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Federal Writs and SCOTUS Certs

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APPENDIX

1. Trevino v. Thaler PWC filings

I. SCOTUS certs

If you plan on pursuing SCOTUS work, you should invest in the best work on this topic – Stephen M. Shapiro, Kenneth S. Geller, Timothy S. Bishop, Edward A. Hartnett & Dan Himmelfarb, Supreme Court Practice. To give you an excellent sample of SCOTUS work mandated by the rules that follow, I have attached to this paper the successful SCOTUS filings in Trevino v. Thaler graciously provided to me by Warren A. Wolf and John “Bud” Ritenour.

A. Deadlines

“Unless otherwise provided by law, a petition for a writ of certiorari to review a judgment in any case, civil or criminal, entered by a state court of last resort or a United States court of appeals (including the United States Court of Appeals for the Armed Forces) is timely when it is filed with the Clerk of this Court within 90 days after entry of the judgment. A petition for a writ of certiorari seeking review of a judgment of a lower state court that is subject to discretionary review by the state court of last resort is timely when it is filed with the Clerk within 90 days after entry of the order denying discretionary review.” Sup. Ct. R. 13.1.

“The time to file a petition for a writ of certiorari runs from the date of entry of the judgment or order sought to be reviewed, and not from the issuance date of the mandate (or its equivalent under local practice). But if a petition for rehearing is timely filed in the lower court by any party, or if the lower court appropriately entertains an untimely petition for rehearing or sua sponte considers rehearing, the time to file the petition for a writ of certiorari for all parties (whether or not they requested rehearing or joined in the petition for rehearing) runs from the date of

the denial of rehearing or, if rehearing is granted, the subsequent entry of judgment.” Sup. Ct. R. 13.3.

“For good cause, a Justice may extend the time to file a petition for a writ of certiorari for a period not exceeding 60 days. An application to extend the time to file shall set out the basis for jurisdiction in this Court, identify the judgment sought to be reviewed, include a copy of the opinion and any order respecting rehearing, and set out specific reasons why an extension of time is justified. The application must be filed with the Clerk at least 10 days before the date the petition is due, except in extraordinary circumstances. The application must clearly identify each party for whom an extension is being sought, as any extension that might be granted would apply solely to the party or parties named in the application. For the time and manner of presenting the application, see Rules 21, 22, 30, and 33.2. An application to extend the time to file a petition for a writ of certiorari is not favored.” Sup. Ct. R. 13.5.

B. Requirements

1. Order of contents

Supreme Court Rule 14 states that a petition for a writ of certiorari (PWC) must contain the following in this order:

1. Question(s) presented for review;
2. List of all parties;
3. Table of contents and table of authorities;
4. Citations of opinions/orders below;
5. Statement of jurisdiction;
6. Constitutional provisions etc. involved;
7. Statement of the case;
8. Argument; and
9. Appendix.

“The questions presented for review, expressed concisely in relation to the

circumstances of the case, without unnecessary detail. The questions should be short and should not be argumentative or repetitive. If the petitioner or respondent is under a death sentence that may be affected by the disposition of the petition, the notation ‘capital case’ shall precede the questions presented. The questions shall be set out on the first page following the cover, and no other information may appear on that page. The statement of any question presented is deemed to comprise every subsidiary question fairly included therein. Only the questions set out in the petition, or fairly included therein, will be considered by the Court.” Sup. Ct. R. 14.1(a).

“A list of all parties to the proceeding in the court whose judgment is sought to be reviewed (unless the caption of the case contains the names of all the parties), and a corporate disclosure statement as required by Rule 29.6.” Sup. Ct. R. 14.1(b).

“If the petition prepared under Rule 33.1 exceeds 1,500 words or exceeds five pages if prepared under Rule 33.2, a table of contents and a table of cited authorities. The table of contents shall include the items contained in the appendix.” Sup. Ct. R. 14.1(c).

“Citations of the official and unofficial reports of the opinions and orders entered in the case by courts or administrative agencies.” Sup. Ct. R. 14.1(d).

“A concise statement of the basis for jurisdiction in this Court, showing: (i) the date the judgment or order sought to be reviewed was entered (and, if applicable, a statement that the petition is filed under this Court’s Rule 11); (ii) the date of any order respecting rehearing, and the date and terms of any order granting an extension of time to file the

petition for a writ of certiorari; (iii) express reliance on Rule 12.5, when a cross-petition for a writ of certiorari is filed under that Rule, and the date of docketing of the petition for a writ of certiorari in connection with which the cross-petition is filed; (iv) the statutory provision believed to confer on this Court jurisdiction to review on a writ of certiorari the judgment or order in question; and (v) if applicable, a statement that the notifications required by Rule 29.4(b) or (c) have been made.” Sup. Ct. R. 14.1(e).

“The constitutional provisions, treaties, statutes, ordinances, and regulations involved in the case, set out verbatim with appropriate citation. If the provisions involved are lengthy, their citation alone suffices at this point, and their pertinent text shall be set out in the appendix referred to in subparagraph 1(I).” Sup. Ct. R. 14.1(f).

“A concise statement of the case setting out the facts material to consideration of the questions presented, and also containing the following: (i) If review of a state-court judgment is sought, specification of the stage in the proceedings, both in the court of first instance and in the appellate courts, when the federal questions sought to be reviewed were raised; the method or manner of raising them and the way in which they were passed on by those courts; and pertinent quotations of specific portions of the record or summary thereof, with specific reference to the places in the record where the matter appears (e. g., court opinion, ruling on exception, portion of court’s charge and exception thereto, assignment of error), so as to show that the federal question was timely and properly raised and that this Court has jurisdiction to review the judgment on a writ of certiorari. When the portions of the record relied on under this subparagraph are voluminous, they shall be included in the appendix referred to in

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