

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. ~~[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. No citation to authority or argument may be incorporated into the petition by reference to another document. The question(s) presented for review must appear on the first page after the cover.

~~[(b) Petition in Criminal Appeals; Exhaustion of State Remedies. In all appeals from criminal convictions or postconviction relief matters, a party shall 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 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. Unless the time is shortened or enlarged by order, any party may file a [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 not receive or file an untimely petition, but shall return the petition unfiled.]~~~~

~~[(d) Content and Form of Petition. A petition for review 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. 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 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)]~~ **(d) Response to Petition and Reply.** No response to a petition for review ~~[shall]~~ may be filed unless requested by the Supreme 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.

(e) 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 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 Rule 40(f) and must be substantially similar to the Certificate of Compliance for Rules 40, 40A, and 40B Form on the Nevada Supreme Court website.

(f) Length of Petition, 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. Any reply may not exceed one half of the page or type-volume limitation of the petition.

~~[(f)]~~ **(g) 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.

[(g)] (h) 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.

(i) 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.

(j) 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).

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) provides the Supreme Court with an additional factor to consider when deciding whether to grant review—“[w]hether the question presented was raised by the parties below or decided by the Court of Appeals”—understanding that some parties may utilize Rule 40B to seek a second bite at the apple by raising new issues that were not previously raised or decided. Subdivision (b) adds a requirement that “[t]he question(s) presented for review must appear on the first page after the cover.” Subdivision (c) changes the time for filing a petition for review from 18 days to 14 days. In the event the court orders a response to a petition for review, subdivision (d) now expressly provides for the filing of a reply within 7 days after service of the response. Subdivision (h) clarifies that “[u]nless otherwise ordered, a grant of a petition for review does not vacate the Court of Appeals’ decision.”