

**L.A.R. Misc. 112      PETITIONS FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE VIRGIN ISLANDS**

**112.1    Considerations Governing Review on Certiorari**

(a) Review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. The following, while neither controlling nor limiting the court's discretion, indicate the character of reasons that will be considered.

(1) The Supreme Court of the Virgin Islands has decided a question in a way that conflicts with applicable decisions of this court, other appellate courts, or the United States Supreme Court.

(2) The Supreme Court of the Virgin Islands has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this court's powers of review.

(3) The Supreme Court of the Virgin Islands has decided an important question of federal or territorial law that has not been, but should be, decided by this court.

(4) The Supreme Court of the Virgin Islands was without jurisdiction of the case, or where, because of disqualifications or other reason, the decision of the Supreme Court of the Virgin Islands lacks the concurrence of the required majority of qualified non-recused judges.

(b) A petition for a writ of certiorari will rarely be granted when the asserted error consists of erroneous findings of fact or the misapplication of a properly stated rule of law. A petition for writ of certiorari that raises any issue or relies on any material fact that was omitted from or misstated in the opinion of the Supreme Court of the Virgin Islands will normally not be considered, unless the omission or misstatement was called to the attention of the Supreme Court of the Virgin Islands in a petition for rehearing. All other issues and facts may be presented in the petition for a writ of certiorari without the necessity of filing a petition for rehearing.

**112.2    Petition for Writ of Certiorari - How Sought**

(a) In both civil and criminal cases, review of a final decision of the Supreme Court of the Virgin Islands may be sought pursuant to 48 U.S.C. § 1613 by filing a petition for a writ of certiorari with the Clerk of the United States Court of Appeals for the Third Circuit within sixty (60) days from the entry of judgment sought to be reviewed on the docket of the Supreme Court of the Virgin Islands. A petition filed by an incarcerated person will be deemed filed when placed in the prison mail system; the petition must be accompanied by a statement under penalty of perjury stating the date the petition was placed in the prison mail system and stating that first-class postage has been pre-paid. In all other cases, the petition must be received by the Clerk in Philadelphia by the sixtieth day.

(b) Petitions for certiorari must be filed electronically as provided in L.A.R. 113. Where the petition may be filed in paper format under L.A.R. 113, petitioner **Petitioner** must file, with proof of service, an original and three paper copies of the petition for writ of certiorari. Petitioner must serve one copy of the petition for writ of certiorari pursuant to L.A.R. 113 on each of the parties to the proceedings in the Supreme Court of the Virgin Islands. When filing the petition, petitioner must pay the docketing fee, which ~~shall be~~ **is** the same as the fees charged for an original proceeding such as a petition for writ of mandamus or petition for review of an agency order, in the Court of Appeals. Counsel for the petitioner must enter an appearance within ten days of filing a petition.

(c) Parties interested jointly may file a joint petition. A petitioner not shown on the petition at the time of filing may not later join in that petition.

(d) If a petition for rehearing of the final decision of the Supreme Court of the Virgin Islands is timely filed pursuant to the Rules of the Supreme Court of the Virgin Islands or if that court sua sponte considers rehearing, the time for filing the petition for writ of certiorari ~~shall~~ **runs** from entry of the order denying the petition or, if rehearing is granted, from entry of the order on rehearing.

### **112.3 Cross-petitions for Certiorari**

(a) Unless a rule specifies a different procedure for a cross-petition for certiorari, the rules for a petition for certiorari apply to cross-petitions.

(b) A cross-petition for a writ of certiorari may be filed within twenty-one (21) days after the first petition was filed. When filing the cross-petition, cross-petitioner must pay the docketing fee. The cross-petitioner must serve one copy of the petition on each of the parties to the proceedings in the Supreme Court of the Virgin Islands.

(c) A cross-petitioner need not duplicate the appendix filed by petitioner

### **112.4 Extension of Time to File Petitions**

(a) A circuit judge, for good cause shown, may extend the time for filing a petition for writ of certiorari or cross-petition for a period not exceeding thirty (30) days. Any application for extension of time within which to file a petition for writ of certiorari must set out the grounds on which the jurisdiction of this court is invoked, must identify the judgment sought to be reviewed, must append ~~and have appended thereto~~ a copy of the opinion, and must set forth with specificity the reasons justifying an extension. An untimely petition for writ of certiorari must be accompanied by a motion for extension of time. However, an application for extension of time to file a petition for certiorari ordinarily will not be granted, if filed less than five (5) days before the expiration of the time to file a petition.

### **112.5 Denominating Parties**

(a) The party filing the first petition for the writ of certiorari ~~shall~~ **will** be denominated the petitioner; petitioner's denomination in the appeal or other proceeding before the Supreme Court and the Superior Court of the Virgin Islands must be included in the first paragraph of the statement of the case.

(b) A parties to the proceeding in the court whose judgment is sought to be reviewed are deemed parties in this court and ~~shall~~ **will** be denominated respondents, unless the petitioner notifies the clerk of this court in writing of petitioner's belief that one or more of the parties below has no interest in the outcome of the petition. A copy of such notice must be served on all parties to the proceeding in the Supreme Court of the Virgin Islands. A party noted as no longer interested may remain a party by notifying the clerk in writing within ten (10) days from the date of service of petitioner's notice, with service on all other parties, that the party has an interest in the petition. Each respondent's denomination in the proceedings before the Supreme Court and the Superior Court of the Virgin Islands must be included in the petition for writ of certiorari in the first paragraph of the statement of the case. Any respondent who supports the position of a petitioner must meet the time schedule for filing responsive papers.

(c) a party who files a cross-petition for certiorari is denominated as respondent/cross-petitioner.

#### **112.6 The Petition for Writ of Certiorari**

(a) The petition for writ of certiorari must contain, in the following order:

(1) a table of contents;

(2) a table of authorities, including citations to the relevant constitutional provisions, treaties, statutes, ordinances, and regulations;

(3) a concise statement of the ground on which the jurisdiction of this court is invoked, with citations to applicable statutes and stating relevant facts establishing the finality of the order. The jurisdictional statement must also include the date of entry of the judgment sought to be reviewed, the date of any orders respecting rehearing, and, in the case of a cross-petition for a writ of certiorari, the date of the filing of the petition for a writ of certiorari;

(4) a concise statement, with citations to appropriate statutes, of the basis of jurisdiction of the Supreme Court of the Virgin Islands and of the Superior Court of the Virgin Islands.

(5) the questions presented for review, expressed concisely in relation to the circumstances of the case. The statement of the questions should not be argumentative or repetitious. The statement of a question presented will be deemed to comprise every subsidiary question fairly included therein. Only the questions set forth in the petition or fairly included therein will be considered by the court;

(6) A concise statement of the case containing the facts material to the consideration of the questions presented. The first paragraph of the statement of the case must

specify the denomination of each of the parties as they appeared in the Supreme Court of the Virgin Islands and the Superior Court of the Virgin Islands. The statement of the case must specify, with appropriate citation to the record, the stage in the proceedings, both in the Superior Court and the Supreme Court of the Virgin Islands, at which the questions sought to be reviewed were raised and the ruling thereon;

(7) a direct and concise argument amplifying the reasons why the questions for review are important enough to warrant issuance of the writ;

(8) a short conclusion, which must include a statement of the specific relief requested if the writ of certiorari is granted.

(b) All contentions in support of a petition for writ of certiorari must be set forth in the body of the petition, as provided by this rule. No separate brief in support of a petition for a writ of certiorari will be received, and the clerk will refuse to file any petition for a writ of certiorari to which is annexed or appended any supporting brief.

(c) Any reason for expedited treatment or request for interim relief must be made by separate motion. The requirement in Rule 8, F.R.A.P., that a request for stay or injunction pending appeal must first be made to the court below will be strictly enforced. Any motion for stay or injunction must attach the order of the Supreme Court of the Virgin Islands disposing of the motion for stay or injunction made to it in the first instance.

### **112.7 Appendix**

(a) An original and three copies of an appendix must be filed with the petition [as provided in L.A.R. 113.6](#). The appendix must contain in the following order:

(1) copies of all docket entries, opinions, orders, findings of fact, and conclusions of law, whether written or oral (if recorded and transcribed), delivered upon the rendering of the judgment or decree by the Supreme Court of the Virgin Islands; and

(2) copies of any applicable local statutes, ordinances, and regulations the above documents may be bound with the petition provided they do not exceed 75 pages.

(b) the above documents in subparagraphs (1) and (2) may be bound with the petition provided they do not exceed 75 pages.

(c) Cross-petitioners need not duplicate materials filed by the petitioner.

(d) Respondents wishing to file materials in addition to those filed by petitioner must file a motion for permission to file a supplemental appendix.

### **112.8 Brief in Opposition - in Support - Reply - Supplemental Briefs**

(a) Within thirty (30) days of receipt of a petition for writ of certiorari, a respondent may

file [an opposing brief, with certificate of service, as provided in L.A.R. 113. If paper filing is permitted by L.A.R. 113, the party must file](#) an original and three [paper](#) copies, with certificate of service, of an opposing brief. In addition to the merits of the questions presented, the brief should address whether the issues identified by the petitioner are suitable for review. The respondent may agree that the petition for certiorari should be granted because the case presents an important question, yet argue that the decision of the Supreme Court of the Virgin Islands is correct.

(b) A respondent supporting the position of the petitioner must file a response supporting the petition with 20 days of the opening of the case. Parties who file no document will not qualify for any relief from the court.

(c) If no response is received within the time prescribed, it will be assumed that the party does not wish to participate and will no longer receive notices from the clerk or be entitled to service of documents from the other parties. The clerk may direct a party to file a response.. Ordinarily, a petition for certiorari will not be granted unless a response has been filed or requested.

(d) No motion by a respondent to dismiss a petition for writ of certiorari will be received. Objections to the jurisdiction of the court to grant the writ of certiorari may be included in the brief in opposition.

(e) [Within 14 days of receipt of respondent's brief, petitioner](#) Petitioner may file [and serve under L.A.R. 113 a reply brief](#) an original and three copies, with certificate of service, of a reply brief addressed to arguments first raised in the brief in opposition [within fourteen \(14\) days of receipt of respondent's brief. If paper filing is permitted by L.A.R. 113, the party must file and serve an original and three paper copies.](#)

(f) Motions for extensions of time to file a brief are governed by [Third Circuit](#) L.A.R. 31.4

(g) No supplemental filings may be made by any party except as provided in Rule 28(j), F.R.A.P.

### **112.9 Format, and Length, Filing and Service**

(a) The typeface, page size, margins, line spacing, binding, and text style of a petition for writ of certiorari and responses must be in compliance with Rule 32(a), F.R.A.P. and [Third Circuit Local Rule L.A.R. 32.1](#) The cover of a [paper](#) petition for writ of certiorari must be blue; the cover of respondent's [paper](#) brief must be red; the cover of a [paper](#) reply brief must be gray.

(b) A proportionately spaced petition for a writ of certiorari and response must not exceed 5,600 words, exclusive of the table of contents and table of authorities. A reply brief must not exceed 2,300 words.

[\(c\) Petitions for certiorari, responses and replies must be filled and served as provided in](#)

[L.A.R. 113.](#)

**112.10 Disposition of a Petition for Writ of Certiorari**

(a) The petition and any responses ~~shall~~**will** be referred to a motions panel for disposition. If a petition for writ of certiorari is granted, the clerk will issue a briefing schedule and the case ~~shall~~**will** proceed as other appeals in accordance with the Federal Rules of Appellate Procedure and Local Appellate Rules but with review limited to the questions on which the writ of certiorari was granted.

**112.11 Record on Review**

(a) The record on review ~~shall~~**consists** of the record presented to the Supreme Court of the Virgin Islands.

(b) Within thirty (30) days of an order granting a writ of certiorari, the Clerk of the Supreme Court of the Virgin Islands must file a certified copy of the docket entries in lieu of the record with the Clerk of the Court of Appeals. The filing of the certified docket entries with the Court of Appeals constitutes the filing of the record.

**112.12 Rehearings**

(a) Rules 35 and 40, F.R.A.P., govern petitions for rehearing an order denying a petition for writ of certiorari.

(b) The grounds for a petition for rehearing of an order denying a petition for writ of certiorari are limited to intervening circumstances of substantial or controlling effect or to other substantial grounds. A petitioner must certify that the petition is restricted to the grounds specified in this paragraph and that it is presented in good faith and not for delay. This certification is in lieu of that required by ~~Third Circuit~~ L.A.R. 35.1;

(c) No response to a petition for rehearing will be received unless requested by the court, but no petition will be granted without an opportunity to submit a response.

(d) Consecutive petitions for rehearings will not be received.

**112.13 Costs**

(a) Each party **shall will** bear its own costs in a proceeding seeking a writ of certiorari, unless the court either sua sponte or following a motion directs that costs be taxed under Rule 38, F.R.A.P., for a vexatious or frivolous petition. If the writ is granted and the case proceeds to briefing and decision, costs may be taxed as provided in Rule 39, F.R.A.P.

**112.14 Applicability of the Federal Rules of Appellate Procedure**

(a) The Federal Rules of Appellate Procedure, to the extent that they are not inconsistent with any statutory provisions or these rules, may be applied to a proceeding seeking a writ of

certiorari.