

**Highlights of Rules of Court Amendments Effective January 1, 2004,  
Including Modified Procedures for *Exhaustion Petitions for Review* and  
*Word-Limits* for Court of Appeal Briefs.**

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Many amendments to the rules of court became effective January 1, 2004. Most of the amendments relevant to criminal and dependency appellate practice are summarized in the attached [chart](#) and some highlights are noted directly below. But keep in mind that there has been a major overall of the rules governing criminal appeals. (New Rules 30-36.3; Former Rules 30-38.). Many things have been renumbered or revised, and the chart does not describe all changes.

Of the changes noted below, the new provisions regarding Court of Appeal brief length and certificates (New Rule 33(b)) and Exhaustion Petitions for Review (New Rule 33.3) might generate the most interest and concern.

- **Brief length and Certificates.**
  - ✓ Under **New Rule 33(b)**, all computer-produced Court of Appeal briefs—including AOB's, RB's, Replies, and Rehearing—now have a **25,500 word-limit**, including footnotes, but excluding tables, the word-count certificate, and any attachment permitted by rule 14(d). Every brief must include a **certificate**, signed by counsel, stating the number of words. (Rule 33(b).) The certificate can be in the same form as the certificates for petitions for review.
  - ✓ In a somewhat related change, the rule requiring certificates for petitions for review (and answers and replies) has been renumbered 28.1(d). If you cite the rule in your form certificate, cite **28.1(d)** (instead of 28.1(e)).
- **Exhaustion Petition for Review.** (New Rule 33.3.) An appellant may file an abbreviated petition for review where the issues don't qualify for review under Rule 28(b), but the petition is necessary to exhaust state remedies in order to preserve issues for federal habeas review.

- ✓ “Petition for Review to Exhaust State Remedies” must appear on the cover of the petition.
  - ✓ Petition need not comply with 28.1(b)(1) (questions presented) & (b)(2) (explanation of how case presents a ground for review under 28(b)).
  - ✓ Petition must include: “(A) a statement that the case presents no grounds for review under rule 28(b) and the petition is filed solely to exhaust state remedies for federal habeas corpus purposes; (B) a brief statement of the underlying proceedings, including the nature of the conviction and the punishment imposed; and (C) a brief statement of the factual and legal bases of the claim.” (New Rule 33.3(b)(3).)
  - ✓ Petition need not be served on superior court. (New Rule 33.3(c).)
  - ✓ Original and 8 copies only.
  - ✓ CAVEAT: None of this changes how federal courts define what is adequately exhausted.
- **Normal Record Missing (Former Rule 35(e) Requests).** While the procedures haven’t change, the rule number has. Rule 35(e) requests are now **32.1(b) requests**. Practice until it rolls off your tongue: “32.1(b) request, 32.1(b) request, 32.1(b) request, 32.1(b) request, 32.1(b) request, 32.1(b) request, 32.1(b) request.”
  - **Rehearing.**
    - ✓ In Court of Appeal, answers to petitions for rehearing are not permitted unless ordered by court. Rule 25(b)(2).
    - ✓ Court may grant relief from default for the late filing of a petition for rehearing. Rule 25(b)(4).
    - ✓ Answers to petitions for rehearing may be filed in Supreme Court cases without court order.
  - **Abandonment.** We no longer voluntarily “dismiss” appeals, we voluntarily “abandon” them. Rule 30.3(a).

- **Certificate Appeals.** Now governed by Rule 30(b). (Former Rule 31(d).)
  - ✓ 31(d) appeals are now 30(b) appeals.
  - ✓ Under new Rule 30(b)(1) defendant must file both an NOA and a CPC statement. A CPC request no longer does double-duty as NOA.
  - ✓ Under new Rule 30(b)(3), a certificate appeal is inoperative (and must be so marked by the superior court clerk) if there is no certificate statement or if the judge denies the CPC. Clerk must given notice to defendant and send copy of statement to appellate project.
  - ✓ Under New Rule 30(c)(1), in case of a certificate appeal, clerk may not notify reporters and COA of filing of noa unless court grants certificate.
  
- **Documents Supporting Habeas Corpus Petitions.**
  - ✓ *Tabbed and paginated exhibits.* Under new Rule 56.5(c)(4), documents supporting habeas petitions are now governed by rule 56(d), which requires tabs and “consecutive pagination throughout.” Tabbing and Bates-stamping the exhibits will be cumbersome, both because of the extra brief-production time and because of the need to insert citations in the petition after the Bates-stamping. The rule, however, requires the clerk to file the petition even if it is not in compliance. (Rule 56(d) (“The clerk shall accept for filing petitions and supporting documents not in compliance with this subdivision; but the court may give the petitioner notice requiring that the petition and documents be brought into compliance within a stated reasonable time, or the petition may be stricken or denied summarily.”) Consideration might be given to foregoing the consecutive pagination throughout the entire volume of exhibits. If tabs are used and if each individual exhibit is internally paginated, it seems unlikely that the court would reject the exhibits.

- **Changes in Number of Copies for Supreme Court filings (Rule 44(b)(1):**

Normal Petition for Review, Answer, & Reply	13 copies
Exhaustion Petition for Review, Answer, & Reply	8 copies
Merits Briefs	13 copies
Original Petitions (including Habeas)	10 copies