

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

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

(c) Time for Filing. A petition for review of a decision of the Court of Appeals must be filed in the Supreme Court within 18-21 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 [DW2]: If we change the deadline for filing a petition for review in NRAP 40 to 21 days, this should also be changed.

(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.

Commented [DW3]: We moved this concept to subsection f, a new section addressing the length of petitions *and* 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* responses.

(e) 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.

(f) Length of Petition and Response. 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.

(h) Certificate of Compliance. The petition, response, 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.

(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.

(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.

(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.

Commented [DW4]: As currently drafted, NRAP 40B fails to address a number of the things covered by NRAP 40 and NRAP 40A (e.g., the *timing* of the filing of a response, whether a certificate of compliance is required, the length of a response, whether the response must comply in form with Rule 32 and how it is to be filed, etc.) This section incorporates those requirements here.

Commented [DW5]: Similar language is contained in NRAP 40(b)(4) and 40A(d) but was omitted from NRAP 40B. The subcommittee felt it should be added.

Commented [DW6]: 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.