

# Preparing And Filing Petitions For Certiorari In The U.S. Supreme Court: Checklist And Explanations

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## Overview

This article will discuss the steps for preparing and filing a petition for certiorari to the U.S. Supreme Court, and the time line for those steps. The sample U.S. Supreme Court documents posted on this website's Petition for Certiorari page are also discussed here.

This article, and the sample documents posted on the Petition for Certiorari page, are intended as guides only; as always, counsel must determine for themselves the appropriate content of documents and proper procedures for each individual case.

**EXTREME CAUTION:** The U.S. Supreme Court's 90-day period for filing a petition for certiorari is **jurisdictional, mandatory, and very strictly enforced**; there are **no** exceptions. If the petition is not timely filed according to the U.S. Supreme Court's rules (*e.g.*, mailed on Day 91), for any reason whatsoever, it will be rejected: "The Clerk will not file any petition for a writ of certiorari that is jurisdictionally out of time." (S.Ct. R. 13(2) [also incorporated here in 28 U.S.C. § 2101(d)].)

It is therefore exceptionally important for counsel to know exactly when the 90-day jurisdictional period has begun, and when it will end. The beginning of the 90-day jurisdictional period is determined as in Steps (2) and (3) below. The end of the 90-day jurisdictional period – the deadline for filing the petition – is determined as in Step (4) below.

## Checklist Of Steps In The Petition Process

The sequence of events with respect to filing a certiorari petition in the U.S. Supreme Court are summarized step-by-step in the following checklist. Further explanation of Steps (2) through (12) will follow after the checklist.

1. Note the date of issuance of the Court of Appeal opinion.
- 2a. File a timely petition for review to the California Supreme Court.
- 2b. Note the date of any action by the California Supreme Court terminating your appeal, which in the vast majority of cases will be a denial of review.

The next four steps, (3) through (6), should be taken as soon as possible, after the denial of review or other document in Step (2b) above:

3. Compute the beginning of the mandatory, jurisdictional 90-day period for the cert. petition. In the vast majority of cases, that 90-day period begins with the date of the California Supreme Court order denying review. (In the rare cases where review has been granted, see the explanation to Step (3), below.) **CAUTION:** The issuance of

the remittitur is *irrelevant* to this computation.

4. Compute the end of the mandatory, jurisdictional 90-day period for the cert. petition, counting 90 days from the beginning date in Step (3) above.

5a. As soon as possible, prepare and mail an affidavit of indigency for execution and return by your client – with a stamped, self-addressed envelope to facilitate the affidavit’s return – in support of a motion for leave to proceed *in forma pauperis*. THIS IS IMPORTANT... AND IT’S IMPORTANT TO DO IT QUICKLY!! The process should be set in motion as quickly as possible and followed up regularly, particularly if the client is incarcerated, due to likely prison mail delays. A sample *in forma pauperis* affidavit is on the Petitions for Certiorari page of this website.

5b. *Optional but highly recommended:* Promptly arrange with your client’s counselor or other prison authority to speak with your client in prison, to ensure that he knows the affidavit is coming, and that he should fill it out and return it immediately.

6. If you are not yet a member of the U.S. Supreme Court Bar, promptly file an application to become a member of the Bar. The petition for certiorari can be filed while a Bar application is still pending, but the application process should be set in motion as quickly as possible. (Alternatively, the petition can be filed in pro. per.)

7. Prepare the other three documents required for the certiorari petition, specifically:

- a. Petition for certiorari;
- b. Motion for filing *in forma pauperis*; and
- c. Separate certification of service. (This may need to be prepared in draft, if it is prepared before the *in forma pauperis* affidavit has been returned, because of the possibility of delays in an incarcerated petitioner returning the affidavit. See explanation of Steps (5a) and (8b) below.)

Samples of all three are on the Petition for Certiorari page of this website.

8. On or before the 90th day, file the petition for certiorari, with the separate certification of service in Step (7c) above. At that time:

a. If all of the other paperwork (*in forma pauperis* motion and affidavit) is complete and you have been admitted to the Supreme Court Bar, then file and serve the documents described in Steps (5) and (7) above, with the *in forma pauperis* motion and affidavit attached to the front of the petition, and the certification of service in a separate document.

b. If any of the other paperwork is not yet complete or you have not yet secured a Bar admission, then write a cover letter to the U.S. Supreme Court Clerk’s Office briefly explaining the circumstances, and submit and serve it along with the petition and certification. If only the Bar admission is not complete, the *in forma pauperis* motion and affidavit should still be attached to the front of the certiorari petition for filing and service.

**Under no circumstances should the certiorari petition be delayed past the 90th day due to a missing *in forma pauperis* affidavit, lack of Bar admission, or for any other reason.** A certiorari petition delayed past the 90th day will not be filed. See Overview above, and explanation entry captioned “Steps (2b), (3) and (4)” below.

9. If the *in forma pauperis* motion and affidavit could not be filed by the 90th day, follow up immediately and diligently, and file and serve them (along with a

separate certification of service) the moment the affidavit is returned to you. If you are unable to obtain the affidavit at all due to circumstances beyond your control, call the CCAP staff attorney assigned to your case.

10. *Optional but highly recommended:* Once you have submitted the petition and all necessary paperwork, follow up on-line to make sure your case is docketed in the normal course. (It will not be docketed until after all necessary paperwork is received.) If there seems to be an unexpected delay, call the U.S. Supreme Court Clerk's Office.

11. Await the issuance of the docketing letter by U.S. Supreme Court.

12. Promptly serve the docketing letter on counsel for all other parties in the court from which review of the judgment is sought, which in almost all cases would be the Court of Appeal.

This is the typical checklist for certiorari petitions. For special situations that may arise on rare occasion (for example, if the defendant appears to be incompetent to execute the *in forma pauperis* affidavit, or if there are undue problems with the prison mail despite all diligence of counsel), please feel free to contact the CCAP staff attorney assigned to your case.

### **Explanations Of Steps In The Checklist**

**Steps 2b, 3 and 4.** As stated in the checklist, if you have filed a timely petition for review, then the California Supreme Court's last non-clerical action terminating the appeal – usually denial of the petition for review – is generally what begins the 90-day period for a certiorari petition, and the processes in the rest of this checklist. The issuance of a remittitur is a clerical action, and is thus irrelevant for these purposes. S. Ct. R. 13.3; *Close v. United States*, 336 F.3d 1283, 1285 (11th Cir. 2003).

**EXTREME CAUTION:** It cannot be emphasized enough that the 90-day period for certiorari is **absolutely mandatory and jurisdictional**. "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." S. Ct. R. 13.2.

If the California Supreme Court has denied a petition for review, then the 90-day mandatory, jurisdictional period for a certiorari petition begins on the date of that denial of review. The 90-day period will generally begin with the California Supreme Court's last nonclerical action terminating an appeal (counted as "Day Zero," see S. Ct. R. 30.1), which is very likely to be a denial of a petition for review. If the 90th day falls on a Saturday, Sunday, federal legal holiday listed in 5 U.S.C. § 6103, or day on which the Supreme Court building is closed by order of the Court or the Chief Justice, then the 90-day period automatically extends to the day the court reopens (usually the following Monday; occasionally Tuesday, if Monday was a court holiday). S. Ct. R. 30.1.

In computing the 90-day deadline for a certiorari petition, it makes no difference whether the California Supreme Court's order denying review had any extra language in it. (As one example of such extra language: "Petition for review denied without

prejudice to any relief to which defendant might be entitled after the United States Supreme Court determines in *Cunningham v. California*, No. 05-6551, the effect of *Blakely v. Washington* (2004) 542 U.S. 296 and *United States v. Booker* (2005) 543 U.S. 220, on California law.") For these purposes, all denials of discretionary review should be considered to be the same.

In the rare case where the California Supreme Court grants review on any issue, the last non-clerical action case terminating the appeal will likely occur, if at all, in one of three ways: dismissal of review, issuance of an opinion, or denial of rehearing as to any party on any issue. The latest of those events will generally be the one that starts the 90-day period running. (If a petition for rehearing is filed in the state's highest court by any party on any issue, the date of denial of rehearing will start the 90-day period as to all parties, under U.S. Supreme Court Rule 13.3. See *Washington v. Confederated Tribes*, 447 U.S. 134, 149-50 (1980); *Market St. Ry. Co. v. Railroad Comm. of Calif.*, 324 U.S. 548, 551-52 (1945).)

If the California Supreme Court remands for further proceedings on any basis or any issue, grants rehearing, or does anything else that doesn't fit into one of the categories described above, or if your situation is unusual and you aren't sure, please feel free to contact the CCAP staff attorney assigned to your case.

For truly exigent circumstances, counsel may seek an extension of time to file a certiorari petition, if it is filed at least 10 days before the petition is due. S. Ct. R. 13.5. However, "[a]n application to extend the time to file a petition for certiorari is not favored," S. Ct. R. 13.5. And it can never be assumed the court would grant such an application. Further, if counsel learns after the 90th day that such an application was denied, no certiorari petition can be filed because the 90-day deadline is absolute. This type of application should be reserved for truly unforeseeable and overwhelming circumstances. In the very unlikely event you have reason to believe such exceptional circumstances have arisen or may arise, consult the CCAP attorney assigned to your case.

**Steps 5a and 7:** For indigent (*in forma pauperis*, or "IFP") cases, the U.S. Supreme Court permits certiorari petitions, motions, and all other documents to be prepared on 8 ½" x 11" paper bound with just a staple. (Paying cases, by contrast, must have cert. petitions filed in a printed booklet; the printing bills can easily run into four figures.) The format for preparing 8 ½" x 11" documents, found in U.S. Supreme Court Rule 33.2, is fairly standard; the document must be double-spaced except for indented quotations, and there appear to be no margin requirements except for common sense.

The sample petitions and accompanying documents on the Petition for Certiorari page of this website were all produced to conform to the U.S. Supreme Court's format rules for *in forma pauperis* cases. However, any format that complies with the rules may be used.

**Steps 5a, 7 and 8:** The U.S. Supreme Court’s “Guide for Prospective Indigent Petitioners for Writs of Certiorari” [“IFP Guide”] is written with the intent of assisting *pro. per.* indigent petitioners. It spells out the steps for preparing, filing and serving a certiorari petition and accompanying documents in fairly simple detail. There are also example forms in the IFP Guide. (The forms on the CCAP website are not materially different; in particular, *in forma pauperis* form is somewhat streamlined from that in the IFP Guide, but contains the necessary information to support an IFP motion.) A link to the IFP Guide may be found on CCAP’s Petition for Certiorari page.

**Step 5a:** It is IMPORTANT to begin the process of getting your client’s IFP affidavit executed and returned AS SOON AS POSSIBLE – with a strong preference for beginning on day 1 of 90 after the denial of review! Consider: A single piece of mail coming into California prisons is sometimes reported as being delayed up to 30 days, and it is certainly possible that some mail will never be received at all. There may also be mail difficulties with the form coming back from the prison. Your client might have reading or language difficulties or problems in filling out forms that you weren’t aware of. S/he might not be as attuned to the importance of filling out and returning the form immediately as you are (especially understandable if you didn’t send it out immediately), so it may take some effort to get the client to do that, and effort takes time. Your client’s facility may be on lockdown, which has been known to last for months at a time in some prisons, potentially jeopardizing the flow of mail even more. Your client might have a question – and then s/he might have another question – all of which will take up more time, potentially creating even further mail delays. Or, a client of lesser reading or writing skills, or who has to contend with foreign languages, or who has other emotional or mental issues, could send back the form unsigned – in which case you might have to start all over, weeks later. Obtaining a properly executed IFP affidavit is the most difficult part of filing a certiorari petition for an incarcerated petitioner, and sometimes the difficulties can be exceptional.

It is always best to have all of the case paperwork completed and ready to go in time for filing before the 90th day, as the Supreme Court Rules require. Getting a very early start on the IFP affidavit is the key to maximizing the chances this will actually happen.

If you don’t hear from your client within a reasonable time – follow up! Do not assume you will hear from your client shortly with respect to the affidavit, merely because your cover letter described its importance. Otherwise, you risk not hearing from him or her until much later, or at all.

**Step 5b:** One way to lessen the risk of severe difficulties in getting the IFP affidavit is to tell your client it’s coming before it gets there – in the only practical way you can be certain your client will get the information, by telephone. Arranging for a telephone call with your client’s prison counselor or the prison litigation coordinator, so you can tell the client the affidavit is coming and what he will need to do and when, is an excellent precautionary measure. This precautionary measure becomes closer to essential as the number of days left in the 90-day period decreases. Although it is

always best to get an unmonitored telephone call, a monitored call may sometimes work for these purposes if need be, since the affidavit and other documents related to the petition will be publicly filed, and describing the certiorari process can often be done without discussing anything of high confidence.

For those who haven't yet had the privilege of trying to set up a prison phone call, prison counselors vary widely on the degree of cooperation appellate counsel will get, or occasionally, whether counsel's phone calls will be returned at all. In dealing with prison personnel on such a request, tact, diplomacy, and cooperativeness are the keys (at the risk of restating the obvious). You can also consider whether, in your particular situation, truthfully mentioning the words "U.S. Supreme Court" might increase the possibility of a favorable response. Contacting the prison litigation coordinator is an alternative that can sometimes be successful, and the counselor may send you to that office anyway.

However, setting up this type of telephone call early in the 90-day period is merely a precaution, and if for whatever reason that can't be done with reasonable effort, you can still await the client's affidavit without the telephone contact. Following up by mail at regular and prompt intervals becomes all the more important in those situations.

**Step 6:** If you are not yet a member of the U.S. Supreme Court Bar, you should take all the necessary steps as promptly as possible. The attorney who is listed as counsel of record on the certiorari petition must be a member of the U.S. Supreme Court Bar in order for the petition to be filed.

The link to the attorney admission sections of the U.S. Supreme Court's website may be found on the CCAP website's Petition for Certiorari page. Generally speaking, the most basic requirements beyond submitting the admission application are: admission to practice for the past three years in any jurisdiction, good moral and professional character, a certificate of good standing from the California Supreme Court, a fee of \$200, and two sponsors who are already members of the U.S. Supreme Court Bar. (CCAP regrets that it cannot sponsor individual panel attorneys.) For information on certificates of good standing from the California Supreme Court, you should contact that court's Clerk's Office. (If you cannot afford the fee or obtain sponsorship for this step, the petition can still be filed in pro. per.)

If you have been diligent in seeking Bar admission, but you have not been notified that your application was granted at the time you wish to file the certiorari petition, you may file the petition anyway along with a cover letter briefly explaining the circumstances. This is discussed further in the explanation to Step (8b) below.

**Step 7:** For a brief discussion of document formatting, see the entry captioned "Steps 5a and 7," above.

All parties to the proceeding in the court whose judgment is sought to be

reviewed (generally, the Court of Appeal) are considered parties in the U.S. Supreme Court case, unless the procedures of Supreme Court Rule 12.6 are followed or there is an order or other provision to like effect. Accordingly, co-appellants should be served with petition-related documents along with the Attorney General's office (absent one of those exceptions), and the name, address, and telephone number of co-appellants' counsel should go into the separate certification of service, as described in the explanation to Step (7c).

**Step 7a:** Detailed information on the substance of a certiorari petition, including the order in which required items are to appear and what goes into each Appendix to a petition, can be found in Supreme Court Rule 14. Detailed information on form requirements for a certiorari petition (other than the formatting requirements in Rule 33.2), also including the order in which required items are to appear, can be found in Supreme Court Rule 34. The court's criteria for granting a petition for certiorari can be found in Supreme Court Rule 10. All of these rules are, of course, very important, and counsel are well advised to become familiar with them. (A link to the Supreme Court rules may be found on CCAP's Petition for Certiorari page.) The IFP Guide, as one would expect, also discusses the content of a petition for certiorari, though only in general and simple terms.

The sample petitions on the CCAP website are posted so that attorneys can download the sample onto their computers, and then copy, cut and paste as they wish in order to produce a petition that is specific to the attorney's individual case. However, as one might expect of a sample petition intended for use by many different attorneys in each of their individual cases, CCAP's sample petition is by necessity streamlined and simplified. Toward that end, you are of course free to add to, modify, edit, alter, or do anything else with the sample that enables you to produce a petition you consider suitable to their own individual case. It is offered only as a general guide, however; determining the final content of the petition in any individual case is the responsibility of counsel of record.

In writing the petition, counsel may quote from or cite to any portion of the state court record, even if the record document being quoted or cited is not attached as an Appendix and the full record is not yet in the hands of the U.S. Supreme Court Clerk's Office. S. Ct. R. 12.7. If for some unusual reason, counsel believes it would be very important for the court to see part or all of a document of record that is not otherwise within the mandatory appendix provisions of Supreme Court Rule 14.1(l), counsel has the prerogative to consider attaching a copy of that excerpt or document to the petition itself, under Supreme Court Rule 14.1(i)(vi).

In that respect, special note should be taken of Supreme Court Rule 14(g), which calls for providing specific information including "pertinent quotations of specific portions of the record or summary thereof, with specific reference to the places in the record where the matter appears . . . so as to show the federal question was timely and properly raised [in the state courts] . . ." In light of this provision, counsel should show how thoroughly the certiorari question was aired in the state courts. As one example, if

the issue was specifically briefed in the trial court, you might consider briefly describing that in addition to describing where and how it was specifically briefed in the appellate courts.

The ultimate goal is to show the court – in brief, since the court likes brevity – that the question raised in the certiorari petition was adequately presented to the state appellate courts in a manner consistent with state procedure, and that the court should grant certiorari in your case. Brevity and specificity are goals to strive for in that effort.

Also, please take special note of Supreme Court Rule 14(f), which requires that the constitutional provisions, statutes, and court rules involved in a case must be set forth verbatim in the certiorari petition, with appropriate citations. Thus for example, since a basic *Cunningham* petition would be expected to rely on the Sixth and Fourteenth Amendments to the U.S. Constitution, the sample “Me Too” *Cunningham* cert. petition sets those out in the text. However, different cases will implicate different statutes and rules, and you will need to comply with Rule 14(f) for those as well. Those statutes and rules may be set forth in an appendix, which in the sample petition “Me Too” petition is referred to as Appendix D.

One form of relief requested in the sample “Me Too” *Cunningham* cert. petition is known in Supreme Court lingo as “GVR” – Grant, Vacate, and Remand, on issuance of a decision in *Cunningham*. It is derived from the statute governing relief in appellate courts, 28 U.S.C. § 2106, and has become a standard form of relief for “me-too” cases. See *Lawrence v. Chater*, 516 U.S. 163, 180-81 (1996) (per curiam) (Scalia, J., dissenting), and cases cited; *id.* at 166-67 [opinion of the court, citing Justice Scalia’s dissent on this point]. So it might be appropriate in some cases to mention GVR as a possible form of relief, in order to indicate further that your petition is filed based on another case. However, the primary form of relief sought in the petition should usually be a grant of certiorari, leaving it up to the court to decide for itself what it wants to do with your case if it does issue a grant.

If you have any unexpected problems with on the sample petitions or adapting them to your own case, you may contact the CCAP staff attorney assigned to your case.

**Step 7b.** The IFP motion is important, because it is what will exempt your case from the \$300 filing fee and the very expensive requirement of printing the certiorari petition. The Supreme Court’s rules require that the IFP affidavit must be attached to the IFP motion, S. Ct. R. 39.2, and the IFP motion and affidavit must precede and be attached to the petition for certiorari. S. Ct. R. 12.2, 12.4.

It is far better to follow the rules to the letter, and attach the IFP motion and executed affidavit to the certiorari petition, for filing within the 90-day mandatory jurisdictional deadline. However, the court’s Clerk’s Office does make due allowance for the possibility that counsel for an incarcerated petitioner might not get the affidavit back within the 90 days. The certiorari petition must still be filed within the 90 days;

other procedures to follow in that event are described in the explanation to Step (8b) below.

**Step 7c.** Unlike the practice in California courts and most other courts, a certification of service in the U.S. Supreme Court must be made on a separate document, under Supreme Court Rule 29.5. It must be signed by a member of the U.S. Supreme Court Bar (with an exception for federal indigent cases that is inapplicable here). Counsel for all parties must be served. The separate certification of service must set forth the names, addresses, and telephone numbers of counsel being served, the party whom each such counsel represents, and “a statement that all parties required to be served have been served.” S. Ct. R. 29.5. Service on the court from which certiorari is sought (i.e. the Court of Appeal) is not required by the U.S. Supreme Court rules, but might be warranted as a practical matter, *e.g.*, for purposes of compensation by the Court of Appeal or the California Supreme Court.

**Step 8:** An original and 10 copies of each document must be filed. S. Ct. R. 12.2, 21.2(c), 39.2. As described in Step (7c) and its explanation above, the IFP affidavit must be attached to the IFP motion, and both must precede and be attached to the certiorari petition.

It is always safest to have the petition in the hands of the U.S. Supreme Court Clerk’s Office on or before the 90th day. However, if this cannot be done or verified, there are fairly generous provisions for filing by mail or private courier.

U.S. Supreme Court Rule 29.2 states in part: “A document is timely filed if it is received by the Clerk within the time specified for filing; or if it is sent to the Clerk through the United States Postal Service by first-class mail (including express or priority mail), postage prepaid, and bears a postmark, other than a commercial postage meter label, showing that the document was mailed on or before the last day for filing; or if it is delivered on or before the last day for filing to a third-party commercial carrier for delivery to the Clerk within 3 calendar days.”

If filing is done by Postal Service, it is prudent to take the filing parcel directly to a Post Office window, and watch the clerk affix the postmark to the parcel. For an extra fee of 50 cents, delivery confirmation is available, and the clerk can hand-postmark the delivery confirmation certificate. (The Postal Service offers on-line parcel tracking, but from experience, it doesn’t always work.) Certified mail is somewhat more expensive, and the extra expense might not be compensable, but it does permit better tracking. The volume of documents *might* be thin enough to fit inside a Priority Mail flat rate envelope, which if true would minimize expense and provide priority handling.

If filing is done by delivery to a “third party commercial carrier” (e.g., FedEx, Airborne, UPS), the rule requires that delivery must be promised in three days or less. (In other words, UPS Ground is not an option.) Any extra expense for coast-to-coast delivery using a third-party commercial carrier will not be compensable. However, with most such private carriers, the parcel can easily be tracked, tracking information is

posted on-line, and status updates are routinely provided. This rule provision is somewhat newer provision than the provisions on Postal Service filing.

The rules provide that ordinarily, service on a party must be done by a manner at least as expeditious as the manner used to file the document with the Court. S. Ct. R. 29.3.

**Step 8a.** If you have the executed affidavit in hand and all of your documents prepared and ready to go in advance of the 90-day deadline, congratulations! You have just saved yourself some effort and stress. Send off and serve your parcels, and treat yourself to something a little extra special – you deserve it!

**Step 8b.** If any of the supporting paperwork is not yet complete by the time you are ready to file the certiorari petition, *i.e.* if you have not yet received notice of your Bar admission or your client has not yet returned a properly executed IFP affidavit, you may still submit the certiorari petition for filing. As this article has made clear (and now makes clear again!), **the certiorari petition cannot be delayed beyond the 90th day for any reason**, including missing supporting documents. It is definitely best to have the IFP affidavit filed and served and Bar admission complete within the 90-day period, but if that is not possible, the defect should not be fatal if counsel has acted with due diligence.

(Looked at from another perspective: An IFP motion is filed to seek an exemption from the filing fee requirement. Under U.S. Supreme Court precedent, review in a federal appellate court is not precluded even if the filing fee arrives after a mandatory jurisdictional deadline for review, if the document required by law to initiate review is filed on time. *Parissi v. Telechron, Inc.*, 349 U.S. 46, 47 (1955) (per curiam) [reversing dismissal of federal appeal due to late filing of a \$5 filing fee, because the Clerk received the notice of appeal within the required time period, even though the fee was inadvertently not sent with the notice]. So timely filing of the petition without the IFP motion, or with a technical defect such as pending Bar admission, should still protect the petitioner, as long as counsel exercises due diligence in taking all actions required to correct the defect.)

The Supreme Court Rules provide for a 60-day window to fix technical defects in petitions “submitted timely and in good faith.” S. Ct. R. 14.5. However, this is provided as a matter of courtesy, and should definitely not be counted on or relied on as a *de facto* extension of time for supporting documentation. If counsel cannot demonstrate due diligence in getting all of the supporting paperwork in order, it is presumed that the Court or Clerk’s Office has discretion to deny the courtesy and decline to file the petition.

In response to a post-*Cunningham* contact, the U.S. Supreme Court Clerk’s Office informed CCAP that as a courtesy, it will accept timely certiorari petitions without the IFP motion if the affidavit is unavailable, or without a Bar admission if the application for admission is pending. In those events, counsel must submit a cover

letter to the Clerk of the Court (with a copy to counsel for the other parties) briefly setting forth the deficiency, and if deemed appropriate, the status of efforts to remedy it. The Clerk's Office will either hold the petition and wait for the other documentation to catch up, or return the petition for timely refiling within a specified grace period.

If the deficiency is an incomplete Bar admission, you might wish to consider contacting the Attorney Admissions section of the U.S. Supreme Court first, to verify the date your application was received and determine if there is an updated status. Your cover letter to the Clerk's Office may then recite the date you submitted your Bar application, and the most recent status from the Attorney Admissions section. In this situation, you will still be able to submit all of the required petition documents for filing in their proper form, including attaching the IFP motion and affidavit to the front of the certiorari petition. See Item (7c) and its explanation above.

If the deficiency is a missing IFP affidavit (which, according to the Clerk's Office, is the most common deficiency in these situations), you might wish to consider setting forth briefly in your cover letter the steps you have taken to date, and any known obstacles, as well as a representation of your expected continued efforts to obtain the affidavit. The idea behind supplying such extra detail would be to set forth facts to show you have acted and will be acting with due diligence in trying to obtain the affidavit. The letter doesn't need to contain much detail; however, the better your showing, the greater the likelihood that the Clerk's Office will extend further courtesies and provide you with the extra time you need to secure the affidavit. In any event, when a busy Clerk's Office extends a courtesy beyond a filing deadline, it is of course basic professional protocol to give that office as much assistance and cooperation as is reasonably possible – which is especially true when the Clerk's Office is attached to the highest court in the nation.

**Step 9.** If you have reached this point, you are somewhat on borrowed time, so extra diligence in attempting to obtain the affidavit is now called for. As additional possible steps, you might first wish to contact the prison to determine if there is a lockdown or some other systemic problem which might have prevented your client from returning the affidavit to you.

You might also consider trying to set up a telephone call with your client, especially if you haven't done so already; this is discussed in the explanation to Step (5b) above. Because you will probably have no way to know when or even whether the affidavit might arrive in the mail (you might not even know if your client has filled it out and returned it), trying to arrange a telephone call may be the most direct route at this point for trying to expedite return of the affidavit. If you cannot reach the client's counselor, try the prison litigation coordinator; sometimes that office can be helpful and understanding for case-related matters that a counselor might not be as receptive to. If you are stymied in trying to reach your client at each step of the way, despite your most diplomatic efforts, the CCAP staff attorney assigned to your case may be able to render assistance in some situations.

For the rare case where it appears you will not be able to obtain an affidavit from your client at all, please contact the CCAP staff attorney assigned to your case.

**Step 10.** If your case doesn't appear on the U.S. Supreme Court's docket within a reasonable time, that could indicate a problem with the supporting paperwork, or in a rare case, nonreceipt of the parcel. If this type of event happens unexpectedly in your case, it helps to know about it as early as possible. As with the California appellate courts, U.S. Supreme Court docket information is available on the Internet, without any subscription requirements or fees. The Petition for Certiorari page on the CCAP website has a link to the U.S. Supreme Court's automated docket system webpage.

While Item (10) is otherwise self-explanatory, it might be added here that by reputation and experience, the U.S. Supreme Court Clerk's Office has traditionally been staffed with very knowledgeable and helpful people. Their automated on-line docketing system is also very helpful, and is well kept up to date; it is also very easy to use. So it is usually worth trying the automated on-line system for questions relating to whether or when a document was received or filed and the like, before calling the Clerk's Office. However, if there is a problem that cannot be solved without a live person, the Clerk's Office has been generally quite receptive to calls of that nature, and gracious in encouraging attorneys to call if they need assistance.

**Steps 11 and 12.** The docketing letter is a final step unique to U.S. Supreme Court cases. When a certiorari petition is timely filed and all of the supporting documentation is in order, the Clerk's Office will place the case on the docket and assign a case number, as is customary in all courts. The Clerk's Office will then send a docketing letter to counsel of record only, notifying counsel of the case caption and docket number, and directing counsel to serve a copy of the docketing letter on counsel for the other parties in the case. See S. Ct. R. 12.3.

Service of a copy of the docketing letter on other counsel is routine, and counsel of record should accomplish it as promptly as possible. According to the Clerk's Office, the requirement of a separate certification of service does not apply to the docketing letter.

## **Closing Points**

The primary Supreme Court rules which would probably be most generally applicable to certiorari petitions of the nature described in this article are:

- Rule 10: "Considerations Governing Review on Certiorari"
- Rule 12: "Review on Certiorari: How Sought; Parties"
- Rule 13: "Review on Certiorari: Time for Petitioning"
- Rule 14: "Content of a Petition for a Writ of Certiorari"
- Rule 21: "Motions to the Court"
- Rule 29: "Filing and Service of Documents; Special Notifications; Corporate Listing" [the corporate listing provisions are inapplicable here]

Rule 30: "Computation and Extension of Time"

Rule 33: "Document Preparation: Booklet Format; 8 ½ by 11-Inch Paper Format"

[only Rule 33.2 is applicable to *in forma pauperis* cases]

Rule 34: "Document Preparation: General Requirements"

Rule 39: "Proceedings *In Forma Pauperis*"

A link to the U.S. Supreme Court's website page containing the Supreme Court Rules may be found on the Petition for Certiorari page of CCAP's website.

CCAP has tried to make these materials as self-explanatory as possible. However, if you have any questions, including questions specific to the particular circumstances of your individual case, you may call the CCAP staff attorney assigned to your case. (Please do not call the author of this article unless she happens to be the staff attorney assigned to your case!)