

**Supreme Court**

In re Amendment to Article I,                   :  
      Rules 12A and 13                           :  
(Certiorari Petitions subject to prebriefing   :  
      procedures )                            :

**ORDER**

Section 1. Subdivisions (1), (3), (4), (6) and (7), of Rule 12A of the Rules of Appellate Procedure, entitled “Statement of the case; single justice conferences; hearing panels,” are hereby amended to read as follows:

(1) *Statement of the Case.* Within twenty (20) days after the docketing of the record of an appeal with the clerk of the Supreme Court or the receipt by the clerk of the Supreme Court of the record in a case in which a petition for writ of certiorari has been granted, the appellant, petitioner, or other moving party shall file a statement of the case and a summary of the issues proposed to be argued ~~on appeal~~, together with a copy of the judgment, order or other ruling which is the subject of the appeal or certiorari petition and the bench decision or written decision of the trial justice or other tribunal deciding the matter. The appellant, petitioner, or other moving party shall file nine (9) copies thereof and shall also complete the Supreme Court Summary Report form provided by the clerk. The statement shall be concise, not exceeding ten pages (unless special permission is granted by the Court or a justice thereof for additional pages). The party may take out the transcripts and exhibits from the clerk’s office in accordance with Rule 29 for reference in the preparation of the statement but shall return them when the statement is filed.

(2) *Counter-statement.*

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(3) *Single Justice Conferences and Orders.* Following the filing of such statements, the Court may require appearance by counsel for the parties before a single justice of the Court for a conference.

The objective of said conference will be to achieve settlement of the dispute in civil cases, to determine the issues on appeal/certiorari, to determine the manner in which the appeal, cross-appeal, certiorari petition, or petition for review shall proceed, and to consider whether proceedings over aspects of the case not involved in the appeal, cross-appeal, certiorari petition, or petition for review are contemplated or pending below while the matter is pending in the Supreme Court. In civil matters, counsel for each party shall confer in advance of the conference with his or her client and obtain authority to settle the matter, if possible. In the event that the single justice of the Court determines it appropriate, he or she may (a) issue an order in accordance with subdivisions 4 and 6 of this rule to either or both parties to show cause why the issues raised by the appeal or petition for certiorari should not be decided on the show cause calendar, (b) refer the appeal or certiorari petition to the Court at a session in conference for a determination of the manner in which the appeal or certiorari petition shall proceed or for a disposition of the issues on appeal or certiorari with or without further filing of memoranda and with or without oral argument, or (c) order that the case be placed on the regular calendar for full briefing and oral argument. The single justice may also order that specific appeals or certiorari petitions be consolidated or that the case be remanded for specific proceedings or the entry of necessary orders in the trial court or other tribunal.

(4) *Show Cause Supplemental Statements.* In cases in which show cause orders are issued, counsel for either party may submit a supplemental statement not exceeding ten (10) pages unless otherwise ordered, together with nine (9) copies thereof. The appellant, petitioner, or other moving party may submit this statement within twenty (20) days of the issuance of the show cause order; the responding party may file a counter-statement within ten (10) days thereafter. The single justice may vary the time of filing as well as the length of memorandum by special order. No party may submit a further supplemental statement or post-argument memorandum, or other communication of any kind, without the prior approval or direction of the Court or a justice thereof upon motion in accordance with Rule 28.

(5) \* \* \*

(6) *Show Cause Arguments, Orders, and Decisions.* The show cause argument shall be conducted before a hearing panel of this Court consisting of at least three justices, except for appeals in criminal cases which shall be heard by the full Court or by as many

members of the Court as are available. The Court or hearing panel may issue an order or opinion dismissing the appeal, or certiorari petition, reversing or modifying the judgment, or remanding the case to the appropriate trial court or other tribunal for further proceedings. The Court or panel may if it sees fit determine that the case should be placed on the regular calendar for full briefing and argument.

(7) *Cases Referred to the Full Court.* Cases referred to the Court for a determination of the manner in which the appeal or certiorari petition shall proceed or for disposition with or without briefing or oral argument may be (a) ordered to be placed on the regular calendar for full briefing and argument, (b) decided by the Court on the merits of the controversy without further briefing or oral argument, or (c) ordered to be placed on the motion calendar with such further filing of supplemental memoranda as the Court may require for oral argument before a hearing panel of the Court consisting of at least three justices, except for appeals in criminal cases and proceedings pursuant to Rule 6 which shall be heard by the full Court or as many members of the Court as are available.

Section 2. Rule 13, subdivision (e) of the Rules of Appellate Procedure, entitled “Order Granting or Denying Petition”, is hereby amended to read as follows:

“(e) *Order Granting or Denying Petition.* Upon the granting or denying of a petition, an appropriate order will be entered and the clerk shall give notice thereof to all parties. If the petition is granted, appropriate process shall issue and the cause shall thereafter proceed in accordance with these rules, including, as regards certiorari petitions, Rule 12A; and it shall be incumbent upon the petitioner to comply with the requirements of these rules for the preparation and transmission of the record on appeal. If the writ in question calls for review of the record of a court or other tribunal, allegations of fact contained in the petition which are not contained in the record under review shall not be considered to be established. A denial of a petition, without more, is not an adjudication on the merits and has no precedential effect, and such action is to be taken as being without prejudice to a further application to this Court or any court for the relief sought.”

Entered as an Order of this Court this 26<sup>th</sup> day of *September 2005*.

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WILLIAMS, C. J.

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GOLDBERG, J.

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FLAHERTY, J.

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SUTTELL, J.

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ROBINSON, J.