

# Detailed Contents

Preface .....	vii
Checklists for Processing Cases Through the Court Including Document Page Limits and Cover Colors .....	xxxvii
<b>1 Introduction to the Supreme Court .....</b>	<b>1</b>
1.1 The Creation of “one supreme Court” .....	2
1.2 Implementation of the “one supreme Court” .....	3
(a) Number of Justices .....	4
(b) Tenure and Compensation .....	4
(c) Compensation of the Justices .....	5
(d) Quorum .....	5
(e) Absence of a Quorum .....	6
(f) The “First Monday in October” Term .....	7
(g) Holding Terms “at the seat of government” .....	9
(h) Congressional Funding of the Court .....	10
1.3 Court Sessions and Conferences During Its “Continuous” Term .....	11
1.4 Opinions and Orders .....	16
1.5 The Supreme Court Building and Grounds .....	18
1.6 The Courtroom and the Conference Room .....	21
1.7 The Supreme Court Library .....	24
1.8 Clerk’s Office .....	27
1.9 Marshal’s Office .....	29
1.10 Reporter of Decisions and Publication of Opinions .....	30
1.11 Public Information Office .....	32
1.12 Administrative Assistant to the Chief Justice .....	33
1.13 The Legal Office .....	34
1.14 Office of the Curator .....	35
1.15 The Supreme Court Historical Society .....	35
1.16 Supreme Court Law Clerks .....	36
(a) History of Supreme Court Law Clerks .....	36
(b) Law Clerk Selection Process .....	38

(c)	Certiorari Work of Law Clerks .....	39
(d)	Work of Law Clerks on Opinions .....	42
(e)	Ethical Obligations of Law Clerks .....	44
1.17	The Supreme Court Web Site and Other Sources of Information About Cases Before the Court .....	48
(a)	The Supreme Court Web Site .....	48
(b)	Where to Find Briefs Filed in the Supreme Court .....	50
(c)	Availability of Petitions and Briefs in the Supreme Court's Files .....	52
(d)	Unofficial Reprints of Opinions and Orders .....	54
1.18	Dockets .....	55
1.19	The Court's Procedural Framework .....	56
1.20	The Court's Workload and Its Effect on Practice .....	57
(a)	The Growth of the Court's Workload .....	57
(b)	The Decline of the Argument Calendar .....	60
(c)	The Decline in Supreme Court Decisions .....	61
(d)	The Effect of the Workload on the Practitioner .....	64
1.21	The Computerization of Booklet-Format Documents .....	65
1.22	Timely Filing of Documents .....	68
<b>2</b>	<b>Jurisdiction to Review Decisions of Federal Courts .....</b>	<b>71</b>
	<b>Introduction</b>	
2.1	Constitutional and Statutory Bases of Certiorari Jurisdiction .....	72
	<b>Federal Courts of Appeals</b>	
2.2	Plenary Nature of Certiorari Jurisdiction Over Federal Courts of Appeals .....	77
2.3	Certiorari Jurisdiction Over Nonfinal Judgments of Federal Courts of Appeals .....	81
2.4	Certiorari Jurisdiction Before Rendition of Judgment Below .....	83
2.5	Invocation of Certiorari Jurisdiction by "Any Party" to Case Below ....	86
2.6	Jurisdiction by Certification From Courts of Appeals .....	89
	<b>District Courts</b>	
2.7	Appeals From District Courts .....	89
2.8	Appeal Jurisdiction to Review Decisions in Civil Antitrust Cases Brought by the Government .....	92
	<b>Three-Judge District Courts</b>	
2.9	Appeal Jurisdiction Over Three-Judge District Courts Under §1253 .....	99
2.10	Appealable Judgments Under Existing Three-Judge Court Statutes .....	102
(a)	Specific Statutory Cases .....	102
(b)	Reapportionment Cases .....	103
(1)	Injunctive Relief .....	103
(2)	Scope of the Statute .....	104

(c)	The Civil Rights Act of 1964 .....	105
(d)	The Voting Rights Act of 1965 and Related Statutes .....	107
(1)	42 U.S.C. §1971(g) .....	107
(2)	42 U.S.C. §§1973b and 1973c .....	108
(3)	Other Three-Judge Court Proceedings .....	111
(4)	Direct Appeals From Three-Judge Courts .....	112
(e)	The Presidential Election Campaign Fund Act .....	113
2.11	Procedures and Considerations Applicable to All Appeals From Three-Judge District Courts .....	117

### Other Federal Courts

2.12	Jurisdiction Over the United States Court of Appeals for the Federal Circuit .....	121
2.13	Jurisdiction Over the District of Columbia Court of Appeals .....	124
2.14	Jurisdiction Over the United States Court of Appeals for the Armed Forces .....	127
2.15	Jurisdiction Over Other Specialized Federal Tribunals .....	134
(a)	The Temporary Emergency Court of Appeals .....	134
(b)	The Regional Rail Reorganization Act Special Court .....	135
(c)	The Foreign Intelligence Surveillance Act Courts .....	136
3	<b>Jurisdiction to Review Decisions of State Courts</b> .....	137

### Introduction

3.1	Jurisdiction Over State Courts—Historic and Present Day Scope .....	138
(a)	The “Final Judgment” Requirement .....	140
(b)	The Rooker-Feldman Exclusivity Doctrine .....	140
(c)	No Supervisory Power Over State Courts .....	141
(d)	The “Binding” Effect of State Laws in the Exercise of §1257(a) Jurisdiction .....	141
(1)	Loss of Supreme Court Jurisdiction .....	142
(2)	Far Beyond “Fair Reading” of the State Statute .....	143
(3)	Misconstruction of State Property Law .....	143
(4)	Distortion of State Election Laws .....	144
(e)	Deference to Lower Federal Court Interpretation of State Law .....	145
(f)	The “All-Certiorari” Jurisdiction Over State Courts .....	146
3.2	Jurisdiction Over State Courts—The Current Statutes .....	147
3.3	Certiorari Jurisdiction Over State Courts—In General .....	150

### Requirements for Finality

3.4	Sources for Satisfying the Finality Requirement .....	152
3.5	Literal and Pragmatic Concepts of Finality .....	155
3.6	Finality With Respect to Separable or Collateral Matters .....	158
3.7	Finality Where Further Proceedings Are Contemplated .....	161
3.8	Illustrative Applications of Finality in Civil Cases .....	168

3.9	Illustrative Applications of Finality in Criminal Cases .....	171
3.10	Finality as Affected by Petitions for Rehearing.....	173
<b>Requirement of Decision by Highest State Court</b>		
3.11	In General .....	175
3.12	State Trial Courts .....	176
3.13	Intermediate State Appellate Courts.....	178
3.14	State Courts of Last Resort .....	179
3.15	State Administrative Bodies .....	180
<b>Need for Properly Raising a Substantial Federal Question</b>		
3.16	In General .....	180
3.17	Framing the Federal Question .....	183
3.18	Where and When a Federal Question Should Be Raised .....	187
	(a) In Trial Court.....	189
	(b) In State Appellate Court .....	192
	(c) On Rehearing .....	193
	(d) Presenting Issue in Certiorari Papers .....	196
3.19	Effect of State Court's Determination of Federal Question.....	197
3.20	Certificate From State Court That Federal Question Was Raised and Decided .....	199
3.21	Limitation of Review to Properly Raised or Decided Federal Questions—Noticing Plain Errors .....	203
<b>Lack of Jurisdiction to Review Judgments Based on Independent and Adequate State Grounds</b>		
3.22	In General .....	207
3.23	Sources for Ascertaining Grounds of Decision .....	210
3.24	Independence of State Ground When Federal Ground Also Present—The <i>Michigan v. Long</i> Presumption .....	214
3.25	The “Footnote 6 Exception” to the <i>Michigan v. Long</i> Presumption .....	220
3.26	Adequacy of State Ground.....	222
3.27	Disposition and Enforcement in Cases Coming from State Courts .....	226
3.28	Nonreviewability of State Court Findings of Fact— The Rule and Its Exceptions.....	228
4	<b>Factors Motivating the Exercise of the Court's Certiorari Appellate Jurisdiction.....</b>	<b>233</b>
<b>Certiorari Jurisdiction</b>		
4.1	Historical Background of the Certiorari Jurisdiction .....	234
4.2	Guidelines for Exercise of Certiorari Jurisdiction .....	237
4.3	Conflict Between Decisions as Basis for Granting Certiorari— In General .....	241
4.4	Conflict Between Decisions of Courts of Appeals .....	242
	(a) Important and Recurring Nature of Conflict .....	245

(b) Well-Developed Conflict Among Circuits .....	246
(c) Live Conflict .....	247
(d) Conflict Based on Discredited Authority .....	247
(e) Alternative Ground For Decision .....	248
(f) Conflict Irrelevant to Ultimate Outcome of Case .....	248
(g) Conflict Not Fairly Presented .....	248
(h) Interlocutory Decision .....	249
4.5 Conflict Between Decisions of Court of Appeals and of Supreme Court .....	250
4.6 Conflict Between Decisions of Same Court of Appeals .....	253
4.7 Conflict Between Decisions of Courts of Appeals and of Court of Appeals for the Federal Circuit or Court of Appeals for the Armed Forces .....	255
4.8 Conflict Between Decisions of Courts of Appeals and District Courts .....	256
4.9 Conflict Between Decisions of Court of Appeals and of Highest State Court as to Federal Matters .....	258
4.10 Conflict Between Decisions of Court of Appeals and of Highest State Court on General and Nonfederal Matters .....	259
4.11 Importance of Issues Involved .....	262
4.12 Important Constitutional Issues .....	264
4.13 Important Federal Statutory Issues .....	267
4.14 Important Factual Issues—The Usual Rule and Its Exceptions .....	270
4.15 Important Federal Jurisdictional and Procedural Issues— Exercise of the Court’s Supervisory Power .....	273
4.16 Important Similar Issues Already Pending Before the Supreme Court .....	276
4.17 Erroneousness of Decision Below .....	276
4.18 Interlocutory Nature of Judgment Below as Affecting Grant of Certiorari .....	280
4.19 Effect of Interlocutory Appeals Act (28 U.S.C. §1292(b)) .....	283
4.20 Grant of Certiorari Before Judgment by Courts of Appeals .....	284
4.21 Considerations Affecting Grant of Certiorari in Cases Coming From the Court of Appeals for the Federal Circuit .....	286
4.22 Considerations Affecting Grant of Certiorari in Cases Coming From the District of Columbia .....	289
4.23 Considerations Affecting Grant of Certiorari in Cases Coming From the Court of Appeals for the Armed Forces .....	292
4.24 Considerations Affecting Grant of Certiorari in Cases Originating in Puerto Rico Courts .....	293
4.25 Considerations Affecting Grant of Certiorari in Cases Coming From State Courts .....	294

### Appellate Jurisdiction

4.26 The Prior Practice of Disposing of Most Appeals Without Oral Argument .....	298
---	-----

4.27	Standards Applied in Determining Whether Appeals Should Be Heard .....	300
	(a) Factors Relating to the Merits .....	302
	(b) Factors Not Relating to the Merits .....	303
4.28	Precedential Effect of Summary Dispositions in the Supreme Court .....	304
4.29	Precedential Effect of Supreme Court Summary Dispositions in Lower Courts .....	306
<b>5</b>	<b>The Manner in Which the Court Determines to Take Jurisdiction .....</b>	<b>311</b>
	<b>Certiorari Cases</b>	
5.1	Procedures for Considering and Disposing of Petitions for Certiorari—Historical Background .....	312
5.2	Procedures for Considering and Disposing of Petitions for Certiorari—Modern Procedures .....	314
5.3	Consideration of Petitions for Certiorari at Conference .....	322
5.4	Granting Certiorari on Four Votes .....	323
5.5	The Practice of Not Stating Reasons for Denying Certiorari .....	328
5.6	Dissenting Opinions From the Denial of Certiorari .....	330
5.7	Significance of the Denial of Certiorari .....	334
5.8	The Court’s Disposition of Certiorari Petitions—In General .....	339
5.9	Deferring Consideration of Petition .....	339
5.10	Limited Grant of Certiorari .....	339
5.11	Specification of Additional Questions at Time of Grant of Certiorari or on Reargument .....	341
5.12	GVRs and Other Summary Dispositions .....	342
	(a) Summary Disposition Without Opinion .....	343
	(b) Summary Reconsideration Orders (GVRs) .....	345
	(c) Summary Disposition on the Merits by Per Curiam Opinion .....	349
5.13	Summary Action in Moot or Abated Cases .....	356
5.14	Vacating Denial of Certiorari in Absence of Petition for Rehearing .....	357
5.15	Dismissal of Writ of Certiorari as Improvidently Granted .....	358
	<b>Appeals</b>	
5.16	Consideration Given Appeals by Court and Individual Justices .....	362
5.17	Summary Action Before Argument—In General .....	364
5.18	Summary Affirmance or Dismissal on the Merits Before Argument .....	365
5.19	Summary Reversal on the Merits Before Argument .....	366
5.20	Summary Dismissal Before or After Argument for Miscellaneous Reasons .....	367
5.21	Distinction Between Noting Probable Jurisdiction and Postponing Jurisdiction to the Merits .....	368

## 6 Procedure in Connection With Petitions for Certiorari ..... 371

### Time Limitations

6.1	Time Limitations Governing Petitioning for Certiorari.....	375
(a)	Introduction to Time Limitations Applicable to Petitions, Cross-Petitions, and Applications for an Extension of Time to File a Petition .....	375
(1)	General Time Limits .....	376
(2)	Events Triggering the 90-Day Period for Petitioning .....	377
(3)	Calculating the 90-Day Period for Filing a Petition for Certiorari .....	379
(4)	Extension of the Time to File .....	379
(5)	Methods for Timely Filing .....	380
(6)	Time Limits for Filing a Cross-Petition for Certiorari .....	380
(b)	Special Statutes and Writs Governing the Time for Filing a Certiorari Petition .....	381
(c)	What Constitutes Filing the Petition .....	383
(1)	Clerk's Actual Receipt of Petition During the Filing Period .....	383
(2)	Mailing of Petition Postmarked Within the Filing Period .....	383
(3)	Forwarding Petition by Third-Party Commercial Carrier .....	384
(4)	Proof of Filing Date .....	385
(5)	Filing a Pro Se Petition .....	385
(6)	Physical Delivery to the Guard .....	385
(7)	The Court's Screening of Mail .....	386
(8)	Electronic Submission of Petition .....	387
(d)	Nonwaivability of Time Limits in Civil Cases .....	387
(e)	Waivability of Time Limits in Criminal Cases .....	389
(f)	Filing Under Seal .....	392
6.2	Calculating Filing Time From Entry of Judgment Below .....	392
6.3	Time Calculation When Rehearing Sought Below .....	394
6.4	Time Calculation When Judgment Below Is Changed .....	396

### Extensions of Time for Filing Petition for Certiorari

6.5	Obtaining Extensions of Time .....	398
6.6	When to File for Extension of Time .....	400
6.7	Presenting "Good Cause" for Extension—Effect of 10-Day Rule .....	401
(a)	Factors to Be Considered in Determining "Good Cause" .....	402
(b)	Factors to Be Considered in Determining "Most Extraordinary Circumstances" .....	405
(c)	Amount of Additional Time Requested .....	405
(d)	Effect of Requested Extension Upon Litigation .....	406

(e)	Nature of the Case and the Likelihood That Certiorari Will Be Granted .....	406
(f)	Compliance With 10-Day Rule .....	407
6.8	Form and Content of Application for Extension of Time .....	408

#### **Docketing and Fees**

6.9	Docketing the Case .....	409
6.10	Payment of Filing Fees and Costs .....	410
6.11	Statutory Waivers of Filing Fees and Costs .....	412
(a)	Veteran's Cases .....	412
(b)	Seamen's Cases .....	413
(c)	Military Justice Act Cases .....	414

#### **The Record**

6.12	Record Below Not to Be Filed at Time of Filing	
	Petition for Certiorari .....	414
(a)	Only the Clerk May Request Transmittal of the Record .....	415
(b)	History of the Court's Use of the Certified Record at the Petition Stage .....	415
(c)	Lack of the Certified Record Does Not Hamper Court's Review .....	416

#### **The Petition—Introduction**

6.13	In General .....	418
6.14	Certiorari Documents—Number, Color, and Length .....	419
(a)	Number of Copies .....	419
(b)	Color of Covers .....	420
(c)	Length of Documents .....	420
(d)	Application for Leave to Submit a Longer Petition .....	422

#### **The Petition—Identifying Counsel and Parties**

6.15	Naming Counsel of Record on Petition .....	423
6.16	What Parties May Petition for Certiorari .....	425
(a)	Generally Only a Party Below May Petition .....	425
(b)	Successful Party Below May Not Petition .....	426
(c)	Intervention in the Supreme Court .....	426
(d)	Intervention by the United States; 28 U.S.C. §2403(a) .....	428

#### **The Petition—Preparing the Cover**

6.17	Content of Cover .....	430
6.18	Naming Parties in Caption of Petition .....	431

#### **The Petition—Corporate Disclosure and List of Parties**

6.19	Making Corporate Disclosures .....	434
6.20	Procedure for Omitting Parties .....	436

**The Petition—To Which Court Is the Writ Directed?**

6.21	Court to Which Writ Is to Be Directed .....	439
------	---	-----

**The Petition—Procedure When There Are Multiple Cases**

6.22	Whether to File One or More Petitions in Consolidated or Related Cases .....	441
------	---	-----

**The Petition—Producing the Document for Filing**

6.23	Methods of Printing and Reproduction .....	443
	(a) Document Formats for Paid and IFP Petitions .....	443
	(b) Booklet-Format Petitions .....	444
	(1) Standard Typographic Printing Process .....	444
	(2) Volume of Material .....	444
	(3) Paper, Margins, Text Field, Binding .....	446
	(4) Exceptional Allowance of Nonconforming Filings .....	446
	(5) Preparation of the Petition Appendix .....	446
	(6) Clerk's Rejection of Nonconforming Papers .....	447
	(7) Opportunity to File Corrected Papers .....	448

**The Petition—Introduction to Structure and Content**

6.24	Structure of Petition .....	449
	(a) Preliminary Items .....	450
	(b) Text of Petition .....	450
	(c) Appendices .....	450

**The Petition—The Questions Presented**

6.25	Content of Questions Presented .....	452
	(a) Placement of the Questions Presented .....	453
	(b) The “Short” and “Without Unnecessary Detail” Standard .....	453
	(c) Form of the Question .....	454
	(d) Introductory Paragraph .....	454
	(e) The Number of Questions to Ask .....	455
	(f) Avoiding Argumentative or Repetitious Questions .....	455
	(g) Subsidiary Questions That Are “Fairly Included” .....	456
	(h) The Court's Power to Rephrase or Add to the Questions Presented .....	459
	(i) Questions to Be Avoided .....	461
6.26	Need for Presenting Questions Below and in Petition .....	463
	(a) The Court Considers Only Questions Presented in the Petition and Questions Fairly Included Therein .....	463
	(b) The Court Does Not Decide Questions Neither Raised Nor Decided Below .....	464
	(c) Respondent May Defend Its Judgment on Any Ground Preserved Below .....	465

(d) Court's Consideration of Amicus Arguments .....	465
(e) Limitations Are Prudential and May Be Outweighed by Special Considerations .....	466
(f) Plain Error Exception .....	467
(g) Court's Power to Consider Jurisdictional Issues .....	468
(h) Court's Broad Discretion in Applying the General Rules .....	468
6.27 Adding to or Amending Questions Presented .....	471

### **The Petition—Jurisdiction, Statement of Case, and Argument Sections**

6.28 Content of Jurisdiction Section .....	472
6.29 Discussion of Other Jurisdictional Matters in Statement of the Case .....	473
6.30 Content of Statement of the Case .....	474
6.31 Content of Reasons for Granting the Petition .....	476
(a) Conflicts .....	478
(b) Importance .....	479
(c) Error in Court Below .....	481
(d) Arrangement of Reasons .....	483
(e) Deferring Consideration of a Petition .....	483
(f) Voluntary Dismissal of a Petition .....	484

### **Serving the Petition**

6.32 Service of Petition .....	484
6.33 Service of Petition on Solicitor General in Certain Cases Involving Constitutionality of Federal Statutes .....	486

### **Cross-Petitions for Certiorari**

6.34 Additional Time for Filing Cross-Petition .....	488
6.35 When Cross-Petition Is Necessary .....	489
6.36 Content of Cross-Petition .....	494

### **The Opposing Brief**

6.37 Response to Petition for Certiorari .....	495
(a) The Opposition Must Identify Any Misstatement of Fact or Law in the Petition or Risk Waiver .....	495
(b) Time for Filing .....	496
(c) Extension of Time in Which to File .....	497
(d) Format of the Opposition .....	498
(e) Content of the Opposition .....	499
(f) Jurisdictional Statement .....	500
(g) Questions Presented .....	500
(h) Statement of the Case .....	501
(i) Reasons for Denying the Petition .....	501
(1) Dealing With Claims of Conflict .....	502
(2) Jurisdictional Arguments .....	504
(3) Other Arguments for Opposing Certiorari .....	505

(j)	Length of Brief in Opposition .....	507
(k)	Waiver of Brief in Opposition .....	507

**Reply and Supplemental Briefs**

6.38	Reply Brief by Petitioner .....	509
6.39	Supplemental Briefs by Any Party .....	510

**Amicus Curiae Briefs and Briefs Filed by Invitation**

6.40	Amicus Curiae Briefs Supporting or Opposing Petitions for Certiorari .....	512
6.41	Briefs of Nonparties Filed by Invitation of the Court .....	516

**Action by the Court on the Certiorari Petition**

6.42	What the Court Does With Petitions for Certiorari— Notification to Counsel .....	517
6.43	Notification to Lower Court of Denial of Certiorari— Suspension of Order Denying Certiorari .....	518
6.44	Petition for Rehearing After Certiorari Is Denied .....	520

7	Procedure on Appeals .....	521
---	----------------------------	-----

**Introduction**

7.1	In General .....	522
-----	------------------	-----

**Time Limitations**

7.2	Time for Filing Notice of Appeal .....	524
	(a) Time Limits for Filing Notice .....	524
	(b) No Extensions for Filing Notice of Appeal .....	525
	(c) Method of Computing Time for Filing Notice of Appeal .....	525
7.3	Time for Docketing Appeal .....	527
	(a) Extensions Permissible .....	527
	(b) Untimely Docketing .....	528
7.4	Other Time Considerations and Limitations .....	529

**Manner of Taking Appeal to Supreme Court**

7.5	Filing and Form of Notice of Appeal in Lower Court .....	530
7.6	No Need to File Record at Time of Docketing Appeal .....	532
7.7	Docketing and Fees .....	532

**The Jurisdictional Statement**

7.8	In General .....	533
7.9	Function and Purpose .....	534
7.10	Form, Arrangement, and Contents .....	536

(a) Questions Presented .....	536
(b) Lists of Parties and Corporate Disclosures .....	537
(c) Tables of Contents and Authorities .....	537
(d) Introductory Paragraph .....	537
(e) Citation to Opinions Below .....	537
(f) Jurisdiction .....	537
(g) Statutes Involved.....	538
(h) Statement of the Case .....	538
(i) The Argument, Entitled “The Questions Are Substantial” .....	539
(j) Conclusion (Formal) and Names of Counsel .....	540
(k) Appendix Containing Opinions, Judgments, and Findings Below .....	540
<b>Appellee’s Motion to Dismiss or Affirm</b>	
7.11 Response to Jurisdictional Statement .....	541
7.12 Appellant’s Opposition to Motion to Dismiss or Affirm .....	543
7.13 Supplemental Brief by Any Party.....	544
7.14 Briefs Amicus Curiae and Briefs by Invitation of the Court .....	544
<b>Action by the Court</b>	
7.15 The Court’s Disposition of an Appeal.....	545
<b>8 In Forma Pauperis Proceedings .....</b>	<b>547</b>
8.1 In Forma Pauperis Proceedings—In General .....	548
8.2 Filing a Case In Forma Pauperis .....	551
8.3 Who May Invoke In Forma Pauperis Procedures— Individuals and Artificial Entities .....	553
8.4 Filing Time Requirements .....	556
8.5 Motion for Leave to Proceed In Forma Pauperis .....	557
8.6 Requirement of Filing Supporting Affidavit or Declaration of Poverty—Exceptions .....	559
8.7 Form and Content of Supporting Affidavit or Declaration of Poverty—Denial of In Forma Pauperis Status .....	561
8.8 Frivolous, Malicious, or Repetitive Petitions—Denial of In Forma Pauperis Status, Dismissal of Petitions for Certiorari, Barring of Future Filings.....	565
8.9 Substantive Document Accompanying the Motion and Affidavit or Declaration .....	571
8.10 Docketing the In Forma Pauperis Case—Proof of Service .....	574
8.11 Filing Certified Record Not Part of the Docketing Process .....	576
8.12 Response to In Forma Pauperis Petition or Jurisdictional Statement .....	577
8.13 The Court’s Consideration of In Forma Pauperis Papers .....	579
8.14 Court Appointment of Counsel in In Forma Pauperis Cases .....	580
(a) No Appointment of Counsel by the Supreme Court Before Grant of Review .....	581

(b) Appointment of Counsel by the Supreme Court After Grant of Review .....	587
8.15 Duties of Court-Appointed Counsel.....	589
8.16 Reimbursement and Compensation of Court-Appointed Counsel.....	591
<b>9 Certified Questions.....</b>	<b>595</b>
9.1 Jurisdiction to Review Certified Questions .....	595
9.2 Form and Content of Certificates .....	597
9.3 Procedure When Case Is Certified .....	601
9.4 Certification by the Supreme Court of Questions of State Law to a State Appellate Court .....	604
<b>10 Original Cases .....</b>	<b>609</b>
<b>Jurisdiction</b>	
10.1 Constitutional and Statutory Provisions .....	609
10.2 Suits Between Two or More States .....	613
10.3 Cases Affecting Ambassadors, Other Public Ministers, and Consuls .....	618
10.4 Controversies Between the United States and a State .....	619
10.5 Suits by a State Against Citizens of Another State or Against Aliens .....	622
10.6 Factors Relevant to the Decision to Decline Original Jurisdiction.....	626
<b>Procedure</b>	
10.7 In General—The Preliminary Sifting .....	631
10.8 Preparation and Filing of Pleadings and Supporting Brief .....	633
10.9 Brief in Opposition and Answer .....	636
10.10 Intervention by the United States and Other Parties— Amicus Curiae Briefs .....	637
10.11 Procedural Steps After the Court Passes on Motion for Leave to File Complaint .....	639
10.12 Proceedings Before a Special Master .....	642
10.13 Right to Jury Trial .....	645
<b>11 Extraordinary Writs .....</b>	<b>647</b>
<b>Jurisdiction</b>	
11.1 In General .....	647
11.2 Bases for Issuance of Writs of Mandamus, Prohibition, and Certiorari .....	653
(a) Forcing Lower Courts to Comply With Appellate Mandate .....	655
(b) Correcting Jurisdictional Error .....	656
(c) Protecting Appellate Jurisdiction of Supreme Court .....	661
11.3 Bases for Issuance of “Original” Writs of Habeas Corpus .....	662

### Procedure

11.4	In General .....	667
11.5	Common-Law Writ of Certiorari .....	669
11.6	Writs of Mandamus and Prohibition .....	669
11.7	Writ of Habeas Corpus .....	670
11.8	Captions .....	671

12	Preparing and Printing the Joint Appendix .....	673
----	---	-----

### Introduction

12.1	The Joint Appendix System .....	674
------	---------------------------------	-----

### Time of Filing

12.2	Alternative Time Limitations for Filing the Joint Appendix .....	676
	(a) The Preferred Rule 26.1 Joint Appendix .....	676
	(b) The Deferred Appendix Is not Favored .....	677

### Citation Conventions

12.3	Making References in Briefs to a Deferred Joint Appendix or the Record .....	678
	(a) Citing the Record Rather Than the Appendix .....	679
	(b) Filing Briefs in Page-Proof Form .....	679

### Designating and Preparing the Contents of the Appendix

12.4	Items Required to Be Included in the Joint Appendix .....	680
	(a) Table of Contents and List of Relevant Docket Entries .....	680
	(b) Opinions, Decisions, Orders, and Judgments Below .....	681
	(c) Order Granting Review .....	682
	(d) Other Relevant Parts of the Record .....	682
12.5	Agreement, Designation, and Cross-Designation as to Inclusion of Nonmandatory Items .....	683
	(a) Designation of Record Material for Inclusion in the Joint Appendix .....	683
	(b) Non-Record Material Should Not Be Included in the Joint Appendix .....	684
	(c) Timing of Designations .....	684
	(d) Failure of Party to Designate .....	685
12.6	Assembling Portions of the Record to Be Included in the Joint Appendix .....	685
	(a) Preparing the Joint Appendix from an Appendix or Record Filed Below .....	685
	(b) Assembling Joint Appendix Materials When There Was No Appendix Below .....	686

**Printing the Appendix**

12.7	Methods of Printing or Reproducing the Joint Appendix— Number of Copies Required .....	687
12.8	The Clerk's Suggestions as to Printing the Joint Appendix .....	688
	(a) Clerk's Memorandum on Printing the Joint Appendix .....	688
	(b) Clerk's Sample Cover of a Joint Appendix .....	691
12.9	Who Bears Initial and Ultimate Cost of Reproducing the Joint Appendix .....	692
	(a) The Initial Cost of Preparing the Joint Appendix .....	692
	(b) Taxing the Cost of Printing the Joint Appendix .....	692
12.10	Use of Appendix or Record in Another Case .....	693
12.11	Dispensing With Requirements as to a Printed Joint Appendix .....	694
	(a) Waiver of Printing Requirement in In Forma Pauperis Cases .....	694
	(b) Waiver of Printing Requirement in Paid Cases .....	694

**Clerk's Return of the Record**

12.12	Return of Certified Record Following Disposition of Case .....	696
-------	--	-----

**13 The Briefs on the Merits ..... 697**

13.1	Time Schedule for Filing .....	698
	(a) Opening Brief on the Merits .....	699
	(b) Opposing Brief on the Merits .....	699
	(c) Reply Briefs .....	699
	(d) Supplemental Briefs .....	700
	(e) Briefs After Argument .....	700
	(f) Extensions and Reductions of Time for Filing Briefs .....	700
13.2	Physical Form, Number, and Color .....	701
13.3	Length .....	702
13.4	Names of Counsel of Record and Other Attorneys .....	704
13.5	Service of Briefs .....	705
13.6	Form of Citations and References to Parties .....	705
13.7	Organization of Brief .....	708
13.8	Content of the Questions Presented .....	710
13.9	Content of the Statement of the Case .....	711
13.10	Content of the Summary of Argument .....	713
13.11	Content of the Argument .....	716
	(a) Argumentative Headings and Subheadings .....	716
	(b) Be as Brief as You Can .....	716
	(c) Use Good, Clear English .....	716
	(d) Selection and Arrangement of Points .....	717
	(e) Follow Your Own Pattern .....	718
	(f) Argue Reasons and Principles .....	718
	(g) How to Treat Cases .....	720
	(h) Statutes and Legislative History .....	721

(i)	Avoid Overstatement .....	726
(j)	Avoid Personalities or Scandalous Matter .....	726
(k)	Facts Outside the Record—General Rule .....	727
(1)	Facts Subject to Judicial Notice .....	727
(2)	The Brandeis Brief .....	728
(3)	Facts Relating to Mootness—Disclosing Subsequent Relevant Developments .....	729
(l)	Vary the Type Style Whenever Appropriate .....	729
13.12	Preparing the Brief .....	730
(a)	Drafting the Brief .....	730
(b)	Finalization, Proofreading, and Cite-Checking .....	732
13.13	Reply Briefs .....	732
13.14	Amicus Curiae Briefs .....	734
13.15	Supplemental Briefs .....	744
<b>14</b>	<b>Oral Argument .....</b>	<b>747</b>
14.1	Importance of Oral Argument .....	748
14.2	Submission Without Oral Argument by Counsel Disfavored .....	752
14.3	When Oral Arguments Are Heard .....	755
14.4	Date of Argument—Advancements .....	757
14.5	Number of Counsel .....	759
14.6	Time and Order of Arguments in Consolidated and Companion Cases .....	763
14.7	Argument by Amici Curiae .....	765
14.8	When Counsel Must Be Present .....	766
14.9	Courtroom Etiquette .....	766
(a)	Registration of Counsel and Seating in the Courtroom .....	766
(b)	Addressing the Court .....	768
(c)	Dress .....	769
(d)	Tapes and Transcripts .....	769
(e)	Speaking Into Microphone .....	770
(f)	Nervousness .....	770
(g)	Eating Lunch .....	771
14.10	Time Allowed for Argument .....	771
14.11	Impact of Questions on Time Limitations .....	773
14.12	Opening and Closing by Appellant or Petitioner .....	774
14.13	Methods of Preparing for Argument .....	774
14.14	Content of Argument—In General .....	779
14.15	Beginning the Argument .....	779
14.16	Presenting the Facts .....	780
14.17	Presenting the Argument on the Law .....	783
(a)	Emphasize Reasoning, Not Authority .....	784
(b)	Get to the Heart of the Case .....	785
(c)	The Handling of Cases .....	786
(d)	Discuss Candidly Relevant New Legal Developments .....	787

14.18	Reading and Quoting .....	788
14.19	Flexibility and Questioning .....	788
14.20	Rebuttal Arguments—Anticipating Opponent’s Argument .....	794
14.21	Respondent’s and Appellee’s Arguments .....	794
14.22	Avoidance of Common Mistakes .....	795
14.23	Use of Maps, Charts, Models, and Motion Pictures .....	798
14.24	Submission of Additional Memoranda or Briefs Following Oral Argument .....	800
14.25	Conducting Oral Argument In Camera .....	802
<b>15</b>	<b>Petitions for Rehearing and Final Disposition of Cases .....</b>	<b>803</b>
	<b>Petitions for Rehearing</b>	
15.1	The Governing Rules .....	803
15.2	Time for Filing .....	807
15.3	Power to Grant Untimely Petitions .....	808
	(a) The “Term Rule” .....	809
	(b) The “Interests of Justice” .....	810
15.4	Limitation on Power to Grant Untimely Petitions in Tax Court Cases .....	814
15.5	Proportion of Rehearings Granted .....	814
15.6	Occasion for Petitioning for Rehearing .....	815
	(a) After Decision on the Merits .....	815
	(b) After Denial of Certiorari .....	818
15.7	Formal Requirements .....	821
	<b>Final Disposition of Cases</b>	
15.8	Judgments and Mandates .....	823
15.9	Interest and Damages .....	825
15.10	Costs and Attorneys’ Fees .....	829
<b>16</b>	<b>Motions and Applications .....</b>	<b>833</b>
16.1	In General .....	833
16.2	Form and Content .....	835
16.3	When Motions Must Be in Booklet Format .....	836
16.4	How Motions Are Presented—Oral Motions .....	837
16.5	Service .....	838
16.6	Responses .....	839
16.7	Special Considerations Governing Applications to Individual Justices .....	840
16.8	Particular Motions, Including Motions to Dismiss Case .....	841
	(a) Motions to Dismiss One’s Own Case .....	841

(b) Motions to Dismiss Opponent's Case .....	842
(c) Various Other Motions .....	842
16.9 Clerk's Power to Act on Certain Applications for Extensions of Time—Appeals to Court .....	843
<b>17 Stays, Injunctions, and Bail.....</b>	<b>845</b>
<b>Introduction</b>	
17.1 In General .....	846
17.2 Procedure on Applications for Interim Relief.....	849
<b>Stays and Temporary Injunctions</b>	
17.3 Need for Stays or Temporary Injunctions .....	850
17.4 Authority for Stays and Temporary Injunctions .....	852
17.5 Stays and Temporary Injunctions Pending Supreme Court Review .....	854
17.6 Stays and Temporary Injunctions Pending Appeal in a Court of Appeals .....	855
17.7 Stays of Interlocutory Order .....	857
17.8 Need to Seek Relief in Lower Courts .....	860
17.9 Application to Individual Justice .....	862
17.10 Reapplication to Different Justice After Denial .....	864
17.11 Altering or Vacating Stay Granted by Lower Court or by Individual Justice .....	866
17.12 Action on Application to Individual Justice— Referrals to Full Court .....	867
17.13 Grounds for Granting Stays and Temporary Injunctions .....	871
(a) Irreparable Injury and Balancing Equities .....	873
(b) Whether the Court Is Likely to Review the Case and Reverse .....	876
(c) Weight to Be Accorded Rulings of Judges Below .....	880
(d) Other Considerations .....	881
17.14 Opposing an Application for a Stay—Reply .....	883
<b>Bail, Release, and Detention</b>	
17.15 Bail, Release, and Detention in Federal Criminal Cases .....	884
17.16 Release and Detention by Circuit Justices Prior to Certiorari Proceedings .....	886
17.17 Release or Detention Pending Certiorari Proceedings .....	889
17.18 Revocation of Release Orders .....	890
17.19 Reduction or Alteration of Release Conditions Fixed by Court Below .....	891
17.20 Bail for Individuals Committed Under State Authority.....	892
17.21 Custody and Release Pending Review of Habeas Corpus Decisions.....	894

<b>18 Capital Cases .....</b>	<b>897</b>
18.1 In General .....	897
18.2 Stays of Death Sentences .....	898
18.3 Stays on Direct Review .....	900
18.4 Stays on Collateral Review .....	900
18.5 Stays on Successive Federal Habeas Corpus Petitions .....	904
18.6 Stays Based on Challenges to the Method of Execution .....	908
18.7 Vacating Stays Granted by Lower Courts .....	909
18.8 Stays, Certiorari, and the Rule of Four .....	911
<b>19 Justiciability: Standing, Mootness, and Abatement .....</b>	<b>915</b>
<b>Standing</b>	
19.1 Standing to Raise Constitutional Issues in the Supreme Court .....	916
(a) Article III Requirements .....	917
(b) Prudential Considerations .....	919
<b>Introduction to Mootness and Abatement</b>	
19.2 Termination of Controversies Through Mootness or Abatement .....	923
<b>Mootness</b>	
19.3 Meaning of Mootness .....	925
(a) Civil Cases .....	926
(b) Class Actions .....	929
(c) Voluntary Cessation .....	931
(d) Criminal Matters .....	933
19.4 Presentation of Facts With Respect to Mootness, Abatement, or Change of Law .....	937
19.5 Form of Order to Be Requested When Case Is Mooted .....	941
<b>Abatement</b>	
19.6 Automatic Substitution of New Public Officer to Prevent Abatement .....	943
19.7 Death of a Party While Case Is Pending in the Supreme Court .....	946
19.8 Nonappealability of Rulings in Abatement .....	949
<b>20 Admissions to the Bar and Disbarment .....</b>	<b>953</b>
20.1 The Supreme Court Bar's Scope and Importance .....	953
20.2 Requirements for Admission .....	956

20.3	Application Form and Certificate of Admission From “Highest Court” .....	957
20.4	Admission .....	960
	(a) On Written Motion .....	961
	(b) In Open Court .....	962
	(c) Group Admissions .....	964
	(d) Good Moral and Professional Character .....	965
20.5	Change of Attorney’s Name and Address on Records of the Court .....	967
20.6	Appearance of Counsel—Withdrawal of Appearance .....	968
20.7	Admission of Counsel Pro Hac Vice—Foreign Counsel .....	968
20.8	Disbarment, Disciplinary Action, and Resignation From the Bar .....	969
 <b>Appendix I. Rules of the Supreme Court of the United States .....</b>		<b>979</b>
 <b>Appendix II. Clerk’s Guidelines Regarding Filing Cases .....</b>		<b>1061</b>
	A. Guide to Filing Paid Cases .....	1062
	B. Paid Cases Brief Chart .....	1071
	C. Guide to Filing <i>In Forma Pauperis</i> Cases .....	1072
 <b>Appendix III. Clerk’s Guidelines Regarding Cases Selected for Review .....</b>		<b>1097</b>
	A. Letter Upon Grant of Certiorari .....	1098
	B. Memorandum Regarding Briefs on the Merits .....	1099
	C. Memorandum Regarding Printing the Joint Appendix .....	1101
	D. Guidelines for Electronic Submission of Briefs on the Merits .....	1104
	E. Guide for Counsel in Cases to be Argued .....	1106
 <b>Appendix IV. Forms .....</b>		<b>1129</b>
<b>Forms Used in Connection With Petitions for Certiorari</b>		
A.	Application for Extension of Time to File Petition for Certiorari or to Docket a Case on Appeal .....	1131
B.	The Rule 29.6 Corporate Disclosure Statement .....	1133
C.	Petition for Writ of Certiorari .....	1134
D.	Affidavit or Declaration of Mailing .....	1156
E.	Notification to Other Parties of Filing of Petition .....	1157
F.	Request to Clerk for Extension of Time to File Briefs, Motions, and Other Documents .....	1158
G.	Brief in Opposition to Certiorari .....	1159
H.	Short Forms of Opposition to Certiorari .....	1164
I.	Petitioner’s Reply to Brief in Opposition .....	1166
J.	Application for Suspension of Order Denying Certiorari Pending Rehearing .....	1168
K.	Petition for Rehearing of Order Denying Certiorari .....	1169
L.	Motion for Leave to File Out-of-Time Petition for Rehearing of Order Denying Certiorari .....	1172

**Forms Used in Connection With Appeals**

M.	Notice of Appeal .....	1173
N.	Jurisdictional Statement .....	1174
O.	Motion to Dismiss or Affirm .....	1185

**Original Cases and Extraordinary Writs**

P.	Original Case—Complaint and Motion for Leave to File .....	1191
Q.	Petition for Common-Law Writ of Certiorari Under 28 U.S.C. §1651 .....	1196
R.	Petition for Writ of Mandamus .....	1197

**Certificates**

S.	Certificate of Questions From Court of Appeals .....	1199
T.	Certificate of State Court as to Existence of a Federal Question .....	1201

**Brief on the Merits**

U.	Brief on the Merits .....	1202
----	---------------------------	------

**Joint Appendix**

V.	Joint Appendix To Be Prepared Following Grant of Review .....	1219
W.	Letter to Clerk as to Costs of Preparing Joint Appendix .....	1229

**Release and Stay Applications**

X.	Application for Release Pending Appeal in Court of Appeals or Pending Certiorari .....	1230
Y.	Application for Stay of Mandate of Lower Court .....	1233

**Miscellaneous Motions**

Z.	Motion to Dismiss by Petitioner or Appellant .....	1239
AA.	Motion for Leave to File a Brief as <i>Amicus Curiae</i> .....	1241
BB.	Memorandum Suggesting That the Case Is Moot .....	1242
CC.	Motion to Advance Oral Argument .....	1244
DD.	Motion for Leave to Increase Number of Counsel Arguing .....	1246
EE.	Motion to Extend the Time for Oral Argument .....	1247
FF.	Petition for Leave to Intervene to File Petition for Certiorari .....	1248
GG.	Motion to Substitute Party .....	1253
HH.	Notifications to Clerk Respecting Omitted Parties .....	1255

**Appendix V. Statutes and Regulations .....** 1257

A.	Organization of Supreme Court .....	1257
B.	Assignment of Justices .....	1259
C.	Judicial Conference .....	1261
D.	Resignation and Retirement .....	1261
E.	Printing the Court's Decisions .....	1262

F. General Provisions for All Courts .....	1262
G. Supreme Court Officers .....	1263
H. Jurisdiction, Venue, and Fees .....	1266
I. Rule-Making Powers .....	1271
J. Filing Time Requirements .....	1273
K. Supreme Court Quorum; Harmless Error .....	1275
L. Habeas Corpus Procedures .....	1276
M. Special Habeas Corpus (AEDPA) Procedures .....	1282
N. Federal Appellate Rules 41 and 44 .....	1286
O. Antitrust Appeals .....	1287
P. District of Columbia Courts .....	1288
Q. Supreme Court Building and Grounds .....	1289
R. Building and Grounds Regulations .....	1293
<b>Table of Cases .....</b>	<b>1297</b>
<b>Subject Index .....</b>	<b>1361</b>
<b>Table of Rules and Laws .....</b>	<b>1411</b>