

FAST FIVE

RHODE ISLAND APPELLATE PRACTICE

(1) IN RHODE ISLAND, THE WRIT OF CERTIORARI IS INDEED EXTRAORDINARY.

There are two distinct procedural mechanisms for obtaining review by the Rhode Island Supreme Court. The most common is the appeal, which may be taken as of right in circumstances prescribed by law. *See New Harbor Village, LLC v. Town of New Shoreham Zoning Bd.*, 894 A.2d 901, 907 (R.I. 2006). The second is the petition for an extraordinary writ, which is discretionary and granted at the discretion of the Court. *Id.*

The most common of the extraordinary writs is the common law petition for writ of certiorari. As their name suggests, writs of certiorari are indeed extraordinary. Last year, 62 petitions were filed with the Rhode Island Supreme Court seeking issuance of a writ of certiorari. *See Rhode Island Judiciary 2012 Annual Report, available at <http://www.courts.ri.gov/PublicResources/annualreports/PDF/2012.pdf>.* Of those, very few will be granted. While the Court has unbridled discretion to issue the writ, it rarely exercises that discretion. *See New Harbor Village, LLC*, 894 A.2d at 907.

(2) MAKING THE CASE FOR ISSUANCE OF A WRIT OF CERTIORARI.

Given the rarity of the Rhode Island Supreme Court's issuance of writs of certiorari, a petition must demonstrate entitlement to extraordinary relief. The Court long ago explained that certiorari

does not lie in any case unless the petition can satisfy this court either that there is involved a question of jurisdiction of the inferior court or tribunal, which is raised originally by his petition, or that he has no other adequate remedy, or that review by *certiorari* is necessary to avoid great injury or unusual hardship which would result from the delay involved in pursuing such other adequate remedy.

White v. White, 36 A.2d 661, 663-64 (R.I. 1944).

A petition for issuance of a writ of certiorari must include the following:

- (1) A concise statement of the case containing the facts material to consideration of the questions presented in sufficient detail as to enable the Supreme Court to determine the desirability of issuance of the writ;
- (2) A statement setting forth with particularity why the relief sought is not available in any other court, or cannot be had through other appellate processes, including whether a notice of appeal has been filed with the Court and why that is not sufficient and
- (3) A copy of any order or opinion which the petitioner seeks to have reviewed and any other parts of the record which may be essential to an understanding of the matters set forth in the petition.

R.I. Sup. Ct. R. App. P. 13(a). With respect to the requirement that the petition include a copy of any order or opinion which the petitioner seeks to have reviewed, the petitioner should include a copy of the order, as well as any written decision or transcript of any hearing or bench decision on that issue. The petition should also be accompanied by a memorandum of law with the arguments and authorities relied upon by the petitioner. *Id.*

(3) PETITION THE SUPREME COURT WITHIN A REASONABLE TIME.

There is no set deadline by which a petition for issuance of a writ of certiorari must be filed. Even in the absence of a specific deadline, a petition for issuance of a writ of certiorari must be filed within a reasonable time. *See Davis v. Rhode Island Bd. of Regents*, 399 A.2d

1247, 1249 (R.I. 1979) (petition will not be granted when there is an unreasonable and unexplained delay in seeking relief). Of course, any delay in seeking issuance of the writ will undercut an argument that the writ is “necessary to avoid great injury or unusual hardship which would result from the delay involved in pursuing such other adequate remedy.” *White v. White*, 36 A.2d 661, 663-64 (R.I. 1944). Although the “reasonable time” deadline for filing a petition for writ of certiorari is longer than the 20-day deadline for the filing of an appeal, a petition for writ of certiorari is not a substitute for an untimely appeal.

For more information about the timeline and process for a common-law petition for issuance of a writ of certiorari before the Rhode Island Supreme Court, please see [Anatomy of Petition for Writ of Certiorari to the Rhode Island Supreme Court](#).

(4) STOP EVERYTHING! MY PETITION IS PENDING.

When a petition for issuance of a writ of certiorari is filed to review an interlocutory order, ruling or decision, the underlying trial court proceedings will continue. Many times, continuation of the underlying proceedings could moot the issue on which appellate review is sought. For example, a trial court ruling that certain documents are not protected by the attorney client privilege is an interlocutory ruling which only may be reviewed by certiorari, however, if the trial court proceedings continue while the petition is pending, the documents at issue will be disclosed and the issue for review on certiorari will be moot. In those instances, the Rhode Island Supreme Court Rules of Appellate Procedure authorize the petitioner to seek a stay *pendente lite*. R.I. Sup. Ct. R. App. P. 13(f). Ordinarily, the stay should be sought in the first instance in the trial court and, if the stay is denied by the trial court, a motion to stay may be filed in the Supreme Court.

(5) DID YOU KNOW?

Unlike a notice of appeal, which is filed with the trial court, a petition for issuance of a writ of certiorari (and the accompanying filing fee of \$150 per petitioner) is filed with the Supreme Court. R.I. Sup. Ct. R. App. P. 13(a). In cases that are assigned to a single judge, it is good practice to provide the trial justice with a courtesy copy of the petition for writ of certiorari so that he or she is aware that the petition has been filed.

For more updates on Rhode Island appellate law, pointers for practice before the Rhode Island Supreme Court and past editions of the Fast Five on Rhode Island Appellate Practice, please visit our new blog site <http://www.RIAppeals.com>.



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