

Rule Change #2006(07)

CHAPTER 32

THE COLORADO APPELLATE RULES

**(New) Rule 51.1. Exhaustion of State Remedies
Requirement in Criminal Cases**

(a) Exhaustion of Remedies. In all appeals from criminal convictions or post-conviction relief matters from or after July 1, 1974, a litigant shall not be required to petition for rehearing and certiorari following 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 or Supreme Court, and relief has been denied, the litigant shall be deemed to have exhausted all available state remedies.

(b) Savings Clause. If a litigant's petition for federal habeas corpus is dismissed or denied for failure to exhaust state remedies based on a decision that this rule is ineffective, the litigant shall have 45 days from the date of such dismissal or denial within which to file a motion to recall the mandate together with a writ of certiorari presenting any claim of error not previously presented in reliance on this rule.

Adopted by the Court, En Banc May 18, 2006, effective immediately. Justice Coats and Justice Eid would not adopt the rule.

BY THE COURT:

**Nancy E. Rice
Justice, Colorado Supreme Court**