

Order

Michigan Supreme Court
Lansing, Michigan

March 27, 2024

Elizabeth T. Clement,
Chief Justice

ADM File No. 2024-05

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Megan K. Cavanagh
Elizabeth M. Welch
Kyra H. Bolden,
Justices

Proposed Amendment of
Rule 7.306 of the Michigan
Court Rules

On order of the Court, this is to advise that the Court is considering an amendment of Rule 7.306 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter will also be considered at a public hearing. The notices and agendas for each public hearing are posted on the [Public Administrative Hearings](#) page.

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[Additions to the text are indicated in underlining and
deleted text is shown by strikeover.]

Rule 7.306 Original Proceedings

(A)-(B) [Unchanged.]

(C) An action for judicial review under MCL 168.46 or MCL 168.845a must be initiated only in the Supreme Court as an original proceeding and in accordance with this rule.

(D) What to File. Service provided under this subrule must be verified by the clerk. To initiate an original proceeding, a plaintiff must file with the clerk all of the following:

- (1) 1 signed copy of a complaint prepared in conformity with MCR 2.111(A) and (B). and entitled, for eExample, titles include:

“[Plaintiff] v [Court of Appeals, Governor [NAME], Board of State Canvassers, Board of Law Examiners, Attorney Discipline Board, Attorney Grievance Commission, or Independent Citizens Redistricting Commission].”

The clerk shall retitle a complaint that is named differently.

- (2) 1 signed copy of a brief conforming as nearly as possible to MCR 7.212(B) and (C);
- (3) Proof that the complaint and brief were served on the defendant, and,
 - (a) for a complaint filed against the Attorney Discipline Board or Attorney Grievance Commission, on the respondent in the underlying discipline matter;
 - (b) for purposes of a complaint filed under Const 1963, art 4, § 6(19), service of a copy of the complaint and brief shall be made on any of the following persons:
 - (i) the chairperson of the Independent Citizens Redistricting Commission;
 - (ii) the secretary of the Independent Citizens Redistricting Commission, or
 - (iii) upon an individual designated by the Independent Citizens Redistricting Commission or Secretary of State as a person to receive service. ~~Service shall be verified by the Clerk of the Court; and~~
 - (c) for purposes of a complaint filed under MCL 168.46, service of a copy of the complaint and brief shall be made on the defendant(s) and all of the following persons if not named as a defendant:
 - (i) the candidates who were declared the winners of the office of President or Vice President of the United States,
 - (ii) the chairperson of the board of state canvassers,
 - (iii) the attorney general, and
 - (iv) the secretary of state.

A complaint filed under MCL 168.46 must be filed with the Court within 24 hours after the governor's certification of the completed recount but no later than 8:00 a.m. on the day before the electors of

President and Vice President are required to convene pursuant to MCL 168.47.

- (d) for purposes of a complaint filed under MCL 168.845a, service of a copy of the complaint and brief shall be made on the defendant(s) and all of the following persons if not named as a defendant:
- (i) the candidates who were declared the winners of the office of President or Vice President of the United States,
 - (ii) the governor,
 - (iii) the attorney general, and
 - (iv) the secretary of state.

A complaint filed under MCL 168.845a must be filed with the Court within 48 hours after the certification or determination of the results of a presidential election and must name the board of state canvassers as a defendant.

- (4) The fees provided by MCR 7.319(C)(1) and MCL 600.1986(1)(a).

Copies of relevant documents, record evidence, or supporting affidavits may be attached as exhibits to the complaint.

~~(E)~~ Answer.

- (1) [Unchanged.]
- (2) A defendant challenging a certification or ascertainment after recount under MCL 168.46 must file the following with the clerk within 24 hours of the complaint being filed or by 12 p.m. on the day before the electors of President and Vice President are required to convene pursuant to MCL 168.47, whichever is earlier, unless the Court directs otherwise:
 - (a) 1 signed copy of an answer in conformity with MCR 2.111(C);
 - (b) 1 signed copy of a supporting brief in conformity with MCR 7.212(B) and (D); and
 - (c) Proof that a copy of the answer and supporting brief was served on the plaintiff.

- (3) A defendant in an action filed under MCL 168.845a must file the following with the clerk within 48 hours after service of the complaint and supporting brief, unless the Court directs otherwise:
- (a) 1 signed copy of an answer in conformity with MCR 2.111(C);
 - (b) 1 signed copy of a supporting brief in conformity with MCR 7.212(B) and (D); and
 - (c) Proof that a copy of the answer and supporting brief was served on the plaintiff and any intervenors.
- (2) [Renumbered as (4) but otherwise unchanged.]
- (E) [Relettered as (F) but otherwise unchanged.]
- (G~~F~~) Reply Brief. 1 signed copy of a reply brief may be filed as provided in MCR 7.305(E). In an action filed under Const 1963, art 4, § 6(19), a reply brief may be filed within 3 days after service of the answer and supporting brief, unless the Court directs otherwise. In an action filed under MCL 168.845a, a reply brief may be filed within 1 day after service of the answer and supporting brief, unless the Court directs otherwise. A plaintiff may not file a reply brief in an action for judicial review under MCL 168.46.
- (H) Notice of Intervention and Brief. In an action filed under MCL 168.845a(1), the governor, attorney general, secretary of state, and the winner of the presidential election may intervene by filing a notice of intervention and brief in support of or opposition to the complaint within 48 hours after service of the complaint and supporting brief.
- (G)-(I) [Relettered as (I)-(K) but otherwise unchanged.]
- (L~~J~~) Decision. The Court may set the case for argument as a calendar case, grant or deny the relief requested, or provide other relief that it deems appropriate, including an order to show cause why the relief sought in the complaint should not be granted. To have conclusive effect in an action for judicial review under MCL 168.46, the Court's final order must be issued no later than 4 p.m. the day before the electors for President and Vice President of the United States convene under MCL 168.47. To have conclusive effect in an action for judicial review under MCL 168.845a, the Court's final order must be issued no later than the day before the electors for President and Vice President of the United States convene under MCL 168.47.

Staff Comment (ADM File No. 2024-05): The proposed amendment of MCR 7.306 would establish a procedure for two new original actions in the Supreme Court related to presidential elections in conformity with MCL 168.46 (as amended by 2023 PA 269) and MCL 168.845a (as adopted by 2023 PA 255).

The staff comment is not an authoritative construction by the Court. In addition, adoption of a new rule or amendment in no way reflects a substantive determination by this Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be submitted by July 1, 2024 by clicking on the “Comment on this Proposal” link under this proposal on the [Court’s Proposed & Adopted Orders on Administrative Matters](#) page. You may also submit a comment in writing at P.O. Box 30052, Lansing, MI 48909 or via email at ADMcomment@courts.mi.gov. When submitting a comment, please refer to ADM File No. 2024-05. Your comments and the comments of others will be posted under the chapter affected by this proposal.



I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

March 27, 2024

A handwritten signature in black ink, appearing to read "Larry S. Royster".

Clerk