



**TITLE III LOCAL RULES OF COURT
UNITED STATES SUPREME COURT
[ALL-IN-ONE DOCUMENT]**

JURISDICTION ON WRIT OF CERTIORARI

{AS OF: 7/1/2019}

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LOCAL RULES OF COURT | 11TH CIRCUIT (US)

SECTION: III

TITLE: JURISDICTION ON WRIT OF CERTIORARI

RULES: 10 through 16

DATE: July 1, 2019



RULE 10 | CONSIDERATIONS GOVERNING REVIEW ON CERTIORARI

Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:

(a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;

(b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;

(c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.

RULE 11 | CERTIORARI TO A UNITED STATES COURT OF APPEALS BEFORE JUDGMENT

A petition for a writ of certiorari to review a case pending in a United States court of appeals, before judgment is entered in that court, will be granted only upon a showing that the case is of such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination in this Court. See 28 U.S.C. §2101(e).



RULE 12 | REVIEW ON CERTIORARI: HOW SOUGHT; PARTIES

1. Except as provided in paragraph 2 of this Rule, the petitioner shall file 40 copies of a petition for a writ of certiorari, prepared as required by Rule 33.1, and shall pay the Rule 38(a) docket fee.

2. A petitioner proceeding *in forma pauperis* under Rule 39 shall file an original and 10 copies of a petition for a writ of certiorari prepared as required by Rule 33.2, together with an original and 10 copies of the motion for leave to proceed *in forma pauperis*. A copy of the motion shall precede and be attached to each copy of the petition. An inmate confined in an institution, if proceeding *in forma pauperis* and not represented by counsel, need file only an original petition and motion.

3. Whether prepared under Rule 33.1 or Rule 33.2, the petition shall comply in all respects with Rule 14 and shall be submitted with proof of service as required by Rule 29. The case then will be placed on the docket. It is the petitioner's duty to notify all respondents promptly, on a form supplied by the Clerk, of the date of filing, the date the case was placed on the docket, and the docket number of the case. The notice shall be served as required by Rule 29.

4. Parties interested jointly, severally, or otherwise in a judgment may petition separately for a writ of certiorari; or any two or more may join in a petition. A party not shown on the petition as joined therein at the time the petition is filed may not later join in that petition. When two or more judgments are sought to be reviewed on a writ of certiorari to the same court and involve identical or closely related questions, a single petition for a writ of certiorari covering all the judgments suffices. A petition for a writ of certiorari may not be joined with any other pleading, except that any motion for leave to proceed *in forma pauperis* shall be attached.



5. No more than 30 days after a case has been placed on the docket, a respondent seeking to file a conditional cross-petition (i.e., a cross-petition that otherwise would be untimely) shall file, with proof of service as required by Rule 29, 40 copies of the cross-petition prepared as required by Rule 33.1, except that a cross-petitioner proceeding *in forma pauperis* under Rule 39 shall comply with Rule 12.2. The cross-petition shall comply in all respects with this Rule and Rule 14, except that material already reproduced in the appendix to the opening petition need not be reproduced again. A cross-petitioning respondent shall pay the Rule 38(a) docket fee or submit a motion for leave to proceed *in forma pauperis*. The cover of the cross-petition shall indicate clearly that it is a conditional cross-petition. The cross-petition then will be placed on the docket, subject to the provisions of Rule 13.4. It is the cross-petitioner's duty to notify all cross-respondents promptly, on a form supplied by the Clerk, of the date of filing, the date the cross-petition was placed on the docket, and the docket number of the cross-petition. The notice shall be served as required by Rule 29. A cross-petition for a writ of certiorari may not be joined with any other pleading, except that any motion for leave to proceed *in forma pauperis* shall be attached. The time to file a conditional cross-petition will not be extended.

6. All parties to the proceeding in the court whose judgment is sought to be reviewed are deemed parties entitled to file documents in this Court, unless the petitioner notifies the Clerk of this Court in writing of the petitioner's belief that one or more of the parties below have no interest in the outcome of the petition. A copy of such notice shall be served as required by Rule 29 on all parties to the proceeding below. A party noted as no longer interested may remain a party by notifying the Clerk promptly, with service on the other parties, of an intention to remain a party. All parties other than the petitioner are considered respondents, but any respondent who supports the position of a petitioner shall meet the petitioner's time schedule for filing documents, with the following exception: A response of a party aligned with petitioner below who supports granting the petition shall be filed within 30 days after the case is placed on the docket, and that time will not be extended. Counsel for such respondent shall ensure that counsel of record for all parties receive notice of its intention to file a brief in support



within 20 days after the case is placed on the docket. A respondent not aligned with petitioner below who supports granting the petition, or a respondent aligned with petitioner below who takes the position that the petition should be denied, is not subject to the notice requirement and may file a response within the time otherwise provided by Rule 15.3. Parties who file no document will not qualify for any relief from this Court.

7. The clerk of the court having possession of the record shall keep it until notified by the Clerk of this Court to certify and transmit it. In any document filed with this Court, a party may cite or quote from the record, even if it has not been transmitted to this Court. When requested by the Clerk of this Court to certify and transmit the record, or any part of it, the clerk of the court having possession of the record shall number the documents to be certified and shall transmit therewith a numbered list specifically identifying each document transmitted. If the record, or stipulated portions, have been printed for the use of the court below, that printed record, plus the proceedings in the court below, may be certified as the record unless one of the parties or the Clerk of this Court requests otherwise. The record may consist of certified copies, but if the lower court is of the view that original documents of any kind should be seen by this Court, that court may provide by order for the transport, safekeeping, and return of such originals.

RULE 13 | REVIEW ON CERTIORARI: TIME FOR PETITIONING

1. Unless otherwise provided by law, a petition for a writ of certiorari to review a judgment in any case, civil or criminal, entered by a state court of last resort or a United States court of appeals (including the United States Court of Appeals for the Armed Forces) is timely when it is filed with the Clerk of this Court within 90 days after entry of the judgment. A petition for a writ of certiorari seeking review of a judgment of a lower state court that is subject to discretionary review by the state court of last resort is timely when it is filed with the Clerk within 90 days after entry of the order denying discretionary review.

2. The Clerk will not file any petition for a writ of certiorari that is jurisdictionally out of time. See, e.g., 28 U.S.C. §2101(c).

3. The time to file a petition for a writ of certiorari runs from the date of entry of the judgment or order sought to be reviewed, and not from the issuance date of the mandate (or its equivalent under local practice). But if a petition for rehearing is timely filed in the lower court by any party, or if the lower court appropriately entertains an untimely petition for rehearing or sua sponte considers rehearing, the time to file the petition for a writ of certiorari for all parties (whether or not they requested rehearing or joined in the petition for rehearing) runs from the date of the denial of rehearing or, if rehearing is granted, the subsequent entry of judgment.

4. A cross-petition for a writ of certiorari is timely when it is filed with the Clerk as provided in paragraphs 1, 3, and 5 of this Rule, or in Rule 12.5. However, a conditional cross-petition (which except for Rule 12.5 would be untimely) will not be granted unless another party's timely petition for a writ of certiorari is granted.



5. For good cause, a Justice may extend the time to file a petition for a writ of certiorari for a period not exceeding 60 days. An application to extend the time to file shall set out the basis for jurisdiction in this Court, identify the judgment sought to be reviewed, include a copy of the opinion and any order respecting rehearing, and set out specific reasons why an extension of time is justified. The application must be filed with the Clerk at least 10 days before the date the petition is due, except in extraordinary circumstances. The application must clearly identify each party for whom an extension is being sought, as any extension that might be granted would apply solely to the party or parties named in the application. For the time and manner of presenting the application, see Rules 21, 22, 30, and 33.2. An application to extend the time to file a petition for a writ of certiorari is not favored.



RULE 14 | CONTENT OF A PETITION FOR A WRIT OF CERTIORARI

1. A petition for a writ of certiorari shall contain, in the order indicated:

(a) The questions presented for review, expressed concisely in relation to the circumstances of the case, without unnecessary detail. The questions should be short and should not be argumentative or repetitive. If the petitioner or respondent is under a death sentence that may be affected by the disposition of the petition, the notation "capital case" shall precede the questions presented. The questions shall be set out on the first page following the cover, and no other information may appear on that page. The statement of any question presented is deemed to comprise every subsidiary question fairly included therein. Only the questions set out in the petition, or fairly included therein, will be considered by the Court.

(b)

(i) A list of all parties to the proceeding in the court whose judgment is sought to be reviewed (unless the caption of the case contains the names of all the parties);

(ii) a corporate disclosure statement as required by Rule 29.6; and

(iii) a list of all proceedings in state and federal trial and appellate courts, including proceedings in this Court, that are directly related to the case in this Court. For each such proceeding, the list should include the court in question, the docket number and case caption for the proceeding, and the date of entry of the judgment. For the purposes of this rule, a case is "directly related" if it arises from the same trial court case as the case in this Court (including the proceedings directly on review in this case), or if it challenges the same criminal conviction or sentence as is challenged in this Court, whether on direct appeal or through state or federal collateral proceedings.



(c) If the petition prepared under Rule 33.1 exceeds 1,500 words or exceeds five pages if prepared under Rule 33.2, a table of contents and a table of cited authorities. The table of contents shall include the items contained in the appendix.

(d) Citations of the official and unofficial reports of the opinions and orders entered in the case by courts or administrative agencies.

(e) A concise statement of the basis for jurisdiction in this Court, showing:

(i) the date the judgment or order sought to be reviewed was entered (and, if applicable, a statement that the petition is filed under this Court's Rule 11);

(ii) the date of any order respecting rehearing, and the date and terms of any order granting an extension of time to file the petition for a writ of certiorari;

(iii) express reliance on Rule 12.5, when a cross-petition for a writ of certiorari is filed under that Rule, and the date of docketing of the petition for a writ of certiorari in connection with which the cross-petition is filed;

(iv) the statutory provision believed to confer on this Court jurisdiction to review on a writ of certiorari the judgment or order in question; and

(v) if applicable, a statement that the notifications required by Rule 29.4(b) or (c) have been made.

(f) The constitutional provisions, treaties, statutes, ordinances, and regulations involved in the case, set out verbatim with appropriate citation. If the provisions involved are lengthy, their citation alone suffices at this point, and their pertinent text shall be set out in the appendix referred to in subparagraph 1(i).

(g) A concise statement of the case setting out the facts material to consideration of the questions presented, and also containing the following:

(i) If review of a state-court judgment is sought, specification of the stage in the proceedings, both in the court of first instance and in the appellate courts, when the federal questions sought to be reviewed were raised; the method or manner of raising them and the way in which they were passed on by those courts; and pertinent quotations of specific portions of the record or summary thereof, with specific reference to the places in the record where the matter appears (e.g., court opinion, ruling on exception, portion of court's charge and exception thereto, assignment of error), so as to show that the federal question was timely and properly raised and that this Court has jurisdiction to review the judgment on a writ of certiorari. When the portions of the record relied on under this subparagraph are voluminous, they shall be included in the appendix referred to in subparagraph 1(i).

(ii) If review of a judgment of a United States court of appeals is sought, the basis for federal jurisdiction in the court of first instance.

(h) A direct and concise argument amplifying the reasons relied on for allowance of the writ. See Rule 10.

(i) An appendix containing, in the order indicated:

(i) the opinions, orders, findings of fact, and conclusions of law, whether written or orally given and transcribed, entered in conjunction with the judgment sought to be reviewed;

(ii) any other relevant opinions, orders, findings of fact, and conclusions of law entered in the case by courts or administrative agencies, and, if reference thereto is necessary to ascertain the grounds of the judgment, of those in companion cases (each document shall include the caption showing the name of the issuing court or agency, the title and number of the case, and the date of entry);

(iii) any order on rehearing, including the caption showing the name of the issuing court, the title and number of the case, and the date of entry;

(iv) the judgment sought to be reviewed if the date of its entry is different from the date of the opinion or order required in sub-subparagraph (i) of this subparagraph;

(v) material required by subparagraphs 1(f) or 1(g) (i); and

(vi) any other material the petitioner believes essential to understand the petition.

If the material required by this subparagraph is voluminous, it may be presented in a separate volume or volumes with appropriate covers.

2. All contentions in support of a petition for a writ of certiorari shall be set out in the body of the petition, as provided in subparagraph 1(h) of this Rule. No separate brief in support of a petition for a writ of certiorari may be filed, and the Clerk will not file any petition for a writ of certiorari to which any supporting brief is annexed or appended.

3. A petition for a writ of certiorari should be stated brief and in plain terms and may not exceed the word or page limitations specified in Rule 33.

4. The failure of a petitioner to present with accuracy, brevity, and clarity whatever is essential to ready and adequate understanding of the points requiring consideration is sufficient reason for the Court to deny a petition.

5. If the Clerk determines that a petition submitted timely and in good faith is in a form that does not comply with this Rule or with Rule 33 or Rule 34, the Clerk will return it with a letter indicating the deficiency. A corrected petition submitted in accordance with Rule 29.2 no more than 60 days after the date of the Clerk's letter will be deemed timely.



RULE 15 | BRIEFS IN OPPOSITION; REPLY BRIEFS; SUPPLEMENTAL BRIEFS

1. A brief in opposition to a petition for a writ of certiorari may be filed by the respondent in any case, but is not mandatory except in a capital case, see Rule 14.1(a), or when ordered by the Court.

2. A brief in opposition should be stated briefly and in plain terms and may not exceed the word or page limitations specified in Rule 33. In addition to presenting other arguments for denying the petition, the brief in opposition should address any perceived misstatement of fact or law in the petition that bears on what issues properly would be before the Court if certiorari were granted. Counsel are admonished that they have an obligation to the Court to point out in the brief in opposition, and not later, any perceived misstatement made in the petition. Any objection to consideration of a question presented based on what occurred in the proceedings below, if the objection does not go to jurisdiction, may be deemed waived unless called to the Court's attention in the brief in opposition. A brief in opposition should identify any directly related cases that were not identified in the petition under Rule 14.1(b)(iii), including for each such case the information called for by Rule 14.1(b)(iii).

3. Any brief in opposition shall be filed within 30 days after the case is placed on the docket, unless the time is extended by the Court or a Justice, or by the Clerk under Rule 30.4. Forty copies shall be filed, except that a respondent proceeding *in forma pauperis* under Rule 39, including an inmate of an institution, shall file the number of copies required for a petition by such a person under Rule 12.2, together with a motion for leave to proceed *in forma pauperis*, a copy of which shall precede and be attached to each copy of the brief in opposition. If the petitioner is proceeding *in forma pauperis*, the respondent shall prepare its brief in opposition, if any, as required by Rule 33.2, and shall file an original and 10 copies of that brief. Whether prepared under Rule 33.1 or Rule 33.2, the brief in opposition shall comply with the requirements of Rule 24 governing a respondent's brief, except that no summary of the argument is required. A brief in opposition may not be joined with any other pleading, except that any motion for leave to proceed



in forma pauperis shall be attached. The brief in opposition shall be served as required by Rule 29.

4. No motion by a respondent to dismiss a petition for a writ of certiorari may be filed. Any objections to the jurisdiction of the Court to grant a petition for a writ of certiorari shall be included in the brief in opposition.

5. The Clerk will distribute the petition to the Court for its consideration upon receiving an express waiver of the right to file a brief in opposition, or, if no waiver or brief in opposition is filed, upon the expiration of the time allowed for filing. If a brief in opposition is timely filed, the Clerk will distribute the petition, brief in opposition, and any reply brief to the Court for its consideration no less than 14 days after the brief in opposition is filed, unless the petitioner expressly waives the 14-day waiting period.

6. Any petitioner may file a reply brief addressed to new points raised in the brief in opposition, but distribution and consideration by the Court under paragraph 5 of this Rule will not be deferred pending its receipt. Forty copies shall be filed, except that a petitioner proceeding *in forma pauperis* under Rule 39, including an inmate of an institution, shall file the number of copies required for a petition by such a person under Rule 12.2. The reply brief shall be served as required by Rule 29.

7. If a cross-petition for a writ of certiorari has been docketed, distribution of both petitions will be deferred until the cross-petition is due for distribution under this Rule.

8. Any party may file a supplemental brief at any time while a petition for a writ of certiorari is pending, calling attention to new cases, new legislation, or other intervening matter not available at the time of the party's last filing. A supplemental brief shall be restricted to new matter and shall follow, insofar as applicable, the form for a brief in opposition prescribed by this Rule. Forty copies shall be filed, except that a party proceeding *in forma pauperis* under Rule 39, including an inmate of an institution, shall file the number of copies required for a petition by such a person under Rule 12.2. The supplemental brief shall be served as required by Rule 29.



RULE 16 | DISPOSITION OF A PETITION FOR A WRIT OF CERTIORARI

1. After considering the documents distributed under Rule 15, the Court will enter an appropriate order. The order may be a summary disposition on the merits.

2. Whenever the Court grants a petition for a writ of certiorari, the Clerk will prepare, sign, and enter an order to that effect and will notify forthwith counsel of record and the court whose judgment is to be reviewed. The case then will be scheduled for briefing and oral argument. If the record has not previously been filed in this Court, the Clerk will request the clerk of the court having possession of the record to certify and transmit it. A formal writ will not issue unless specially directed.

3. Whenever the Court denies a petition for a writ of certiorari, the Clerk will prepare, sign, and enter an order to that effect and will notify forthwith counsel of record and the court whose judgment was sought to be reviewed. The order of denial will not be suspended pending disposition of a petition for rehearing except by order of the Court or a Justice.



APPENDIX



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