

RULE 40. PETITION FOR REHEARING

(a) ~~[Procedure and Limitations.]~~ Grounds for Rehearing. The court may consider rehearing in the following circumstances:

(1) When the court has overlooked or misapprehended a material fact in the record or a material question of law in the case;

(2) 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

(3) 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 a petition for rehearing.

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

~~[(2)]~~ (b) Content[s] of Petition. 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 ~~[shall]~~ must 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. Except

as necessary to establish the grounds for rehearing set forth in Rule 40(a), matters presented in the briefs and oral arguments may not be reargued, and no point may be raised for the first time. Oral argument in support of the petition will not be permitted.

~~[(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(e). Petitions for rehearing filed on the pretext of exhausting state remedies may result in sanctions under Rule 40(g).]~~

~~[(1)]~~ (c) 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.

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

(e) Response to Petition and Reply. No response to a petition for rehearing may be filed unless requested by the court. The response to a petition for rehearing must be filed within 14 days after entry of the order requesting the response, unless otherwise directed by the court. A petition for rehearing will ordinarily not 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.

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

~~[(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 panel, or ~~[an answer]~~ a response to such a petition, or a reply, ~~[shall]~~ must comply in form with Rule 32, and unless e-filed, ~~[an]~~ the 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. The petition, response, or reply 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), and must be accompanied by a completed certificate of compliance substantially similar to the Certificate of Compliance for Rules 40, 40A, and 40B Form on the Nevada Supreme Court website.

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

~~[(3)]~~ (g) Length of Petition, Response, and Reply. Except by permission of the court, a petition for rehearing, or ~~[an answer]~~ a response to the petition, ~~[shall]~~ may not exceed 10 pages or 4,667 words or, if it uses a monospaced typeface, 433 lines of text. ~~[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.] Any reply may not exceed one half of the page or type-volume limitation of the petition.~~

~~[(4) Certificate of Compliance. A petition for rehearing or an answer shall 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) must be accompanied by a completed certificate of compliance substantially similar to Form 16 in the Appendix of Forms.]~~

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

~~[(e) 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.]~~

~~[(d) Answer; Reply. No answer to a petition for rehearing or reply to an answer shall be filed unless requested by the court. Unless otherwise ordered by the court, the answer to a petition for rehearing shall be filed within 14 days after entry of the order requesting the answer. A petition for rehearing will ordinarily not be granted in the absence of a request for an answer.]~~

(h) Decision by Court. A court's decision to grant or deny a petition for rehearing is final and not subject to further requests for rehearing.

~~[(e)]~~ (i) Action by Court ~~[if]~~ When Petition Granted. If a petition for rehearing is granted, the court may make a final disposition of the cause without ~~[re]~~argument or may restore it to the calendar for ~~[re]~~argument 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 panel ~~[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)]~~ (j) Untimely Petition~~[s; 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.]~~

(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.

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

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

A decision by a Supreme Court panel, 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(a).

REVIEWING NOTE

The proposed amendments to this Rule are both stylistic and substantive. Initially, the NRAP Commission sought to bring NRAP 40, 40A, and 40B into harmony with one another, by utilizing similar structure and language throughout all three rules. Subdivision (a) now lists three grounds for rehearing (as opposed to just two), and subdivision (a)(3) would permit rehearing in the event a new rule of law is issued after the court's disposition, but before the rehearing deadline. Subdivision (b) clarifies that "except as necessary to establish the grounds for rehearing" matters presented in the briefs and oral arguments may not be reargued, and no point may be raised for the first time. Subdivision (c) reduces the time for filing a petition for rehearing from 18 days to 14 days, in conformity with FRAP 40. Additionally, the "answer" to a petition for rehearing is now referred to as the "response" throughout NRAP 40, in conformity with FRAP 40. In the event the court orders a response to a petition for rehearing, subdivision (e) now expressly provides for the filing of a reply within 7 days after service of the response.