



Office of the Clerk
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October 19, 2001

**Notice and Opportunity for Comment on
 Proposed Amendments to the Circuit Rules**

Comments are invited on the following proposed amendment to Circuit Rule 6-2, Petition for Writ of Certiorari to Review Final Decisions of the Supreme Court of Guam. The proposed amendments are in **bold**. Comments should be submitted to Cathy A. Catterson, Clerk of Court/Circuit Court Executive, no later than **November 30, 2001**.

CIRCUIT RULE 6-2

PETITION FOR WRIT OF CERTIORARI TO REVIEW
 FINAL DECISIONS OF THE SUPREME COURT OF GUAM

(a) Petition of Writ of Certiorari.

- (1) ****
- (2) ****
- (3) ****

(b) Consideration Governing Review on Certiorari.

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

- (1) **The Supreme Court of Guam has decided an important question of federal or territorial law in a way that conflicts with the**

decisions of the Supreme Court of the United States, this Court, or another United States court of appeals; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power.

- (2) **The Supreme Court of Guam has decided an important question of federal or territorial law that has not been, but should be, settled by this Court.**
 - (3) **The Supreme Court of Guam was without jurisdiction of the cause, or where, because of disqualification or other reason, the decision of the Supreme Court of Guam lacks the concurrence of the required majority of qualified, non-recused judges.**
 - (4) **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 a writ of certiorari with respect to any issue or any material fact that was omitted from or misstated in the opinion of the Supreme Court of Guam will normally not be considered, unless the omission or misstatement was called to the attention of the Supreme Court of Guam 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.**
- (c) **Denomination of the Parties.**
The party petitioning for the writ of certiorari shall be denominated the petitioner; the petitioner's denomination in the appeal or other proceeding before the Supreme Court of Guam shall also be included. All other parties shall be denominated respondents and each respondent's denomination in the appeal or other proceeding before the Supreme Court of Guam shall also be included. Any respondent who supports the position of a petitioner shall meet the time schedule for filing responsive papers.

Remaining subparagraphs now (d) through (j).

- (d) Content of Petition.

- (e) Response

- (f) Format and Length

- (g) Copies

- (h) Disposition of the Petition.

- (i) The Record on Review

- (j) The Certificate of Record

NEW PROPOSED AMENDMENT
CIRCUIT ADVISORY COMMITTEE NOTE
TO RULE 6-2(b) and (c), added in 2001

The Guam Organic Act, 48 U.S.C. § 1424-2, authorizes the Ninth Circuit to “promulgate rules necessary to carry out” its certiorari jurisdiction and function granted by that section. The Ninth Circuit has interpreted the grant of the 15-year interim certiorari jurisdiction to it by § 1424-2 as including “jurisdiction to review issues of local Guam law.” EIE Guam Corp. v. Supreme Court, 191 F.3d 1123, 1127 (9th Cir. 1999), cert. denied, 120 S. Ct. 980 (2000).

The introductory paragraph of subparagraph (b), and subdivisions (1), (2) and the first part of subdivision (4) are patterned after Rule 10 of the Rules of the Supreme Court of the United States. Subdivision 93) and the latter part of subdivision (4) of subparagraph (b) are patterned after Rule 29(a) of the California Rules of Court, which sets forth the grounds for discretionary review by the Supreme Court of California. Subparagraph (c) is patterned after Rule 40.1(c) of the Hawaii Court Rules.

Indicating that the considerations governing whether the Ninth Circuit will grant a petition for writ of certiorari are similar to and generally limited to those employed by the Supreme Court of the United States is in keeping with the Ninth Circuit's prior indication that it will exercise its certiorari jurisdiction sparingly. See EIE Guam Corp., 191 F.3d at 1127.

Purpose of Amendment

To provide guidance on criteria for seeking certiorari.