

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) Content of Petition; Question(s) Presented. 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. The question(s) must appear on the first page after the cover. No citation to authority or argument may be incorporated into the petition by reference to another document.

Commented [WJD1]: On 1-17-23 we moved "Content of Petition" to subsection (b). We need to determine whether, based on US Supreme Court rules (e.g., 14.1(A)) we should include a requirement that the petitioner identify the question presented for review on a separate page.

Commented [BS2R1]: The majority of the subcommittee agrees with this inclusion and recommends adding "Question(s) Presented" in the subheading and adding the following language: "The question(s) must appear on the first page after the cover."

~~(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 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 beis 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.~~

Commented [WJD3]: At 1-17-23 meeting, we moved this language to the end of the rule.

~~(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

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.

~~(f)~~ **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, ~~t~~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.

~~(g)~~ **Form of Petition, Response, and Reply; Number of Copies; 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

Commented [WJD4]: At the 1-17-23 meeting, we added "number of copies" back into the headings in Rules 40A and 40B based on the highlighted language stating, "One copy must be served on counsel for each party separately represented."

Julie Ollom asks whether this sentence (and the language in the heading) are necessary since we already have Rule 25(b) that governs service of all documents.

Rule 25(b) provides: "**Service of All Papers Required.** Unless a rule requires service by the clerk, a party or person acting for that party must, at or before the time of filing a paper, serve a copy on the other parties to the appeal or review. Service on a party represented by counsel shall be made on the party's counsel."

If we agree to omit the sentence, we can take "Number of Copies" back out of the heading.

Commented [BS5R4]: The subcommittee discussed removing this sentence but did not reach a consensus.

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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(gf) in substantially the form suggested in Form 16 of the Appendix of Forms.

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(hff) 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.

(fig) 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.

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Commented [WJD6]: Committee needs to decide whether to include this language here, or if it more appropriately belongs in IOPs, where the U.S. Supreme Court's "rule of 4" is not included in its analogous rules.

Commented [BS7R6]: The majority of the subcommittee favors removing it. But some favor keeping it because most people are unaware of the IOPs and at least two other states (Oregon and Massachusetts) include this information in their rules.

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(gjh) 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.

(ki) 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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~~(j)~~ (k) 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.

(k) 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 Supreme Court is available only under the limited circumstances set forth in Rule 40B(a).