

**SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D. C. 20543-0001**

February 2020

SCOTT S. HARRIS
CLERK OF THE COURT

AREA CODE 202
479-3011

**MEMORANDUM CONCERNING THE DEADLINES FOR CERT STAGE
PLEADINGS AND THE SCHEDULING OF CASES FOR CONFERENCE.**

This memorandum is intended to provide guidance to attorneys and litigants on the procedures for cert-stage briefs, waivers, and replies. It also addresses the practices and procedures for distribution of cert-stage filings to the Justices for consideration.

1. Briefs in Opposition or in Support

A respondent is permitted to file a brief in opposition to or in support of a petition for a writ of certiorari. A brief in opposition or support is not required, except in a capital case or when ordered by the Court. Rules 14.1(a) and 15.1. If it is to be submitted, a brief in opposition or support must be filed within 30 days after the case is placed on the docket (or a response is called for by the Court), unless the time is extended. The due date for the brief in opposition is specifically noted on the docket.

A motion to extend the time to file a brief in opposition may be presented to the Clerk in the form of a letter under Rule 30.4, and the motion may be acted on by the Clerk's Office in the first instance. Unless there are circumstances that necessitate a speedy ruling on the petition, the Clerk's Office will generally grant an initial extension of 30 days upon request. If a respondent seeks an extension of more than 30 days, or a further extension after receiving a 30-day extension, respondent should include in the letter to the Clerk whether the petitioner(s) oppose the extension. It is permissible for an attorney who is not a member of the Supreme Court Bar to request an extension of time to file a brief in opposition. In this limited circumstance, the letter should be

submitted only in paper form, and electronic filing is not required. The letter should note that the requesting attorney is not currently a member of the Bar of this Court and acknowledge that the brief in opposition must be filed by a Bar member. If a petitioner opposes an extension request, and their opposition is not noted in the request, counsel for petitioner should contact the Clerk's Office promptly, since these motions are routinely acted upon very quickly. Extensions beyond 30 days are possible but depend on the circumstances and the views of the other parties to the case.

2. Waivers

If a respondent has determined that no brief in opposition or support will be filed, it is encouraged to file a waiver of the right to file. A form waiver should have been provided to respondent by the petitioner shortly after the petition was placed on the docket; the form is also available on the Rules and Guidance page of the Court's website. In completing the waiver (and in entering a notice of appearance within the Court's electronic filing system), particular care should be taken to ensure that it is clear for which respondent or respondents the waiver is submitted. It is permissible for an attorney who is not a member of the Supreme Court Bar to submit a waiver of the right to file a brief in opposition. The waiver should be submitted only in paper form, and electronic filing is not required. If the Court later calls for a response to the petition, the brief in opposition may only be submitted by a member of this Court's Bar.

3. Reply Briefs

If a brief in opposition has been filed, the petitioner is permitted to file a reply. There is no formal deadline for submission of a reply, but for the reply to be considered by the Court, it must be received by the Clerk's Office and accepted for filing in advance of the date the case will be considered at conference. If the reply has been received and accepted for filing when the case is distributed for conference (see Section 4, below), the reply will be distributed to the Chambers of the Justices along with the other filings in the case; many litigants therefore make an effort to have the reply on file before distribution. But if the reply arrives after distribution but before the Justices' consideration of the petition at conference, it will be distributed to Chambers

immediately upon docketing. Because there is no formal deadline for the submission of a reply, the Court will not accept a motion to extend the time to file one.

4. Scheduling of the Petition for Conference

Each week, the Clerk's Office distributes two main "conference lists" that identify petitions and other filings that will be considered by the Justices at an upcoming conference. The case distribution schedule is available on the Rules and Guidance page of the Court's website.¹ For most of the year, the list of paid cases is distributed on Wednesdays, and the list of *in forma pauperis* cases is distributed on Thursdays. Between the end of April and the middle of June, paid cases are distributed on Tuesdays, and *in forma pauperis* cases are distributed on Wednesdays. The petition, briefs in opposition/support and any other filings in the case will be forwarded to Chambers on the same day that the case is included on a conference list. When a case is distributed for conference, a notation is added to the docket for the case.

The precise date for distribution of the case is slightly different depending upon the status of filings in the case:

- (a) If it is clear that all respondents have waived the right to file a response to the petition, it will be placed on the next relevant conference list (*i.e.*, paid or *ifp*) after receipt of the waivers. Thus, if the waiver(s) in a paid case have been docketed by Tuesday, the case will be placed on a conference list that Wednesday.
- (b) If the time to file a brief in opposition has passed, but the Court has not received either a brief in opposition or a waiver from each respondent, the Clerk's Office will wait several days after the brief due date before distributing the petition. This delay is to account for the possibility that a timely filed brief may arrive by mail after the deadline.

¹ The distribution schedule also includes one list for each conference that is typically distributed on the Monday before conference. This list will include cases that were scheduled for a previous conference but not decided, and are ready to be considered again. Except in very unusual circumstances, the Clerk's Office will not include a case on this list if it has not previously been scheduled for consideration at a conference.

- (c) If a brief in opposition has been filed, the case will generally be placed on the next relevant conference list that is at least 14 days after the filing date for the brief in opposition. See Rule 15.5. Thus, if a brief in opposition in an *in forma pauperis* case was filed on Friday, October 11, 2019, the case would presumably be included on a conference list and distributed to Chambers on Thursday, October 31, 2019, for consideration at the November 15, 2019, conference.
- (d) If a reply is received and accepted for filing less than 14 days after the brief in opposition is filed, or if a letter from petitioner is received by the Clerk's office indicating a desire to waive the 14-day period, the Clerk's Office will distribute the case on the next relevant conference list.

5. Response Requests and CVSGs.

The Court will sometimes schedule a case for conference, but then request a response from the respondent(s) before the petition is actually considered at conference. Such a request will be noted on the docket, and will generally give the respondent 30 days to submit the response. Once the response is received, the Clerk's Office will place the case on the next relevant conference list that is at least 14 days after the date that the last response is filed (comparable to paragraph 4(c), above).

Occasionally, the Court will decide at a conference to call for the views of the Solicitor General (CVSG) before making a final decision about whether to grant a petition. Such a request is also noted on the docket, though there typically is no formal due date listed. Once the Solicitor General's brief is filed, the Clerk's Office will place the case on the next relevant conference list that is at least 14 days after the date that brief is filed. This 14-day period gives the parties the opportunity to file a supplemental brief responding to the Solicitor General's brief.