

NRAP 40B – Proposed

RULE 40B. PETITION FOR REVIEW BY THE SUPREME COURT

(a) Decisions of Court of Appeals Reviewable by Petition 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.

(b) Petition in Criminal Appeals; Exhaustion of State Remedies.

In all appeals from criminal convictions or postconviction relief matters, a party ~~shall is~~ not ~~be~~ required to 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 is~~ 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

Commented [DW1]: At our 3/14/22 meeting, our subcommittee proposed revising this language to “any party” for consistency with NRAP 40 and 40A.

outside the normal process of appellate review, which is not available as a matter of right.

(c) Time for Filing. A petition for review of a decision of the Court of Appeals must be filed in the Supreme Court within 18 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~~ must 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.

(d) 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.~~ The 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.

(e) ~~Response Answer~~ to Petition and Reply. No ~~response-answer~~ to a petition for review ~~may~~ shall be filed unless requested by the Supreme Court. Unless otherwise ordered by the court, the answer to a petition for review must be filed within 14 days after entry of the order requesting the answer. A petition for review will not ordinarily be granted in the absence of a request for an answer. If an answer to the petition is ordered, the petitioner may file a reply within 7 days after service of the answer. A reply must not present

Commented [GU2]: The "shalls" are now "musts." Not opposed to this change, but I am curious as to why.

Commented [GU3R2]: I would use "may" instead of "must" in the sentence "A petition for review [may] not be filed while a petition for rehearing is pending ..." in (c). JRP

Commented [DW4R2]: Per discussion item 11, our subcommittee agreed to recommend replacing the word "shall" with "may" or "must" which are used throughout the FRAPs and which comports with the more modern approach.

Commented [GU5R2]: I suggest "A petition for review may not be filed ..." I suggest: "A petition for rehearing may not be filed ..." The word "may" reads better to me in context and it connotes a mandatory command even in the form of "may." I think "must" on the other hand used in these sentences is awkward and almost suggests the "end of the world" or something bad will happen if the petitioner files both at the same time. JRP

Commented [DW6]: TEAM – Note that I moved this concept to subsection f, a new section addressing length of petitions and answers/responses. It did not seem to fit here, as this section relates to the content/form of petitions only, and our language regarding length applies to petitions and answers/responses.

Commented [GU7R6]: Makes good sense to me!

Commented [DW8]: After our meeting, Steve Silva pointed out that NRAP 40 and 40A utilize the word "Answer" while NRAP 40B utilizes the word "Response" to describe the responsive document filed after a Petition. He recommends that the Commission consider which term is more appropriate and pick one to use throughout the three rules (he prefers the term, "Response").

Commented [GU9R8]: I agree that "Response" is more appropriate. When I think of "Answer" I think of a more general denial/concession document to enumerated allegations. -Jenny

Commented [GU10R8]: I think the language should be consistent throughout these three rules. JRP

matters that do not relate to the answer. Any answer or reply must comply in form with Rule 32, and unless e-filed, an original shall be filed with the clerk.

(f) Length of Petition and Answer. Except by permission of the court, a petition for review by the Supreme Court, or an answer to such a petition, may 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.

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

(h) Certificate of Compliance. The petition, answer, or reply must include the certification required by NRAP 40(b)(4) in substantially the form suggested in Form 16 of the Appendix of Forms.

(fi) 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.

(gj) 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.

Commented [DW11]: TEAM – we did not discuss specific revisions to NRAP 40B in much detail during our meeting. But I know generally we all liked the idea of consistency in these instructions. As I was revising this rule, I noticed that NRAP 40B fails to address a lot of the things covered by NRAP 40 and NRAP 40A (e.g., the timing of the filing of an answer/response, whether a certificate of compliance is required, the length of a response/answer, whether the response/answer must comply in form with Rule 32 and how it is to be filed, etc. John and Steve both sent me some revisions that incorporated a few of these issues (e.g., timing and length and the availability of a reply), but I think we may want to go further and expressly spell out that the form/certificate of compliance requirements are also a part of 40B, and they apply to petitions, responses/answers and replies as well. Thoughts?

Commented [GU12R11]: Looks clearer to me. -Jenny

Commented [DW13]: Per discussion item 9, the subcommittee agreed to recommend making the language in NRAP 40B(d) identical to the language in NRAP 40(b)(3) and 40A(d) but the subcommittee did not decide which language was preferable. John and Sharon expressed a preference for the language currently used in NRAP 40(b)(3), which is split up into 2 sentences, while Steve expressed a preference for the language currently used in NRAP 40B(d) which is contained in 1 sentence (e.g.: "Except by permission of the court, a petition for rehearing, or an answer to the petition, may not exceed 10 pages or 4,667 words or, if it uses a monospaced typeface, 433 lines of text.") The Subcommittee recommends that the Commission pick one and use it consistently throughout.

Commented [DW14]: TEAM – again, this language is not currently in the rule, but shouldn't it be?

Commented [GU15R14]: I agree. -Jenny

Commented [DW16]: After discussing on 3/14/22, the subcommittee agreed to recommend codifying the Supreme Court's practice of vacating a Court of Appeals decision when the Supreme Court grants a petition for review.