

RULE 40B. PETITION FOR REVIEW BY THE SUPREME COURT

~~(a) Decisions of Court of Appeals Reviewable by Petition for Review~~**Grounds for Review.** A decision of the Court of Appeals is a final decision that is not reviewable by the Supreme Court except on petition for review. ~~Any party~~ A party aggrieved by a decision of the Court of Appeals may file a petition for review with the clerk of the Supreme Court. The petition must state the question(s) presented for review and the reason(s) review is warranted. Supreme Court review is not a matter of right but of judicial discretion. The following, while neither controlling nor fully measuring the Supreme Court's discretion, are factors that will be considered in the exercise of that discretion:

(1) Whether the question presented is one of first impression of general statewide significance;

(2) Whether the decision of the Court of Appeals conflicts with a prior decision of the Court of Appeals, the Supreme Court, or the United States Supreme Court; ~~or~~

(3) Whether the case involves fundamental issues of statewide public importance; ~~or~~

~~(4) Whether the question presented was raised by the parties below or decided by the Court of Appeals.~~

(b) Petition in Criminal Appeals; Exhaustion of State Remedies. ~~A decision of 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. Review of decisions of the Court of Appeals by the Nevada Supreme Court is available only under the limited circumstances set forth in Rule 40B(a). In all appeals from criminal convictions or postconviction relief matters, a party shall~~ is not be required to

Commented [SB1]: This is fairly long. Could we move the factors portion into its own section entitled "Grounds for Review" (to track the structure/language of 40A)?

Commented [pdw2R1]: I changed the title to conform with the other two rules and shortened this section by removing the sentence, "Any party may file a petition for review with the clerk of the Supreme Court" (subsection (c) is where the "any party" language is found in the other two rules, so I moved that concept to subsection (c)).

I also moved the following language to the subsection (e) which governs the "content of petition": "The petition must state the question(s) presented for review and the reason(s) review is warranted." This appears to be more of a content requirement than a description of "grounds for review."

Commented [pdw3]: Language proposed by Chief Judge Gibbons at the 12/15/22 Commission meeting.

~~petition for review of an adverse decision of the Court of Appeals in order to be deemed to have exhausted all available state remedies respecting a claim of error. Rather, when a claim has been presented to the Court of Appeals and relief has been denied, the party shall be~~ deemed to have exhausted all available state remedies. Review of decisions of the Court of Appeals by the Nevada Supreme Court is limited to the circumstances set forth in these Rules and is an extraordinary remedy outside the normal process of appellate review, which is not available as a matter of right.

(c) Time for Filing. ~~A~~Unless the time is shortened or enlarged by order, any party may file a petition for review ~~of a decision of the Court of Appeals must be filed in the Supreme Court~~ within 18-14 days after the filing of the Court of Appeals' decision under Rule 36, or its decision on rehearing under Rule 40. A petition for review ~~shall~~ may not be filed while a petition for rehearing is pending in the Court of Appeals. The 3-day mailing period set forth in Rule 26(c) does not apply to the time limits set by this Rule. ~~The clerk of the Supreme Court 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.~~ M

(d) Filing Fee. Except as otherwise provided by statute, where a party has not previously sought rehearing, a \$150 filing fee must be paid to the clerk at the time a petition for review is submitted for filing.

(e) Content and Form of Petition. A petition for review shall ~~must~~ comply in form with Rule 32, and ~~unless e filed, 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. The petition may not exceed 10 pages or 4,667 words or, if it uses a monospaced typeface, 433 lines of text.~~ LThe

Commented [pdw4]: Proposal tracks similar language in NRAP 40 and 40A. Thoughts?

Commented [SB5R4]: I think it should be consistent with the other rules. But I wonder if it was drafted this way for a reason? The language in 40 and 40A suggests that exhaustion occurs when the COA resolves a claim, whereas this language makes clear that exhaustion occurs when the COA was presented with the claim and denied relief, regardless of whether the COA's decision actually resolves the claim.

Commented [pdw6]: Language added from NRAP 40.

Commented [pdw7]: Moved to its own section at the end (NRAP 40B(k) to track structure of NRAP 40A.

Commented [pdw8]: Proposal for consideration to make this rule consistent with NRAP 40A, by requiring a filing fee in the event a party has not previously paid a fee on rehearing. Thoughts?

Commented [pdw9]: Language was moved to its own section in NRAP 40B(g) on "form" of Petitions, Responses and Replies.

A petition for review must state the question(s) presented for review and the reason(s) review is warranted and may include citation of authority in support of that contention. ~~petition shall must succinctly state the precise basis on which the party seeks review by the Supreme Court and may include citation of authority in support of that contention.~~ No citation to authority or argument may be incorporated into the petition by reference to another document.

Commented [pdw10]: Took the more specific language from 40B(a) and incorporated it here. Then, omitted the redundant language.

(fe) Response to Petition and Reply. No response to a petition for review ~~may~~shall be filed unless requested by the Supreme Court. ~~Unless otherwise ordered by the court,~~†The response to a petition for review must be filed within 14 days after entry of the order requesting the response, unless otherwise directed by the court. A petition for review will not ordinarily be granted in the absence of a request for a response. If a response to the petition is ordered, the petitioner 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. ~~Any response or reply must comply in form with Rule 32, and unless e filed, an original shall be filed with the clerk.~~

Commented [pdw11]: Moved to section (g) below, to track structure of NRAP 40A

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(g) Form of Petition, Response, and Reply; Certificate of Compliance.

A petition for review of a Court of Appeals' decision, a response to such a petition, or a reply must comply in form with Rule 32, and unless e-filed, an original must be filed with the clerk. One copy must be served on counsel for each party separately represented. The petition, response, or reply must include the certification required by [NRAPRule](#) 40(g) in substantially the form suggested in Form 16 of the Appendix of Forms.

Commented [pdw12]: Moved from section (e) above, to track structure of NRAP 40A.

(hf) Length of Petition, and Response, and Reply. Except by permission of the court, a petition for review by the Supreme Court, or a response to such a petition, may not exceed 10 pages or 4,667 words or, if it uses a monospaced typeface, 433 lines of text.

~~(g) Length of Reply.~~ Any reply may not exceed one half of the page or type-volume limitations of the petition.

Commented [pdw13]: Sections combined to track structure of NRAP 40A

~~(f)~~ **Decision by Supreme Court.** The Supreme Court may grant a petition for review on the affirmative vote of a majority of the justices. The Supreme Court's decision to grant or deny a petition is final and is not subject to further requests for rehearing or reconsideration. ~~When the Supreme Court grants a petition for review, the Court of Appeals decision is vacated.~~

Commented [pdw14]: Language rejected based on concerns raised at 12-15-22 Commission meeting.

~~(g)~~ **Action by Supreme Court When Petition Granted.** The Supreme Court may limit the question(s) on review. The Supreme Court's review on the grant of a petition for review ~~shall will~~ be conducted on the record and briefs previously filed in the Court of Appeals, but the Supreme Court may require supplemental briefs on the merits of all or some of the issues for review. ~~Unless otherwise ordered, a grant of a petition for review does not vacate the Court of Appeals' decision.~~

Commented [pdw15]: This language was proposed at the 12-15-22 Commission meeting. The language fits better in this section, which addresses actions that may be taken by the Supreme Court when a petition is granted.

~~(k)~~ **Untimely Petitions.** A petition for review is timely if e-filed, mailed, or sent by commercial carrier to the clerk within the time fixed for filing. The clerk of the Supreme Court must not receive or file an untimely petition, but must return the petition unfiled or, if the petition was e-filed, must reject the petition.

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~~(lk)~~ **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.

Commented [pdw16]: Language added to track NRAP 40A. This rule did not contain any language addressing untimely petitions.