answer, response, or reply~~ must be accompanied by a completed certificate of compliance substantially similar to Form 16 in the Appendix of Forms.

**Commented [SB3]:** These two provisions are essentially the same. How about condensing this to one subsection entitled "Form"?

**(5) Filing Fee.** Except as otherwise provided by statute, a \$150 filing fee ~~shall~~ must be paid to the clerk at the time a petition for rehearing is submitted for filing.

**(c) Scope of Application; When Rehearing Considered.**

~~(1) Matters presented in the briefs and oral arguments may not be reargued in the petition for rehearing, and no point may be raised for the first time on rehearing.~~

~~(2)~~ The court may consider rehearings in the following circumstances:

(A) When the court has overlooked or misapprehended a material fact in the record or a material question of law in the case, ~~or~~

(B) When the court has overlooked, misapplied, or failed to consider a statute, procedural rule, regulation or decision directly controlling a dispositive issue in the case, or

(C) When a new rule of law, directly controlling on the disposition of the issues in the case, has issued after the court announced its order or opinion but within the time fixed for filing.

(2) Except as necessary to establish the grounds for rehearing set forth in [NRAP Rule 40\(c\)\(1\)](#), matters presented in the briefs and oral arguments may not be reargued, and no point may be raised for the first time.

**(d) ~~Answer Response; and Reply.~~** No ~~answer response~~ to a petition for rehearing ~~or reply to an answer shall~~ may be filed unless requested by the court. ~~Unless otherwise ordered by the court, the~~ The answer response to a petition for rehearing ~~shall~~ must be filed within 14 days after entry of the order requesting the ~~answer response, unless otherwise directed by the court.~~ A petition for rehearing will ordinarily not be granted in the absence of a request for an ~~answer response~~. If a response to the petition is ordered, the petitioner

**Commented [SB4]:** I suggest changing this title to "Grounds for Rehearing" and moving it up so that it becomes section (a), similar to the title/structure of 40A.

may file a reply within 7 days after service of the response. A reply must not present matters that do not relate to the response.

**(e) Action by Court if Granted.** If a petition for rehearing is granted, the court may make a final disposition of the cause without reargument or may restore it to the calendar for reargument or resubmission or may make such other orders as are deemed appropriate under the circumstances of the particular case. A petition for rehearing of a decision of a panel of the Supreme Court ~~shall~~ must be reviewed by the panel that decided the matter. If the panel determines that rehearing is warranted, rehearing before that panel will be held. The full court ~~shall~~ must consider a petition for rehearing of an en banc decision.

**(f) Untimely Petitions; ~~Unrequested Answer or Reply.~~** A petition for rehearing is timely if ~~e-filed,~~ mailed, or sent by commercial carrier to the clerk within the time fixed for filing. The clerk ~~shall~~ must not receive or file an untimely petition, but ~~shall~~ must return the petition unfiled or, if the petition was e-filed, must reject the petition. ~~The clerk shall return unfiled any answer or reply submitted for filing in the absence of an order requesting the same.~~

**(g) Unrequested Response.** Absent an order requesting a response, the clerk must not receive or file a response, but must return it unfiled or, if the response was e-filed, must reject it.

**(g) Sanctions.** ~~Petitions for rehearing which do not comply with this Rule may result in the imposition of appropriate sanctions.~~

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