

Order

Michigan Supreme Court
Lansing, Michigan

November 10, 2011

Robert P. Young, Jr.,
Chief Justice

ADM File No. 2010-05

Michael F. Cavanagh
Marilyn Kelly
Stephen J. Markman
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Justices

Amendment of Rules 2.112,
2.625, 7.206, and 7.213 of the
Michigan Court Rules

On order of the Court, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the following amendments of Rules 2.112, 2.625, 7.206, and 7.213 of the Michigan Court Rules are adopted, effective January 1, 2012.

[Additions are indicated by underlining and deletions are indicated by strikeover.]

Rule 2.112 Pleading Special Matters

(A)-(L) [Unchanged.]

(M) Headlee Amendment Actions. In an action brought pursuant to Const 1963, art 9, § 32, alleging a violation of Const 1963, art 9, §§ 25-34, the pleadings shall set forth with particularity the factual basis for the alleged violation or a defense and indicate whether there are any factual questions that are anticipated to require resolution by the court ~~factual basis for the alleged violation or a defense must be stated with particularity.~~ In an action involving Const 1963, art 9, § 29, the plaintiff ~~must~~ shall state with particularity the type and extent of the harm and whether there has been a violation of either the first or second sentence of that section. In an action involving the second sentence of Const 1963, art 9, § 29, the plaintiff ~~must~~ shall state with particularity the activity or service involved. The pleadings shall identify all ~~All~~ statutes involved in the case, and ~~must be identified, and~~ the parties shall append to their pleadings copies of all ordinances and municipal charter provisions involved, and any available documentary evidence supportive of a claim or defense, ~~must be attached to the pleading.~~ The parties may supplement their pleadings with additional documentary evidence as it becomes available to them.

(N) [Unchanged.]

Rule 2.625 Taxation of Costs

(A)-(I)[Unchanged.]

- (J) Costs in Headlee Amendment Suits. A plaintiff who prevails in an action brought pursuant to Const 1963, art 9, § 32 shall receive from the defendant the costs incurred by the plaintiff in maintaining the action as authorized by MCL 600.308a(1) and (6). Costs include a reasonable attorney fee.

Rule 7.206 Extraordinary Writs, Original Actions, and Enforcement Actions

(A)-(C)[Unchanged.]

(D) Actions for Extraordinary Writs and Original Actions.

- (1) Filing of Complaint. To commence an original action, the plaintiff shall file with the clerk:
- (a) ~~for original actions filed under Const 1963, art 9, §§ 25-34, 5 copies of a complaint (one signed) that conforms to the special requirements of MCR 2.112(M), and which indicates whether there are any factual questions that must be resolved; for all other extraordinary writs and original actions, 5 copies of a complaint (one signed), which may have copies of supporting documents or affidavits attached to each copy;~~
 - (b) 5 copies of a supporting brief (one signed) conforming to MCR 7.212(C) to the extent possible;
 - (c) proof that a copy of each of the filed documents was served on every named defendant and, in a superintending control action, on any other party involved in the case which gave rise to the complaint for superintending control; and
 - (d) the entry fee.
- (2) Answer. The defendant or any other interested party must file with the clerk within 21 days of service of the complaint and any supporting documents or affidavits:
- (a) ~~for original actions filed under Const 1963, art 9, §§ 25-34, 5 copies of an answer to the complaint (one signed) that conforms to the special requirements of MCR 2.112(M), and which indicates whether there are any factual questions that must be resolved; for all other extraordinary writs and original actions, 5 copies of an answer to the complaint (one signed), which may have copies of supporting documents or affidavits attached to each copy;~~

- (b) 5 copies of an opposing brief (one signed) conforming to MCR 7.212(D) to the extent possible; and
- (c) proof that a copy of each of the filed documents was served on the plaintiff and any other interested party.

(3) Electronic Filing. The parties may file all pleadings and other papers permitted by this rule electronically with the Court of Appeals. All electronically filed documents must be in PDF digital format, while appendices and other nonoriginal filings may be scanned. All electronic filings must be submitted in accordance with the instructions set forth on the website of the Michigan Court of Appeals. Pro se parties may file pleadings and other papers in paper form.

(34) [Former subsection (3) has been renumbered as (4), but otherwise is unchanged.]

(E) Actions to Enforce the Headlee Amendment, Pursuant to Const 1963, art 9, § 32.

(1) Filing of Complaint. To commence an action pursuant to Const 1963, art 9, § 32, the plaintiff shall file with the clerk:

- (a) 5 copies of the complaint (1 signed), which conforms with the special pleading requirements of MCR 2.112(M) and indicates, inter alia, whether there are any factual questions that are anticipated to require resolution by the court and whether the plaintiff(s) anticipate(s) the need for discovery and the development of a factual record;
- (b) 5 copies of a supporting brief (1 signed) conforming to MCR 7.212(C) to the extent possible;
- (c) proof that a copy of each of the filed documents was served on every named defendant and the office of the attorney general; and
- (d) the entry fee.

(2) Answer. The named defendant(s) shall file with the clerk within 21 days of service of the complaint:

- (a) 5 copies of an answer to the complaint (1 signed), which conforms with the special pleading requirements of MCR 2.112(M) and indicates, inter alia, whether there are any factual questions that are anticipated to require resolution by the court and whether the named defendant(s) anticipate(s) the need for discovery and the development of a factual record;

- (b) 5 copies of a supporting brief (1 signed) conforming to MCR 7.212(C) to the extent possible;
 - (c) proof that a copy of each of the filed documents was served on every named plaintiff.
- (3) Subsequent proceedings. Following receipt of the answer:
- (a) the chief clerk shall promptly select a panel of the court by random draw and assign that panel to commence proceedings in the suit; and
 - (b) the panel of the court may deny relief or grant peremptory relief without oral argument; or
 - (c) if the panel of the court determines that the issues framed in the parties' pleadings and supporting briefs solely present jurisprudentially significant questions of law, the panel shall direct that the suit proceed to a full hearing on the merits in the same manner as an appeal as of right and notify the parties of the date for the filing of supplemental briefs, if such briefs are determined to be necessary, and of the date for oral argument, which shall be on an expedited basis; or
 - (d) if the panel of the court determines that the issues framed in the parties' pleadings and supplemental briefs present factual questions for resolution, the panel shall refer the suit to a judicial circuit for the purposes of holding pretrial proceedings, conducting a hearing to receive evidence and arguments of law, and issuing a written report for the panel setting forth proposed findings of fact and conclusions of law. The proceedings before the circuit court shall proceed as expeditiously as due consideration of the circuit court's docket, facts and issues of law requires. Following the receipt of the report from the circuit court, the panel shall notify counsel for the parties of the schedule for filing briefs in response to the circuit court's report and of the date for oral argument, which shall be on an expedited basis.

~~(E)~~(F) [Former (E) has been relettered as (F), but otherwise is unchanged.]

Rule 7.213 Calendar Cases

(A)-(B)[Unchanged.]

(C) Priority on Calendar. The priority of cases on the session calendar is in accordance with the initial filing dates of the cases, except that precedence shall be given to:

- (1) interlocutory criminal appeals;
- (2) child custody cases;
- (3) interlocutory appeals from the grant of a preliminary injunction;
- (4) appeals from all cases involving election issues, including, but not limited to, recall elections and petition disputes;
- (5) appeals of decisions holding that a provision of the Michigan Constitution, a Michigan statute, a rule or regulation included in the Michigan Administrative Code, or any other action of the legislative or executive branch of state government is invalid; ~~and~~
- (6) actions brought under Const 1963, art 9, §§ 29-34 (Headlee actions); and
- (7) [Former (6) has been renumbered as (7), but is otherwise unchanged.]

(D)-(E)[Unchanged.]

Staff Comment: The existing fact-specific pleading requirements in MCR 2.112(M) are retained and expanded to promote earlier consideration whether facts must be established in the case. The amendments of MCR 2.625 clarify that costs, including reasonable attorney fees, are recoverable in a Headlee action. The amendment of MCR 7.206(D)(3) allows parties to utilize electronic filing in Headlee cases, as well as other extraordinary writs or original actions filed in the Court of Appeals. The amendments of MCR 7.206 create a new specific subsection (7.206[E]) regarding the procedure for filing a Headlee action as an original proceeding in the Court of Appeals. The amendment of MCR 7.213 is intended to clarify that Headlee actions are considered priority matters in the Court of Appeals.

The staff comment is not an authoritative construction by the Court.



I, Corbin R. Davis, 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.

November 10, 2011

Corbin R. Davis

Clerk